March 2, 2015

Re: Oppose H.R. 1090

Dear Representative:

Last week, Representative Ann Wagner (R-MO) introduced H.R. 1090, the cynically misnamed "Retail Investor Protection Act." This bill would erect new barriers to slow or stop efforts by the Department of Labor (DOL) and the Securities and Exchange Commission (SEC) to adopt new rules to require all financial advisers to act in the best interests of their clients when providing investment advice. By impeding their 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.

Under our current regulatory regime, certain financial professionals are allowed to hold themselves out as trusted advisers but not comply with the fiduciary standard that traditionally applies to those in a position of trust. Both the DOL and SEC are working to update and strengthen the ethical standards that apply when financial professionals provide investment advice to their clients. While some have suggested that these rules are likely to create conflicts, each agency has an important and unique role when it comes to protecting the quality of advice that financial professionals provide to investors.

Under the Employee Retirement Income Security Act (ERISA), the DOL has exclusive authority over retirement accounts, including traditional pension plans and defined contribution plans such as 401(k)s, and shared authority over Individual Retirement Accounts (IRAs). Under the securities laws, the SEC has exclusive authority over private securities accounts and shared authority over IRAs. The SEC's authority is limited to recommendations regarding securities, while the DOL's is not. Because neither agency currently requires all those who provide advice to act in their customers' best interests, both agencies must act to provide comprehensive protections governing the provision of investment advice.

The DOL is significantly farther along in its rulemaking process than the SEC. Last week, the DOL sent its proposal to the Office of Management and Budget for interagency review and it is expected that the proposal will be issued for public comment in the next few months. The SEC, on the other hand, has been studying the issue for years, and no one at the agency can provide a definitive answer as to when the SEC is going to move forward with its rulemaking process or even any assurance that it will.

This bill is a clear attempt to thwart DOL action by making the DOL wait indefinitely to proceed with its rulemaking to strengthen protections under ERISA until after the SEC finalizes a rule under securities laws. And, to further delay SEC 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. This approach puts both agencies in a vice, effectively crippling both their abilities to fulfill their unique and critical regulatory roles. Moreover, with no justification, it also subjugates an executive agency's jurisdictional authority to an independent agency's.

Investors face a multitude of complex decisions when saving for retirement and other important goals. They often turn to professionals for advice to help them navigate these difficult decisions. To ensure that the financial professionals are serving their clients' best interests, the rules that apply to financial advisers must be updated, and the DOL and SEC should be allowed to proceed with their rulemakings without manufactured roadblocks. Therefore, we urge you to oppose this ill-conceived and dangerous legislation.

Sincerely,

Micah Hauptman

Financial Services Counsel

Barbara Roper

Director of Investor Protection

Michelle Styczynski | Advocacy and Administrative Associate

Consumer Federation of America

1620 Eye Street, NW Suite 200 I Washington, DC 20006

T 202/939-1000 | | F 202/265-7989

consumerfed.org | mstyczynski@consumerfed.org