September 29, 2015

OPPOSE H.R. 1090, the misnamed "Retail Investor Protection Act"

Dear Representative:

We are writing as organizations that strongly support the Department of Labor's (DOL) efforts to strengthen protections for working families and retirees by requiring the financial professionals they turn to for retirement investment advice to act in their best interests. As such, we oppose H.R. 1090, the misnamed "Retail Investor Protection Act," and urge you to vote **NO** when the bill comes up for a vote in the Financial Services Committee.

H.R. 1090 is a clear attempt to thwart DOL action by making the Department wait for years and possibly indefinitely until after the Securities and Exchange Commission (SEC) finalizes a rule under securities laws—a process that the SEC has not yet initiated. And, to further delay action, the bill imposes on the SEC new requirements to engage in further economic analysis, beyond the extensive analysis it has already conducted, and make formal findings before promulgating a rule. By impeding DOL's efforts, this bill would in no way protect retail investors; instead, it would protect those financial professionals who take advantage of loopholes in the law to profit at their clients' expense.

This approach would effectively cripple DOL's ability to fulfill its unique and critical regulatory role under ERISA. When Congress enacted ERISA, it intentionally set a higher standard for protecting retirement assets than applies to other investments. There are good reasons to do so. Retirement assets are special, as evidenced by the fact that they are heavily subsidized by the government through the tax code. These tax subsidies should flow to individuals, not financial firms, and should not be depleted by conflicts of interest.

Retirement savers who are struggling to fund an independent and secure retirement need financial advice they can trust. Today, neither our securities regulations nor the rules under ERISA provide that assurance. Instead, both sets of regulations expose retirement savers to recommendations from conflicted advisers who are free to recommend products based on their own financial interests rather than those of their customers. The DOL proposal – which combines a best interest standard with meaningful restrictions on the practices that undermine that standard – offers significant progress toward addressing this problem. There is no reason to force the DOL to wait for the SEC, since ***only*** the DOL has the authority and expertise to close the loopholes in the ERISA rules.

DOL has succeeded in crafting a balanced rule that provides much needed new protections for retirement savers while providing the flexibility necessary to enable well-meaning firms operating under a variety of business models to comply. While adjustments can and doubtless will be made to clarify and streamline certain of the rule's operational requirements, the rule's overall framework is sound. Contrary to the misinformation that has swirled around the DOL proposal, it actually will help, not hurt, small savers. They need the protections of the best interest standard more than any other workers and retirees, since they can least afford high fees and poor returns on their savings. And if some advisers really do pull back, there are plenty of advisers happy to provide affordable, best interest advice to clients at all income levels.

We can only hope that the SEC eventually will follow DOL's lead and craft a similarly strong and effective rule for non-retirement accounts. But in a nation that faces a retirement crisis, and with DOL ready to act, we cannot afford to wait. We therefore urge you to reject H.R. 1090 -- or any other legislation that is designed to stall or derail DOL's rule -- and instead support DOL's efforts to finalize a rule based on the sound regulatory approach it has proposed.

Sincerely,

AFSCME
Alliance for Retired Americans
American Association for Justice
American Association of University Women
Americans for Financial Reform
Association of University Centers on Disabilities
Better Markets
Center for Community Change Action
Center for Global Policy Solutions
Center for Responsible Lending
Committee for the Fiduciary Duty
Consumer Action
Consumer Federation of America
International Association of Machinists and Aerospace Workers
International Brotherhood of Boilermakers
International Brotherhood of Electrical Workers Union
Lynn Turner, former chief accountant, SEC
Main Street Alliance
Metal Trades Department, AFL-CIO
National Council of LaRaza
National Organization for Women
Pension Rights Center
Public Citizen
Public Investors Arbitration Bar Association
United Auto Workers
United Steelworkers, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW)