
Born to be vetoed: Two more House bills target DOL proposal

By Editorial Staff Thu, Feb 4, 2016

The bills emerging from the House Committee on Education and the Workforce would maintain the status quo by requiring disclosure of, not elimination of, conflicts of interest in sales of financial products.

While the Office of Management and Budget reviews the budgetary implications of the Department of Labor's forthcoming "fiduciary rule," the Republican-led House Committee on Education and the Workforce approved two bills on Feb. 2, 2016 that would nullify the DOL's proposed rule.

The two similar bills, which would likely be vetoed by President Obama if they reached his desk, are:

- The "Affordable Retirement Advice Protection Act" ([HR 4293](#)) introduced by Rep. Phil Roe (R-Tenn.) addresses ERISA jurisdiction;
- The "Strengthening Access to Valuable Education and Retirement Support (SAVERS) Act" ([HR 4293](#)) introduced by Rep. Peter Roskam (R-Ill.) would amend the Internal Revenue Code.

The two bills are written in the customary congressional style, which makes interpretation by a layperson nearly impossible. But they seem intended to maintain the status quo in provision of financial advice to 401(k) participants and IRA owners.

In the status quo, the line between "advice" and sales and marketing is blurred (with respect to IRAs (and any other assets). The advisor's only obligation to clients is to disclose that he is a salesperson and not a trustworthy advisory conflicts of interests; most clients don't read or understand the disclosures.

The DOL proposal would resolve this ambiguity by requiring sellers of financial products to IRA owners to act solely in the interests of the client. But, in making it illegal for sales to masquerade as advice, the DOL threatens to eliminate a vast amount of sales activity virtually overnight.

Financial services companies could adapt, but it would require fundamental, expensive changes to business models and processes. Hence the partisan effort, through legislation, to stop or emasculate the proposed rule. It's still possible that the final version of the rule will be softer than the proposal, but no one's counting on that.

The second bill, also similar to one introduced in December, uses similar language to amend the Internal Revenue Code. (The IRS would enforce the new DOL rule.) Both of the new bills require congressional approval of the DOL's final rule before it goes into effect and, if Congress did not approve the final rule, Congress would offer "alternative fiduciary protection for consumers."

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