

114TH CONGRESS  
1ST SESSION

# H. R. 4294

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

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 18, 2015

Mr. ROSKAM (for himself, Mr. NEAL, Mr. ROE of Tennessee, Mr. LARSON of Connecticut, Mr. REED, and Ms. MICHELLE LUJAN GRISHAM of New Mexico) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## 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-

erty to be rolled over or otherwise distributed from such plan; or

“(III) the advisability of retaining or ceasing to retain a person who would receive a fee or other compensation for providing any of the types of advice described in this subclause; and

“(ii) is rendered pursuant to—

“(I) a written acknowledgment that the person is a fiduciary with respect to the provision of such recommendation; or

“(II) a mutual agreement, arrangement, or understanding which may include limitations on scope, timing, and responsibility to provide ongoing monitoring or advice services, between the person making such recommendation and the plan, plan participant, or beneficiary that such recommendation is individualized to the plan, plan participant, or beneficiary and such plan, plan participant, or 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-

tion made pursuant to a mutual agreement, arrangement, or understanding, and such information shall contain the disclaimer required by subparagraph (B), if—

“(i) SELLER’S EXCEPTION.—The information is provided in conjunction with full and fair disclosure in writing to a plan, plan participant, or beneficiary that the person providing the information is doing so in its marketing or sales capacity, including any information regarding the terms and conditions of the engagement of the person providing the information, and that the person is not intending to provide investment advice within the meaning of this subparagraph or to otherwise act as a fiduciary to the plan or under the obligations of a best interest recommendation.

“(ii) SWAP AND SECURITY-BASED SWAP TRANSACTION.—The person providing the information is a counterparty or service provider to the plan in connection with any transaction based on the information (including a service arrangement, sale, 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

disclosed if notification is provided at any time prior to a transaction based on the person's recommendation, in a manner calculated to be understood by the average individual, of the following:

“(i) A notice in writing, including a clearly-stated notice that the same or similar investments may be available at a different cost (greater or lesser) from other sources, that the person providing the recommendation (or its affiliate) may receive varying amounts of fees or other compensation with respect to such transaction.

“(ii) A description of any fee or other compensation that is directly payable to the person (or its affiliate) from the advice recipient with respect to such transaction (expressed as an amount, formula, percentage of assets, per capita charge, or estimate or range of such compensation).

“(iii) A description of the types and ranges of any indirect compensation that may be paid to the person (or its affiliate) by any third party in connection with such 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.

○