



JOINT COMMITTEE ON TAXATION

February 2, 2016

JCX-6-16

**DESCRIPTION OF AN AMENDMENT IN THE NATURE OF
A SUBSTITUTE TO THE PROVISIONS OF H.R. 4294, THE STRENGTHENING
ACCESS TO VALUABLE EDUCATION AND RETIREMENT SUPPORT
(OR “SAVERS”) ACT OF 2015**

Description of Changes

In general

The Chairman’s amendment in the nature of a substitute modifies H.R. 4294 by making the changes described below. The Chairman’s amendment also makes minor technical changes to the statutory language.

Definition of investment advice

The Chairman’s amendment revises the language that must be used in any disclaimer of a mutual agreement, arrangement, or understanding with respect to a recommendation for purposes of whether the recommendation constitutes investment advice. As revised, any disclaimer must only state, “This information is not individualized to you, and you are not intended to materially rely on this information in making investment or management decisions.”

Exemptions relating to investment advice

The Chairman’s amendment combines the two exemptions provided under the proposal by revising the best interest recommendation exemption and deleting the exemption for certain fee arrangements. As revised, the exemption with respect to investment advice that is a best interest recommendation applies to the provision of the investment advice or a transaction connected to the advice.

The Chairman’s amendment continues to allow a best interest recommendation to include a recommendation based on a limited range of investment options, which may consist, in whole or in part, of proprietary products, but only if any limitations are clearly disclosed to the advice recipient before any transaction based on the recommendation. Under the Chairman’s amendment, any limitations must be disclosed in the form of a notice that states only the following: “This recommendation is based on a limited range of investment options, and the same or similar investments may be available at a different cost (greater or lesser) from other sources.”

The Chairman's amendment also continues to allow a best interest recommendation to result in variable compensation to the adviser (or an affiliate), but only if the receipt of the compensation is clearly disclosed before any transaction. For this purpose, clear disclosure of variable compensation, must include, in a manner calculated to be understood by the average individual, each of the following:

1. A notice that states only the following: "This recommendation may result in varying amounts of fees or other compensation to the person providing the recommendation (or its affiliate), and the same or similar investments may be available at a different cost (greater or lesser) from other sources."¹
2. A description of any fee or other compensation that is directly or indirectly payable to the adviser (or its affiliate) by the advice recipient with respect to the transaction (expressed as an amount, formula, percentage of assets, per capita charge, or estimate or range of the compensation).
3. A description of the types and ranges of any compensation that may be directly or indirectly payable to the adviser (or its affiliate) by any third party in connection with the transaction (expressed as an amount, formula, percentage of assets, per capita charge, or estimate or range of the compensation).
4. On request of the advice recipient, a disclosure of the specific amounts of compensation described in (3) that the adviser will receive in connection with the particular transaction (expressed as an amount, formula, percentage of assets, per capita charge, or estimate of the compensation).

A notice with respect to limitations on the range of investment options on which a recommendation is based or with respect to variable compensation shall have no effect on any other notice otherwise required without regard to the Code and shall be provided in addition to, and not in lieu of, any other such notice.

Under the Chairman's Amendment, in the case of a prohibited transaction arising by the failure of investment advice to be a best interest recommendation, "correction" and "correct" mean the payment to, or reimbursement of, actual damages of the plan, plan participants, or plan beneficiaries resulting directly from the plan's, plan participant's, or plan beneficiary's reliance on the investment advice, if any, that have not otherwise been paid or reimbursed to the plan, plan participants, or plan beneficiaries, including payments and reimbursements made pursuant to the general correction rule under present law (that is, undoing the transaction to the extent possible, but in any case placing the plan in a financial position not worse than that in which it would be if the disqualified person were acting under the highest fiduciary standards) if such amount is greater than the amount determined under the present-law correction rule.

¹ Any regulations or other administrative guidance implementing this requirement may not require this notice to be updated more frequently than annually.

Effective date

The Chairman's Amendment revises the standard for compliance with the amendments made by the proposal until regulations or other guidance is issued. Under the Chairman's Amendment, until the issuance of regulations or other guidance, a plan or a fiduciary will be treated as meeting the requirements of the amendments if the plan or fiduciary, as applicable, complies with a reasonable good faith interpretation of the amendments.

Estimated Revenue Effect

The proposal is estimated to have a negligible effect on Federal fiscal year budget receipts for the period 2016-2026.