

111TH CONGRESS  
1ST SESSION

# H. R. 1984

To amend title I of the Employee Retirement Income Security Act of 1974 to provide special reporting and disclosure rules for individual account plans and to provide a minimum investment option requirement for such plans.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 21, 2009

Mr. GEORGE MILLER of California (for himself, Mr. ANDREWS, Ms. WOOLSEY, Mr. SABLAN, Mr. GRIJALVA, Ms. HIRONO, Ms. CLARKE, Mr. HARE, Mrs. DAVIS of California, and Mr. KILDEE) introduced the following bill; which was referred to the Committee on Education and Labor

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## A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 to provide special reporting and disclosure rules for individual account plans and to provide a minimum investment option requirement for such plans.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “401(k) Fair Disclosure  
5 for Retirement Security Act of 2009”.

1 **SEC. 2. SPECIAL REPORTING AND DISCLOSURE RULES FOR**  
2 **INDIVIDUAL ACCOUNT PLANS.**

3 (a) ADDITIONAL REPORTING AND DISCLOSURE  
4 RULES.—Part 1 of subtitle B of title I of the Employee  
5 Retirement Income Security Act of 1974 is amended—

6 (1) by redesignating section 111 (29 U.S.C.  
7 1031) as section 112; and

8 (2) by inserting after section 110 (29 U.S.C.  
9 1030) the following new section:

10 **“SEC. 111. SPECIAL REPORTING AND DISCLOSURE RULES**  
11 **FOR INDIVIDUAL ACCOUNT PLANS.**

12 “(a) DISCLOSURE TO EMPLOYERS SPONSORING INDI-  
13 VIDUAL ACCOUNT PLANS REGARDING SERVICES NEC-  
14 ESSARY FOR ESTABLISHMENT OR OPERATION OF  
15 PLANS.—

16 “(1) SERVICE DISCLOSURE STATEMENT.—The  
17 plan administrator of an individual account plan (or  
18 any other plan official with contracting authority  
19 under the terms of the plan) and any other person  
20 may not enter into a contract for services to the  
21 plan (including, for purposes of this section, the of-  
22 fering of any investment option to the plan) unless  
23 such plan administrator or other official has re-  
24 ceived, not less than 10 business days in advance of  
25 entering into the contract, a single written statement  
26 from such person which—

1           “(A) describes such services for the plan  
2           that will be provided in connection with the con-  
3           tract, and

4           “(B) provides the expected total annual  
5           charges for such services for the plan that will  
6           be provided in connection with the contract, in-  
7           cluding a reasonable allocation of such total an-  
8           nual charges among all relevant component  
9           charges specified in paragraph (2) (regardless  
10          of how the charges are actually assessed).

11          The description of the services and the charges for  
12          the services shall be displayed prominently in the  
13          written statement and shall be presented in a format  
14          which is understandable to the typical plan adminis-  
15          trator.

16          “(2) MINIMUM ALLOCATION REQUIREMENTS.—  
17          The allocation required under paragraph (1)(B) in  
18          connection with the services provided under each  
19          contract shall specify component charges (to the ex-  
20          tent such services for the plan are provided under  
21          the contract) as follows:

22                 “(A) charges for administration and rec-  
23                 ordkeeping,

24                 “(B) transaction-based charges,

1           “(C) charges for investment management,  
2           and

3           “(D) all such charges not described in sub-  
4           paragraph (A), (B), or (C) as may be specified  
5           by the Secretary.

6           “(3) PRESENTATION OF CHARGES.—The total  
7           charges described in paragraph (2)(A) and the total  
8           charges described in paragraph (2)(C) shall each be  
9           presented in the written statement as an aggregate  
10          total dollar amount, and, in addition, each of such  
11          total charges may also be presented as a percentage  
12          of assets. The charges described in paragraph (2)(B)  
13          shall be itemized separately as dollar amounts or as  
14          percentages of the applicable base amounts.

15          “(4) ESTIMATIONS.—For purposes of providing  
16          the statement required under this subsection in con-  
17          nection with any service, the service provider may  
18          provide a reasonable and representative estimate of  
19          the charges required to be disclosed under para-  
20          graph (1)(B) and shall indicate any such estimate as  
21          being such an estimate. Any such estimate shall be  
22          based on the previous year’s experience of the plan  
23          or, in the case of a new plan, the previous year’s ex-  
24          perience of a comparable plan with participants and  
25          beneficiaries of similar demographics.

1           “(5) RELIANCE.—To the extent any of the in-  
2           formation required to be disclosed by a service pro-  
3           vider under this subsection is given to the service  
4           provider by an unaffiliated person which is regulated  
5           by the Federal Government or a State, the service  
6           provider may rely on the completeness and accuracy  
7           of such information unless the service provider—

8                   “(A) knows that the information is inac-  
9                   curate or incomplete,

10                   “(B) has reason to know that the informa-  
11                   tion is inaccurate or incomplete, or

12                   “(C) has notice of facts or information  
13                   that would prompt a reasonable service provider  
14                   to inquire into the accuracy or completeness of  
15                   the information.

16           “(6) DISCLOSURE OF FINANCIAL RELATION-  
17           SHIPS.—

18                   “(A) IN GENERAL.—The statement re-  
19                   quired under paragraph (1) shall include a writ-  
20                   ten disclosure of—

21                           “(i) any payment provided (or the  
22                           amount representing the value of any serv-  
23                           ices provided) to the service provider (or  
24                           any affiliate thereof) pursuant to, or in  
25                           connection with, the contract described in

1 paragraph (1) and the amount and type of  
2 any payment made or credit received for  
3 such services (irrespective of whether the  
4 service provider (or affiliate thereof) or  
5 other person providing such services is af-  
6 filiated or unaffiliated with the plan, the  
7 plan sponsor, the plan administrator, or  
8 any other plan official),

9 “(ii) any personal, business, or finan-  
10 cial relationship with the plan sponsor, the  
11 plan, or the service provider (or any affil-  
12 iate of the service provider) or any totality  
13 of such relationships which is material, if  
14 such relationship results in the service pro-  
15 vider (or any affiliate thereof) deriving any  
16 material benefit, and

17 “(iii) such other similar arrangements  
18 benefitting the service provider (or any af-  
19 filiate thereof) as may be specified by the  
20 Secretary.

21 “(B) INCLUSIONS.—

22 “(i) IN GENERAL.—Disclosures de-  
23 scribed under subparagraph (A)(ii) shall  
24 include the extent to which the service pro-  
25 vider (or any affiliate thereof) may benefit

1 from the offering of its own proprietary in-  
2 vestment products or those of third par-  
3 ties.

4 “(ii) APPLICABLE PROHIBITED  
5 TRANSACTION EXEMPTION.—Disclosures  
6 under this paragraph may include a de-  
7 scription of any applicable prohibited  
8 transaction exemption under section 408  
9 related to the services described in the  
10 statement required under paragraph (1).

11 “(7) DISCLOSURE OF IMPACT OF SHARE CLASS-  
12 ES.—The statement required under paragraph (1)  
13 shall, to the extent applicable, disclose that the share  
14 prices of certain mutual fund investments that are  
15 available to the plan may be different from the share  
16 prices outside of the plan due to the existence of dif-  
17 ferent share classes and provide the basis for these  
18 differences.

19 “(8) DISCLOSURE OF CERTAIN ARRANGEMENTS  
20 IN CONNECTION WITH FREE OR DISCOUNTED SERV-  
21 ICES OR REIMBURSEMENTS BY SERVICE PRO-  
22 VIDERS.—In any case in which services are provided  
23 to the plan, or to the plan sponsor in connection  
24 with the plan, by any service provider without ex-  
25 plicit charge or for charges set at a discounted rate

1 or subject to rebate, the statement required under  
2 paragraph (1) shall specify the manner in which, the  
3 extent to which, and the amount by which consider-  
4 ation is otherwise obtained by the service provider  
5 (or any affiliate thereof), the plan, or the plan spon-  
6 sor for such services, directly or indirectly, by means  
7 of any charges against the account of the participant  
8 or beneficiary.

9 “(9) MODEL STATEMENT.—The Secretary shall  
10 prescribe a model statement that may be used for  
11 purposes of satisfying the requirements of this sub-  
12 section.

13 “(10) UPDATING.—Each contract described in  
14 paragraph (1) shall require that the service provider  
15 must provide to the plan administrator an updated  
16 written statement described in paragraph (1) de-  
17 scribing any material change in the information in-  
18 cluded in the statement provided pursuant to para-  
19 graph (1) as soon as is reasonable after the occur-  
20 rence of the change is known. The contract shall  
21 provide that such an updated written statement, or,  
22 in the case of a plan year in which no material  
23 change in the information included in the statement  
24 provided pursuant to paragraph (1) has occurred, a



1 written statement setting forth such fact, must be  
2 provided not less often than annually.

3 “(11) LIMITATIONS.—

4 “(A) DOLLAR LIMITATION.—

5 “(i) IN GENERAL.—The requirements  
6 of this subsection shall apply with respect  
7 to any contract for services provided dur-  
8 ing any plan year only if the total charged  
9 for such services under such contract (re-  
10 gardless of whether, in connection with  
11 such services under such contract, such  
12 charges are received by the service provider  
13 (or any affiliate thereof) directly or are re-  
14 ceived by the service provider (or any affil-  
15 iate thereof) indirectly from other affiliated  
16 or unaffiliated parties) equals or exceeds  
17 \$5,000.

18 “(ii) COST OF LIVING ADJUSTMENT.—

19 “(I) IN GENERAL.—In the case  
20 of any plan year beginning during a  
21 calendar year beginning after 2010,  
22 the dollar amount in clause (i) shall  
23 be increased by an amount equal to  
24 such dollar amount, multiplied by the  
25 percentage (if any) by which the aver-

1 age of the Consumer Price Index for  
2 all urban consumers (United States  
3 city average) for the 12-month period  
4 ending with September of the pre-  
5 ceding calendar year exceeds such av-  
6 erage for the 12-month period ending  
7 with September 2009.

8 “(II) ROUNDING.—If any dollar  
9 amount after being increased under  
10 subclause (I) is not a multiple of  
11 \$500, such dollar amount shall be  
12 rounded to the next lower multiple of  
13 \$500.

14 “(iii) ADJUSTMENTS BY THE SEC-  
15 RETARY.—The Secretary may by regula-  
16 tion adjust the dollar amount specified in  
17 this subparagraph to a lesser amount for  
18 small plans and to a greater amount for  
19 other plans and provide for appropriate an-  
20 nual adjustments in such adjusted  
21 amounts at the same rate as would apply  
22 under clause (ii).

23 “(B) GENERAL APPLICABILITY OF RE-  
24 QUIREMENTS WITH RESPECT TO SERVICES.—  
25 Nothing in this subsection shall be construed to

1           require any service provider to provide any serv-  
2           ice with respect to any particular plan sponsor.

3           “(12) COORDINATION WITH FIDUCIARY  
4           RULES.—Nothing in this subsection affects the obli-  
5           gations of plan sponsors and fiduciaries under part  
6           4 of this subtitle.

7           “(b) DISCLOSURES TO PARTICIPANTS AND BENE-  
8           FICIARIES.—

9           “(1) ADVANCE NOTICE OF AVAILABLE INVEST-  
10          MENT OPTIONS.—The plan administrator of an indi-  
11          vidual account plan which permits a participant or  
12          beneficiary to exercise control over the assets in the  
13          account of the participant or beneficiary shall pro-  
14          vide to the participant or beneficiary with respect to  
15          each plan year notice of the investment options  
16          available for election under the plan at least 10 busi-  
17          ness days prior to—

18                 “(A) the earliest date provided for under  
19                 the plan for the participant’s initial investment  
20                 of any contribution made on behalf of such par-  
21                 ticipant, and

22                 “(B) the effective date of any material  
23                 change in investment options.

24          In the case of a plan that provides for immediate eli-  
25          gibility or that contains an automatic contribution

1 arrangement (as defined in subparagraphs (A) and  
2 (B) of section 514(e)(2)), the notice required under  
3 subparagraph (A) may be provided within any rea-  
4 sonable period prior to such initial investment. With  
5 respect to the notice required under this paragraph,  
6 the Secretary shall prescribe regulations creating ex-  
7 ceptions to the 10-day notice requirement in cir-  
8 cumstances similar to those described in section  
9 101(i)(2)(C), and such notice may be combined with  
10 any similar notice that may be required under sec-  
11 tion 404(c)(5) or under this section.

12 “(2) INFORMATION INCLUDED IN NOTICE.—

13 The notice required under paragraph (1) shall—

14 “(A) include a prominent statement, in  
15 language presented in a manner which is easily  
16 understandable by the typical participant, indi-  
17 cating which components of the charges (both  
18 direct and indirect) for each investment option  
19 are payable by the participant or beneficiary  
20 and how such components are to be paid,

21 “(B) set forth, with respect to each avail-  
22 able investment option—

23 “(i) the name of the option,

1           “(ii) the investment objectives and  
2 principal investment strategies of the op-  
3 tion,

4           “(iii) the risk level associated with the  
5 option,

6           “(iv) whether the option is diversified  
7 among various classes of assets so as to  
8 minimize the risk of large losses or should  
9 be combined with other options so as to  
10 obtain such diversification,

11           “(v) whether the investment option is  
12 actively managed or passively managed in  
13 relation to an index and the difference be-  
14 tween active management and passive  
15 management,

16           “(vi) where, and the manner in which,  
17 additional plan-specific, option-specific,  
18 and generally available investment infor-  
19 mation regarding the option may be ob-  
20 tained, and

21           “(vii) a statement explaining that in-  
22 vestment options should not be evaluated  
23 solely on the basis of the charges for each  
24 option but should also be based on careful  
25 consideration of other key factors, includ-

1 ing the risk level of the option, the invest-  
2 ment objectives of the option, the principal  
3 investment strategies of the option, and  
4 historical returns derived by the option,  
5 and

6 “(C) include a plan fee comparison chart,  
7 relating to the charges described in paragraph  
8 (3) in connection with all investment options  
9 available under the plan, as provided in para-  
10 graph (3).

11 “(3) PLAN FEE COMPARISON CHART.—

12 “(A) IN GENERAL.—

13 “(i) IN GENERAL.—The notice pro-  
14 vided under this subsection shall include a  
15 plan fee comparison chart consisting of a  
16 comparison of actual service and invest-  
17 ment charges (including, for purposes of  
18 this clause, charges for the offering of an  
19 investment option) that will or could be as-  
20 sessed against the account of the partici-  
21 pant or beneficiary with respect to the plan  
22 year. The plan fee comparison chart shall  
23 be presented in a manner which is easily  
24 understood by the typical participant and  
25 include such information as the Secretary

1 determines necessary to permit partici-  
2 pants and beneficiaries to assess the serv-  
3 ices for which charges will or could be as-  
4 sessed against the account.

5 “(ii) FORM.—For purposes of this  
6 paragraph, the potential service charges  
7 shall be provided in the form of a dollar  
8 amount and may also be provided, in addi-  
9 tion, as a percentage of assets. The form  
10 of the potential service charges shall be  
11 presented in a manner which is easily un-  
12 derstandable by the typical participant, in-  
13 cluding examples that demonstrate how the  
14 charges will be assessed against the ac-  
15 count of the participant or beneficiary.

16 “(B) CATEGORIZATION OF CHARGES.—The  
17 plan fee comparison chart shall provide infor-  
18 mation in relation to 4 categories of charges  
19 that will or could be assessed against the ac-  
20 count of the participant or beneficiary, as fol-  
21 lows:

22 “(i) ASSET-BASED CHARGES SPECIFIC  
23 TO INVESTMENT.—Charges that vary de-  
24 pending on the investment options selected  
25 by the participant or beneficiary, including

1 expense ratios and investment-specific  
2 asset-based charges. The information relat-  
3 ing to such charges shall include a state-  
4 ment noting any charges for 1 or more in-  
5 vestment options which pay for services  
6 other than investment management.

7 “(ii) ASSET-BASED CHARGES NOT  
8 SPECIFIC TO INVESTMENT.—Charges that  
9 are assessed as a percentage of the total  
10 assets in the account of the participant or  
11 beneficiary, regardless of the investment  
12 option selected.

13 “(iii) ADMINISTRATIVE AND TRANS-  
14 ACTION-BASED CHARGES.—Administration  
15 and transaction-based charges, including  
16 fees charged to participants to cover plan  
17 administration, compliance, and record-  
18 keeping costs, plan loan origination fees,  
19 possible redemption fees, and possible sur-  
20 render charges, that are not assessed as a  
21 percentage of the total assets in the ac-  
22 count and are either automatically de-  
23 ducted each year or result from certain  
24 transactions engaged in by the participant  
25 or beneficiary.



1           “(iv) OTHER CHARGES.—Any other  
2           charges which may be deducted from par-  
3           ticipants’ or beneficiaries’ accounts and  
4           which are not described in clauses (i), (ii),  
5           and (iii).

6           “(C) DESCRIPTION OF PURPOSE FOR  
7           CHARGES.—The notice shall indicate the extent  
8           to which each charge is for investment manage-  
9           ment, transactions, plan administration and  
10          recordkeeping, or other identified services.

11          “(D) FEES AND HISTORICAL RETURNS.—  
12          In connection with each investment option listed  
13          in the plan fee comparison chart, the chart  
14          shall include the amounts of the fees assessed  
15          in connection with such option and a history of  
16          the returns derived net of fees and expenses.  
17          Any such history shall be for the previous year,  
18          5 years, and 10 years (or since inception if  
19          later).

20          “(4) MODEL NOTICE.—The Secretary shall pre-  
21          scribe a model notice that may be used for purposes  
22          of satisfying the requirements of this subsection, in-  
23          cluding a model plan fee comparison chart.

24          “(5) ESTIMATIONS.—For purposes of providing  
25          the notice required under this subsection, the plan

1 administrator may provide a reasonable and rep-  
2 resentative estimate for any charges or percentages  
3 disclosed under paragraph (2) or (3) and shall indi-  
4 cate any such estimate as being such an estimate.  
5 Any such estimate shall be based on the previous  
6 year's experience or, in the case of a new plan, the  
7 previous year's experience of a comparable plan with  
8 participants and beneficiaries of similar demo-  
9 graphics.

10 “(c) ELECTRONIC MEDIA.—Any disclosure required  
11 under this section may be provided through an electronic  
12 medium under rules prescribed by the Secretary. Such  
13 rules shall be similar to those applicable under the Inter-  
14 nal Revenue Code of 1986 with respect to notices to par-  
15 ticipants in pension plans. The Secretary shall have the  
16 authority to modify such rules as appropriate to take into  
17 account new developments, including new forms of elec-  
18 tronic media. The rules prescribed by the Secretary pursu-  
19 ant to this subsection shall provide for a method for the  
20 typical participant or beneficiary to obtain without undue  
21 burden any such disclosure in writing on paper in lieu of  
22 receipt through an electronic medium.

23 “(d) REGULATIONS REGARDING CERTAIN PROD-  
24 UCTS.—The Secretary shall prescribe regulations identi-  
25 fying (and establishing separate rules, if necessary, to

1 identify) any investment options that provide a guaranteed  
2 rate of return and that do not identify specific fees.

3 “(e) DEFINITIONS.—For purposes of this section—

4 “(1) CHARGE.—The term ‘charge’ means, in  
5 connection with any service provided to a plan or  
6 any financial product provided to the plan in which  
7 plan assets are to be invested, any fee, credit, or  
8 other compensation charged or paid for such service  
9 or product, including money and any other thing of  
10 monetary value to be received by the provider of the  
11 service or product, or its affiliate, in connection with  
12 the service or product.

13 “(2) SERVICE.—The term ‘service’ means, in  
14 connection with a plan, a service provided directly or  
15 indirectly to, or with respect to, the plan or a service  
16 provided directly or indirectly in connection with a  
17 financial product in which plan assets are to be in-  
18 vested.

19 “(3) CONTRACT.—The term ‘contract’ means,  
20 in connection with any 2 or more parties, any con-  
21 tract or arrangement entered into between or among  
22 such parties, and any extension or renewal thereof.

23 “(4) SERVICE PROVIDER.—The terms ‘service  
24 provider’ and ‘provider’ mean, in connection with a

1 service, a person directly or indirectly providing such  
2 service.

3 “(5) REGULATIONS.—The Secretary shall pro-  
4 vide by regulation definitions of other terms used in  
5 this section.”.

6 (b) QUARTERLY BENEFIT STATEMENTS.—Section  
7 105 of such Act (29 U.S.C. 1025) is amended—

8 (1) in subsection (a)(2)—

9 (A) by redesignating subparagraph (C) as  
10 subparagraph (H);

11 (B) in subparagraph (B)(ii)—

12 (i) in subclause (II), by striking “di-  
13 versified, and” and inserting “diversified,”;

14 (ii) in subclause (III), by striking the  
15 period and inserting “, and”; and

16 (iii) by adding after subclause (III)  
17 the following new subclause:

18 “(IV) with respect to the portion of a  
19 participant’s account for which the partici-  
20 pant has the right to direct the investment  
21 of assets, the information described in sub-  
22 paragraph (C).”; and

23 (C) by inserting after subparagraph (B)  
24 the following new subparagraphs:

1           “(C) PERIODIC ACCOUNT INFORMATION  
2           FOR PARTICIPANTS AND BENEFICIARIES.—For  
3           purposes of subparagraph (B)(ii)(IV), the infor-  
4           mation described in this subparagraph consists  
5           of the following, indicating the portion of each  
6           amount described in clauses (i) through (vii) at-  
7           tributable to each investment option elected in  
8           connection with the participant’s account:

9                   “(i) the starting balance of the par-  
10                  ticipant’s account,

11                  “(ii) contributions made during the  
12                  quarter, itemizing separately totals for em-  
13                  ployer and totals for employee contribu-  
14                  tions,

15                  “(iii) investment earnings or losses on  
16                  the account balance during the quarter (if  
17                  any),

18                  “(iv) actual or estimated charges  
19                  (within the meaning of section 111(e)(1))  
20                  which reduce the account during the quar-  
21                  ter, expressed in dollars or, if estimated,  
22                  such estimated dollar charges as derived  
23                  from an expense ratio (which may be ex-  
24                  pressed as a specific date estimate based  
25                  on the previous year’s expense ratio),

1           “(v) any other charges to the partici-  
2           pant or beneficiary in connection with the  
3           participant’s account,

4           “(vi) the ending balance of the ac-  
5           count,

6           “(vii) the participant’s asset allocation  
7           to each investment option, including the  
8           net return, expressed as an amount and as  
9           a percentage, and

10           “(viii) how to obtain the most recently  
11           updated version of the plan fee comparison  
12           chart prepared for purposes of section  
13           111(b)(3).

14           “(D) OTHER INFORMATION.—The plan ad-  
15           ministrator may include in the quarterly pen-  
16           sion benefit statement information relating to  
17           the historical return and risk of each invest-  
18           ment option and the estimated amount that the  
19           participant needs to contribute each month or  
20           year so as to retire at retirement age (as de-  
21           fined in section 216(l) of the Social Security  
22           Act).

23           “(E) ESTIMATIONS.—For purposes of  
24           making the disclosure of actual charges or per-  
25           centages as required under this paragraph, the

1 plan administrator may provide a reasonable  
2 and representative estimate of such charges or  
3 percentages and shall indicate any such esti-  
4 mate as being such an estimate. Any such esti-  
5 mate shall be based on the previous year's expe-  
6 rience.

7 “(F) MODEL STATEMENT.—The Secretary  
8 shall prescribe a model pension benefit state-  
9 ment that may be used for purposes of satis-  
10 fying the requirements of this subparagraph  
11 and subparagraph (B)(ii).

12 “(G) ANNUAL COMPLIANCE FOR SMALL  
13 PLANS AND WITH RESPECT TO CERTAIN INFOR-  
14 MATION.—In the case of a plan providing for  
15 investment as described in paragraph  
16 (1)(A)(i)—

17 “(i) if the plan has 100 or fewer par-  
18 ticipants and beneficiaries, the plan may  
19 provide the pension benefit statement  
20 under paragraph (1) on an annual rather  
21 than a quarterly basis, and

22 “(ii) the plan may comply with the re-  
23 quirements of subparagraph (B)(ii)(IV) on  
24 an annual rather than a quarterly basis.”;  
25 and

1           (2) by adding at the end the following new sub-  
2 sections:

3           “(d) ASSISTANCE TO SMALL EMPLOYERS.—The Sec-  
4 retary shall make available to employers with 100 or fewer  
5 employees—

6           “(1) educational and compliance materials de-  
7 signed to assist such employers in selecting and  
8 monitoring service providers for individual account  
9 plans which permit a participant or beneficiary to  
10 exercise control over the assets in the account of the  
11 participant or beneficiary, investment options under  
12 such plans, and charges relating to such options,  
13 and

14           “(2) services designed to assist such employers  
15 in finding and understanding affordable investment  
16 options for such plans and in comparing the invest-  
17 ment performance of, and charges for, such options  
18 on an ongoing basis against appropriate benchmarks  
19 or other appropriate measures.

20           “(e) ASSISTANCE TO PLAN SPONSORS AND PLAN  
21 PARTICIPANTS AND BENEFICIARIES.—The Secretary shall  
22 provide assistance to plan sponsors of individual account  
23 plans and participants and beneficiaries under such plans  
24 with any questions or problems regarding compliance with  
25 the requirements of this section.



1           “(f) ELECTRONIC MEDIA.—Any disclosure required  
2 under this section may be provided through an electronic  
3 medium under rules prescribed by the Secretary. Such  
4 rules shall be similar to those applicable under the Inter-  
5 nal Revenue Code of 1986 with respect to notices to par-  
6 ticipants in pension plans. The Secretary shall have the  
7 authority to modify such rules as appropriate to take into  
8 account new developments, including new forms of elec-  
9 tronic media. The rules prescribed by the Secretary pursu-  
10 ant to this subsection shall provide for a method for the  
11 typical participant or beneficiary to obtain without undue  
12 burden any such disclosure in writing on paper in lieu of  
13 receipt through an electronic medium.”.

14           (c) ENFORCEMENT.—Section 502(c)(7) of such Act  
15 (29 U.S.C. 1132(c)(7)) is amended—

- 16           (1) by inserting “(A)” after “(7)”; and  
17           (2) by adding at the end the following new sub-  
18 paragraph:

19           “(B)(i) In the case of any violation of section 111(a)  
20 by a service provider (as defined in section 111(e)(4)) with  
21 respect to one or more participants and beneficiaries, the  
22 service provider shall be assessed by the Secretary a civil  
23 penalty of up to \$1,000 a day with respect to each such  
24 participant or beneficiary from the date of the initial viola-  
25 tion until the date on which such violation is corrected,

1 subject to a total maximum penalty of 10 percent of the  
2 amount involved.

3 “(ii) Any plan administrator or other person who is  
4 a service provider with respect to the plan who fails or  
5 refuses to provide a statement to participants and bene-  
6 ficiaries in accordance with section 105(a)(2)(B)(ii) or  
7 111(b) shall be assessed by the Secretary a civil penalty  
8 of up to \$100 a day from the date of the failure or refusal  
9 to the date on which such statement or notice is so pro-  
10 vided.

11 “(iii) For purposes of this subparagraph, each viola-  
12 tion with respect to any single participant, beneficiary, or  
13 plan administrator shall be treated as a separate violation.  
14 The Secretary may compromise, modify, or remit any civil  
15 penalty imposed on any person under this subparagraph  
16 if the Secretary determines—

17 “(I) that the person acted reasonably and in  
18 good faith or that severe financial hardship would  
19 otherwise occur to the plan sponsor, and

20 “(II) that such compromise, modification, or re-  
21 mission is in the interests of participants and bene-  
22 ficiaries.”.

23 (d) CONFORMING AMENDMENT.—The table of con-  
24 tents in section 1 of such Act, as amended by section 2,

1 is amended by striking the item relating to section 111  
2 and inserting the following new items:

“Sec. 111. Special reporting and disclosure rules for individual account plans.  
“Sec. 112. Repeal and effective date.”.

3 (e) **EFFECTIVE DATE.**—The amendments made by  
4 this section shall apply to contracts for services entered  
5 into in plan years beginning after one year after the date  
6 of the enactment of this Act.

7 **SEC. 3. MINIMUM INVESTMENT OPTION REQUIREMENT**  
8 **FOR INDIVIDUAL ACCOUNT PLANS.**

9 (a) **IN GENERAL.**—Section 404(c) of the Employee  
10 Retirement Income Security Act of 1974 (29 U.S.C.  
11 1104(c)) is amended by adding at the end the following  
12 new paragraph:

13 “(6) **MINIMUM INVESTMENT OPTION REQUIRE-**  
14 **MENT FOR INDIVIDUAL ACCOUNT PLANS.**—Para-  
15 graph (1)(A)(ii) shall not apply in connection with  
16 any individual account plan which permits a partici-  
17 pant or beneficiary to exercise control over the as-  
18 sets in the account of the participant or beneficiary  
19 unless the plan includes at least one investment op-  
20 tion—

21 “(A) which is an unmanaged or passively  
22 managed mutual fund with a portfolio of securi-  
23 ties designed to substantially match the per-  
24 formance of the entire United States equity

1 market or the entire United States bond mar-  
2 ket, or a combination thereof,

3 “(B) which offers a combination of histor-  
4 ical returns, risk, and charges (within the  
5 meaning of section 111(e)(1)) that is likely to  
6 meet retirement income needs at adequate lev-  
7 els of contribution, and

8 “(C) which is described in the terms of the  
9 plan as offered without any endorsement of the  
10 Government or the plan sponsor.”.

11 (b) CONFORMING AMENDMENT.—Section  
12 404(e)(1)(A)(ii) of such Act (29 U.S.C. 1104(e)(1)(A)(ii))  
13 is amended by inserting “except as provided in section  
14 404(e)(6) and” after “exercise of control,”.

15 (c) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply with respect to plan years begin-  
17 ning after one year after the date of the enactment of this  
18 Act.

19 **SEC. 4. ENFORCEMENT COORDINATION AND REVIEW BY**  
20 **THE DEPARTMENT OF LABOR.**

21 (a) IN GENERAL.—Section 502 of the Employee Re-  
22 tirement Income Security Act of 1974 (29 U.S.C. 1132)  
23 is amended by adding at the end the following new sub-  
24 section:

1       “(n) ENFORCEMENT COORDINATION OF CERTAIN  
2 DISCLOSURE REQUIREMENTS AND REVIEW BY THE DE-  
3 PARTMENT OF LABOR.—

4               “(1) IN GENERAL.—

5                       “(A) NOTIFICATION AND ACTION.—The  
6 Secretary shall notify the applicable regulatory  
7 authority in any case in which the Secretary de-  
8 termines that a service provider is engaged in  
9 a pattern or practice that precludes compliance  
10 by plan administrators with section 111. The  
11 Secretary shall, in consultation with the appli-  
12 cable authority, take such timely enforcement  
13 action under this title as is necessary to assure  
14 that such pattern or practice ceases and desists  
15 and assess any appropriate penalties.

16                       “(B) DISSEMINATION.—The Secretary  
17 shall widely disseminate to employee pension  
18 benefit plans covered by this title and their par-  
19 ticipants and beneficiaries the identity of any  
20 service providers with respect to such plans  
21 found to be engaged in any pattern or practice  
22 described in subparagraph (A) with the intent  
23 to preclude compliance by plan administrators  
24 with section 111 and the particulars of such  
25 pattern or practice. Prior to the dissemination

1 of the identity of any service providers identi-  
2 fied and determined by the Secretary to be en-  
3 gaged in such a pattern or practice, such serv-  
4 ice provider shall receive a notice of intent to  
5 disseminate, an opportunity to request an ad-  
6 ministrative hearing, and a timely appeal to the  
7 Secretary.

8 “(2) ANNUAL AUDIT OF REPRESENTATIVE SAM-  
9 PLING OF INDIVIDUAL ACCOUNT PLANS.—The Sec-  
10 retary shall annually audit a representative sampling  
11 of individual account plans covered by this title to  
12 determine compliance with the requirements of sec-  
13 tion 111. The Secretary shall annually report the re-  
14 sults of such audit and any related recommendations  
15 of the Secretary to the Committee on Education and  
16 Labor of the House of Representatives and the Com-  
17 mittee on Health, Education, Labor, and Pensions  
18 of the Senate.”.

19 (b) REVIEW AND REPORT TO THE CONGRESS BY  
20 SECRETARY OF LABOR RELATING TO REPORTING AND  
21 DISCLOSURE REQUIREMENTS.—

22 (1) STUDY.—As soon as practicable after the  
23 date of the enactment of this Act, the Secretary of  
24 Labor shall review the reporting and disclosure re-  
25 quirements of part 1 of subtitle B of title I of the

1 Employee Retirement Income Security Act of 1974  
2 and related provisions of the Pension Protection Act  
3 of 2006.

4 (2) REPORT.—Not later than 18 months after  
5 the date of the enactment of this Act, the Secretary  
6 of Labor, in consultation with the Secretary of the  
7 Treasury, shall make such recommendations as the  
8 Secretary of Labor considers appropriate to the ap-  
9 propriate committees of the Congress to consolidate,  
10 simplify, standardize, and improve the applicable re-  
11 porting and disclosure requirements so as to simplify  
12 reporting for employee pension benefit plans and en-  
13 sure that needed understandable information is pro-  
14 vided to participants and beneficiaries of such plans.

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