

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 4294
OFFERED BY MR. CARTER OF GEORGIA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

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

5 SEC. 2. PURPOSE.

6 The purpose of this Act is to provide that advisors
7 who—

8 (1) provide advice that is impermissible under
9 the prohibited transaction provisions under section
10 4975 of the Internal Revenue Code of 1986, or

11 (2) breach the best interest standard for the
12 provision of investment advice,

13 are subject to liability under the Internal Revenue Code
14 of 1986.

**15 SEC. 3. RULES RELATING TO THE PROVISION OF INVEST-
16 MENT ADVICE.**

17 (a) AMENDMENTS TO THE INTERNAL REVENUE
18 CODE OF 1986.—

1 (1) EXEMPTION FOR INVESTMENT ADVICE
2 WHICH IS BEST INTEREST RECOMMENDATION.—Sec-
3 tion 4975(d) of the Internal Revenue Code of 1986
4 is amended by striking “or” at the end of paragraph
5 (22), by striking the period at the end of paragraph
6 (23) and inserting “, or”, and by inserting after
7 paragraph (23) the following:

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

12 (2) INVESTMENT ADVICE; BEST INTEREST REC-
13 OMMENDATION.—Section 4975(e) of such Code is
14 amended by adding at the end the following:

15 “(10) INVESTMENT ADVICE.—

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

19 “(i) relates to—

20 “(I) the advisability of acquiring,
21 holding, disposing, or exchanging any
22 moneys or other property of a plan by
23 the plan, plan participants, or plan
24 beneficiaries, including any rec-
25 ommendation whether to take a dis-

1 tribution of benefits from such plan or
2 any recommendation relating to the
3 investment of any moneys or other
4 property of such plan to be rolled over
5 or otherwise distributed from such
6 plan;

7 “(II) the management of moneys
8 or other property of such plan, includ-
9 ing recommendations relating to the
10 management of moneys or other prop-
11 erty to be rolled over or otherwise dis-
12 tributed from such plan; or

13 “(III) the advisability of retain-
14 ing or ceasing to retain a person who
15 would receive a fee or other com-
16 pensation for providing any of the
17 types of advice described in this sub-
18 clause; and

19 “(ii) is rendered pursuant to—

20 “(I) a written acknowledgment
21 that the person is a fiduciary with re-
22 spect to the provision of such rec-
23 ommendation; or

24 “(II) a mutual agreement, ar-
25 rangement, or understanding which

1 may include limitations on scope, tim-
2 ing, and responsibility to provide on-
3 going monitoring or advice services,
4 between the person making such rec-
5 ommendation and the plan, plan par-
6 ticipant, or beneficiary that such rec-
7 ommendation is individualized to the
8 plan, plan participant, or beneficiary
9 and such plan, plan participant, or
10 beneficiary intends to materially rely
11 on such recommendation in making
12 investment or management decisions
13 with respect to any moneys or other
14 property of such plan.

15 “(B) DISCLAIMER OF A MUTUAL AGREE-
16 MENT, ARRANGEMENT, OR UNDERSTANDING.—
17 For purposes of subparagraph (A)(ii)(II), any
18 disclaimer of a mutual agreement, arrangement,
19 or understanding shall only state the following:
20 ‘This information is not individualized to you,
21 and there is no intent for you to materially rely
22 on this information in making investment or
23 management decisions.’. Such disclaimer shall
24 not be effective unless such disclaimer is in
25 writing and is communicated in a clear and

1 prominent manner and an objective person
2 would reasonably conclude that, based on all
3 the facts and circumstances, there was not a
4 mutual agreement, arrangement, or under-
5 standing.

6 “(C) WHEN RECOMMENDATION TREATED
7 AS MADE PURSUANT TO A MUTUAL AGREE-
8 MENT, ARRANGEMENT, OR UNDERSTANDING.—
9 For purposes of subparagraph (A)(ii)(II), infor-
10 mation shall not be treated as a recommenda-
11 tion made pursuant to a mutual agreement, ar-
12 rangement, or understanding, and such infor-
13 mation shall contain the disclaimer required by
14 subparagraph (B), if—

15 “(i) SELLER’S EXCEPTION.—The in-
16 formation is provided in conjunction with
17 full and fair disclosure in writing to a plan,
18 plan participant, or beneficiary that the
19 person providing the information is doing
20 so in its marketing or sales capacity, in-
21 cluding any information regarding the
22 terms and conditions of the engagement of
23 the person providing the information, and
24 that the person is not intending to provide
25 investment advice within the meaning of

1 this subparagraph or to otherwise act as a
2 fiduciary to the plan or under the obliga-
3 tions of a best interest recommendation.

4 “(ii) SWAP AND SECURITY-BASED
5 SWAP TRANSACTION.—The person pro-
6 viding the information is a counterparty or
7 service provider to the plan in connection
8 with any transaction based on the informa-
9 tion (including a service arrangement, sale,
10 purchase, loan, bilateral contract, swap (as
11 defined in section 1a of the Commodity
12 Exchange Act (7 U.S.C. 1a)), or security-
13 based swap (as defined in section 3(a) of
14 the Securities Exchange Act (15 U.S.C.
15 78c(a))), but only if—

16 “(I) the plan is represented, in
17 connection with such transaction, by a
18 plan fiduciary who is independent of
19 the person providing the information,
20 and, except in the case of a swap or
21 security-based swap, independent of
22 the plan sponsor; and

23 “(II) prior to entering into such
24 transaction, the independent plan fi-
25 duciary represents in writing to the

1 person providing the information that
2 it is aware that the person has a fi-
3 nancial interest in the transaction and
4 that it has determined that the person
5 is not intending to provide investment
6 advice within the meaning of this sub-
7 paragraph or to otherwise act as a fi-
8 duciary to the plan, plan participants,
9 or plan beneficiaries.

10 “(iii) EMPLOYEES OF A PLAN SPON-
11 SOR.—The person providing the informa-
12 tion is an employee of any sponsoring em-
13 ployer or employee organization who pro-
14 vides the information to the plan for no fee
15 or other compensation other than the em-
16 ployee’s normal compensation.

17 “(iv) PLATFORM PROVIDERS SELEC-
18 TION AND MONITORING ASSISTANCE.—The
19 person providing the information discloses
20 in writing to the plan fiduciary that the
21 person is not undertaking to provide in-
22 vestment advice as a fiduciary (within the
23 meaning of this paragraph) or under the
24 obligations of a best interest recommenda-

1 tion and the information consists solely
2 of—

3 “(I) making available to the plan,
4 plan participants, or plan bene-
5 ficiaries, without regard to the indi-
6 vidualized needs of the plan, plan par-
7 ticipants, or plan beneficiaries, securi-
8 ties or other property through a plat-
9 form or similar mechanism from
10 which a plan fiduciary may select or
11 monitor investment alternatives, in-
12 cluding qualified default investment
13 alternatives, into which plan partici-
14 pants or beneficiaries may direct the
15 investment of assets held in, or con-
16 tributed to, their individual accounts,
17 or

18 “(II) in connection with a plat-
19 form or similar mechanism described
20 in subclause (I)—

21 “(aa) identifying investment
22 alternatives that meet objective
23 criteria specified by the plan,
24 such as criteria concerning ex-

1 pense ratios, fund sizes, types of
2 asset, or credit quality, or

3 “(bb) providing objective fi-
4 nancial data and comparisons
5 with independent benchmarks to
6 the plan.

7 “(v) VALUATION.—The information
8 consists solely of valuation information.

9 “(vi) FINANCIAL EDUCATION.—The
10 information consists solely of—

11 “(I) information described in De-
12 partment of Labor Interpretive Bul-
13 letin 96–1 (29 C.F.R. 2509.96–1, as
14 in effect on January 1, 2015), regard-
15 less of whether such education is pro-
16 vided to a plan or plan fiduciary or a
17 participant or beneficiary,

18 “(II) information provided to
19 participants or beneficiaries regarding
20 the factors to consider in deciding
21 whether to elect to receive a distribu-
22 tion from a plan and whether to roll
23 over such distribution to a plan, so
24 long as any examples of different dis-
25 tribution and rollover alternatives are

1 accompanied by all material facts and
2 assumptions on which the examples
3 are based, or

4 “(III) any additional information
5 treated as education by the Secretary.

6 “(11) BEST INTEREST RECOMMENDATION.—

7 For purposes of this subsection—

8 “(A) IN GENERAL.—The term ‘best inter-
9 est recommendation’ means a recommenda-
10 tion—

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

14 “(ii) provided by a person acting with
15 the care, skill, prudence, and diligence
16 under the circumstances then prevailing
17 that a prudent person would exercise based
18 on—

19 “(I) the information obtained
20 through the reasonable diligence of
21 the person regarding factors such as
22 the advice recipient’s age, and

23 “(II) any other information that
24 the advice recipient discloses to the

1 person in connection with receiving
2 such recommendation, and

3 “(iii) where the person places the in-
4 terests of the plan or advice recipient
5 above its own.

6 “(B) INVESTMENT OPTIONS; VARIABLE
7 COMPENSATION.—A best interest recommenda-
8 tion may include a recommendation that—

9 “(i) is based on a limited range of in-
10 vestment options (which may consist, in
11 whole or in part, of proprietary products),
12 but only if any such limitations, including
13 a clearly-stated notice that the same or
14 similar investments may be available at a
15 different cost (greater or lesser) from other
16 sources, are clearly disclosed to the advice
17 recipient prior to any transaction based on
18 the recommendation, or

19 “(ii) may result in variable compensa-
20 tion to the person providing the rec-
21 ommendation (or any affiliate of such per-
22 son), but only if the receipt of such com-
23 pensation, including a clearly-stated notice
24 that the same or similar investments may
25 be available at a different cost (greater or

1 lesser) from other sources, is clearly dis-
2 closed to the advice recipient prior to any
3 transaction based on the recommendation.

4 The notices provided pursuant to clauses (i)
5 and (ii) shall only state the following: ‘The
6 same or similar investments may be available at
7 a different cost (greater or lesser) from other
8 sources.’.

9 “(C) CLEAR DISCLOSURE OF VARIABLE
10 COMPENSATION.—For purposes of subpara-
11 graph (B)(ii), variable compensation is clearly
12 disclosed if notification is provided at any time
13 prior to a transaction based on the person’s rec-
14 ommendation, in a manner calculated to be un-
15 derstood by the average individual, of the fol-
16 lowing:

17 “(i) A notice in writing, including a
18 clearly-stated notice that the same or simi-
19 lar investments may be available at a dif-
20 ferent cost (greater or lesser) from other
21 sources, that the person providing the rec-
22 ommendation (or its affiliate) may receive
23 varying amounts of fees or other com-
24 pensation with respect to such transaction.

1 “(ii) A description of any fee or other
2 compensation that is directly payable to
3 the person (or its affiliate) from the advice
4 recipient with respect to such transaction
5 (expressed as an amount, formula, percent-
6 age of assets, per capita charge, or esti-
7 mate or range of such compensation).

8 “(iii) A description of the types and
9 ranges of any indirect compensation that
10 may be paid to the person (or its affiliate)
11 by any third party in connection with such
12 transaction (expressed as an amount, for-
13 mula, percentage of assets, per capita
14 charge, or estimate of such ranges of com-
15 pensation).

16 “(iv) Upon request of the advice re-
17 cipient, a disclosure of the specific
18 amounts of compensation described in
19 clause (iii) that the person will receive in
20 connection with the particular transaction
21 (expressed as an amount, formula, percent-
22 age of assets, per capita charge, or esti-
23 mate of such compensation).

24 “(D) DEFINITION OF AFFILIATE.—For
25 purposes of this paragraph, the term ‘affiliate’

1 has the meaning given in subsection
2 (f)(8)(J)(ii).

3 “(E) CORRECTION OF CERTAIN ERRORS
4 AND OMISSIONS.—A recommendation shall not
5 fail to be a best interest recommendation solely
6 because a person who, acting in good faith and
7 with reasonable diligence, makes an error or
8 omission in disclosing the information specified
9 in subparagraph (B), if the person discloses the
10 correct information to the advice recipient as
11 soon as practicable but not later than 30 days
12 from the date on which the person knows of
13 such error or omission.”.

14 (3) FAILURES RELATING TO BEST INTEREST
15 RECOMMENDATION.—

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

18 (i) by striking “(5) CORRECTION.—

19 The terms” and inserting:

20 “(5) CORRECTION.—

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

23 (ii) by adding at the end the fol-
24 lowing:

1 “(B) DETERMINATION OF ‘CORRECTION’
2 AND ‘CORRECT’ WITH RESPECT TO BEST INTER-
3 EST ADVICE RECOMMENDATIONS.—In the case
4 of a prohibited advice transaction arising by the
5 failure of investment advice to be a best interest
6 recommendation, the terms ‘correction’ and
7 ‘correct’ mean the payment to, or reimburse-
8 ment of, actual damages of the plan, plan par-
9 ticipants, or plan beneficiaries resulting directly
10 from the plan’s, plan participant’s, or plan
11 beneficiary’s reliance on such investment advice,
12 if any, that have not otherwise been paid or re-
13 imbursed to the plan, plan participants, or plan
14 beneficiaries, including payments and reim-
15 bursements made pursuant to subparagraph
16 (A).”.

17 (B) AMOUNT INVOLVED FOR PURPOSES OF
18 EXCISE TAX.—The first sentence of section
19 4975(f)(4) of such Code is amended by striking
20 “excess compensation.” and inserting “excess
21 compensation, and in the case of a prohibited
22 transaction arising by the failure of investment
23 advice to be a best interest recommendation,
24 the amount involved shall be the amount paid
25 to the person providing the advice (or its affil-

1 iate, as defined in paragraph (8)(J)(ii) that
2 has not been paid or reimbursed to the plan,
3 plan participants, or plan beneficiaries, includ-
4 ing payments and reimbursements made pursu-
5 ant to paragraph (5).”.

6 (4) EXEMPTION RELATING TO INVESTMENT AD-
7 VICE WITH RESPECT TO CERTAIN FEE ARRANGE-
8 MENTS.—Section 4975(d) of such Code (as amended
9 by paragraph (1)) is amended by striking “or” at
10 the end of paragraph (23), by striking the period at
11 the end of paragraph (24) and inserting “, or”, and
12 by adding after paragraph (24) the following:

13 “(25) any transaction, including a contract for
14 service, between a person providing investment ad-
15 vice described in subsection (e)(3)(B) and the advice
16 recipient in connection with such investment advice,
17 if—

18 “(A) no more than reasonable compensa-
19 tion is paid (as determined under section
20 4975(d)(2)) for such investment advice,

21 “(B) in a case in which the investment ad-
22 vice is based on a limited range of investment
23 options (which may consist, in whole or in part,
24 of proprietary products), such limitations, in-
25 cluding a clearly-stated notice that the same or

1 similar investments may be available at a dif-
2 ferent cost (greater or lesser) from other
3 sources), shall be clearly disclosed to the advice
4 recipient prior to any transaction based on the
5 investment advice,

6 “(C) in a case in which the investment ad-
7 vice may result in variable compensation to the
8 person providing the investment advice (or any
9 affiliate of such person), the receipt of such
10 compensation, including a clearly-stated notice
11 that the same or similar investments may be
12 available at a different cost (greater or lesser)
13 from other sources, shall be clearly disclosed to
14 the advice recipient (within the meaning of sub-
15 section (e)(11)(C)), and

16 “(D) in any case in which a person who,
17 acting in good faith and with reasonable dili-
18 gence, makes an error or omission in disclosing
19 the information specified in subparagraphs (B)
20 or (C), the person discloses the correct informa-
21 tion to the advice recipient as soon as prac-
22 ticable but not later than 30 days from the date
23 on which the person knows of such error or
24 omission.”.

25 (b) EFFECTIVE DATE.—

1 (1) MODIFICATION OF CERTAIN RULES, AND
2 RULES AND ADMINISTRATIVE POSITIONS PROMUL-
3 GATED BEFORE ENACTMENT BUT NOT EFFECTIVE
4 ON JANUARY 1, 2015, PROHIBITED.—The Depart-
5 ment of Labor is prohibited from amending any
6 rules or administrative positions promulgated under
7 section 3(21) of the Employee Retirement Income
8 Security Act of 1974 and section 4975(e)(3) of the
9 Internal Revenue Code of 1986 (including Depart-
10 ment of Labor Interpretive Bulletin 96–1 (29 C.F.R.
11 2509.96–1) and Department of Labor Advisory
12 Opinion 2005–23A), and no such rule or administra-
13 tive position promulgated by the Department of
14 Labor prior to the date of the enactment of this Act
15 but not effective on January 1, 2015, may become
16 effective unless a bill or joint resolution referred to
17 in paragraph (3) is enacted as described in such
18 paragraph not later than 60 days after the date of
19 the enactment of this Act.

20 (2) GENERAL EFFECTIVE DATE OF AMEND-
21 MENTS.—Except as provided in paragraph (3), the
22 amendments made by subsection (a) of this section
23 shall take effect on the 61st day after the date of
24 the enactment of this Act and shall apply with re-
25 spect to information provided or recommendations

1 made on or after 2 years after the date of the enact-
2 ment of this Act.

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

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

18 (d) TRANSITION.—If the amendments made by sub-
19 section (a) of this section take effect, then nothing in this
20 section shall be construed to prohibit the issuance of guid-
21 ance to carry out such amendments so long as such guid-
22 ance is necessary to implement such amendments. Until
23 such time as regulations or other guidance are issued to
24 carry out such amendments, a plan and a fiduciary shall
25 be treated as meeting the requirements of such amend-

- 1 ments if the plan or fiduciary, as the case may be, makes
- 2 a good faith effort to comply with such requirements.

