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Fiduciary Responsibility

Lawmakers Announce Principles for Bill As Alternative to DOL Fiduciary Rule

A bipartisan group of House lawmakers teamed to release a set of ''best interest'' principles to form the basis of financial education and advice legislation they are developing to counter the Department of Labor's proposed fiduciary rule.

The principles address key concerns that critics have leveled against the DOL's proposed rule, such as fears that the regulation—also called the ''conflict-of-interest'' proposal—would restrict advice for low- and middle-income investors and small businesses.

''We are concerned that the Department of Labor's current fiduciary proposal may have unintended negative consequences that could harm individuals and families saving for retirement,'' Republicans Peter Roskam (Ill.) and Phil Roe (Tenn.) and Democrats Richard E. Neal (Mass.) and Michelle Lujan Grisham (N.M.) said in a news release. ''We acknowledge the Department of Labor's pledge to change aspects of the regulation before final issuance, but feel more must be done to adequately address concerns about the rule's impact on the ability of low- and middle-class families to save for retirement.''

The principles would require that advisers act in their clients' best interest, but don't include the word ''fiduciary''—and don't include the legally binding contractual structure in the DOL proposal (RIN 1210-AB32).

Roskam and Neal agreed during a hearing on the fiduciary proposal in September that they would work together on best-interest legislation (42 BPR 1749, 10/6/15).

The proposal also includes a limited list of allowed investments that the DOL says are more transparent and less complex than others. The lawmakers' principles would allow for ''investor choice and consumer access to all investment services.''

As with all things fiduciary rule, the lawmakers' announcement drew polar opposite reactions.

The American Council of Life Insurers said in a statement that the principles ''offer a common-sense solution to fix'' the DOL's proposed rules, which it said will restrict low- to moderate-income Americans from getting the retirement savings help they need and ''stifle the formation of small business workplace benefit plans.''

On the other end of the spectrum, Nancy Hwa, spokeswoman for the Pension Rights Center, told Bloomberg BNA in an e-mail that ''this is yet another stalling tactic by those who don't want to see meaningful changes to prevent conflicts of interest in investment advice for retirement accounts.''

''The proposed rule already reflects the principles expressed by these lawmakers, and it's disingenuous for them to claim that the rule will prevent low-income savers from getting professional advice or that legislation is needed,'' she said.

Stalling Actions. The lawmakers' announcement is the latest in a string of moves in the past two weeks by both Republicans and Democrats to shut down or postpone the DOL's proposal.

The House passed legislation (H.R. 1090) in late October on nearly a party-line vote that would halt the proposal until after the Securities and Exchange Commission finalizes rules on standards of conduct for brokers and dealers (42 BPR 1895, 11/3/15).

The SEC hasn't proposed its rules yet, and also hasn't released any details on when they might be expected (42 BPR 1849, 10/27/15).

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>
> —HOUSE LAWMAKERS

A group of Democrats led by Rep. Jared Polis (D-Colo.) on Oct. 30 sent a letter to the DOL requesting another comment period prior to the rule's finalization. However, the DOL is moving quickly to finalize the rule, with an expected release in the first half of 2016, so that the effective date kicks in before the end of President Barack Obama's term.

The banking industry is currently taking aim at the federal appropriations bill that has to be passed next month as a way to kill the DOL's proposal as Republican lawmakers seek to attach riders to funding measures to block the rule (see related article in this issue).

But Sen. Elizabeth Warren (D-Mass.), who has supported the DOL's proposal since the start, released in late October a report in which she criticized the largest

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annuity providers for ‘‘kickbacks’’ or perks they provide for encouraging brokers to sell investments that may be more expensive (42 BPR 1896, 11/3/15).

Insurance industry members wasted little time responding to the Warren report. At a Nov. 3 conference session, Carl B. Wilkerson, vice president and chief counsel for securities and litigation at the American Council of Life Insurers, compared the report to the dystopian novel ‘‘1984,’’ because it seemed that it was issued by the ‘‘ministry of misinformation and doublespeak.’’

By Sean Forbes

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The lawmakers’ news release is at http://roskam.house.gov/media-center/press-releases/bipartisan-coalition-of-lawmakers-outline-legislative-principles-to. The Democrats’ request for another comment period is at http://src.bna.com/Xb.

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