October 25, 2013

Dear Representative:

We understand that H.R. 2374, the misnamed "Retail Investor Protection Act," may be brought to the floor for a vote next week. H.R. 2374 would impede the ability of federal regulators at both the Securities and Exchange Commission (SEC) and the Department of Labor (DOL) to protect vulnerable investors, workers, and retirees from the harmful practices of some financial services providers. We are writing on behalf of AARP, Americans for Financial Reform, Consumer Federation of America, and Public Citizen to urge you to VOTE NO on this anti-investor legislation.

H.R. 2374 would erect new barriers in the way of SEC rulemaking by requiring the agency to reach a formal finding that investors are harmed under the existing standard and that the proposed rule would reduce this harm. This would both further slow the SEC rulemaking process and create a new basis for legal challenge by industry groups opposed to rules requiring them to act in the best interests of their customers. The bill also delays DOL rulemaking by conditioning the Department's authority to adopt rules under ERISA on SEC's completion of a separate securities law rule it has yet to propose and may never adopt.

Supporters of this approach have maintained that the SEC and DOL should follow essentially identical approaches. As the attached letter explains in greater detail, however, Congress intentionally set a higher fiduciary standard under ERISA than it did under the securities laws precisely because it recognized that stronger protections are warranted for the tax-subsidized retirement accounts on which Americans rely for retirement security. Forcing DOL to lower its fiduciary standard to match the standard under securities laws would be inconsistent with ERISA and would weaken protections not only for retail accounts, such as IRAs, but also for all employer-provided pension and employee benefits plans.

Earlier this month, FINRA released research showing that 84 percent of Americans had been solicited with one of 11 types of fraudulent offers, with 11 percent losing a significant amount of money after engaging with an offer. A GAO study issued earlier this year documented fraud and abuse in precisely the kinds of transactions to which ERISA's fiduciary duty should apply – recommendations regarding rollovers from 401(k) plans into IRAs. And a FINRA report on conflicts of interest specifically mentioned 401(k) rollovers as an area where heightened conflicts exist and enhanced protections are necessary.

H.R. 2374 would make it more difficult for the SEC and DOL to address those harmful practices and protect retirees and other investors. We therefore urge you to VOTE NO when the bill comes up for a vote.

Sincerely,

AARP
Americans for Financial Reform
Consumer Federation of America
Public Citizen