

111TH CONGRESS  
1ST SESSION

# H. R. 2989

To amend 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, to amend such Act to provide for independent investment advice for participants and beneficiaries under individual account plans, and to amend such Act and the Internal Revenue Code of 1986 to provide transitional relief under certain pension funding rules added by the Pension Protection Act of 2006.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 2009

Mr. GEORGE MILLER of California (for himself and Mr. ANDREWS) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend 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, to amend such Act to provide for independent investment advice for participants and beneficiaries under individual account plans, and to amend such Act and the Internal Revenue Code of 1986 to provide transitional relief under

certain pension funding rules added by the Pension Protection Act of 2006.

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 AND TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
 5 “401(k) Fair Disclosure and Pension Security Act of  
 6 2009”.

7 (b) **TABLE OF CONTENTS.**—The table of contents for  
 8 this Act is as follows:

Sec. 1. Short title and table of contents.

**TITLE I—401(k) FAIR DISCLOSURE FOR RETIREMENT**

Sec. 101. Special reporting and disclosure rules for individual account plans.  
 Sec. 102. Minimum investment option requirement for individual account plans.  
 Sec. 103. Enforcement coordination and review by the Department of Labor.

**TITLE II—PROHIBITION OF CONFLICTED INVESTMENT ADVICE**

Sec. 201. Findings.  
 Sec. 202. Independent investment advisers for individual account plans.  
 Sec. 203. Expansion of outreach to promote retirement income savings to include promotion of education on financial literacy with respect to investment for retirement.

**TITLE III—TRANSITIONAL FUNDING RELIEF FOR DEFINED BENEFIT PLANS**

Sec. 301. Election to use yield curve.  
 Sec. 302. Effective date of regulations.  
 Sec. 303. Clarification of treatment of expenses.  
 Sec. 304. Information reporting.  
 Sec. 305. Five-year extension of automatic amortization extension period for multiemployer plans.

1                   **TITLE I—401(k) FAIR**  
2                   **DISCLOSURE FOR RETIREMENT**

3                   **SEC. 101. SPECIAL REPORTING AND DISCLOSURE RULES**  
4                                   **FOR INDIVIDUAL ACCOUNT PLANS.**

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

8                                   (1) by redesignating section 111 (29 U.S.C.  
9                                   1031) as section 112; and

10                                   (2) by inserting after section 110 (29 U.S.C.  
11                                   1030) the following new section:

12                   **“SEC. 111. SPECIAL REPORTING AND DISCLOSURE RULES**  
13                                   **FOR INDIVIDUAL ACCOUNT PLANS.**

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

18                                   “(1) SERVICE DISCLOSURE STATEMENT.—The  
19                   plan administrator of an individual account plan (or  
20                   any other plan official with contracting authority  
21                   under the terms of the plan) may not enter into a  
22                   contract or arrangement for services to the plan (in-  
23                   cluding, for purposes of this section, the offering of  
24                   any investment option to the plan) unless such plan  
25                   administrator or other official has received, reason-

1 ably in advance of entering into the contract or ar-  
2 rangement, a single written statement from the serv-  
3 ice provider which—

4 “(A) specifies such services for the plan  
5 that will be provided in connection with the con-  
6 tract or arrangement, and

7 “(B) provides the expected total annual  
8 charges for such services for the plan that will  
9 be provided in connection with the contract or  
10 arrangement, including a reasonable allocation  
11 of such total annual charges among all relevant  
12 component charges specified in paragraph (2)  
13 (regardless of how the charges are actually as-  
14 sessed).

15 The description of the services and specification of  
16 the charges for the services shall be displayed promi-  
17 nently in the written statement and shall be pre-  
18 sented in a format which is understandable to the  
19 typical plan administrator.

20 “(2) MINIMUM ALLOCATION REQUIREMENTS.—

21 The allocation required under paragraph (1)(B) in  
22 connection with the services provided under each  
23 contract or arrangement shall specify component  
24 charges (to the extent such services for the plan are

1 provided under the contract or arrangement) as fol-  
2 lows:

3 “(A) charges for administration and rec-  
4 ordkeeping,

5 “(B) transaction based charges,

6 “(C) charges for investment management,  
7 and

8 “(D) all such charges not described in sub-  
9 paragraph (A), (B), or (C).

10 The Secretary may by regulation provide for the ap-  
11 propriate allocation of component charges among the  
12 categories of charges provided in subparagraphs (A),  
13 (B), (C), and (D).

14 “(3) PRESENTATION OF CHARGES.—The total  
15 charges described in paragraph (2)(A) and the total  
16 charges described in paragraph (2)(C) shall each be  
17 presented in the written statement as an aggregate  
18 total dollar amount, and, in addition, each of such  
19 total charges may also be presented as a percentage  
20 of assets. The charges described in paragraph (2)(B)  
21 shall be itemized separately as dollar amounts or as  
22 percentages of the applicable base amounts.

23 “(4) ESTIMATIONS.—For purposes of providing  
24 the statement required under this subsection in con-  
25 nection with any service, the service provider may

1 provide a reasonable and representative estimate of  
2 the charges required to be specified under paragraph  
3 (1)(B) and shall indicate any such estimate as being  
4 such an estimate. Any such estimate shall be based  
5 on reasonable assumptions specified in the statement  
6 (which shall include the previous year's experience of  
7 the plan or, in the case of a new plan, a reasonable  
8 estimate, taking into account the plan's participants  
9 and beneficiaries).

10 “(5) DISCLOSURE OF FINANCIAL RELATION-  
11 SHIPS.—

12 “(A) IN GENERAL.—The statement re-  
13 quired under paragraph (1) shall include a writ-  
14 ten disclosure of—

15 “(i) any payment to be provided (or  
16 the amount representing the value of any  
17 services to be provided) to the service pro-  
18 vider (or any affiliate thereof) from any  
19 entity other than the plan or the accounts  
20 of participants or beneficiaries pursuant  
21 to, or in connection with, the contract or  
22 arrangement described in paragraph (1)  
23 and the amount and type of any payment  
24 to be made or credit to be received for  
25 such services (irrespective of whether the

1 service provider (or affiliate thereof) or  
2 other person providing such services is af-  
3 filiated or unaffiliated with the plan, the  
4 plan sponsor, the plan administrator, or  
5 any other plan official), and

6 “(ii) such other similar arrangements  
7 benefitting the service provider (or any af-  
8 filiate thereof) as may be specified by the  
9 Secretary.

10 In any case in which the contract or arrange-  
11 ment described in paragraph (1) provides for  
12 the payments described in clause (i) in terms of  
13 a formula, the requirements of such clause may  
14 be met by specifying the formula to be used in  
15 connection with such payments and describing  
16 the application of such formula.

17 “(B) INCLUSIONS.—

18 “(i) IN GENERAL.—Disclosures de-  
19 scribed under subparagraph (A)(ii) shall  
20 include the extent to which the service pro-  
21 vider (or any affiliate thereof) may benefit  
22 from the offering of its own proprietary in-  
23 vestment products or those of third par-  
24 ties, including (but not limited to) cross-

1 selling of affiliated products or services to  
2 the plan sponsor or participants.

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

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

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



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

7 “(8) REVIEW BY THE SECRETARY.—The Sec-  
8 retary shall, from time to time as determined appro-  
9 priate by the Secretary, review the accuracy and suf-  
10 ficiency of statements provided pursuant to this sub-  
11 section.

12 “(9) UPDATING.—Each service provider shall  
13 provide to the plan administrator an updated written  
14 statement described in paragraph (1) describing any  
15 material change in the information included in the  
16 statement provided pursuant to paragraph (1) as  
17 soon as is reasonable after the occurrence of the  
18 change is known. Such an updated written state-  
19 ment, or, in the case of a plan year in which no ma-  
20 terial change in the information included in the  
21 statement provided pursuant to paragraph (1) has  
22 occurred, a written statement setting forth such  
23 fact, shall be provided by the service provider not  
24 less often than annually.

25 “(10) LIMITATIONS.—

1           “(A) DOLLAR LIMITATION.—

2                   “(i) IN GENERAL.—The requirements  
3                   of this subsection shall apply with respect  
4                   to any contract or arrangement for services  
5                   provided during any plan year only if the  
6                   total charged for such services under such  
7                   contract or arrangement is reasonably ex-  
8                   pected to equal or exceed \$5,000.

9                   “(ii) ADJUSTMENTS BY THE SEC-  
10                   RETARY.—The Secretary may be regula-  
11                   tion adjust the dollar amount specified in  
12                   this subparagraph to a lesser amount for  
13                   small plans and to a greater amount for  
14                   other plans and provide for appropriate an-  
15                   nual adjustments in such adjusted  
16                   amounts.

17                   “(B) GENERAL APPLICABILITY OF RE-  
18                   QUIREMENTS WITH RESPECT TO SERVICES.—  
19                   Nothing in this subsection shall be construed to  
20                   require any service provider to provide any serv-  
21                   ice with respect to any particular plan sponsor.

22                   “(11) SATISFACTION OF FIDUCIARY RULES.—  
23                   Nothing in the preceding provisions of this sub-  
24                   section affects the obligations of fiduciaries under  
25                   part 4 of this subtitle.

1       “(b) DISCLOSURES TO PARTICIPANTS AND BENE-  
2       FIICIARIES.—

3               “(1) ADVANCE NOTICE OF AVAILABLE INVEST-  
4       MENT OPTIONS.—The plan administrator of an indi-  
5       vidual account plan that permits participants or  
6       beneficiaries to direct the investment of assets in  
7       their individual accounts shall provide to the partici-  
8       pant or beneficiary notice of the investment options  
9       available for election under the plan before a reason-  
10      able period prior to—

11              “(A) the earliest date provided for under  
12              the plan for the participant’s initial investment  
13              of any contribution made on behalf of such par-  
14              ticipant, and

15              “(B) the effective date of any material  
16              change in investment options.

17      In the case of a plan that provides for immediate eli-  
18      gibility or that contains an automatic contribution  
19      arrangement (as defined in subparagraphs (A) and  
20      (B) of section 514(e)(2)), the notice required under  
21      subparagraph (A) may be provided within any rea-  
22      sonable period prior to such initial investment. With  
23      respect to any notice required under this paragraph,  
24      the Secretary shall prescribe regulations creating  
25      specific requirements for periods of advance notice

1 to be treated as reasonable under this paragraph (of  
2 not less than 10 days) in circumstances similar to  
3 those described in section 101(i)(2)(C), and such no-  
4 tice may be combined with any similar notice that  
5 may be required under section 404(e)(5) or under  
6 this section.

7 “(2) INFORMATION INCLUDED IN NOTICE.—  
8 The notice required under paragraph (1) shall—

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

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

18 “(i) the name of the option,

19 “(ii) information effectively describing  
20 the investment objectives of the option  
21 (such as a description of a broadly recog-  
22 nized asset class),

23 “(iii) the risk level associated with the  
24 option,

1           “(iv) whether the option is diversified  
2           among various classes of assets so as to  
3           minimize the risk of large losses or should  
4           be combined with other options so as to  
5           obtain such diversification,

6           “(v) whether the investment option is  
7           actively managed or passively managed in  
8           relation to an index and the difference be-  
9           tween active management and passive  
10          management,

11          “(vi) where, and the manner in which,  
12          additional plan-specific, option-specific,  
13          and generally available investment infor-  
14          mation regarding the option may be ob-  
15          tained, and

16          “(vii) a statement explaining that in-  
17          vestment options should not be evaluated  
18          solely on the basis of the charges for each  
19          option but should also be based on careful  
20          consideration of other key factors, includ-  
21          ing the risk level of the option, the invest-  
22          ment objectives of the option, the principal  
23          investment strategies of the option, and  
24          historical returns of the option, and

1           “(C) include a plan fee comparison chart,  
2 relating to the charges described in paragraph  
3 (3) in connection with all investment options  
4 available under the plan, as provided in para-  
5 graph (3).

6           “(3) PLAN FEE COMPARISON CHART.—

7           “(A) IN GENERAL.—

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

1           “(ii) FORM.—For purposes of this  
2 paragraph, the potential service charges  
3 shall be provided in the form of a dollar  
4 amount or as a formula (such as a per-  
5 centage of assets), as appropriate. The  
6 form of the potential service charges shall  
7 be presented in a manner which is easily  
8 understandable by the typical participant,  
9 including examples that demonstrate how  
10 the charges will be assessed against the ac-  
11 count of the participant or beneficiary.

12           “(B) CATEGORIZATION OF CHARGES.—The  
13 plan fee comparison chart shall provide infor-  
14 mation in relation to the following categories of  
15 charges that will or could be assessed against  
16 the account of the participant or beneficiary:

17           “(i) ASSET-BASED CHARGES SPECIFIC  
18 TO INVESTMENT.—Charges that vary de-  
19 pending on the investment options selected  
20 by the participant or beneficiary, including  
21 expense ratios and investment-specific  
22 asset-based charges. The information relat-  
23 ing to such charges shall include a state-  
24 ment noting any charges for 1 or more in-

1 investment options which pay for services  
2 other than investment management.

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

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

22 “(iv) OTHER CHARGES.—Any other  
23 charges which may be deducted from par-  
24 ticipants’ or beneficiaries’ accounts and



1           which are not described in clauses (i), (ii),  
2           and (iii).

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

8           “(D) FEES AND HISTORICAL RETURNS.—  
9           In connection with each investment option listed  
10          in the plan fee comparison chart, the chart  
11          shall specify (as amounts or percentages) the  
12          fees assessed in connection with such option  
13          and the historical returns, net of fees and ex-  
14          penses, together with language indicating that  
15          past performance does not guarantee future re-  
16          sults. The historical returns shall be specified  
17          for the previous year, 5 years, and 10 years (or  
18          for the period since inception, if shorter).

19          “(4) MODEL NOTICES.—The Secretary shall  
20          prescribe one or more model notices that may be  
21          used for purposes of satisfying the requirements of  
22          this subsection, including model plan fee comparison  
23          charts.

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 reasonable as-  
6 sumptions stated in the notice (such as the previous  
7 year's experience or, in the case of a new plan, a  
8 reasonable estimate, taking into account the plan's  
9 participants and beneficiaries).

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 may modify such  
16 rules from time to time as appropriate to take into account  
17 new developments, including new forms of electronic  
18 media, and to fairly take into consideration the interests  
19 of plan sponsors, service providers, and participants. The  
20 rules prescribed by the Secretary pursuant to this sub-  
21 section shall provide for a method for the typical partici-  
22 pant or beneficiary to obtain without undue burden any  
23 such disclosure in writing on paper in lieu of receipt  
24 through an electronic medium.

1       “(d) REGULATIONS REGARDING CERTAIN PROD-  
2 UCTS.—The Secretary may by regulation identify certain  
3 types of investment options, such as an option that pro-  
4 vides a guaranteed rate of return and that does not iden-  
5 tify specific fees, and prescribe alternative disclosures of  
6 cost and performance measures that correspond to the  
7 particular circumstances of such options.

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

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

18           “(2) SERVICE.—The term ‘service’ means, in  
19 connection with a plan, a service provided directly or  
20 indirectly to, or with respect to, the plan or a service  
21 provided directly or indirectly in connection with a  
22 financial product in which plan assets are to be in-  
23 vested.

24           “(3) CONTRACT OR ARRANGEMENT.—The term  
25 ‘contract or arrangement’ means, in connection with

1 any 2 or more parties, any contract or arrangement  
2 entered into between or among such parties, and any  
3 extension or renewal thereof.

4 “(4) SERVICE PROVIDER.—The terms ‘service  
5 provider’ and ‘provider’ mean, in connection with a  
6 service, a person directly or indirectly providing such  
7 service.

8 “(5) REGULATIONS.—The Secretary shall pro-  
9 vide by regulation such definitions of other terms  
10 used in this section as the Secretary determines ap-  
11 propriate.”.

12 (b) QUARTERLY BENEFIT STATEMENTS.—Section  
13 105 of such Act (29 U.S.C. 1025) is amended—

14 (1) in subsection (a)(2)—

15 (A) by redesignating subparagraph (C) as  
16 subparagraph (H);

17 (B) in subparagraph (B)(ii)—

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

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

22 (iii) by adding after subclause (III)  
23 the following new subclause:

24 “(IV) with respect to the portion of a  
25 participant’s account for which the partici-

1           pant has the right to direct the investment  
2           of assets, the information described in sub-  
3           paragraph (C).”; and

4           (C) by inserting after subparagraph (B)  
5           the following new subparagraphs:

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

14                 “(i) the starting balance of the par-  
15                 ticipant’s account,

16                 “(ii) contributions made during the  
17                 quarter, itemizing separately totals for em-  
18                 ployer and totals for employee contribu-  
19                 tions,

20                 “(iii) investment earnings or losses on  
21                 the account balance during the quarter (if  
22                 any),

23                 “(iv) actual or estimated charges  
24                 (within the meaning of section 111(e)(1))  
25                 which reduce the account during the quar-

1           ter, expressed in dollars or, if estimated,  
2           such estimated dollar charges as are de-  
3           rived from an expense ratio (which may be  
4           expressed as a specific date estimate based  
5           on reasonable assumptions stated in the  
6           disclosure (such as the previous year’s ex-  
7           pense ratio)),

8           “(v) any other direct charges to the  
9           participant or beneficiary in connection  
10          with the participant’s account,

11          “(vi) the ending balance of the ac-  
12          count,

13          “(vii) the participant’s asset allocation  
14          to each investment option, expressed as an  
15          amount and as a percentage, and

16          “(viii) how to obtain the most recently  
17          updated version of the plan fee comparison  
18          chart prepared for purposes of section  
19          111(b)(3).

20          “(D) OTHER INFORMATION.—The plan ad-  
21          ministrators may include in the quarterly pen-  
22          sion benefit statement information relating to  
23          the historical return and risk of each invest-  
24          ment option and the estimated amount that the  
25          participant needs to contribute each month or

1 year so as to retire at retirement age (as de-  
2 fined in section 216(l) of the Social Security  
3 Act).

4 “(E) ESTIMATIONS.—For purposes of  
5 making the disclosure of actual charges or per-  
6 centages as required under this paragraph, the  
7 plan administrator may provide a reasonable  
8 and representative estimate of such charges or  
9 percentages and shall indicate any such esti-  
10 mate as being such an estimate. Any such esti-  
11 mate shall be based on reasonable assumptions  
12 included in the statement (such as the previous  
13 year’s experience).

14 “(F) MODEL STATEMENTS.—The Sec-  
15 retary shall prescribe one or more model pen-  
16 sion benefit statements that may be used for  
17 purposes of satisfying the requirements of sub-  
18 paragraphs (B)(ii) and (C).

19 “(G) ANNUAL COMPLIANCE FOR SMALL  
20 PLANS AND WITH RESPECT TO CERTAIN INFOR-  
21 MATION.—In the case of a plan providing for  
22 investment as described in paragraph  
23 (1)(A)(i)—

24 “(i) if the plan has 100 or fewer par-  
25 ticipants and beneficiaries, the plan may

1 provide the pension benefit statement  
2 under paragraph (1) on an annual rather  
3 than a quarterly basis, and

4 “(ii) the plan may comply with the re-  
5 quirements of subparagraph (B)(ii)(IV) on  
6 an annual rather than a quarterly basis.”;  
7 and

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

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

13 “(1) educational and compliance materials de-  
14 signed to assist such employers in selecting and  
15 monitoring service providers for individual account  
16 plans which permit a participant or beneficiary to  
17 exercise control over the assets in the account of the  
18 participant or beneficiary, investment options under  
19 such plans, and charges relating to such options,  
20 and

21 “(2) services designed to assist such employers  
22 in finding and understanding affordable investment  
23 options for such plans and in comparing the invest-  
24 ment performance of, and charges for, such options



1 on an ongoing basis against appropriate benchmarks  
2 or other appropriate measures.

3 “(e) ASSISTANCE TO PLAN SPONSORS AND PLAN  
4 PARTICIPANTS AND BENEFICIARIES.—The Secretary shall  
5 provide assistance to plan sponsors of individual account  
6 plans and participants and beneficiaries under such plans  
7 with any questions or problems regarding compliance with  
8 the requirements of this section.

9 “(f) ELECTRONIC MEDIA.—Any disclosure required  
10 under this section may be provided through an electronic  
11 medium under rules prescribed by the Secretary. Such  
12 rules shall be similar to those applicable under the Inter-  
13 nal Revenue Code of 1986 with respect to notices to par-  
14 ticipants in pension plans. The Secretary may modify such  
15 rules from time to time as appropriate to take into account  
16 new developments, including new forms of electronic  
17 media, and to fairly take into consideration the interests  
18 of plan sponsors, service providers, and participants. The  
19 rules prescribed by the Secretary pursuant to this sub-  
20 section shall provide for a method for the typical partici-  
21 pant or beneficiary to obtain without undue burden any  
22 such disclosure in writing on paper in lieu of receipt  
23 through an electronic medium.

24 “(g) DEFINITIONS.—For purposes of this section—

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

10           “(2) SERVICE PROVIDER.—The terms ‘service  
11           provider’ and ‘provider’ mean, in connection with a  
12           service (as defined in section 111(e)(2)), a person di-  
13           rectly or indirectly providing such service.

14           “(3) REGULATIONS.—The Secretary shall pro-  
15           vide by regulation such definitions of other terms  
16           used in this section as the Secretary determines ap-  
17           propriate.”.

18           (c) ENFORCEMENT.—Section 502 of such Act (29  
19 U.S.C. 1132) is amended—

20           (1) in subsection (a)(6), by striking “under  
21           paragraph (2)” and all that follows through “sub-  
22           section (c)” and inserting “under paragraph (2),  
23           (4), (5), (6), (7), (8), (9), (10), or (11) of subsection  
24           (c)”; and

1           (2) in subsection (c), by redesignating the sec-  
2           ond paragraph (10) as paragraph (12), and by in-  
3           serting after the first paragraph (10) the following  
4           new paragraph:

5           “(11)(A) In the case of any violation of section  
6 111(a) by a service provider (as defined in section  
7 111(e)(4)), the service provider may be assessed by the  
8 Secretary a civil penalty of up to \$1,000 a day with re-  
9 spect to each such violation from the date of the initial  
10 violation until the date on which such violation is cor-  
11 rected, subject to a total maximum penalty of 10 percent  
12 of the amount involved, as determined by the Secretary.

13           “(B) Any plan administrator with respect to a plan  
14 who fails or refuses to provide a statement to participants  
15 and beneficiaries in accordance with section  
16 105(a)(2)(B)(ii) or 111(b) may be assessed by the Sec-  
17 retary a civil penalty of up to \$100 a day from the date  
18 of the failure or refusal to the date on which such state-  
19 ment or notice is so provided.

20           “(C) For purposes of this paragraph, each violation  
21 with respect to any single participant, beneficiary, or plan  
22 administrator shall be treated as a separate violation.”.

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 DATES.—

4 (1) Section 111(a) of the Employee Retirement  
5 Income Security Act of 1974 (as added by sub-  
6 section (a) of this section) shall apply with respect  
7 to contracts or arrangements for services entered  
8 into after one year after the date of the enactment  
9 of this Act.

10 (2) Section 111(b) of such Act (as added by  
11 subsection (a) of this section) shall apply with re-  
12 spect to plan years beginning after one year after  
13 the date of the enactment of this Act.

14 (3) The amendments made by subsection (b) of  
15 this section shall apply with respect to pension ben-  
16 efit statements for calendar quarters beginning after  
17 one year after the date of the enactment of this Act.

18 (4) The Secretary shall issue final regulations  
19 under the amendments made by this section not  
20 later than 270 days after the date of the enactment  
21 of this Act. Any act or practice in advance of the  
22 issuance of final regulations under the amendments  
23 made by this section which is in good faith compli-  
24 ance with the requirements of such amendments

1 shall be treated as in compliance with any such final  
2 regulations.

3 **SEC. 102. MINIMUM INVESTMENT OPTION REQUIREMENT**  
4 **FOR INDIVIDUAL ACCOUNT PLANS.**

5 (a) IN GENERAL.—Section 404(c) of the Employee  
6 Retirement Income Security Act of 1974 (29 U.S.C.  
7 1104(c)) is amended by adding at the end the following  
8 new paragraph:

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

17 “(A) which is a passively managed invest-  
18 ment with a portfolio of securities that is de-  
19 signed to be representative of the United States  
20 investable equity market (including representa-  
21 tion of small, mid, and large cap stocks) or the  
22 United States investment grade bond market  
23 (including Treasury, agency, non-agency, and  
24 corporate issues), or a combination thereof, and

1           “(B) which is described in the terms of the  
2           plan as offered without any endorsement of the  
3           Government or the plan sponsor.

4           An investment shall not fail to satisfy the require-  
5           ments of subparagraph (A) in connection with either  
6           market described in subparagraph (A) solely by rea-  
7           son of a failure to invest in all or substantially all  
8           equities or bonds (as applicable) in such market, if  
9           the methodology used to select the equities or bonds  
10          is designed to approximate in a reasonable manner  
11          the broad experience of such market.”.

12          (b)           CONFORMING            AMENDMENT.—Section  
13          404(c)(1)(A)(ii) of such Act (29 U.S.C. 1104(c)(1)(A)(ii))  
14          is amended by inserting “except as provided in section  
15          404(c)(6) and” after “exercise of control,”.

16          (c) EFFECTIVE DATES.—

17               (1) The amendments made by this section shall  
18               apply with respect to plan years beginning after one  
19               year after the date of the enactment of this Act.

20               (2) The Secretary shall issue final regulations  
21               under the amendments made by this section not  
22               later than 270 days after the date of the enactment  
23               of this Act. Any act or practice in advance of the  
24               issuance of final regulations under the amendments  
25               made by this section which is in good faith compli-

1       ance with the requirements of such amendments  
2       shall be treated as in compliance with any such final  
3       regulations.

4   **SEC. 103. ENFORCEMENT COORDINATION AND REVIEW BY**  
5                   **THE DEPARTMENT OF LABOR.**

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

10       “(n) ENFORCEMENT COORDINATION OF CERTAIN  
11       DISCLOSURE REQUIREMENTS AND REVIEW BY THE DE-  
12       PARTMENT OF LABOR.—

13               “(1) IN GENERAL.—

14                   “(A) NOTIFICATION AND ACTION.—The  
15       Secretary shall notify the applicable regulatory  
16       authority in any case in which the Secretary de-  
17       termines that a service provider is engaged in  
18       a pattern or practice that precludes compliance  
19       by plan administrators with section 111. The  
20       Secretary shall, in consultation with the appli-  
21       cable authority, take such timely enforcement  
22       action under this title as is necessary to assure  
23       that such pattern or practice ceases and desists  
24       and assess any appropriate penalties.

1           “(B) DISSEMINATION.—The Secretary  
2 shall widely disseminate to employee pension  
3 benefit plans covered by this title and their par-  
4 ticipants and beneficiaries the identity of any  
5 service providers with respect to such plans  
6 found to be engaged in any pattern or practice  
7 described in subparagraph (A) with the intent  
8 to preclude compliance by plan administrators  
9 with section 111 and the particulars of such  
10 pattern or practice. Prior to the dissemination  
11 of the identity of any service providers identi-  
12 fied and determined by the Secretary to be en-  
13 gaged in such a pattern or practice, such serv-  
14 ice provider shall receive a notice of intent to  
15 disseminate, an opportunity to request an ad-  
16 ministrative hearing, and a timely appeal to the  
17 Secretary.

18           “(2) ANNUAL AUDIT OF REPRESENTATIVE SAM-  
19 PLING OF INDIVIDUAL ACCOUNT PLANS.—The Sec-  
20 retary shall annually audit a representative sampling  
21 of individual account plans covered by this title to  
22 determine compliance with the requirements of sec-  
23 tion 111. The Secretary shall annually report the re-  
24 sults of such audit and any related recommendations  
25 of the Secretary to the Committee on Education and



1 Labor of the House of Representatives and the Com-  
2 mittee on Health, Education, Labor, and Pensions  
3 of the Senate.”.

4 (b) REVIEW AND REPORT TO THE CONGRESS BY  
5 SECRETARY OF LABOR RELATING TO REPORTING AND  
6 DISCLOSURE REQUIREMENTS.—

7 (1) STUDY.—As soon as practicable after the  
8 date of the enactment of this Act, the Secretary of  
9 Labor shall review the reporting and disclosure re-  
10 quirements of part 1 of subtitle B of title I of the  
11 Employee Retirement Income Security Act of 1974  
12 and related provisions of the Pension Protection Act  
13 of 2006.

14 (2) REPORT.—Not later than 18 months after  
15 the date of the enactment of this Act, the Secretary  
16 of Labor, in consultation with the Secretary of the  
17 Treasury, shall make such recommendations as the  
18 Secretary of Labor considers appropriate to the ap-  
19 propriate committees of the Congress to consolidate,  
20 simplify, standardize, and improve the applicable re-  
21 porting and disclosure requirements so as to simplify  
22 reporting for employee pension benefit plans and en-  
23 sure that needed understandable information is pro-  
24 vided to participants and beneficiaries of such plans.

1 **TITLE II—PROHIBITION OF CON-**  
2 **FLICTED INVESTMENT AD-**  
3 **VICE**

4 **SEC. 201. FINDINGS.**

5 The Congress finds as follows:

6 (1) The market downturn of 2008 had a dev-  
7 astating effect on the retirement security income of  
8 millions of American workers.

9 (2) According to the Congressional Budget Of-  
10 fice, \$2 trillion of Americans' retirement savings was  
11 wiped out over a 15-month period starting in 2008.

12 (3) According to Congressional Budget Office  
13 estimates, the value of pension funds and retirement  
14 accounts dropped by roughly \$1 trillion last year.

15 (4) Individual average losses of participants in  
16 401(k) plans ranged from 7.2 percent to 11.2 per-  
17 cent in the first nine months of 2008, according to  
18 an Employee Benefit Research Institute analysis of  
19 2.2 million retirements account participants.

20 (5) During the first nine months of 2008,  
21 stocks were down, with the S&P 500 index losing  
22 more than 19 percent. With over two-thirds of the  
23 assets in 401(k)-style defined contribution plans in-  
24 vested in equities, either directly or through mutual  
25 funds, participants are exposed to increased risk and

1 lack meaningful access to independent investment  
2 advise to help them better plan for their retirement.

3 (6) Currently, 401(k) plan account holders have  
4 access to a self-interested or conflicted investment  
5 adviser.

6 (7) In 2007, the Government Accountability Of-  
7 fice concluded that conflicts of interest can have an  
8 adverse affect on defined benefit and defined con-  
9 tribution plans.

10 **SEC. 202. INDEPENDENT INVESTMENT ADVISERS FOR INDI-**  
11 **VIDUAL ACCOUNT PLANS.**

12 (a) IN GENERAL.—Section 3 of the Employee Retire-  
13 ment Income Security Act of 1974 (29 U.S.C. 1002) is  
14 amended by adding at the end the following new para-  
15 graph:

16 “(43) INDEPENDENT INVESTMENT ADVISER.—

17 “(A) IN GENERAL.—The term ‘inde-  
18 pendent investment adviser’ means, with respect  
19 to an individual account plan that permits a  
20 participant or beneficiary to direct the invest-  
21 ment of assets in their individual account, a  
22 person who—

23 “(i) is a fiduciary of the plan by rea-  
24 son of the provision of investment advice  
25 referred to in section 3(21)(A)(ii) by the

1 person to the plan or a participant or ben-  
2 eficiary of the plan (irrespective of the  
3 manner in which such advice is provided or  
4 the extent to which such advice is based on  
5 a computer model), and

6 “(ii) meets the requirements of either  
7 subparagraph (B) or (C).

8 “(B) REQUIREMENTS APPLICABLE TO IN-  
9 VESTMENT ADVISER.—An investment adviser  
10 meets the requirements of this subparagraph,  
11 if—

12 “(i) such adviser is—

13 “(I) registered as an investment  
14 adviser under the Investment Advisers  
15 Act of 1940 (15 U.S.C. 80b–1 et seq.)  
16 or under the laws of the State in  
17 which the adviser maintains its prin-  
18 cipal office and place of business,

19 “(II) a bank or similar financial  
20 institution referred to in section  
21 408(b)(4) or a savings association (as  
22 defined in section 3(b)(1) of the Fed-  
23 eral Deposit Insurance Act (12 U.S.C.  
24 1813(b)(1))), but only if the invest-  
25 ment advice referred to in section

1                   3(21)(A)(ii) which is provided by such  
2                   bank or institution is provided  
3                   through a trust department of the  
4                   bank or similar financial institution or  
5                   savings association which is subject to  
6                   periodic examination and review by  
7                   Federal or State banking authorities,  
8                   or

9                   “(III) any other person, but only  
10                  if every individual providing the in-  
11                  vestment advice referred to in section  
12                  3(21)(A)(ii) on behalf of such person  
13                  (or on behalf of any affiliate thereof)  
14                  is a registered representative,

15                  “(ii) such adviser is not the plan in-  
16                  vestment provider,

17                  “(iii) the fees or other compensation  
18                  received, directly or indirectly, by such ad-  
19                  viser (and any affiliate thereof) with re-  
20                  spect to the provision of investment advice  
21                  to any individual account plan or the par-  
22                  ticipants or beneficiaries of such a plan ei-  
23                  ther—

24                  “(I) are not received from any  
25                  person or persons (or anyone affili-

1           ated with such persons) that market,  
2           sell, manage or provide investments in  
3           which plan assets of the individual ac-  
4           count plan are invested, or

5                   “(II) do not vary depending on  
6           the basis of any investment option se-  
7           lected, and are calculated pursuant to  
8           one or more of the following bases—

9                           “(aa) a flat-dollar basis,

10                           “(bb) a flat percentage of  
11           total plan assets basis,

12                           “(cc) a flat or sliding-scale  
13           percentage of the assets in a par-  
14           ticipant’s or beneficiary’s account  
15           basis, or

16                           “(dd) a per-participant or  
17           per-beneficiary account basis,  
18           and

19                   “(iv) such adviser provides the invest-  
20           ment advice pursuant to a written arrange-  
21           ment with the individual account plan  
22           that—

23                           “(I) provides that the investment  
24           adviser is a fiduciary of the plan with  
25           respect to the provision of the advice,

1           “(II) requires that the advice be  
2 provided only by registered represent-  
3 atives of the investment adviser or an  
4 affiliate thereof,

5           “(III) discloses, before a reason-  
6 able period prior to entering into such  
7 arrangement, whether the investment  
8 adviser or any affiliate thereof has  
9 any material financial, referral, or  
10 other relationship or arrangement  
11 with a money manager, broker, other  
12 client of the investment adviser or any  
13 affiliate thereof, other service provider  
14 to the plan, or any other entity that  
15 creates or may create a conflict of in-  
16 terest for the investment adviser in  
17 performing services pursuant to the  
18 arrangement with the plan and, if so,  
19 includes a description of such relation-  
20 ship or arrangement,

21           “(IV) includes a representation  
22 by the investment adviser that, before  
23 the arrangement was entered into (or  
24 extended or renewed), the investment  
25 adviser provided to the plan fiduciary

1 that has authority to cause the em-  
2 ployee benefit plan to enter into (or  
3 extend or renew) the arrangement a  
4 written statement disclosing all fees or  
5 other compensation that the invest-  
6 ment adviser or any affiliate thereof  
7 anticipates to receive with respect to  
8 the advice during the first year, or  
9 other period if less than a year, of the  
10 arrangement,

11 “(V) provides that the investment  
12 adviser will provide to such plan fidu-  
13 ciary (and the participant and bene-  
14 ficiary receiving the advice, if applica-  
15 ble) a statement annually disclosing  
16 all fees or other compensation that  
17 the investment adviser or any affiliate  
18 thereof has received with respect to  
19 the advice during the prior year, and

20 “(VI) provides that the terms of  
21 the arrangement required under this  
22 clause and any information provided  
23 under such arrangement pursuant to  
24 subclauses (III) and (IV) will also be  
25 furnished by the investment adviser to



1 the participant or beneficiary that is  
2 the recipient of the advice.

3 “(C) ADVICE PROVIDED TO PARTICIPANTS  
4 AND BENEFICIARIES UNDER AN INVESTMENT  
5 ADVICE COMPUTER PROGRAM MEETING RE-  
6 QUIREMENTS.—An investment adviser meets  
7 the requirements of this subparagraph if the in-  
8 vestment advice provided by the adviser, to the  
9 extent that such advice is provided to partici-  
10 pants and beneficiaries of individual account  
11 plans, is provided under an investment advice  
12 computer program with respect to which the re-  
13 quirements of clauses (i) through (x) are met.

14 “(i) ADVISER REQUIREMENTS.—The  
15 requirements of this clause are met if the  
16 investment adviser providing the invest-  
17 ment advice under the program is—

18 “(I) described in subclauses (I)  
19 or (II) of subparagraph (B)(i),

20 “(II) an insurance company  
21 qualified to do business under the  
22 laws of a State,

23 “(III) a person registered as a  
24 broker or dealer under the Securities

1 Exchange Act of 1934 (15 U.S.C. 78a  
2 et seq.),

3 “(IV) an affiliate of a person de-  
4 scribed in any of subclauses (I)  
5 through (III), or

6 “(V) an employee, agent, or reg-  
7 istered representative of a person de-  
8 scribed in subclauses (I) through (IV)  
9 who satisfies the requirements of ap-  
10 plicable insurance, banking, and secu-  
11 rities laws relating to the provision of  
12 the advice.

13 “(ii) COMPUTER MODEL.—The re-  
14 quirements of this clause are met if the in-  
15 vestment advice provided under the invest-  
16 ment advice computer program is provided  
17 pursuant to a computer model that—

18 “(I) applies generally accepted  
19 investment theories that take into ac-  
20 count the historic returns of different  
21 asset classes over defined periods of  
22 time,

23 “(II) utilizes relevant information  
24 about the participant, which may in-  
25 clude age, life expectancy, retirement

1 age, risk tolerance, other assets or  
2 sources of income, and preferences as  
3 to certain types of investments,

4 “(III) utilizes prescribed objective  
5 criteria to provide asset allocation  
6 portfolios comprised of investment op-  
7 tions available under the plan,

8 “(IV) operates in a manner that  
9 is not biased in favor of investments  
10 offered by the investment adviser or  
11 any person with a material affiliation  
12 or contractual relationship with the  
13 investment adviser, and

14 “(V) takes into account all in-  
15 vestment options under the plan in  
16 specifying how a participant’s account  
17 balance should be invested and is not  
18 inappropriately weighted with respect  
19 to any investment option.

20 “(iii) CERTIFICATION.—

21 “(I) IN GENERAL.—The require-  
22 ments of this clause are met with re-  
23 spect to the program if an eligible in-  
24 vestment expert certifies, prior to the  
25 utilization of the computer model and

1 in accordance with rules prescribed by  
2 the Secretary, that the computer  
3 model meets the requirements of  
4 clause (ii).

5 “(II) RENEWAL OF CERTIFI-  
6 CATIONS.—If, as determined under  
7 regulations prescribed by the Sec-  
8 retary, there are material modifica-  
9 tions to the computer model, the re-  
10 quirements of this subparagraph are  
11 met only if a certification described in  
12 subclause (I) is obtained with respect  
13 to the computer model as so modified.

14 “(III) ELIGIBLE INVESTMENT  
15 EXPERT.—For purposes of this  
16 clause, the term ‘eligible investment  
17 expert’ means any person—

18 “(aa) which meets such re-  
19 quirements as the Secretary may  
20 provide, and

21 “(bb) does not have any ma-  
22 terial affiliation or contractual  
23 relationship with any investment  
24 adviser or a related person there-  
25 of (or any employee, agent, or

1 registered representative of the  
2 investment adviser or related per-  
3 son).

4 “(iv) EXCLUSIVITY OF RECOMMENDA-  
5 TION.—The requirements of this clause are  
6 met with respect to the program, if—

7 “(I) the only investment advice  
8 provided under the program is the ad-  
9 vice generated by the computer model  
10 described in clause (ii), and

11 “(II) any transaction pursuant to  
12 the investment advice occurs solely at  
13 the direction of the participant or  
14 beneficiary.

15 “(v) EXPRESS AUTHORIZATION BY  
16 SEPARATE FIDUCIARY.—The requirements  
17 of this clause are met with respect to the  
18 program if the program is expressly au-  
19 thorized by a plan fiduciary other than—

20 “(I) the person offering the pro-  
21 gram,

22 “(II) any person that is a plan  
23 investment provider with respect to  
24 the plan, and

1                   “(III) any affiliate of either per-  
2                   son described in subclause (I) or (II).

3                   “(vi) ANNUAL AUDIT.—The require-  
4                   ments of this clause are met with respect  
5                   to the program if an independent auditor,  
6                   who has appropriate technical training or  
7                   experience and proficiency and so rep-  
8                   resents in writing—

9                   “(I) conducts an annual audit of  
10                  the program other than the computer  
11                  model referred to in clause (ii) which  
12                  is certified pursuant to clause (iii)) for  
13                  compliance with the requirements of  
14                  this subparagraph, and

15                  “(II) following completion of the  
16                  annual audit, issues a written report  
17                  to the fiduciary who authorized use of  
18                  the program which presents its spe-  
19                  cific findings regarding compliance of  
20                  the program with the requirements of  
21                  this subsection.

22                  For purposes of this clause, an auditor is  
23                  considered independent if it is not related  
24                  to the person offering the program to the  
25                  plan and is not affiliated with any person

1 providing investment options under the  
2 plan.

3 “(vii) DISCLOSURE.—The require-  
4 ments of this clause are met with respect  
5 to the program, if—

6 “(I) the investment adviser pro-  
7 vides to the fiduciary referred to in  
8 clause (v) and the participant or bene-  
9 ficiary receiving investment advice  
10 under the program with regard to any  
11 security or other property offered as  
12 an investment option, before providing  
13 the advice, a written notification  
14 (which may consist of notification by  
15 means of electronic communication)—

16 “(aa) of the role of any  
17 party that has a material affili-  
18 ation or contractual relationship  
19 with the investment adviser in  
20 the development of the invest-  
21 ment advice program and in the  
22 selection of investment options  
23 available under the plan,

24 “(bb) of all fees or other  
25 compensation relating to the ad-

1 vice that the investment adviser  
2 or any affiliate thereof is to re-  
3 ceive (including compensation  
4 provided by any third party) in  
5 connection with the provision of  
6 the advice or in connection with  
7 the sale, acquisition, or holding  
8 of the security or other property,  
9 “(cc) of any material affli-  
10 ation or contractual relationship  
11 of the investment adviser or af-  
12 filiates thereof in the security or  
13 other property,  
14 “(dd) of the manner, and  
15 under what circumstances, any  
16 information relating to the par-  
17 ticipant or beneficiary which is  
18 provided under the program will  
19 be used or disclosed,  
20 “(ee) of the types of services  
21 provided by the investment ad-  
22 viser in connection with the pro-  
23 vision of investment advice by the  
24 investment adviser, and



1           “(ff) that a recipient of the  
2           advice may separately arrange  
3           for the provision of advice by an-  
4           other adviser, that could have no  
5           material affiliation with, and  
6           could receive no fees or other  
7           compensation, in connection with  
8           the security or other property,  
9           and

10           “(II) at all times during the pro-  
11           vision of advisory services to the par-  
12           ticipant or beneficiary, the investment  
13           adviser—

14           “(aa) maintains the infor-  
15           mation described in subclause (I)  
16           in accurate form and in the man-  
17           ner described in clause (ix),

18           “(bb) provides, without  
19           charge, accurate information to  
20           the recipient of the advice no less  
21           frequently than annually,

22           “(cc) provides, without  
23           charge, accurate information to  
24           the recipient of the advice upon  
25           request of the recipient, and

1           “(dd) provides, without  
2 charge, accurate information to  
3 the recipient of the advice con-  
4 cerning any material change to  
5 the information required to be  
6 provided to the recipient of the  
7 advice at a time reasonably con-  
8 temporaneous to the change in  
9 information.

10           “(viii) OTHER CONDITIONS.—The re-  
11 quirements of this clause are met with re-  
12 spect to the program, if—

13           “(I) the investment adviser pro-  
14 vides appropriate disclosure, in con-  
15 nection with the sale, acquisition, or  
16 holding of the security or other prop-  
17 erty with respect to which the invest-  
18 ment advice is provided under the  
19 program, in accordance with all appli-  
20 cable securities laws,

21           “(II) the sale, acquisition, or  
22 holding occurs solely at the direction  
23 of the recipient of the advice,

24           “(III) the compensation received  
25 by the investment adviser and affili-

1 ates thereof in connection with the  
2 sale, acquisition, or holding of the se-  
3 curity or other property is reasonable,  
4 and

5 “(IV) the terms of the sale, ac-  
6 quisition, or holding of the security or  
7 other property are at least as favor-  
8 able to the plan as an arm’s length  
9 transaction would be.

10 “(ix) STANDARDS FOR PRESENTATION  
11 OF INFORMATION.—

12 “(I) IN GENERAL.—The require-  
13 ments of this clause are met with re-  
14 spect to the program if the notifica-  
15 tion required to be provided to partici-  
16 pants and beneficiaries under clause  
17 (vii)(I) is written in a clear and con-  
18 spicuous manner and in a manner cal-  
19 culated to be understood by the aver-  
20 age plan participant and is sufficiently  
21 accurate and comprehensive to rea-  
22 sonably apprise such participants and  
23 beneficiaries of the information re-  
24 quired to be provided in the notifica-  
25 tion.

1                   “(II) MODEL FORM FOR DISCLO-  
2                   SURE OF FEES AND OTHER COM-  
3                   PENSATION.—The Secretary shall  
4                   issue a model form for the disclosure  
5                   of fees and other compensation re-  
6                   quired in clause (vii)(I)(bb) which  
7                   meets the requirements of subclause  
8                   (I).

9                   “(x) MAINTENANCE FOR 6 YEARS OF  
10                  EVIDENCE OF COMPLIANCE.—The require-  
11                  ments of this clause are met with respect  
12                  to the program if the investment adviser  
13                  who provides advice under the program  
14                  maintains, for a period of not less than 6  
15                  years after the provision of the advice, any  
16                  records necessary for determining whether  
17                  the requirements of the preceding provi-  
18                  sions of this subparagraph and of sub-  
19                  section (b)(14) have been met. A failure to  
20                  meet the requirements of this clause shall  
21                  not be considered to have occurred solely  
22                  because the records are lost or destroyed  
23                  prior to the end of the 6-year period due  
24                  to circumstances beyond the control of the  
25                  investment adviser.

1           “(D) DEFINITIONS.—For purposes of this  
2 paragraph—

3           “(i) AFFILIATE.—The term ‘affiliate’  
4 means, in connection with any other per-  
5 son, any person directly or indirectly  
6 (through one or more intermediaries) con-  
7 trolling, controlled by, or under common  
8 control with such other person, or any offi-  
9 cer, director, agent, or employee of, or  
10 partner with, such other person.

11           “(ii) REGISTERED REPRESENTA-  
12 TIVE.—The term ‘registered representa-  
13 tive’ of another entity means a person de-  
14 scribed in section 3(a)(18) of the Securi-  
15 ties Exchange Act of 1934 (15 U.S.C.  
16 78c(a)(18)) (substituting the entity for the  
17 broker or dealer referred to in such sec-  
18 tion) or a person described in section  
19 202(a)(17) of the Investment Advisers Act  
20 of 1940 (15 U.S.C. 80b–2(a)(17)) (sub-  
21 stituting the entity for the investment ad-  
22 viser referred to in such section).

23           “(iii) PLAN INVESTMENT PRO-  
24 VIDER.—The term ‘plan investment pro-  
25 vider’ means any person that creates or

1 manages any investment in which plan as-  
2 sets of the individual account plan are in-  
3 vested and held in trust on behalf of such  
4 plan and includes any affiliate of such per-  
5 son. Such term does not include—

6 “(I) a plan sponsor (or an affil-  
7 iate thereof) with respect to any in-  
8 vestment created or managed by the  
9 plan sponsor (or affiliate), if only em-  
10 ployee benefit plans maintained by  
11 such plan sponsor or an affiliate  
12 thereof invest in such investments,

13 “(II) any person who makes the  
14 investment available to the plan, or  
15 any participant or beneficiary in the  
16 plan, as a part of a portfolio of invest-  
17 ment options, to the extent that the  
18 investment options are created and  
19 managed by a person who is not an  
20 affiliate of the person making such  
21 portfolio available, and

22 “(III) any person, solely by rea-  
23 son of authorization by a participant  
24 or beneficiary in the plan of such per-  
25 son to exercise control over the assets

1 in the participant's or beneficiary's  
2 account in such plan, if such assets  
3 are not invested in any investments  
4 created or managed by such person  
5 (or an affiliate thereof).

6 “(iv) FEES OR OTHER COMPENSA-  
7 TION.—The term ‘fees or other compensa-  
8 tion’ includes money or any other thing of  
9 monetary value (for example, gifts, awards,  
10 and trips) received, or to be received, di-  
11 rectly from the plan or plan sponsor or in-  
12 directly (i.e., from any source other than  
13 the plan or the plan sponsor) by the invest-  
14 ment adviser or any affiliate thereof in  
15 connection with the advice to be provided  
16 pursuant to the arrangement or because of  
17 the investment adviser's or any affiliate's  
18 position with the plan. Fees or other com-  
19 pensation may be expressed in terms of a  
20 monetary amount, percentage of the plan's  
21 assets, or per capita charge for each par-  
22 ticipant or beneficiary of the plan. The  
23 manner in which compensation or fees are  
24 expressed shall contain sufficient informa-  
25 tion to enable the plan fiduciary to evalu-

1                   ate the reasonableness of such compensa-  
2                   tion or fees.”.

3           (b) FIDUCIARY DUTIES WITH RESPECT TO INVEST-  
4   MENT ADVICE.—

5           (1) IN GENERAL.—Section 404(a) of such Act  
6           (29 U.S.C. 1104(a)) is amended by adding at the  
7           end the following new paragraph:

8           “(3)(A) The fiduciary of an individual account plan  
9           that permits a participant or beneficiary to direct the in-  
10          vestment of assets in the individual account shall not ap-  
11          point, contract with, or otherwise arrange for an invest-  
12          ment adviser to provide investment advice referred to in  
13          section 3(21)(A)(ii) to the plan or the participant or bene-  
14          ficiary unless the investment adviser is an independent in-  
15          vestment adviser (as defined in section 3(43)).

16          “(B) The independent investment adviser providing  
17          investment advice to a plan or to a participant or bene-  
18          ficiary shall provide, before a reasonable period prior to  
19          the initial provision of the advice, a written notification—

20                  “(i) of the past performance and historical  
21                  rates of return of the investment options available  
22                  with respect to the plan and comparisons of such op-  
23                  tions to relevant benchmarks, and



1           “(ii) that the investment adviser is acting as a  
2           fiduciary of the plan in connection with the provision  
3           of the advice.

4           “(C) Nothing in this paragraph shall be construed to  
5           exempt a plan sponsor or other person who is a fiduciary  
6           from any requirement of this part for the prudent selec-  
7           tion and periodic review of an independent investment ad-  
8           viser with whom the plan sponsor or other person enters  
9           into an arrangement for the provision of investment advice  
10          referred to in section 3(21)(A)(ii), except that any such  
11          requirement shall not be construed to preclude reasonable  
12          reliance by the plan sponsor or other person on the rep-  
13          resentation of any person that such person making the  
14          representation meets the requirements of section  
15          3(43)(A). The plan sponsor and any other person who is  
16          a fiduciary (other than the independent investment ad-  
17          viser) has no duty under this part to monitor the specific  
18          investment advice given by the independent investment ad-  
19          viser to any particular recipient of the advice and shall  
20          not be liable under this title for any loss, or by reason  
21          of any breach, which results from such specific investment  
22          advice given by the independent investment adviser.

23          “(D) Nothing in this part shall be construed to pre-  
24          clude the use of plan assets to pay for reasonable expenses

1 in providing investment advice referred to in section  
2 3(21)(A)(ii).

3 “(E)(i) This paragraph shall not apply to a fiduciary  
4 of an individual account plan that permits a participant  
5 or beneficiary to direct the investment of assets in their  
6 individual account in any case in which the fiduciary ap-  
7 points, contracts with, or otherwise arranges for an invest-  
8 ment adviser to provide investment advice referred to in  
9 section 3(21)(A)(ii) to the plan or the participant or bene-  
10 ficiary if, in such case, such advice—

11 “(I) is provided under an arrangement that  
12 meets the requirements set forth in Advisory Opin-  
13 ion 2001-09A issued under ERISA Procedure 76-1  
14 (41 Fed. Reg. 36281 (Aug. 27, 1976)), or

15 “(II) is provided under an arrangement that  
16 meets the requirements of any Advisory Opinion  
17 issued under ERISA Procedure 76-1 or any exemp-  
18 tion issued by the Secretary under section 408(a), as  
19 determined under the law in effect immediately prior  
20 to the enactment of the Pension Protection Act of  
21 2006.

22 “(ii) The Secretary shall prescribe rules requiring  
23 such reporting and disclosure as the Secretary considers  
24 appropriate with respect to investment advice arrange-  
25 ments permitted by reason of this subparagraph.”.

1           (2) REPORT ON PRIOR ADVISORY OPINIONS AND  
2           EXCEPTIONS.—The Secretary of Labor shall, as  
3           soon as practicable after the date of the enactment  
4           of this Act—

5                   (A) review each Advisory Opinion and ex-  
6                   ception described in section 404(a)(3)(E)(i) of  
7                   the Employee Retirement Income Security Act  
8                   of 1974 (as added by this paragraph (1)) to de-  
9                   termine the extent to which such Advisory  
10                  Opinion or exception fails to adequately serve  
11                  the interests of participants and beneficiaries  
12                  and to be adequately protective of the rights of  
13                  participants and beneficiaries, and

14                   (B) submit a report to each House of the  
15                   Congress describing the extent of any such fail-  
16                   ure by any such Advisory Opinion or exception.

17           (c) CONFORMING AMENDMENTS.—Section 408 of  
18           such Act (29 U.S.C. 1108) is amended—

19                   (1) by striking subsection (g); and

20                   (2) by striking subsection (b)(14)(B) and in-  
21           serting the following:

22                           “(B) the investment advice is provided by  
23                           an independent investment adviser (as defined  
24                           in section 3(43)).”.

1 (d) REGULATORY AUTHORITY.—The Secretary of  
2 Labor may issue regulations providing that an investment  
3 adviser can still be considered as meeting the requirements  
4 of section 3(43)(B) of the Employee Retirement Income  
5 Security Act of 1974 despite the receipt of a de minimus  
6 amount of compensation that fails to meet the require-  
7 ments of section 3(43)(B)(iii) of such Act due to the exist-  
8 ence of previously existing contracts.

9 (e) EFFECTIVE DATE.—The amendments made by  
10 this section shall apply to plan years beginning after one  
11 year after the date of the enactment of this Act.

12 **SEC. 203. EXPANSION OF OUTREACH TO PROMOTE RETIRE-**  
13 **MENT INCOME SAVINGS TO INCLUDE PRO-**  
14 **MOTION OF EDUCATION ON FINANCIAL LIT-**  
15 **ERACY WITH RESPECT TO INVESTMENT FOR**  
16 **RETIREMENT.**

17 (a) IN GENERAL.—Section 516 of the Employee Re-  
18 tirement Income Security Act of 1974 (29 U.S.C. 1146)  
19 is amended—

20 (1) in subsection (b), by inserting after “cre-  
21 ation of educational materials,” the following: “pro-  
22 motion of education in financial literacy with respect  
23 to investment for retirement as provided in sub-  
24 section (e),”;

1           (2) by redesignating subsection (e) as sub-  
2           section (f); and

3           (3) by inserting after subsection (d) the fol-  
4           lowing new subsection:

5           “(e) PROMOTION OF EDUCATION IN FINANCIAL LIT-  
6           ERACY WITH RESPECT TO INVESTMENT FOR RETIRE-  
7           MENT.—The Secretary, in consultation with the Secretary  
8           of Education and the Secretary of the Treasury, shall es-  
9           tablish a program under which—

10           “(1) employees are provided with information  
11           and materials—

12                   “(A) informing them about resources avail-  
13                   able for attaining financial literacy with respect  
14                   to investment for retirement,

15                   “(B) effectively educating them about the  
16                   importance of, and appropriate techniques with  
17                   respect to, personal finance, saving for retire-  
18                   ment, and choosing independent investment ad-  
19                   visers when managing their accounts under in-  
20                   dividual account plans, and

21                   “(C) effectively educating them about debt  
22                   obligations, the relationship of debt to savings,  
23                   and the potential consequences of debt with re-  
24                   spect to saving for retirement,

1           “(2) employers are enlisted to participate in  
2 such program so as to assist in the attainment of  
3 the goals described in subparagraphs (A), (B), and  
4 (C) of paragraph (1) with respect to their employees,  
5 and

6           “(3) appropriate standards of financial literacy  
7 of employees with respect to investment for retire-  
8 ment are developed and published for utilization  
9 under such program.”.

10           (4) STUDY AND REPORT TO THE CONGRESS.—

11           (A) IN GENERAL.—The Secretary of Labor  
12 shall conduct a survey of ongoing efforts by the  
13 Federal Government to assist employees with  
14 attainment of financial literacy with respect to  
15 investment for retirement and to educate them  
16 about the importance of, and appropriate tech-  
17 niques with respect to, personal finance, debt  
18 obligations, saving for retirement, and choosing  
19 independent investment advisers when man-  
20 aging their accounts under individual account  
21 plans.

22           (B) REPORT.—Not later than 180 days  
23 after the date of the enactment of this Act, the  
24 Secretary shall submit a report to each House  
25 of the Congress setting forth the results of the

1 Secretary's survey conducted pursuant to sub-  
2 paragraph (A), together with such recommenda-  
3 tions as the Secretary considers appropriate for  
4 improvement in efforts by the Federal Govern-  
5 ment in assisting employees with attainment of  
6 financial literacy in connection with investment  
7 for retirement and educating them about the  
8 importance of, and appropriate techniques with  
9 respect to, personal finance, debt obligations,  
10 saving for retirement, and choosing independent  
11 investment advisers when managing their ac-  
12 counts under individual account plans.

13 **TITLE III—TRANSITIONAL FUND-**  
14 **ING RELIEF FOR DEFINED**  
15 **BENEFIT PLANS**

16 **SEC. 301. ELECTION TO USE YIELD CURVE.**

17 (a) AMENDMENT TO ERISA.—The last sentence of  
18 clause (ii) of section 303(h)(2)(D) of the Employee Retire-  
19 ment Income Security Act of 1974 (29 U.S.C.  
20 1083(h)(2)(D)(ii)) is amended to read as follows: “Such  
21 election, once made, may be revoked only with the consent  
22 of the Secretary, except that any election in effect for a  
23 plan with respect to a plan year beginning in 2009 may  
24 be revoked for the plan year beginning in 2010 without  
25 such consent.”.

1 (b) AMENDMENT TO IRC.—The last sentence of  
2 clause (ii) of section 430(h)(2)(D) of the Internal Revenue  
3 Code of 1986 (relating to election to use yield curve) is  
4 amended to read as follows: “Such election, once made,  
5 may be revoked only with the consent of the Secretary,  
6 except that any election in effect for a plan with respect  
7 to a plan year beginning in 2009 may be revoked for the  
8 plan year beginning in 2010 without such consent.”.

9 (c) EFFECTIVE DATE.—The amendments made by  
10 this section shall apply to plan years beginning after De-  
11 cember 31, 2009.

12 **SEC. 302. EFFECTIVE DATE OF REGULATIONS.**

13 The Secretary of the Treasury shall—

14 (1) make the final regulations issued under sec-  
15 tions 206(g) and 303 of the Employee Retirement  
16 Income Security Act of 1974 and sections 430 and  
17 436 of the Internal Revenue Code of 1986 effective  
18 no earlier than plan years beginning after December  
19 31, 2009; and

20 (2) provide rules, for plan years beginning be-  
21 fore the effective date of such final regulations,  
22 under which compliance with a reasonable interpre-  
23 tation of an applicable provision under section  
24 206(g) or 303 of the Employee Retirement Income  
25 Security Act of 1974 or section 430 or 436 of the



1 Internal Revenue Code of 1986 shall be treated as  
2 compliance with such provision.

3 **SEC. 303. CLARIFICATION OF TREATMENT OF EXPENSES.**

4 (a) AMENDMENTS TO ERISA.—

5 (1) IN GENERAL.—Clause (ii) of section  
6 303(b)(1)(A) of the Employee Retirement Income  
7 Security Act of 1974 (29 U.S.C. 1083(b)(1)(A)(ii))  
8 is amended by striking “plan-related expenses” and  
9 inserting “plan-related administrative expenses”.

10 (2) CONFORMING AMENDMENT.—Subclause (II)  
11 of section 303(i)(2)(A)(i) of such Act (29 U.S.C.  
12 1083(i)(2)(A)(i)(II)) is amended by striking “plan-  
13 related expenses” and inserting “plan-related admin-  
14 istrative expenses”.

15 (b) AMENDMENTS TO IRC.—

16 (1) IN GENERAL.—Clause (ii) of section  
17 430(b)(1)(A) of the Internal Revenue Code of 1986  
18 (relating to target normal cost) is amended by strik-  
19 ing “plan-related expenses” and inserting “plan-re-  
20 lated administrative expenses”.

21 (2) CONFORMING AMENDMENT.—Subclause (II)  
22 of section 430(i)(2)(A)(i) of such Code is amended  
23 by striking “plan-related expenses” and inserting  
24 “plan-related administrative expenses”.

1 (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall take effect as if included in the enact-  
3 ment of paragraphs (1)(A), (1)(F)(i), (2)(A), and  
4 (2)(F)(i) of section 101(b) of the Worker, Retiree, and  
5 Employer Recovery Act of 2008 (Public Law 110–458;  
6 122 Stat. 5093).

7 **SEC. 304. INFORMATION REPORTING.**

8 (a) IN GENERAL.—Paragraph (1) of section 4010(b)  
9 of the Employee Retirement Security Act of 1974 (29  
10 U.S.C. 1310(b)(1)) is amended to read as follows:

11 “(1) either of the following requirements are  
12 met:

13 “(A) the funding target attainment per-  
14 centage (as defined in subsection (d)) at the  
15 end of the preceding plan year of a plan main-  
16 tained by the contributing sponsor or any mem-  
17 ber of its controlled group is less than 80 per-  
18 cent; or

19 “(B) the aggregate unfunded vested bene-  
20 fits (as determined under section  
21 4006(a)(3)(E)(iii)) of plans maintained by the  
22 contributing sponsor and the members of its  
23 controlled group exceed \$50,000,000 (dis-  
24 regarding plans with no unfunded vested bene-  
25 fits);”.

1 (b) EFFECTIVE DATE.—The amendment made by  
2 this section shall apply to years beginning after 2009.

3 **SEC. 305. FIVE-YEAR EXTENSION OF AUTOMATIC AMORTI-**  
4 **ZATION EXTENSION PERIOD FOR MULTIEM-**  
5 **PLOYER PLANS.**

6 (a) ERISA AMENDMENTS.—Section 304(d) of the  
7 Employee Retirement Income Security Act of 1974 (29  
8 U.S.C. 1084(d)) is amended—

9 (1) in paragraph (1)(A), by striking “5 years”  
10 and inserting “10 years”; and

11 (2) in paragraph (2)(A), by striking “10 years”  
12 and inserting “15 years”.

13 (b) IRC AMENDMENTS.—Section 431(d) of the Inter-  
14 nal Revenue Code of 1986 (relating to extension of amorti-  
15 zation periods for multiemployer plans) is amended—

16 (1) in paragraph (1)(A), by striking “5 years”  
17 and inserting “10 years”; and

18 (2) in paragraph (2)(A), by striking “10 years”  
19 and inserting “15 years”.

20 (c) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply with respect to applications for ex-  
22 tension filed on or after the date of the enactment of this  
23 Act.

○