October 10, 2017

Re: Vote "No" on H.R. 3857, the "PASS Act of 2017"

Dear Representative:

We are writing to express our strong opposition to H.R. 3857, the "Protect Advice for Small Savers Act," (PASS Act) which was recently introduced by Rep. Ann Wagner (R-MO). Contrary to the claims of the bill's sponsor and the Wall Street lobbyists that back it, this bill would dramatically weaken existing protections for retirement savers without providing meaningful new protections for investors in non-retirement accounts. Because it would continue to put American investors and retirement savers at risk when they turn to financial professionals for investment advice, we urge you to vote no when this bill is brought up for a vote.

The bill would repeal the Department of Labor (DOL) conflict of interest (or "fiduciary) rule, reopening loopholes that make it easy for sales-based "advisers" to avoid their fiduciary obligations under ERISA and the tax code. In its place, the bill would apply a watered down, disclosure-based best interest standard to broker-dealers' retirement and non-retirement account investment recommendations alike. It is not clear, however, that the bill's "best interest" standard provides protections that are any stronger than those afforded by the "suitability" standard that currently applies to brokers' non-retirement account recommendations. It is drafted using language straight out of FINRA's guidance on its suitability standard and doesn't include any meaningful restrictions on the toxic conflicts of interest that pervade the broker-dealer and insurance agent business models, undermining that standard.

Instead, firms would be given a choice under this best-interest-standard-in-name-only of avoiding, disclosing, or "otherwise reasonably manag[ing]" conflicts of interest, with the predictable outcome that most firms will do nothing to rein in practices that encourage and reward advice that is not in customers' best interests. As a result, brokers and insurance agents would be free to give lip service to acting in customers' best interests while still paying their sales reps more to recommend substandard products that are more profitable for the firm or pressuring sales reps to push proprietary products. While such egregious conflicts are permitted, however, there is no reason to believe that these "advisers" will abide by the bill's vague and ill-defined best interest standard. But their ability to market themselves as trusted advisers would go unchecked.

Under the bill, insurers and brokers could simply rely on loopholes in the definition of fiduciary investment advice, as they have in the past, to avoid their fiduciary obligations under ERISA and the tax code entirely. Or they could satisfy those obligations simply by being subject to standards that are "substantially similar," but not identical, to the watered down standard outlined in the bill. Because the resulting standards could be somewhat different for different types of advisers, this leaves open the very real possibility that even weaker standards could apply to certain products sold to retirement investors, such as fixed-indexed annuities, than would apply under this bill to securities recommendations. As a result of these and other inconsistencies, the bill would further diminish, rather than enhance, the uniformity of standards that apply to investment advice.

Another deeply troubling feature of the legislation is that it leaves regulators powerless to redress its many shortcomings. Under the bill, the Securities and Exchange Commission and the Departments of Labor and Treasury would be precluded from adopting any requirements for brokers' recommendations that are "in addition to" the bill's requirements. State authority would also be broadly preempted. Thus, if these agencies wanted to adopt clarifying rules, shore up ineffective protections, or address unforeseen problems that may emerge in the future, they would be unable to do so.

This bill would strip away protections from retirement savers just as the DOL fiduciary rule is beginning to deliver the best interest advice that investors want and deserve. Moreover, it comes amid mounting evidence that the DOL rule is reducing the cost of advice, improving the quality of investment products, and preserving access to advice through both fee and commission accounts for even the smallest account holders. Indeed, since brokers and insurance agents are now required to provide fiduciary advice and not just self-interested sales recommendations dressed up as advice, retirement savers' access to *genuine* advice has been dramatically expanded as a result of the DOL rule. The main thing preventing retirement savers from receiving the full potential benefits of the rule is uncertainty over its ultimate fate as a result of the Trump Administration's proposed implementation delay and reconsideration of the rule and legislative threats such as this.

Because this bill weakens, rather than strengthens, investor protections, we urge you to vote no when it is considered in committee.

American Federation of State, County and Municipal Employees (AFSCME)
Americans for Financial Reform
Center for Economic Justice
Committee for the Fiduciary Standard
Consumer Action
Consumer Federation of America
EPI Policy Center
International Association of Machinists and Aerospace Workers
National Active and Retired Federal Employees Association (NARFE)
National Association of Social Workers (NASW)
National Organization for Women
NELP
Pension Rights Center
Public Citizen
UnidosUS (formerly NCLR)
U.S. PIRG
Woodstock Institute