Opening Statement of Robert C. "Bobby" Scott, Ranking Member
Committee on Education and the Workforce
Committee Markup of H.J.RES.88
Thursday, April 21, 2016 at 9:00 AM

Good morning. Today, the Committee is marking-up H.J.RES.88, a joint resolution disapproving of the Department of Labor's conflict of interest rule.

This Congressional Review Act resolution of disapproval would undo the Department's final rule that simply ensures financial advisors act in the best interest of their retirement clients. This CRA resolution should be rejected for what it is – an effort to allow some brokers to continue to put their own interests ahead of the interests of their clients. It seems that some investment advisors are concerned that their business model won't work if they aren't allowed to cheat working people out of their hard-earned savings. That is not a business model we need to protect.

For far too long, certain financial advisors have been able to exploit loopholes in the decades-old regulation that governs investment advice for retirement savers. Right now, financial advisors can easily steer retirement clients toward financial products which may yield the advisor a big commission but may not be in their clients' best interest. And that is exactly what at least some of them do. This unscrupulous practice of providing what's referred to as "conflicted advice" insidiously erodes workers' retirement nest egg. And it is important to note that this rule only impacts retirement funds, not other investment funds. According to the White House, retirement savers lose $17 billion a year as a result of receiving conflicted advice about their retirement savings.

The most common point at which "conflicted advice" occurs is when workers are about to retire and roll over their employer-based retirement account, such as a 401(k), into an IRA or other financial product. Under the old rule, an advisor providing these workers with individualized or one-time retirement investment advice did not have to abide by fiduciary

rules, yet workers will often believe that their advisor has a duty to act in their best interest.

That is not always the case.

According to the White House – and I quote – “a typical worker who receives conflicted advice when rolling over a 401(k) balance to an IRA at age 45 will lose an estimated 17 percent from her account by age 65. In other words, if a worker has $100,000 in retirement savings at age 45, without conflicted advice it would grow to an estimated $216,000 by age 65 adjusted for inflation, but if she receives conflicted advice it would grow to $179,000—a loss of $37,000 or 17 percent.”

The Department of Labor recognized the magnitude of this problem and took action to protect workers’ retirement savings. Nearly six years ago, they put forward a proposed rule. After considering input they received from industry and others, they withdrew that rule in October 2011 and started again. Last April, the Department re-proposed the rule and since

then they have conducted a thorough and transparent rulemaking processes.

Over the past year, the Department conducted hundreds of meetings on the rule and provided the American public and industry representatives nearly six months to weigh in on the proposal. Secretary Perez and his colleagues listened and repeatedly assured industry officials, Members of Congress, and other stakeholders, that the final rule would reflect the input they received and that the Department would get it right.

I believe they did. The final rule strikes the appropriate balance between addressing the legitimate congressional, industry, and other stakeholder concerns without compromising its main goal – ensuring that retirement clients receive investment advice that's in their best interest.

A broad and diverse coalition of stakeholders – including AARP, AFL-CIO, the Leadership Conference on Civil and Human Rights, NAACP,

National Council of La Raza, and many more – have registered their strong support for the rule.

In their joint letter in support of the final rule, the coalition said – and I quote – "it will at long last require all financial professionals who provide retirement investment advice to put their clients' best interests ahead of their own financial interests. By taking this essential step, the rule will help all Americans – many of whom are responsible for making their own decisions about how best to invest their retirement savings – keep more of their hard-earned savings so they can enjoy a more financially secure and independent retirement."

But – let me be clear – support for the final rule is not limited to those organizations that traditionally support the interests of workers and consumers. Initial reactions from many financial services firms and industry officials have also been positive and supportive of the final rule.

For instance, the head of Merrill Lynch Wealth Management said they – and I quote – “were pleased that Secretary Perez and the Department of Labor staff have worked to address many of the practical concerns raised during the comment period.”

The president and CEO of TIAA said, – and I quote – “based on our preliminary analysis, it appears the Department has gone a long way toward making the best interest standard, the industry standard.”

Morgan Stanley issued a statement saying that the Labor Department’s final version of the fiduciary rules was – and I quote – “meaningfully softened in several aspects.”

Others are still taking time to review and are reserving judgment until they figure out this 1000 page rule’s full implications – and that is understandable. After all, it has been less than two weeks since the rule was finalized and published in the Federal Register.

But reserving judgment is not what we are doing here today. Instead, the Committee is rushing to mark-up a joint resolution of disapproval that was introduced just two days ago.

On top of that, only thirteen days have elapsed between publication of the final rule and today's mark-up. According to the Congressional Research Service, this is the *shortest timespan ever* between the issuance or publication of a final rule and a House or Senate Committee's CRA markup.

So congratulations, Mr. Chairman. You broke the previous record of 25 days.

But in all seriousness, this hastily-considered, partisan resolution is not where the Committee should be allocating its time and attention.

Instead, we should be helping working people make ends meet – by taking up legislation that would boost workers' wages, help workers

achieve a better balance between work and family life, level the playing field by strengthening protections from discrimination so that all working people have a fair shot, and strengthening workers' ability to have a safe and secure retirement.

That has been and will remain the focus of Committee Democrats.

For now, I urge a NO vote on this misguided joint resolution and yield back my time.

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