



## H.R. 1090 — Retail Investor Protection Act (Wagner, R-MO)

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### FLOOR SCHEDULE:

Scheduled for consideration on October 27 under a structured [rule](#).

### TOPLINE SUMMARY:

[H.R. 1090](#) would prohibit the Secretary of Labor from issuing any regulation under the [Employee Retirement Income Security Act of 1974](#) (ERISA) ([29 U.S.C. 1001 et seq](#)) that would define when an individual would be considered a fiduciary, until 60 days after the Securities and Exchange Commission (SEC) issues a final rule which would govern standards of conduct for dealers and brokers under the [Dodd-Frank Act](#).

### COST:

The Congressional Budget Office (CBO) [estimates](#) that implementing H.R. 1090 would not affect federal spending or revenues.

### CONSERVATIVE CONCERNS:

There are no substantive concerns.

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

### DETAILED SUMMARY AND ANALYSIS:

Section 2 of H.R. 1090 would prevent the Department of Labor from issuing a rule change pertaining to the definition of a fiduciary until 60 days after the SEC issues a final rule pertaining to standards of conduct governing broker-dealers pursuant to the Dodd-Frank Act.

Section 3 would amend the Securities and Exchange Act of 1934 to require the SEC, prior to issuing a rule pertaining to the standards of conduct for dealers and brokers under section 913 of Dodd-Frank, to submit a report to the House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs which details:

- (1) Whether retail customers are being harmed by differing standards of conduct between broker-dealers and those of investment advisers;

- (2) Are there alternative remedies that will reduce harm to retail investors due to the differing standards;
- (3) Whether the adoption of a uniform fiduciary standard would negatively impact a broker-dealer's commission or the availability of financial products and transactions; and
- (4) Whether the adoption of a uniform fiduciary standard would negatively impact a broker-dealer's access to personalized, cost-effective investment advice and recommendations.

H.R. 1090 would also direct the SEC to provide economic analysis for any conclusions drawn in the report.

Broker-Dealers trade securities for their own portfolios or on behalf of customers, charging a commission for the trades executed, whereas investment advisers provide advice on securities values and investing, purchasing, or selling securities and other assets. Investment advisers typically charge an annual fee calculated on the percentage of total assets managed. In the past, broker-dealers and investment advisers have been held to differing standards of conduct in relation to how they deal with customers, with broker-dealers regulated by the SEC and the [Financial Industry Regulatory Authority](#) (FINRA) using a “[suitability standard](#)”. Broker-dealers must have reasonable grounds to believe a recommendation for purchase, sale, or exchange of a security is suitable for the customer's financial and investment objectives. Investment advisers, conversely, are regulated by the SEC under a heightened “fiduciary duty” standard of conduct, pursuant to the [Investment Advisers Act of 1940](#), requiring advisers to owe an affirmative duty to always act in the client's best interest in good faith, with full disclosure, and avoiding any misleading facts.

Under Section 913 of the Dodd-Frank Act ([15 U.S.C. 80b-11\(g\)](#)), the SEC is required to report the standards of care for broker-dealers and investment advisers. It also permits, but does not require, the SEC to issue new rules pertaining to the differing standards of care. Pursuant to this rule, in 2011 the SEC released a [study](#) recommending that broker-dealers and investment advisers to be held to the “fiduciary duty” standard. SEC Commissioners Casey and Paredes issued [statements](#) addressing this issue, claiming the SEC staff failed to justify their recommendations, address whether investors were being harmed under the current standards of conduct, nor did staff account for overall cost of a rule change. The SEC has not acted since on their ability to promulgate a rule.

In 2015, President Obama [issued](#) his [support](#) for the Department of Labor (DoL) to amend the definition of “investment advice,” expanding the class of individuals subject to fiduciary duties under ERISA. On April 20, 2015, the DoL issued a Notice and Comment of Proposed Rulemaking for public comment on proposed amendments to the definition of a fiduciary, the [Best Interest Contract Exemption](#) (BICE), and other proposed Prohibited Transaction Exemptions. These proposed rule changes to ERISA stand to limit access of middle income individuals to retirement planning and investment guidance. Retail investors will likely be transitioned from commission-based accounts to flat fee advisory accounts, at which point they risk being dropped if their accounts are deemed too small to generate sufficient revenue to cover the costs of providing advisory services. Additionally, this BICE would force advisers to affirmatively agree to provide advice that is in the best interest of the investor, without regard to the interests of the financial institution or adviser. This standard, borrowed from Dodd-Frank, will require investment advisers to interpret the intended meaning of this standard, which could lead to higher compliance costs and excessive liability on the part of investment firms.

The Committee report for H.R. 1090 can be found [here](#).

## **AMENDMENTS:**

1. [Lynch](#) (D-MA)—This amendment would replace the existing requirement that the DoL stop its rulemaking until the SEC issues a final rule with the requirement that the SEC would revise its regulations pertaining to a fiduciary no later than 60 days after the DoL finalizes its rule, and would also require the SEC to coordinate its rulemaking with the DoL.

## **OUTSIDE GROUPS AGAINST THE DOL FIDUCIARY RULE:**

[Competitive Enterprise Institute](#)  
[Americans for Tax Reform](#)  
[Independent Women's Forum Heather Higgins](#)  
[Independent Women's Voice](#)  
[American Commitment](#)  
[Americans for Competitive Enterprise](#)  
[Americans for Prosperity](#)  
[Association of Mature American Citizens](#)  
[Blue Ridge Forum](#)  
[Campaign for Liberty](#)  
[CapStand Council for Policy and Ethics](#)  
[Center for Freedom and Prosperity](#)  
[Center for Individual Freedom](#)  
[Center for Urban Renewal and Education](#)  
[FreedomWorks Foundation](#)  
[Frontiers of Freedom](#)  
[Grassroot Hawaii Action, Inc](#)  
[Institute for Liberty](#)  
[Less Government](#)  
[Log Cabin Republicans](#)  
[Maryland Taxpayers Association](#)  
[National Center for Public Policy Research](#)  
[National Center for Policy Analysis](#)  
[National Federation of Republican Assemblies](#)  
[National Tax Limitation Committee](#)  
[National Taxpayers Union](#)  
[Restore America's Mission](#)  
[60 Plus Association](#)  
[Small Business & Entrepreneurship](#)  
[Taxpayers Protection Alliance](#)  
[Tea Party Patriots](#)  
[Tea Party WDC](#)  
[U.S. Business and Industry Council](#)

## **COMMITTEE ACTION:**

H.R. 1090 was introduced on February 25, 2015 and was referred to the House Committee on Financial Services, where it was ordered reported by the yeas and nays, 34-25, on September 30, 2015.

## **ADMINISTRATION POSITION:**

A Statement of Administration Policy can be found [here](#).

## **CONSTITUTIONAL AUTHORITY:**

According to the sponsor, Congress has the power to enact this legislation pursuant to Article I, Section 8, Clause 3 of the United States Constitution.

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