

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 4294
OFFERED BY MR. BRADY OF TEXAS**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Strengthening Access
3 to Valuable Education and Retirement Support Act of
4 2015” or the “SAVERS Act of 2015”.

5 SEC. 2. PURPOSE.

6 The purpose of this Act is to provide that advisors
7 who—

8 (1) provide advice that is impermissible under
9 the prohibited transaction provisions under section
10 4975 of the Internal Revenue Code of 1986, or

11 (2) breach the best interest standard for the
12 provision of investment advice,

13 are subject to liability under the Internal Revenue Code
14 of 1986.

**15 SEC. 3. RULES RELATING TO THE PROVISION OF INVEST-
16 MENT ADVICE.**

17 (a) AMENDMENTS TO THE INTERNAL REVENUE
18 CODE OF 1986.—

1 (1) EXEMPTION FOR INVESTMENT ADVICE
2 WHICH IS BEST INTEREST RECOMMENDATION.—Sec-
3 tion 4975(d) of the Internal Revenue Code of 1986
4 is amended by striking “or” at the end of paragraph
5 (22), by striking the period at the end of paragraph
6 (23) and inserting “, or”, and by inserting after
7 paragraph (23) the following:

8 “(24) provision of investment advice by a fidu-
9 ciary to a plan, plan participant, or beneficiary with
10 respect to the plan, which is a best interest rec-
11 ommendation or a transaction connected to such ad-
12 vice.”.

13 (2) INVESTMENT ADVICE; BEST INTEREST REC-
14 COMMENDATION.—Section 4975(e) of such Code is
15 amended by adding at the end the following:

16 “(10) INVESTMENT ADVICE.—

17 “(A) IN GENERAL.—For purposes of this
18 section, the term ‘investment advice’ means a
19 recommendation that—

20 “(i) relates to—

21 “(I) the advisability of acquiring,
22 holding, disposing, or exchanging any
23 moneys or other property of a plan by
24 the plan, plan participants, or plan
25 beneficiaries, including any rec-

1 ommendation whether to take a dis-
2 tribution of benefits from such plan or
3 any recommendation relating to the
4 investment of any moneys or other
5 property of such plan to be distrib-
6 uted from such plan;

7 “(II) the management of moneys
8 or other property of such plan, includ-
9 ing recommendations relating to the
10 management of moneys or other prop-
11 erty to be distributed from such plan;
12 or

13 “(III) the advisability of retain-
14 ing or ceasing to retain a person who
15 would receive a fee or other com-
16 pensation for providing any of the
17 types of advice described in this sub-
18 clause; and

19 “(ii) is rendered pursuant to—

20 “(I) a written acknowledgment
21 that the person is a fiduciary with re-
22 spect to the provision of such rec-
23 ommendation; or

24 “(II) a mutual agreement, ar-
25 rangement, or understanding which

1 may include limitations on scope, tim-
2 ing, and responsibility to provide on-
3 going monitoring or advice services,
4 between the person making such rec-
5 ommendation and the plan, plan par-
6 ticipant, or beneficiary that such rec-
7 ommendation is individualized to the
8 plan, plan participant, or beneficiary
9 and such plan, plan participant, or
10 beneficiary intends to materially rely
11 on such recommendation in making
12 investment or management decisions
13 with respect to any moneys or other
14 property of such plan.

15 “(B) DISCLAIMER OF A MUTUAL AGREE-
16 MENT, ARRANGEMENT, OR UNDERSTANDING.—
17 For purposes of subparagraph (A)(ii)(II), any
18 disclaimer of a mutual agreement, arrangement,
19 or understanding shall only state the following:
20 ‘This information is not individualized to you,
21 and you are not intended to materially rely on
22 this information in making investment or man-
23 agement decisions.’. Such disclaimer shall not
24 be effective unless such disclaimer is in writing
25 and is communicated in a clear and prominent

1 manner and an objective person would reason-
2 ably conclude that, based on all the facts and
3 circumstances, there was not a mutual agree-
4 ment, arrangement, or understanding.

5 “(C) WHEN RECOMMENDATION TREATED
6 AS MADE PURSUANT TO A MUTUAL AGREE-
7 MENT, ARRANGEMENT, OR UNDERSTANDING.—
8 For purposes of subparagraph (A)(ii)(II), infor-
9 mation shall not be treated as a recommenda-
10 tion made pursuant to a mutual agreement, ar-
11 rangement, or understanding, and such infor-
12 mation shall contain the disclaimer required by
13 subparagraph (B), if—

14 “(i) SELLER’S EXCEPTION.—The in-
15 formation is provided in conjunction with
16 full and fair disclosure in writing to a plan,
17 plan participant, or beneficiary that the
18 person providing the information is doing
19 so in its marketing or sales capacity, in-
20 cluding any information regarding the
21 terms and conditions of the engagement of
22 the person providing the information, and
23 that the person is not intending to provide
24 investment advice within the meaning of
25 this subparagraph or to otherwise act as a

1 fiduciary to the plan or under the obliga-
2 tions of a best interest recommendation.

3 “(ii) SWAP AND SECURITY-BASED
4 SWAP TRANSACTION.—The person pro-
5 viding the information is a counterparty or
6 service provider to the plan in connection
7 with any transaction based on the informa-
8 tion (including a service arrangement, sale,
9 purchase, loan, bilateral contract, swap (as
10 defined in section 1a of the Commodity
11 Exchange Act (7 U.S.C. 1a)), or security-
12 based swap (as defined in section 3(a) of
13 the Securities Exchange Act (15 U.S.C.
14 78c(a))), but only if—

15 “(I) the plan is represented, in
16 connection with such transaction, by a
17 plan fiduciary that is independent of
18 the person providing the information,
19 and, except in the case of a swap or
20 security-based swap, independent of
21 the plan sponsor; and

22 “(II) prior to entering into such
23 transaction, the independent plan fi-
24 duciary represents in writing to the
25 person providing the information that

1 it is aware that the person has a fi-
2 nancial interest in the transaction and
3 that it has determined that the person
4 is not intending to provide investment
5 advice within the meaning of this sub-
6 paragraph or to otherwise act as a fi-
7 duciary to the plan, plan participants,
8 or plan beneficiaries.

9 “(iii) EMPLOYEES OF A PLAN SPON-
10 SOR.—The person providing the informa-
11 tion is an employee of any sponsoring em-
12 ployer or employee organization who pro-
13 vides the information to the plan for no fee
14 or other compensation other than the em-
15 ployee’s normal compensation.

16 “(iv) PLATFORM PROVIDERS SELEC-
17 TION AND MONITORING ASSISTANCE.—The
18 person providing the information discloses
19 in writing to the plan fiduciary that the
20 person is not undertaking to provide in-
21 vestment advice as a fiduciary (within the
22 meaning of this paragraph) or under the
23 obligations of a best interest recommenda-
24 tion and the information consists solely
25 of—

1 “(I) making available to the plan,
2 plan participants, or plan bene-
3 ficiaries, without regard to the indi-
4 vidualized needs of the plan, plan par-
5 ticipants, or plan beneficiaries, securi-
6 ties or other property through a plat-
7 form or similar mechanism from
8 which a plan fiduciary may select or
9 monitor investment alternatives, in-
10 cluding qualified default investment
11 alternatives, into which plan partici-
12 pants or beneficiaries may direct the
13 investment of assets held in, or con-
14 tributed to, their individual accounts,
15 or

16 “(II) in connection with a plat-
17 form or similar mechanism described
18 in subclause (I)—

19 “(aa) identifying investment
20 alternatives that meet objective
21 criteria specified by the plan,
22 such as criteria concerning ex-
23 pense ratios, fund sizes, types of
24 asset, or credit quality, or

1 “(bb) providing objective fi-
2 nancial data and comparisons
3 with independent benchmarks to
4 the plan.

5 “(v) VALUATION.—The information
6 consists solely of valuation information.

7 “(vi) FINANCIAL EDUCATION.—The
8 information consists solely of—

9 “(I) information described in De-
10 partment of Labor Interpretive Bul-
11 letin 96–1 (29 C.F.R. 2509.96–1, as
12 in effect on January 1, 2015), regard-
13 less of whether such education is pro-
14 vided to a plan or plan fiduciary or a
15 participant or beneficiary,

16 “(II) information provided to
17 participants or beneficiaries regarding
18 the factors to consider in deciding
19 whether to elect to receive a distribu-
20 tion from a plan and whether to roll
21 over such distribution to a plan, so
22 long as any examples of different dis-
23 tribution alternatives are accompanied
24 by all material facts and assumptions
25 on which the examples are based, or

1 “(III) any additional information
2 treated as education by the Secretary.

3 “(11) BEST INTEREST RECOMMENDATION.—

4 For purposes of this subsection—

5 “(A) IN GENERAL.—The term ‘best inter-
6 est recommendation’ means a recommenda-
7 tion—

8 “(i) for which no more than reason-
9 able compensation is paid (as determined
10 under subsection (d)(2)),

11 “(ii) provided by a person acting with
12 the care, skill, prudence, and diligence
13 under the circumstances then prevailing
14 that a prudent person would exercise based
15 on—

16 “(I) the information obtained
17 through the reasonable diligence of
18 the person regarding factors such as
19 the advice recipient’s age, and

20 “(II) any other information that
21 the advice recipient discloses to the
22 person in connection with receiving
23 such recommendation, and

1 “(iii) where the person places the in-
2 terests of the plan or advice recipient
3 above its own.

4 “(B) INVESTMENT OPTIONS; VARIABLE
5 COMPENSATION.—A best interest recommenda-
6 tion may include a recommendation that—

7 “(i) is based on a limited range of in-
8 vestment options (which may consist, in
9 whole or in part, of proprietary products),
10 but only if any such limitations shall be
11 clearly disclosed to the advice recipient
12 prior to any transaction based on the in-
13 vestment advice in the form of a notice
14 that only states the following: ‘This rec-
15 ommendation is based on a limited range
16 of investment options, and the same or
17 similar investments may be available at a
18 different cost (greater or lesser) from other
19 sources.’, or

20 “(ii) may result in variable compensa-
21 tion to the person providing the rec-
22 ommendation (or any affiliate of such per-
23 son), but only if the receipt of such com-
24 pensation shall be clearly disclosed to the

1 advice recipient prior to any transaction
2 based on the investment advice.

3 “(C) CLEAR DISCLOSURE OF VARIABLE
4 COMPENSATION.—For purposes of this para-
5 graph, clear disclosure of variable compensation
6 shall include, in a manner calculated to be un-
7 derstood by the average individual, each of the
8 following:

9 “(i) A notice that states only the fol-
10 lowing: ‘This recommendation may result
11 in varying amounts of fees or other com-
12 pensation to the person providing the rec-
13 ommendation (or its affiliate), and the
14 same or similar investments may be avail-
15 able at a different cost (greater or lesser)
16 from other sources.’. Any regulations or
17 administrative guidance implementing this
18 clause may not require this notice to be
19 updated more than annually.

20 “(ii) A description of any fee or other
21 compensation that is directly or indirectly
22 payable to the person (or its affiliate) by
23 the advice recipient with respect to such
24 transaction (expressed as an amount, for-
25 mula, percentage of assets, per capita

1 charge, or estimate or range of such com-
2 pensation).

3 “(iii) A description of the types and
4 ranges of any compensation that may be
5 directly or indirectly payable to the person
6 (or its affiliate) by any third party in con-
7 nection with such transaction (expressed as
8 an amount, formula, percentage of assets,
9 per capita charge, or estimate or range of
10 such compensation).

11 “(iv) Upon request of the advice re-
12 cipient, a disclosure of the specific
13 amounts of compensation described in
14 clause (iii) that the person will receive in
15 connection with the particular transaction
16 (expressed as an amount, formula, percent-
17 age of assets, per capita charge, or esti-
18 mate of such compensation).

19 “(D) DEFINITION OF AFFILIATE.—For
20 purposes of this paragraph, the term ‘affiliate’
21 has the meaning given in subsection
22 (f)(8)(J)(ii).

23 “(E) CORRECTION OF CERTAIN ERRORS
24 AND OMISSIONS.—A recommendation shall not
25 fail to be a best interest recommendation solely

1 because a person who, acting in good faith and
2 with reasonable diligence, makes an error or
3 omission in disclosing the information specified
4 in subparagraph (B), if the person discloses the
5 correct information to the advice recipient as
6 soon as practicable but not later than 30 days
7 from the date on which the person knows of
8 such error or omission.

9 “(F) SPECIAL RULE.—Any notice provided
10 pursuant to a requirement under subparagraph
11 (B)(i) or subparagraph (C)(i) shall have no ef-
12 fect on any other notice otherwise required
13 without regard to this title, and shall be pro-
14 vided in addition to, and not in lieu of, any
15 other such notice.”.

16 (3) FAILURES RELATING TO BEST INTEREST
17 RECOMMENDATION.—

18 (A) CORRECTION.—Section 4975(f)(5) of
19 such Code is amended—

20 (i) by striking “(5) CORRECTION.—
21 The terms” and inserting:

22 “(5) CORRECTION.—

23 “(A) IN GENERAL.—Except as provided in
24 subparagraph (B), the terms”, and

1 (ii) by adding at the end the fol-
2 lowing:

3 “(B) DETERMINATION OF ‘CORRECTION’
4 AND ‘CORRECT’ WITH RESPECT TO BEST INTER-
5 EST ADVICE RECOMMENDATIONS.—In the case
6 of a prohibited transaction arising by the fail-
7 ure of investment advice to be a best interest
8 recommendation, the terms ‘correction’ and
9 ‘correct’ mean the payment to, or reimburse-
10 ment of, actual damages of the plan, plan par-
11 ticipants, or plan beneficiaries resulting directly
12 from the plan’s, plan participant’s, or plan
13 beneficiary’s reliance on such investment advice,
14 if any, that have not otherwise been paid or re-
15 imbursement to the plan, plan participants, or plan
16 beneficiaries, including payments and reim-
17 bursements made pursuant to subparagraph
18 (A) if such amount is greater than the amount
19 determined under subparagraph (A).”.

20 (B) AMOUNT INVOLVED FOR PURPOSES OF
21 EXCISE TAX.—The first sentence of section
22 4975(f)(4) of such Code is amended by striking
23 “excess compensation.” and inserting “excess
24 compensation, and in the case of a prohibited
25 transaction arising by the failure of investment

1 advice to be a best interest recommendation,
2 the amount involved shall be the amount paid
3 to the person providing the advice (or its affil-
4 iate, as defined in paragraph (8)(J)(ii)) that
5 has not been paid or reimbursed to the plan,
6 plan participants, or plan beneficiaries, includ-
7 ing payments and reimbursements made pursu-
8 ant to paragraph (5).”.

9 (b) EFFECTIVE DATE.—

10 (1) MODIFICATION OF CERTAIN RULES, AND
11 RULES AND ADMINISTRATIVE POSITIONS PROMUL-
12 GATED BEFORE ENACTMENT BUT NOT EFFECTIVE
13 ON JANUARY 1, 2015, PROHIBITED.—The Depart-
14 ment of Labor is prohibited from amending any
15 rules or administrative positions promulgated under
16 section 3(21) of the Employee Retirement Security
17 Act of 1974 and section 4975(e)(3) of the Internal
18 Revenue Code of 1986 (including Department of
19 Labor Interpretive Bulletin 96–1 (29 C.F.R.
20 2509.96–1) and Department of Labor Advisory
21 Opinion 2005–23A), and no such rule or administra-
22 tive position promulgated by the Department of
23 Labor prior to the date of the enactment of this Act
24 but not effective on January 1, 2015, may become
25 effective unless a bill or joint resolution referred to

1 in paragraph (3) is enacted as described in such
2 paragraph not later than 60 days after the date of
3 the enactment of this Act.

4 (2) GENERAL EFFECTIVE DATE OF AMEND-
5 MENTS.—Except as provided in paragraph (3), the
6 amendments made by subsection (a) of this section
7 shall take effect on the 61st day after the date of
8 the enactment of this Act and shall apply with re-
9 spect to information provided or recommendations
10 made on or after 2 years after the date of the enact-
11 ment of this Act.

12 (3) EXCEPTION.—If a bill or joint resolution is
13 enacted prior to the 61st day after the date of the
14 enactment of this Act that specifically approves any
15 rules or administrative positions promulgated under
16 section 3(21) of the Employee Retirement Income
17 Security Act of 1974 and section 4975(e)(3) of the
18 Internal Revenue Code of 1986 that is not in effect
19 on January 1, 2015, the amendments made by sub-
20 section (a) of this section shall not take effect.

21 (c) GRANDFATHERED TRANSACTIONS AND SERV-
22 ICES.—The amendments made by subsection (a) shall not
23 apply to any service or transaction rendered, entered into,
24 or for which a person has been compensated prior to the

1 date on which the amendments made by subsection (a)
2 of this Act become effective under subsection (b)(2).

3 (d) TRANSITION.—If the amendments made by sub-
4 section (a) of this section take effect, then nothing in this
5 section shall be construed to prohibit the issuance of guid-
6 ance to carry out such amendments so long as such guid-
7 ance is necessary to implement such amendments. Until
8 such time as regulations or other guidance is issued to
9 carry out such amendments, a plan or a fiduciary shall
10 be treated as meeting the requirements of such amend-
11 ments if the plan or fiduciary, as the case may be, com-
12 plies with a reasonable good faith interpretation of such
13 amendments.

