

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1090
OFFERED BY MR. FOSTER OF ILLINOIS

Strike all after the enacting clause and insert the
following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Retail Investor Protec-
3 tion Act”.

4 SEC. 2. REPORT ON DIFFERENCES IN STANDARDS.

5 If the Securities and Exchange Commission issues a
6 rule under the second subsection (k) of section 15 of the
7 Securities Exchange Act of 1934 (15 U.S.C. 78o), the Sec-
8 retary of Labor shall, within 120 days, issue a report to
9 the Committees on Financial Services and Education and
10 the Workforce of the House of Representatives and the
11 Committees on Banking, Housing, and Urban Affairs and
12 Health, Education, and Labor of the Senate explaining the
13 differences between the rule issued by the Commission and
14 the rule issued by the Secretary of Labor that defines the
15 circumstances under which an individual is considered a
16 fiduciary under the Employee Retirement Income Security
17 Act of 1974 (29 U.S.C. 1001 et seq.).

1 **SEC. 3. CERTAIN CHANGES DEEMED TO COMPLY WITH APA**
2 **REQUIREMENTS.**

3 (a) IN GENERAL.—With respect to the proposed fidu-
4 ciary rule, the Secretary of Labor may make any of the
5 following changes, and such changes shall be deemed to
6 be a logical outgrowth of the proposed fiduciary rule:

7 (1) APPLICATION TO RECOMMENDATIONS.—
8 Clarify that the rule applies only to “recommenda-
9 tions”, as defined in the Financial Industry Regu-
10 latory Authority’s suitability rules and guidance, and
11 not to “marketing activities”.

12 (2) MODIFICATIONS TO THE BEST INTEREST
13 CONTRACT EXEMPTION.—

14 (A) DEFINITION OF ADVICE.—Excluding
15 communications prior to the retention of the fi-
16 nancial professional or some other action giving
17 rise to a duty to perform services or exchange
18 payment from the definition of “advice”, while
19 preserving any other remedies for false or mis-
20 leading statements.

21 (B) SUBSTITUTING PRINCIPLES OF CON-
22 DUCT.—Substituting principles of conduct for
23 prescribed actions under certain circumstances:

24 (i) The financial professional pro-
25 viding investment advice should at all
26 times act in the best interest of the client,

1 to include exercising the appropriate care,
2 skill, and diligence of a reasonably prudent
3 person given all available information and
4 circumstances.

5 (ii) The client should be presented the
6 benefits and disadvantages of opting for
7 various compensation models, including a
8 fee-based or a commission-based approach,
9 when choosing how to establish the account
10 and documentation executed to establish
11 an account must indicate that the financial
12 professional may from time to time earn
13 commission for various products if the cli-
14 ent chooses the commission-based com-
15 pensation structure.

16 (iii) The financial professional should
17 disclose any material conflict of interest,
18 including commissions earned based on the
19 client's choosing various recommended in-
20 vestment options, and the client must
21 waive said conflict in writing provided that
22 conflicts cannot be waived for discretionary
23 accounts.

24 (C) ADDITIONAL PRODUCTS PERMITTED.—
25 Additional products permitted, including the

1 unit investment trust and exchange traded or
2 listed derivatives.

3 (D) SMALL BUSINESS WITH PARTICIPANT-
4 DIRECTED PLANS.—Extending the exemption to
5 include small businesses with participant-di-
6 rected plans.

7 (3) EDUCATION EXEMPTION.—Creation of an
8 education exemption that would permit the dem-
9 onstration of asset allocation models with specific ex-
10 amples. The exemption should only be available for
11 general advice based on broad characteristics of the
12 investor, such as age.

13 (4) INCLUSION OF QUALITATIVE FACTORS.—
14 The inclusion of qualitative factors, such as the
15 guarantee of continued cash flow, in addition to cost
16 when making recommendations or providing invest-
17 ment advice.

18 (b) JUDICIAL REVIEW; RULE OF CONSTRUCTION.—
19 Any changes made to the proposed fiduciary rule pursuant
20 to this section shall not be subject to judicial review for
21 deficient notice or comment, and nothing in this Act may
22 be construed to support a claim that the Secretary of
23 Labor lacked authority to make any such changes to the
24 proposed fiduciary rule.

1 (c) PROPOSED FIDUCIARY RULE DEFINED.—For
2 purposes of this title, the term “proposed fiduciary rule”
3 means the proposed rule of the Department of Labor titled
4 “Definition of the Term ‘Fiduciary’; Conflict of Interest
5 Rule-- Retirement Investment Advice; Proposed Rule”,
6 published April 20, 2015.

7 **SEC. 4. PHASED IMPLEMENTATION OF NEW STANDARD.**

8 (a) IN GENERAL.—With respect to any new or re-
9 vised rule issued by the Secretary of Labor to define the
10 circumstances under which an individual is considered a
11 fiduciary under the Employee Retirement Income Security
12 Act of 1974 (29 U.S.C. 1001 et seq.), the Secretary may
13 provide relief for firms and other persons making a good-
14 faith effort to comply with such rule for any length of time
15 determined necessary or appropriate by the Secretary. In
16 providing any such relief, the Secretary shall—

17 (1) consider what constitutes “good-faith”; and

18 (2) consider the scope of change for various
19 firms, including changes to business processes, infor-
20 mation technology systems, and the extent to which
21 firms participate in both retirement and non-retire-
22 ment investing activities.

23 (b) SPECIFIC RELIEF REQUESTS.—Firms or other
24 persons may request specific relief under this section. In

1 such case, the Secretary of Labor should consider obsta-
2 cles to implementation as submitted by the petitioner.

