FIDUCIARY DUTY:

ASSESSING THE REAL-WORLD IMPACT

U.S. CHAMBER OF COMMERCE

DATA SHOW INVESTORS WILL BE WORSE OFF UNDER THE FIDUCIARY RULE

On September 7, 2017, the U.S Chamber of Commerce hosted an event, Fiduciary Duty: Assessing the Real-World Impact, to discuss the effects of the Department of Labor's (DOL's) Fiduciary Rule. When the DOL promulgated the final rule in April 2016, it had to guess about the rule's effects on retirement investors and the marketplace. Today, instead of guessing, we have facts. At the event, the U.S. Chamber and five other organizations presented new research on the impact that partial implementation of the rule had on financial institutions and investors.

What was most striking—and troubling— was the consistency of the research presented and the comments by financial advisers who have had to navigate the rule. Time and time again, it was pointed out that contrary to what the DOL intended, investors are suffering under the new rule.

Randy Johnson, U.S. Chamber senior vice president of Labor, Immigration & Employee Benefits, opened the event and thanked the DOL for its proposed delay in the implementation of the remaining provisions.

Rep. Phil Roe (R-TN) shared how he started a retirement plan for his employees at his medical practice over 30 years ago. He spoke about how the rule will restrict the ability of retirement investors to receive similar professional advice owing to the increased liability advisers are under. Roe highlighted his bill, the **Affordable Retirement Advice for Savers Act** (H.R. 2823, the 115th, Congress, 2017–2018), as one of the legislative efforts to help retirement investors. The legislation would repeal the Fiduciary Rule and protect retirement investors' access to affordable retirement advice. Further, it would amend the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code to establish a statutory definition of "investment advice," ensuring that advisers serve their clients' best interests.

> **"Each firm is interpreting the rule differently, and it is impacting our credibility.**
>
> **—Deborah Koller, Principal, Koller Financial Services, LLC**

Following Roe's speech, the first panel, moderated by Brian O'Shea, senior director of the U.S. Chamber's Center for Capital Markets Competitiveness (CCMC), discussed the research that each of the organizations conducted and how the rule limited retirement investors' choices of financial products and access to advice. O'Shea emphasized findings from the Chamber study, pointing out that 100% of survey participants indicated that investors will suffer under the rule. Panel participants were Lisa Bleier, managing director and associate general counsel, Securities Industry and Financial Markets Association (SIFMA); Jason Berkowitz, vice president and counsel of regulatory affairs, Insured Retirement Institute; Paul Henry, co-director, LIMRA LOMA Secure Retirement Institute;

MILLIONS OF REASONS TO PROTECT RETIREMENT SAVERS

13.4 million accounts face a **reduced choice** of retirement products.

4.4 million accounts have already had to be moved into a **different service not requested by the investor.**

6 million accounts are facing the prospect of **increased fees.**

100% of industry participants say the finance needs of small retirement savings investors will be **worse served under the fiduciary rule.**

Dan Levine, practice leader of location strategies and economic development, Oxford Economics; and Brock McCleary, president, Harper Polling.

The research shows that retirement investors face restricted choices and higher fees and that retirement solutions are increasingly out of reach. Bleier said that SIFMA's research found that 95% of the firms surveyed have made changes to their product offerings based on the rule. These findings were mirrored by Levine, saying that firms are already eliminating entire product lines.

> All the regulations and rules are pushing me away from helping people who need help.
>
> —Joe Cope, Founder and CEO, CopeConnelly

Bradford Campbell, partner, Drinker Biddle and Reath LLP, moderated the second panel of financial advisers who are navigating the rule while trying to service their clients. Representing millennials, seniors, and blue collar workers to name a few, panelists discussed how they have and will continue to provide their clients with the best advice possible. Under the rule, however, they are finding that the new restrictions limit the services and products they can offer.

Rep. Ann Wagner (R-MO) concluded the event saying that protecting investors is "vital work" and that advisers helping people plan for the future have their customers' best interests at heart.

Wagner echoed much of what the panelists said—the rule will only restrict access and choices and increase costs for investors. She spoke about paths forward to reverse the rule including adoption of a new rule, a favorable court ruling, or legislation. She also discussed draft legislation she plans to introduce that would repeal the rule and establish a best interest standard under the jurisdiction of the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA).

> Regulations should incentivize good behavior; you get more benefits than disincentivizing bad behavior.
>
> —Bradford Campbell, Partner, Drinker Biddle & Reath LLP

All participants made it clear that the rule has only hurt retirement investors. Investors are finding limited choices and, in many cases, losing the ability to seek the advice of professionals to guide them in investing. The DOL's delay in implementing the remaining parts of the rule is a good first step, but unless changes are made, investors will find it much more difficult to plan for retirement. The SEC has opened a comment period to solicit ways in which it should address standards of conduct for financial advisers. This is a positive development as the SEC is the agency with primary expertise on the subject.

Learn more about the impact of the rule and download the full research at learnsaveretire.com.

Total compliance cost ***($5.4 billion)*** is double the Department of Labor's original estimates.

28.1 million investors will face **reduced product offerings**.

71% of advisers surveyed say they will **stop providing advice** to at least some of their current small accounts.

68% of advisors surveyed believe that their companies will take on f**ewer small accounts**.

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