



Consumer Federation of America

February 1, 2016

The Honorable John Kline
Chairman
Education and the Workforce Committee
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Robert C. “Bobby” Scott
Ranking Member
Education and the Workforce Committee
U. S. House of Representatives
Washington, D.C. 20515

Re: Oppose Anti-Retirement Investor Bills H.R. 4293 and H.R. 4294

Dear Chairman Kline, Ranking Member Scott, and Members of the Committee:

This week the Committee is scheduled to mark up legislation (H.R. 4293, the “Affordable Retirement Advice Protection Act” and H.R. 4294, the “Strengthening Access to Valuable Education and Retirement Support Act”) that, in the name of providing a more “workable” alternative to the Department of Labor’s proposed fiduciary rule would actually weaken existing protections for retirement savers. We are writing on behalf of the Consumer Federation of America to urge you to vote no on this misguided bill.

Everyone, including the sponsors of these bills, seems to agree that retirement savers who turn to financial professionals for advice deserve advice that serves their best interests. Instead of providing that assurance, however, these bills codify loopholes in the definition of fiduciary investment advice that make it all too easy for financial firms and their advisers to avoid their best interest obligations. Firms would continue to be able to use disclaimers to avoid the best interest standard simply by indicating that the advice is not intended to be relied upon or that the firm is acting in a marketing or a sales capacity. Experience tells us that many firms will exploit these loopholes to the detriment of working families and retirees saving for a secure and independent retirement.

Even as they preserve loopholes that enable firms to avoid their fiduciary obligations, the bills weaken the standards that apply to advice that is subject to the bills’ so-called “best interest” standards. H.R. 4293 includes neither the duty of prudence nor the duty of loyalty that are essential core elements of a fiduciary standard. Instead, the sole requirement to meet the bill’s “best interest” standard is that any fees charged are reasonable. H.R. 4294 includes a duty of prudence and a watered down duty of loyalty, but it doesn’t provide any enforcement mechanism to enable IRA investors to hold advisers accountable when they fail to meet that standard.

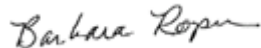
Neither bill does anything to eradicate the web of toxic financial incentives that encourage advice that is not in the best interests of customers. Instead, they rely exclusively on

disclosures to protect retirement savers from the harmful consequences of such conflicts, an approach that has been shown time and again to be ineffective. Experience and simple logic tell us that, if we want advisers to act in the best interests of their customers, we have to stop paying and rewarding them for costly and harmful advice.

Finally, both bills include a provision modeled on the controversial REINS Act, to require affirmative congressional approval for the DOL rule to be enacted. This is simply a backdoor way to kill the rule before we even get a chance to see the final product and evaluate the changes that have been made in response to the comment process. Approving a REINS Act style provision in this bill would not only undermine protections for retirement savers, it would also set a terrible precedent for other issues where efforts to strengthen consumer, health and safety, labor, and environmental protections are resisted by industry.

Working families and retirees saving to afford a secure and independent retirement deserve better. Because H.R. 4293 and H.R. 4294 codify loopholes in current ERISA regulations, weaken the standard that applies to retirement investment advice, and disrupt the regulatory process, we urge you to vote no on these ill-conceived, anti-investor bills.

Respectfully submitted,



Barbara Roper
Director of Investor Protection



Micah Hauptman
Financial Services Counsel