



H.J. Res 88: Disapproving the rule submitted by the Department of Labor relating to the definition of the term “Fiduciary” (Roe, R-TN)

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FLOOR SCHEDULE:

April 29, 2016 under a closed [rule](#) and provides for one hour of debates equally divided.

TOPLINE SUMMARY:

[H.J. Res. 88](#) would express congressional disapproval of the Department of Labor rule relating to the definition of the term fiduciary. If passed into law, this bill would render the rule null and void.

COST:

The [Congressional Budget Office](#) (CBO) and the staff of the Joint Committee on Taxation (JCT) estimate that the bill would have a negligible effect on revenues over the 2016-2026 period. Enacting the bill would not affect direct spending. Because enacting H.J. Res. 88 would affect revenues, pay-as-you-go procedures apply.

CONSERVATIVE 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:

The [Congressional Review Act](#) (CRA) is an oversight tool used by Congress to overturn a rule issued by a federal agency. The federal agency promulgating a rule covered by the CRA must submit the rule to Congress prior to the rule taking effect. Congress is given 60 legislative days to disapprove of a rule through a joint resolution of disapproval. Both chambers must pass the resolution and it must be signed by the president for the rule to not take effect. If the president vetoes the bill, Congress has the opportunity to override the veto. Since the CRA enactment in 1996, only one rule has been successfully disapproved.

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 the Employee Retirement Income Security Act of 1974 (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.

On April 6, 2016, the DOL issued their [final rule](#) which issued new standards as to whether a person is a fiduciary based on rendering investment advice. This rule will go into effect in April 2017. According to the [committee report](#), a person is fiduciary if the person -

- Provides to a plan, a plan fiduciary, an IRA, or an IRA owner certain types of recommendations or statements (as described below) that constitute investment advice with respect to plan or IRA assets in exchange for a fee or other compensation; and
- Either directly or indirectly (such as through an affiliate) (1) represents or acknowledges that it is acting as a fiduciary with respect to the investment advice, or (2) renders the advice pursuant to a written or verbal agreement, arrangement, or understanding that the advice is individualized to, or that the advice is specifically directed to, the advice recipient for consideration in making investment or management decisions with respect to securities or other property of the plan or IRA.

Under the final regulation, investment advice includes -

- A recommendation as to the advisability of acquiring, holding, disposing of, or exchanging securities or other property, including a recommendation to take a distribution of benefits or a recommendation as to the investment of securities or other property to be rolled over or otherwise distributed from the plan or IRA; and
- A recommendation as to the management of securities or other property, including recommendations as to the management of securities or other property to be rolled over or otherwise distributed from the plan or IRA.

In summary, this rule, deemed the “[Obamacare for financial planning](#)”, broadens the definition of fiduciary and gives unprecedented power to regulators. This change will threaten the ability of middle class investors to seek investment advice since the sizes of the portfolios may be too small to justify management fees. Finally, this rule will increase compliance costs and restrict consumer choice.

OUTSIDE GROUP SUPPORT:

- [Americans for Prosperity](#)
- [National Taxpayers Union](#)

COMMITTEE ACTION:

This bill was introduced by Representative Roe on April 19, 2016, and referred to the Committee on Education and the Workforce, and to the Committee on Ways and Means. The Education and the Workforce Committee held a mark-up and the bill was reported out by a vote of 22-14. Read the committee report, [here](#).

ADMINISTRATION POSITION:

The Administration strongly opposes H.J.Res. 88 because the bill would overturn an important Department of Labor final rule critical to protecting Americans' hard-earned savings and preserving their retirement security. If the President were presented with H.J.Res. 88, he would veto the bill.

CONSTITUTIONAL AUTHORITY:

According to the sponsor, Congress has the power to enact this legislation pursuant to the following: Article I, Section 8 of the Constitution of the United States. No specific enumerating clause was included.

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