April 24, 2017

Open Letter to the United States Congress: Stop the Obama administration's Fiduciary Rule by taking these affirmative steps

Members of Congress:

On behalf of the undersigned free market organizations representing millions of Americans, we urge Congress to quickly act to stop the pending implementation of the Department of Labor's (DOL) Fiduciary Rule, an Obama-era regulation that would dramatically raise costs for investors and retirees as well limit access to financial advice.

Specifically, we urge Congress to take the following affirmative steps to stop the Rule from taking effect before a thorough examination is complete. First, the Senate should quickly confirm President Trump's nominee to lead DOL, Alexander Acosta, who will hopefully stop the rush to implementation. Next, any omnibus spending package to fund the government for the next fiscal year should contain a policy rider denying funding to DOL for implementation of the Rule. Finally, Congress should work toward revising the Rule or overturning it entirely.

As currently drafted, the Fiduciary Rule is unworkable and far too costly. By DOL's conservative estimates, the Rule could cost up to $31.5 billion to comply with and require nearly 60,000 hours of paperwork. This alone is incredibly burdensome, especially for smaller and independent financial advisory firms, yet there are other significant problems with the Rule. By raising the legal standard of care for financial advisers, the Rule would also limit investment advice especially for Americans with lower account balances. There are numerous news stories about the rise of so-called "robo advisers" that provide one-size fits all investment advice to American investors and retirees. While consumers should be free to choose robo-advice if that's what they prefer, they should not be forced to forgo human advice by means of regulation. If this Rule creates obstacles to high-quality, individualized investment advice, more Americans could be deterred from saving and investing for retirement, especially in tax-advantaged vehicles. As a result, they could become more heavily reliant on already-strained government-funded retirement programs.

On February 3, 2017, President Trump's issued a Presidential Memorandum directing DOL to examine the Fiduciary Rule "to determine whether it may adversely affect the ability of Americans to gain access to retirement information and financial advice." The Memorandum also asks DOL to reexamine the economic and legal analysis underpinning the Rule.

In response, DOL, under the leadership of the Acting Secretary, an Obama administration holdover, delayed by 60 days the effective date of the Rule, but noted, “the Department has concluded it would be inappropriate to broadly delay application of the fiduciary definition ...” Given that properly examining the Rule will take significantly longer than 60 days, DOL is nonetheless planning to move forward with implementation of the Rule. As the *Wall Street Journal* recently opined, “By refusing to delay the rule in its entirety, the bureaucracy hopes to entrench its main features so it will be too late or too costly or too difficult to do anything about it, even if a review ultimately concludes it was a mistake.”

We remain skeptical that a heightened legal standard for investment advisers is necessary, but at the very least, Congress should do everything in its power to ensure DOL complies with President Trump’s directives. Accordingly, we urge Congress to take the three steps laid out above.

Sincerely,

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National Taxpayers Union

Phil Kerpen, President
American Commitment

Rick Manning, President
Americans for Limited Government

Grover Norquist, President
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