



Consumer Federation of America

October 26, 2015

Vote NO on H.R. 1090: Bill Would Impede Protections for Retirement Savers, Investors

Dear Representative:

We understand that the House is scheduled to vote this week on H.R. 1090, the cynically misnamed “Retail Investor Protection Act.” Contrary to its name, the bill would harm investors and retirement savers alike by undermining the ability of the Securities and Exchange Commission (SEC) and the Department of Labor (DOL) to ensure that financial professionals act in the best interests of their customers when providing investment advice. We are writing to urge you to vote no on this harmful and misguided legislation.

Even as members of Congress express growing frustration over the glacial pace of the SEC’s efforts to adopt a uniform fiduciary standard for investment advice with regard to securities investments, **H.R. 1090 would erect new barriers to further delay SEC rulemaking.** Specifically, it would require the agency to conduct a new round of studies to justify adoption of a uniform fiduciary standard for securities investments even though the agency has already studied the issue extensively. In addition, the bill would require the SEC to make formal findings, which would serve no purpose except to provide additional basis for legal challenge of any resulting rule not supported by the brokerage industry. As such, the bill would serve only to further delay and weaken protections for investors that are badly needed and long overdue.

Just as securities regulations have permitted broker-dealers to operate as advisers without holding them to the fiduciary standard appropriate to that role, loopholes in the regulatory definition of fiduciary investment advice under ERISA have permitted financial professionals to evade their fiduciary obligation when providing advice to retirement savers about both securities and non-securities investments. Middle income workers have seen their ability to afford a secure and independent retirement put at risk as a result of being steered into investments that expose them to excess costs, inferior performance, and unnecessary risks while earning billions in excess profits for financial firms.

In order to address that problem, the Department of Labor has spent the past six years conducting a careful and deliberative process in which it has sought and received input from a host of stakeholders representing a broad variety of viewpoints. Through that process it has developed a strong and balanced rule that strengthens protections for retirement savers who receive investment advice from financial professionals while preserving the industry’s ability to charge commissions and other sales-based fees. As a result, retirement savers will be able to choose how they pay for products and services without having to give up their right to receive

advice that is in their best interest. Moreover, as the rulemaking enters its final phase, DOL officials from the Secretary on down have provided repeated assurances that the Department is carefully considering all the comments it received and will act to address industry concerns about operational aspects of the rule that have been raised during the comment process.

With no justification in law or fact, H.R. 1090 would halt those efforts just as they are nearing completion and force the Department, and retirement savers, to wait for the SEC to complete a rule before the DOL would be permitted to act. **But retirement savers cannot afford to wait for an SEC rule that may never come.** Moreover, the DOL's proposed rule is entirely consistent with the standards Congress established for SEC rulemaking when it enacted Section 913 of the Dodd-Frank Act. Thus, the DOL has ensured that its rule can be harmonized with any future SEC rulemaking should the SEC eventually adopt a uniform fiduciary standard for securities investments. Indeed, instead of delaying DOL rulemaking, Congress could better protect retail investors by adopting legislation that directs the SEC to follow the DOL's lead in crafting a strong and balanced rule.

Investors and retirement savers need and deserve advice that puts their interests first. No one who sincerely supports a best interest standard for investment advice can reasonably support this legislation, the only purpose of which is to impede regulatory efforts to achieve that goal. We therefore urge you to vote no when H.R. 1090 is brought to the House floor later this week and to oppose any efforts that may emerge to interfere with much needed and long overdue rulemaking to strengthen protections for investors and retirement savers.

Respectfully submitted,



Barbara Roper
Director of Investor Protection



Micah Hauptman
Financial Services Counsel