

OPPOSE THE ANTI-INVESTOR HR 2374

June 18, 2013

Dear Representative:

On behalf of the undersigned organizations, we urge you to OPPOSE HR 2374, which will prevent needed reforms that would protect middle-class savings and help to restore needed confidence in our financial markets. HR 2374 would significantly delay and perhaps derail long overdue efforts of the Securities and Exchange Commission to raise the standard of conduct that applies to brokers when they give advice to retail investors. By requiring the Department of Labor to delay rulemaking until after SEC action, the legislation would also prevent the Department of Labor from addressing gaps in retirement savings protections that have not been updated for almost forty years.

Tens of millions of average American families rely on financial professionals for investment advice that will determine whether they can afford to retire securely, fund their children's college education, or provide for their families in an emergency. But many financial professionals are not subject to a fiduciary duty to put their customers' best interests first. Financial professionals not covered by a fiduciary duty are legally free to recommend investments that produce higher compensation or other benefits for themselves, even if they are not in the best interests of the customer. The structure of fiduciary duty rules that once protected retirement savings and other forms of investment has developed severe weaknesses and gaps:

- First, the fiduciary duty protections that protect ERISA-covered retirement savings have not been updated since 1975, when self-directed retirement investment plans like 401-Ks and IRAs were a rarity. The growth of self-directed retirement plans since the 1970s has created many avenues for deceptive or abusive practices that threaten worker retirement savings but are not covered by the Department of Labor's ERISA fiduciary protections. It is crucial that the DOL update these protections.
- Second, brokers who sell securities to individual investors typically present themselves as advisors and offer advisory services, even though they are not subject to the fiduciary duty that applies to all other investment advisors. Research has shown that investors do not distinguish between brokers and advisers and expect any advice they receive to be in their best interests.¹ With investors, regulators, advisers and the main broker-dealer trade association all agreeing that the time had come to raise the standard governing investment

¹ RAND Institute for Civil Justice (Angela A. Hung, Noreen Clancy, Jeff Dominitz, Eric Talley, Claude Berrebi, Farrukh Suvankulov), *Investor and Industry Perspectives on Investment Advisers and Broker-Dealers*, Sponsored by the United States Securities and Exchange Commission, 2008.

advice by brokers, in Section 913 of the Dodd-Frank Act, Congress instructed the Securities and Exchange Commission to study and address this problem as appropriate.

The failure to enforce fiduciary standards to ensure that investment advice is given in the best interests of the investor can have grave consequences. Seemingly small differences in annual fees or returns of an investment can mean a family loses hundreds of thousands of dollars in retirement savings over the course of their working life. The dangers of conflicted and poor advice are real, not theoretical. The non-partisan Government Accountability Office has issued multiple reports warning that there are serious issues of conflicts of interest and deception in the marketing of 401-Ks, IRAs, and other self-directed retirement accounts (see e.g. GAO-11-119, January 28, 2011; GAO -13-30, March 7, 2013).

HR 2374 would strike at the heart of regulatory efforts to address these serious problems. After years of work by the DOL and the SEC, HR 2374 would force both agencies back to the drawing board and create indefinite delays in any action. It does this in two ways.

First, HR 2374 places numerous new analytical and ‘cost-benefit’ requirements on the SEC that would require extensive additional work before the agency could issue a rule. This is despite the fact that the SEC is currently collecting data to support an economic analysis before any rulemaking is undertaken. Furthermore, the current analysis follows over a decade of study of this issue, and a major report already released by the SEC that summarized the results of numerous studies in this area. The additional studies required in HR 2374 would significantly delay rulemaking beyond the analytic efforts that are already in process. The additional findings required would also open up new avenues for protracted legal challenges to the rule.

Next, the legislation requires that the DOL delay any action on updating ERISA fiduciary standards for retirement savings accounts until the SEC has already finalized its fiduciary rule for broker-dealers. There is no justification for conditioning DOL action under ERISA law on retirement savings on the SEC’s ability to finalize a rule change on broker conduct under the securities laws. The effect would be to delay, perhaps indefinitely, much needed protections for retirement plan participants.

Thus, HR 2374 would delay DOL reforms in fiduciary protections for retirement savings until the SEC has completed fiduciary rules in another area of the financial markets, while also loading the SEC with numerous additional cost-benefit requirements and other bureaucratic hurdles before their rules can be finalized. We therefore urge you to OPPOSE HR 2374 and reject efforts to halt progress in needed investor protections.

If you have any questions, please contact Marcus Stanley at 202-466-3672 or marcus@ourfinancialsecurity.org.

Sincerely,

AARP

AFL-CIO

Americans for Financial Reform

Consumer Federation of America

Demos

Pension Rights Center