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(Original Signature of Member)

114TH CONGRESS
1ST SESSION

H. R. _____

To amend the Internal Revenue Code of 1986 to ensure that retirement investors receive advice in their best interests, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. ROSKAM introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Internal Revenue Code of 1986 to ensure that retirement investors receive advice in their best interests, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Strengthening Access
5 to Valuable Education and Retirement Support Act of
6 2015” or the “SAVERS Act of 2015”.

1 **SEC. 2. PURPOSE.**

2 The purpose of this Act is to provide that advisors
3 who—

4 (1) provide advice that is impermissible under
5 the prohibited transaction provisions under section
6 4975 of the Internal Revenue Code of 1986, or

7 (2) breach the best interest standard for the
8 provision of investment advice,

9 are subject to liability under the Internal Revenue Code
10 of 1986.

11 **SEC. 3. RULES RELATING TO THE PROVISION OF INVEST-**
12 **MENT ADVICE.**

13 (a) AMENDMENTS TO THE INTERNAL REVENUE
14 CODE OF 1986.—

15 (1) EXEMPTION FOR INVESTMENT ADVICE
16 WHICH IS BEST INTEREST RECOMMENDATION.—Sec-
17 tion 4975(d) of the Internal Revenue Code of 1986
18 is amended by striking “or” at the end of paragraph
19 (22), by striking the period at the end of paragraph
20 (23) and inserting “, or”, and by inserting after
21 paragraph (23) the following:

22 “(24) provision of investment advice by a fidu-
23 ciary to a plan, plan participant, or beneficiary with
24 respect to the plan, which is a best interest rec-
25 ommendation.”.

1 (2) INVESTMENT ADVICE; BEST INTEREST REC-
2 COMMENDATION.—Section 4975(e) of such Code is
3 amended by adding at the end the following:

4 “(10) INVESTMENT ADVICE.—

5 “(A) IN GENERAL.—For purposes of this
6 section, the term ‘investment advice’ means a
7 recommendation that—

8 “(i) relates to—

9 “(I) the advisability of acquiring,
10 holding, disposing, or exchanging any
11 moneys or other property of a plan by
12 the plan, plan participants, or plan
13 beneficiaries, including any rec-
14 ommendation whether to take a dis-
15 tribution of benefits from such plan or
16 any recommendation relating to the
17 investment of any moneys or other
18 property of such plan to be rolled over
19 or otherwise distributed from such
20 plan;

21 “(II) the management of moneys
22 or other property of such plan, includ-
23 ing recommendations relating to the
24 management of moneys or other prop-

1 erty to be rolled over or otherwise dis-
2 tributed from such plan; or

3 “(III) the advisability of retain-
4 ing or ceasing to retain a person who
5 would receive a fee or other com-
6 pensation for providing any of the
7 types of advice described in this sub-
8 clause; and

9 “(ii) is rendered pursuant to—

10 “(I) a written acknowledgment
11 that the person is a fiduciary with re-
12 spect to the provision of such rec-
13 ommendation; or

14 “(II) a mutual agreement, ar-
15 rangement, or understanding which
16 may include limitations on scope, tim-
17 ing, and responsibility to provide on-
18 going monitoring or advice services,
19 between the person making such rec-
20 ommendation and the plan, plan par-
21 ticipant, or beneficiary that such rec-
22 ommendation is individualized to the
23 plan, plan participant, or beneficiary
24 and such plan, plan participant, or
25 beneficiary intends to materially rely

1 on such recommendation in making
2 investment or management decisions
3 with respect to any moneys or other
4 property of such plan.

5 “(B) DISCLAIMER OF A MUTUAL AGREE-
6 MENT, ARRANGEMENT, OR UNDERSTANDING.—
7 For purposes of subparagraph (A)(ii)(II), any
8 disclaimer of a mutual agreement, arrangement,
9 or understanding shall only state the following:
10 ‘This information is not individualized to you,
11 and there is no intent for you to materially rely
12 on this information in making investment or
13 management decisions.’ Such disclaimer shall
14 not be effective unless such disclaimer is in
15 writing and is communicated in a clear and
16 prominent manner and an objective person
17 would reasonably conclude that, based on all
18 the facts and circumstances, there was not a
19 mutual agreement, arrangement, or under-
20 standing.

21 “(C) WHEN RECOMMENDATION TREATED
22 AS MADE PURSUANT TO A MUTUAL AGREE-
23 MENT, ARRANGEMENT, OR UNDERSTANDING.—
24 For purposes of subparagraph (A)(ii)(II), infor-
25 mation shall not be treated as a recommenda-

1 tion made pursuant to a mutual agreement, ar-
2 rangement, or understanding, and such infor-
3 mation shall contain the disclaimer required by
4 subparagraph (B), if—

5 “(i) SELLER’S EXCEPTION.—The in-
6 formation is provided in conjunction with
7 full and fair disclosure in writing to a plan,
8 plan participant, or beneficiary that the
9 person providing the information is doing
10 so in its marketing or sales capacity, in-
11 cluding any information regarding the
12 terms and conditions of the engagement of
13 the person providing the information, and
14 that the person is not intending to provide
15 investment advice within the meaning of
16 this subparagraph or to otherwise act as a
17 fiduciary to the plan or under the obliga-
18 tions of a best interest recommendation.

19 “(ii) SWAP AND SECURITY-BASED
20 SWAP TRANSACTION.—The person pro-
21 viding the information is a counterparty or
22 service provider to the plan in connection
23 with any transaction based on the informa-
24 tion (including a service arrangement, sale,
25 purchase, loan, bilateral contract, swap (as

1 defined in section 1a of the Commodity
2 Exchange Act (7 U.S.C. 1a)), or security-
3 based swap (as defined in section 3(a) of
4 the Securities Exchange Act (15 U.S.C.
5 78c(a))), but only if—

6 “(I) the plan is represented, in
7 connection with such transaction, by a
8 plan fiduciary who is independent of
9 the person providing the information,
10 and, except in the case of a swap or
11 security-based swap, independent of
12 the plan sponsor; and

13 “(II) prior to entering into such
14 transaction, the independent plan fi-
15 duciary represents in writing to the
16 person providing the information that
17 it is aware that the person has a fi-
18 nancial interest in the transaction and
19 that it has determined that the person
20 is not intending to provide investment
21 advice within the meaning of this sub-
22 paragraph or to otherwise act as a fi-
23 duciary to the plan, plan participants,
24 or plan beneficiaries.

1 “(iii) EMPLOYEES OF A PLAN SPON-
2 SOR.—The person providing the informa-
3 tion is an employee of any sponsoring em-
4 ployer or employee organization who pro-
5 vides the information to the plan for no fee
6 or other compensation other than the em-
7 ployee’s normal compensation.

8 “(iv) PLATFORM PROVIDERS SELEC-
9 TION AND MONITORING ASSISTANCE.—The
10 person providing the information discloses
11 in writing to the plan fiduciary that the
12 person is not undertaking to provide in-
13 vestment advice as a fiduciary (within the
14 meaning of this paragraph) or under the
15 obligations of a best interest recommenda-
16 tion and the information consists solely
17 of—

18 “(I) making available to the plan,
19 plan participants, or plan bene-
20 ficiaries, without regard to the indi-
21 vidualized needs of the plan, plan par-
22 ticipants, or plan beneficiaries, securi-
23 ties or other property through a plat-
24 form or similar mechanism from
25 which a plan fiduciary may select or

1 monitor investment alternatives, in-
2 cluding qualified default investment
3 alternatives, into which plan partici-
4 pants or beneficiaries may direct the
5 investment of assets held in, or con-
6 tributed to, their individual accounts,
7 or

8 “(II) in connection with a plat-
9 form or similar mechanism described
10 in subclause (I)—

11 “(aa) identifying investment
12 alternatives that meet objective
13 criteria specified by the plan,
14 such as criteria concerning ex-
15 pense ratios, fund sizes, types of
16 asset, or credit quality, or

17 “(bb) providing objective fi-
18 nancial data and comparisons
19 with independent benchmarks to
20 the plan.

21 “(v) VALUATION.—The information
22 consists solely of valuation information.

23 “(vi) FINANCIAL EDUCATION.—The
24 information consists solely of—

1 “(I) information described in De-
2 partment of Labor Interpretive Bul-
3 letin 96–1 (29 C.F.R. 2509.96–1, as
4 in effect on January 1, 2015), regard-
5 less of whether such education is pro-
6 vided to a plan or plan fiduciary or a
7 participant or beneficiary,

8 “(II) information provided to
9 participants or beneficiaries regarding
10 the factors to consider in deciding
11 whether to elect to receive a distribu-
12 tion from a plan and whether to roll
13 over such distribution to a plan, so
14 long as any examples of different dis-
15 tribution and rollover alternatives are
16 accompanied by all material facts and
17 assumptions on which the examples
18 are based, or

19 “(III) any additional information
20 treated as education by the Secretary.

21 “(11) BEST INTEREST RECOMMENDATION.—

22 For purposes of this subsection—

23 “(A) IN GENERAL.—The term ‘best inter-
24 est recommendation’ means a recommenda-
25 tion—

1 “(i) for which no more than reason-
2 able compensation is paid (as determined
3 under subsection (d)(2)),

4 “(ii) provided by a person acting with
5 the care, skill, prudence, and diligence
6 under the circumstances then prevailing
7 that a prudent person would exercise based
8 on—

9 “(I) the information obtained
10 through the reasonable diligence of
11 the person regarding factors such as
12 the advice recipient’s age, and

13 “(II) any other information that
14 the advice recipient discloses to the
15 person in connection with receiving
16 such recommendation, and

17 “(iii) where the person places the in-
18 terests of the plan or advice recipient
19 above its own.

20 “(B) INVESTMENT OPTIONS; VARIABLE
21 COMPENSATION.—A best interest recommenda-
22 tion may include a recommendation that—

23 “(i) is based on a limited range of in-
24 vestment options (which may consist, in
25 whole or in part, of proprietary products),

1 but only if any such limitations, including
2 a clearly-stated notice that the same or
3 similar investments may be available at a
4 different cost (greater or lesser) from other
5 sources, are clearly disclosed to the advice
6 recipient prior to any transaction based on
7 the recommendation, or

8 “(ii) may result in variable compensa-
9 tion to the person providing the rec-
10 ommendation (or any affiliate of such per-
11 son), but only if the receipt of such com-
12 pensation, including a clearly-stated notice
13 that the same or similar investments may
14 be available at a different cost (greater or
15 lesser) from other sources, is clearly dis-
16 closed to the advice recipient prior to any
17 transaction based on the recommendation.

18 The notices provided pursuant to clauses (i)
19 and (ii) shall only state the following: ‘The
20 same or similar investments may be available at
21 a different cost (greater or lesser) from other
22 sources.’.

23 “(C) CLEAR DISCLOSURE OF VARIABLE
24 COMPENSATION.—For purposes of subpara-
25 graph (B)(ii), variable compensation is clearly

1 disclosed if notification is provided at any time
2 prior to a transaction based on the person's rec-
3 ommendation, in a manner calculated to be un-
4 derstood by the average individual, of the fol-
5 lowing:

6 “(i) A notice in writing, including a
7 clearly-stated notice that the same or simi-
8 lar investments may be available at a dif-
9 ferent cost (greater or lesser) from other
10 sources, that the person providing the rec-
11 ommendation (or its affiliate) may receive
12 varying amounts of fees or other com-
13 pensation with respect to such transaction.

14 “(ii) A description of any fee or other
15 compensation that is directly payable to
16 the person (or its affiliate) from the advice
17 recipient with respect to such transaction
18 (expressed as an amount, formula, percent-
19 age of assets, per capita charge, or esti-
20 mate or range of such compensation).

21 “(iii) A description of the types and
22 ranges of any indirect compensation that
23 may be paid to the person (or its affiliate)
24 by any third party in connection with such
25 transaction (expressed as an amount, for-

1 mula, percentage of assets, per capita
2 charge, or estimate of such ranges of com-
3 pensation).

4 “(iv) Upon request of the advice re-
5 cipient, a disclosure of the specific
6 amounts of compensation described in
7 clause (iii) that the person will receive in
8 connection with the particular transaction
9 (expressed as an amount, formula, percent-
10 age of assets, per capita charge, or esti-
11 mate of such compensation).

12 “(D) DEFINITION OF AFFILIATE.—For
13 purposes of this paragraph, the term ‘affiliate’
14 has the meaning given in subsection
15 (f)(8)(J)(ii).

16 “(E) CORRECTION OF CERTAIN ERRORS
17 AND OMISSIONS.—A recommendation shall not
18 fail to be a best interest recommendation solely
19 because a person who, acting in good faith and
20 with reasonable diligence, makes an error or
21 omission in disclosing the information specified
22 in subparagraph (B), if the person discloses the
23 correct information to the advice recipient as
24 soon as practicable but not later than 30 days

1 from the date on which the person knows of
2 such error or omission.”.

3 (3) FAILURES RELATING TO BEST INTEREST
4 RECOMMENDATION.—

5 (A) CORRECTION.—Section 4975(f)(5) of
6 such Code is amended—

7 (i) by striking “(5) CORRECTION.—
8 The terms” and inserting
9 “(5) CORRECTION.—

10 “(A) IN GENERAL.—Except as provided in
11 subparagraph (B), the terms”, and

12 (ii) by adding at the end the fol-
13 lowing:

14 “(B) DETERMINATION OF ‘CORRECTION’
15 AND ‘CORRECT’ WITH RESPECT TO BEST INTER-
16 EST ADVICE RECOMMENDATIONS.—In the case
17 of a prohibited advice transaction arising by the
18 failure of investment advice to be a best interest
19 recommendation, the terms ‘correction’ and
20 ‘correct’ mean the payment to, or reimburse-
21 ment of, actual damages of the plan, plan par-
22 ticipants, or plan beneficiaries resulting directly
23 from the plan’s, plan participant’s, or plan
24 beneficiary’s reliance on such investment advice,
25 if any, that have not otherwise been paid or re-

1 imbursed to the plan, plan participants, or plan
2 beneficiaries, including payments and reim-
3 bursements made pursuant to subparagraph
4 (A).”.

5 (B) AMOUNT INVOLVED FOR PURPOSES OF
6 EXCISE TAX.—The first sentence of section
7 4975(f)(4) of such Code is amended by striking
8 “excess compensation.” and inserting “excess
9 compensation, and in the case of a prohibited
10 transaction arising by the failure of investment
11 advice to be a best interest recommendation,
12 the amount involved shall be the amount paid
13 to the person providing the advice (or its affil-
14 iate, as defined in paragraph (8)(J)(ii)) that
15 has not been paid or reimbursed to the plan,
16 plan participants, or plan beneficiaries, includ-
17 ing payments and reimbursements made pursu-
18 ant to paragraph (5).”.

19 (4) EXEMPTION RELATING TO INVESTMENT AD-
20 VICE WITH RESPECT TO CERTAIN FEE ARRANGE-
21 MENTS.—Section 4975(d) of such Code (as amended
22 by paragraph (1)) is amended by striking “or” at
23 the end of paragraph (23), by striking the period at
24 the end of paragraph (24) and inserting “, or”, and
25 by adding after paragraph (24) the following:

1 “(25) any transaction, including a contract for
2 service, between a person providing investment ad-
3 vice described in subsection (e)(3)(B) and the advice
4 recipient in connection with such investment advice,
5 if—

6 “(A) no more than reasonable compensa-
7 tion is paid (as determined under section
8 4975(d)(2)) for such investment advice,

9 “(B) in a case in which the investment ad-
10 vice is based on a limited range of investment
11 options (which may consist, in whole or in part,
12 of proprietary products), such limitations, in-
13 cluding a clearly-stated notice that the same or
14 similar investments may be available at a dif-
15 ferent cost (greater or lesser) from other
16 sources), shall be clearly disclosed to the advice
17 recipient prior to any transaction based on the
18 investment advice,

19 “(C) in a case in which the investment ad-
20 vice may result in variable compensation to the
21 person providing the investment advice (or any
22 affiliate of such person), the receipt of such
23 compensation, including a clearly-stated notice
24 that the same or similar investments may be
25 available at a different cost (greater or lesser)

1 from other sources, shall be clearly disclosed to
2 the advice recipient (within the meaning of sub-
3 section (e)(11)(C)), and

4 “(D) in any case in which a person who,
5 acting in good faith and with reasonable dili-
6 gence, makes an error or omission in disclosing
7 the information specified in subparagraphs (B)
8 or (C), the person discloses the correct informa-
9 tion to the advice recipient as soon as prac-
10 ticable but not later than 30 days from the date
11 on which the person knows of such error or
12 omission.”.

13 (b) EFFECTIVE DATE.—

14 (1) MODIFICATION OF CERTAIN RULES, AND
15 RULES AND ADMINISTRATIVE POSITIONS PROMUL-
16 GATED BEFORE ENACTMENT BUT NOT EFFECTIVE
17 ON JANUARY 1, 2015, PROHIBITED.—The Depart-
18 ment of Labor is prohibited from amending any
19 rules or administrative positions promulgated under
20 section 3(21) of the Employee Retirement Security
21 Act of 1974 and section 4975(e)(3) of the Internal
22 Revenue Code of 1986 (including Department of
23 Labor Interpretive Bulletin 96–1 (29 C.F.R.
24 2509.96–1) and Department of Labor Advisory
25 Opinion 2005–23A), and no such rule or administra-

1 tive position promulgated by the Department of
2 Labor prior to the date of the enactment of this Act
3 but not effective on January 1, 2015, may become
4 effective unless a bill or joint resolution referred to
5 in paragraph (3) is enacted as described in such
6 paragraph not later than 60 days after the date of
7 the enactment of this Act.

8 (2) GENERAL EFFECTIVE DATE OF AMEND-
9 MENTS.—Except as provided in paragraph (3), the
10 amendments made by subsection (a) of this section
11 shall take effect on the 61st day after the date of
12 the enactment of this Act and shall apply with re-
13 spect to information provided or recommendations
14 made on or after 2 years after the date of the enact-
15 ment of this Act.

16 (3) EXCEPTION.—If a bill or joint resolution is
17 enacted prior to the 61st day after the date of the
18 enactment of this Act that specifically approves any
19 rules or administrative positions promulgated under
20 section 3(21) of the Employee Retirement Security
21 Act of 1974 and section 4975(e)(3) of the Internal
22 Revenue Code of 1986 that is not in effect on Janu-
23 ary 1, 2015, the amendments made by subsection
24 (a) of this section shall not take effect.

1 (c) GRANDFATHERED TRANSACTIONS AND SERV-
2 ICES.—The amendments made by subsection (a) shall not
3 apply to any service or transaction rendered, entered into,
4 or for which a person has been compensated prior to the
5 date on which the amendments made by subsection (a)
6 of this Act become effective under subsection (b)(2).

7 (d) TRANSITION.—If the amendments made by sub-
8 section (a) of this section take effect, then nothing in this
9 section shall be construed to prohibit the issuance of guid-
10 ance to carry out such amendments so long as such guid-
11 ance is necessary to implement such amendments. Until
12 such time as regulations or other guidance are issued to
13 carry out such amendments, a plan and a fiduciary shall
14 be treated as meeting the requirements of such amend-
15 ments if the plan or fiduciary, as the case may be, makes
16 a good faith effort to comply with such requirements.