

Union Calendar No. 289

111TH CONGRESS
2^D SESSION

H. R. 2989

[Report No. 111-244, Part I]

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.

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

JULY 31, 2009

Reported from the Committee on Education and Labor with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

JULY 31, 2009

Referral to the Committee on Ways and Means extended for a period ending not later than October 16, 2009

OCTOBER 16, 2009

Referral to the Committee on Ways and Means extended for a period ending not later than November 13, 2009

NOVEMBER 13, 2009

Referral to the Committee on Ways and Means extended for a period ending not later than December 11, 2009

DECEMBER 11, 2009

Referral to the Committee on Ways and Means extended for a period ending
not later than January 19, 2010

JANUARY 19, 2010

Referral to the Committee on Ways and Means extended for a period ending
not later than February 26, 2010

FEBRUARY 26, 2010

Referral to the Committee on Ways and Means extended for a period ending
not later than March 26, 2010

MARCH 26, 2010

Referral to the Committee on Ways and Means extended for a period ending
not later than April 30, 2010

APRIL 30, 2010

Referral to the Committee on Ways and Means extended for a period ending
not later than May 28, 2010

MAY 28, 2010

Additional sponsor: Mr. McDERMOTT

MAY 28, 2010

Committee on Ways and Means discharged; committed to the Committee of
the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on June 23, 2009]

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 2009”.*

6 (b) *TABLE OF CONTENTS.*—*The table of contents for*
 7 *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 in-
 vestment 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. 5-year extension of automatic amortization extension period for multi-
 employer plans.*

*Sec. 306. Pension plan maintained by Christian Schools International treated as
 church plan.*

*Sec. 307. Special rule for determining adequate consideration in connection with
 the purchase and sale of qualifying employer securities.*

*Sec. 308. Extended period for single-employer defined benefit plans to amortize
 the shortfall amortization base for 2009 and 2010.*

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 INDIVIDUAL*
 15 *ACCOUNT PLANS REGARDING SERVICES NECESSARY FOR ESTABLISHMENT OR OPERATION OF PLANS.*—

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

1 *rangement, a single written statement from the serv-*
2 *ice provider which—*

3 *“(A) specifies such services for the plan that*
4 *will be provided in connection with the contract*
5 *or arrangement, and*

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

14 *The description of the services and specification of the*
15 *charges for the services shall be displayed prominently*
16 *in the written statement and shall be presented in a*
17 *format which is understandable to the typical plan*
18 *administrator.*

19 *“(2) MINIMUM ALLOCATION REQUIREMENTS.—*

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

1 “(A) charges for administration and record-
2 keeping,

3 “(B) transaction based charges,

4 “(C) charges for investment management,
5 and

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

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

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

21 “(4) *ESTIMATIONS.—For purposes of providing
22 the statement required under this subsection in con-
23 nection with any service, the service provider may
24 provide a reasonable and representative estimate of
25 the charges required to be specified under paragraph*

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

8 “(5) DISCLOSURE OF FINANCIAL RELATION-
 9 SHIPS.—

10 “(A) IN GENERAL.—The statement required
 11 under paragraph (1) shall include a written dis-
 12 closure of—

13 “(i) any payment to be provided (or
 14 the amount representing the value of any
 15 services to be provided) to the service pro-
 16 vider (or any affiliate thereof) from any en-
 17 tity other than the plan or the accounts of
 18 participants or beneficiaries pursuant to, or
 19 in connection with, the contract or arrange-
 20 ment described in paragraph (1) and the
 21 amount and type of any payment to be
 22 made or credit to be received for such serv-
 23 ices (irrespective of whether the service pro-
 24 vider (or affiliate thereof) or other person
 25 providing such services is affiliated or unaf-

1 *filiated with the plan, the plan sponsor, the*
2 *plan administrator, or any other plan offi-*
3 *cial), and*

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

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

15 *“(B) INCLUSIONS.—*

16 *“(i) IN GENERAL.—Disclosures de-*
17 *scribed under subparagraph (A)(ii) shall in-*
18 *clude the extent to which the service pro-*
19 *vider (or any affiliate thereof) may benefit*
20 *from the offering of its own proprietary in-*
21 *vestment products or those of third parties,*
22 *including (but not limited to) cross-selling*
23 *of affiliated products or services to the plan*
24 *sponsor or participants.*

1 “(ii) *APPLICABLE PROHIBITED TRANS-*
2 *ACTION EXEMPTION.—Disclosures under this*
3 *paragraph may include a description of*
4 *any applicable prohibited transaction ex-*
5 *emption under section 408 related to the*
6 *services described in the statement required*
7 *under paragraph (1).*

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

16 “(7) *DISCLOSURE OF CERTAIN ARRANGEMENTS*
17 *IN CONNECTION WITH FREE OR DISCOUNTED SERV-*
18 *ICES OR REIMBURSEMENTS BY SERVICE PRO-*
19 *VIDERS.—In any case in which services are provided*
20 *to the plan, or to the plan sponsor in connection with*
21 *the plan, by any service provider without explicit*
22 *charge or for charges set at a discounted rate or sub-*
23 *ject to rebate, the statement required under paragraph*
24 *(1) shall specify the manner in which, the extent to*
25 *which, and the amount by which consideration is oth-*

1 *erwise obtained by the service provider (or any affil-*
2 *iate thereof), the plan, or the plan sponsor for such*
3 *services, directly or indirectly, by means of any*
4 *charges against the plan.*

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

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

23 “(10) *LIMITATIONS.*—

24 “(A) *DOLLAR LIMITATION.*—

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

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

15 “(B) *GENERAL APPLICABILITY OF REQUIRE-*
 16 *MENTS WITH RESPECT TO SERVICES.*—*Nothing*
 17 *in this subsection shall be construed to require*
 18 *any service provider to provide any service with*
 19 *respect to any particular plan sponsor.*

20 “(11) *SATISFACTION OF FIDUCIARY RULES.*—
 21 *Nothing in the preceding provisions of this subsection*
 22 *affects the obligations of fiduciaries under part 4 of*
 23 *this subtitle.*

24 “(b) *DISCLOSURES TO PARTICIPANTS AND BENE-*
 25 *FICIARIES.*—

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

9 “(A) *the earliest date provided for under the*
 10 *plan for the participant’s initial investment of*
 11 *any contribution made on behalf of such partici-*
 12 *pant, and*

13 “(B) *the effective date of any material*
 14 *change in investment options.*

15 *In the case of a plan that provides for immediate eli-*
 16 *gibility or that contains an automatic contribution*
 17 *arrangement (as defined in subparagraphs (A) and*
 18 *(B) of section 514(e)(2)), the notice required under*
 19 *subparagraph (A) may be provided within any rea-*
 20 *sonable period prior to such initial investment. With*
 21 *respect to any notice required under this paragraph,*
 22 *the Secretary shall prescribe regulations creating spe-*
 23 *cific requirements for periods of advance notice to be*
 24 *treated as reasonable under this paragraph (of not*
 25 *less than 10 days) in circumstances similar to those*

1 *described in section 101(i)(2)(C), and such notice*
2 *may be combined with any similar notice that may*
3 *be required under section 404(c)(5) or under this sec-*
4 *tion.*

5 “(2) *INFORMATION INCLUDED IN NOTICE.—The*
6 *notice required under paragraph (1) shall—*

7 “(A) *include a prominent statement, in lan-*
8 *guage presented in a manner which is easily un-*
9 *derstandable by the typical participant, indi-*
10 *cating which components of the charges (both di-*
11 *rect and indirect) for each investment option are*
12 *payable by the participant or beneficiary and*
13 *how such components are to be paid,*

14 “(B) *set forth, with respect to each available*
15 *investment option—*

16 “(i) *the name of the option,*

17 “(ii) *information effectively describing*
18 *the investment objectives of the option (such*
19 *as a description of a broadly recognized*
20 *asset class),*

21 “(iii) *the risk level associated with the*
22 *option,*

23 “(iv) *whether the option is diversified*
24 *among various classes of assets so as to*
25 *minimize the risk of large losses or should*

1 *be combined with other options so as to ob-*
2 *tain such diversification,*

3 “(v) *whether the investment option is*
4 *actively managed or passively managed in*
5 *relation to an index and the difference be-*
6 *tween active management and passive man-*
7 *agement,*

8 “(vi) *where, and the manner in which,*
9 *additional plan-specific, option-specific,*
10 *and generally available investment informa-*
11 *tion regarding the option may be obtained,*
12 *and*

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

22 “(C) *include a plan fee comparison chart,*
23 *relating to the charges described in paragraph*
24 *(3) in connection with all investment options*

1 *available under the plan, as provided in para-*
2 *graph (3).*

3 “(3) *PLAN FEE COMPARISON CHART.*—

4 “(A) *IN GENERAL.*—

5 “(i) *IN GENERAL.*—*The notice provided*
6 *under this subsection shall include a plan*
7 *fee comparison chart consisting of a com-*
8 *parison of actual service and investment*
9 *charges (including, for purposes of this*
10 *clause, charges for the offering of an invest-*
11 *ment option) that will or could be assessed*
12 *against the account of the participant or*
13 *beneficiary with respect to the plan year.*
14 *The plan fee comparison chart shall be pre-*
15 *sented in a manner which is easily under-*
16 *stood by the typical participant and include*
17 *such information as the Secretary deter-*
18 *mines necessary to permit participants and*
19 *beneficiaries to assess the services for which*
20 *charges will or could be assessed against the*
21 *account.*

22 “(ii) *FORM.*—*For purposes of this*
23 *paragraph, the potential service charges*
24 *shall be provided in the form of a dollar*
25 *amount or as a formula (such as a percent-*

1 age of assets), as appropriate. The form of
2 the potential service charges shall be pre-
3 sented in a manner which is easily under-
4 standable by the typical participant, in-
5 cluding examples that demonstrate how the
6 charges will be assessed against the account
7 of the participant or beneficiary.

8 “(B) CATEGORIZATION OF CHARGES.—The
9 plan fee comparison chart shall provide informa-
10 tion in relation to the following categories of
11 charges that will or could be assessed against the
12 account of the participant or beneficiary:

13 “(i) ASSET-BASED CHARGES SPECIFIC
14 TO INVESTMENT.—Charges that vary de-
15 pending on the investment options selected
16 by the participant or beneficiary, including
17 expense ratios and investment-specific asset-
18 based charges. The information relating to
19 such charges shall include a statement not-
20 ing any charges for 1 or more investment
21 options which pay for services other than
22 investment management.

23 “(ii) ASSET-BASED CHARGES NOT SPE-
24 CIFIC TO INVESTMENT.—Charges that are
25 assessed as a percentage of the total assets

1 *in the account of the participant or bene-*
2 *ficiary, regardless of the investment option*
3 *selected.*

4 “(iii) *ADMINISTRATIVE AND TRANS-*
5 *ACTION-BASED CHARGES.—Administration*
6 *and transaction-based charges, including*
7 *fees charged to participants to cover plan*
8 *administration, compliance, and record-*
9 *keeping costs, plan loan origination fees,*
10 *possible redemption fees, and possible sur-*
11 *render charges, that are not assessed as a*
12 *percentage of the total assets in the account*
13 *and are either automatically deducted each*
14 *year or result from certain transactions en-*
15 *gaged in by the participant or beneficiary.*

16 “(iv) *OTHER CHARGES.—Any other*
17 *charges which may be deducted from par-*
18 *ticipants’ or beneficiaries’ accounts and*
19 *which are not described in clauses (i), (ii),*
20 *and (iii).*

21 “(C) *DESCRIPTION OF PURPOSE FOR*
22 *CHARGES.—The notice shall indicate the extent*
23 *to which each charge is for investment manage-*
24 *ment, transactions, plan administration and rec-*
25 *ordkeeping, or other identified services.*

1 “(D) *FEEES AND HISTORICAL RETURNS.*—In
2 *connection with each investment option listed in*
3 *the plan fee comparison chart, the chart shall*
4 *also include, as determined periodically by the*
5 *Secretary in consultation with the Securities and*
6 *Exchange Commission, appropriate and con-*
7 *sistent benchmarks, indices, or other points of*
8 *comparison that may be used by beneficiaries to*
9 *compare each investment option’s historical re-*
10 *turns, net of fees and expenses, for the previous*
11 *year, 5 years, and 10 years (or for the period*
12 *since inception, if shorter) as shown in the chart*
13 *pursuant to this paragraph, including a sepa-*
14 *rate point of comparison with respect to each*
15 *such time period.*

16 “(4) *MODEL NOTICES.*—The Secretary shall pre-
17 *scribe one or more model notices that may be used for*
18 *purposes of satisfying the requirements of this sub-*
19 *section, including model plan fee comparison charts.*

20 “(5) *ESTIMATIONS.*—For purposes of providing
21 *the notice required under this subsection, the plan ad-*
22 *ministrator may provide a reasonable and representa-*
23 *tive estimate for any charges or percentages disclosed*
24 *under paragraph (2) or (3) and shall indicate any*
25 *such estimate as being such an estimate. Any such es-*

1 *timate shall be based on reasonable assumptions stat-*
 2 *ed in the notice (such as the previous year's experi-*
 3 *ence or, in the case of a new plan, a reasonable esti-*
 4 *mate, taking into account the plan's participants and*
 5 *beneficiaries).*

6 “(c) *ELECTRONIC MEDIA.*—*Any disclosure required*
 7 *under this section may be provided through an electronic*
 8 *medium under such rules as shall be prescribed by the Sec-*
 9 *retary not later than 1 year after the date of the enactment*
 10 *of the 401(k) Fair Disclosure and Pension Security Act of*
 11 *2009. Such rules shall be similar to those applicable under*
 12 *the Internal Revenue Code of 1986 with respect to notices*
 13 *to participants in pension plans. The Secretary shall regu-*
 14 *larly modify such rules as appropriate to take into account*
 15 *new developments, including new forms of electronic media,*
 16 *and to fairly take into consideration the interests of plan*
 17 *sponsors, service providers, and participants. The rules pre-*
 18 *scribed by the Secretary pursuant to this subsection shall*
 19 *provide for a method for the typical participant or bene-*
 20 *ficiary to obtain without undue burden any such disclosure*
 21 *in writing on paper in lieu of receipt through an electronic*
 22 *medium.*

23 “(d) *REGULATIONS REGARDING CERTAIN PROD-*
 24 *UCTS.*—*The Secretary may by regulation identify certain*
 25 *types of investment options, such as an option that provides*

1 *a guaranteed rate of return and that does not identify spe-*
 2 *cific fees, and prescribe alternative disclosures of cost and*
 3 *performance measures that correspond to the particular cir-*
 4 *cumstances of such options.*

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

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

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

21 “(3) *CONTRACT OR ARRANGEMENT.*—*The term*
 22 *‘contract or arrangement’ means, in connection with*
 23 *any 2 or more parties, any contract or arrangement*
 24 *entered into between or among such parties, and any*
 25 *extension or renewal thereof.*

1 “(4) *SERVICE PROVIDER.*—*The terms ‘service*
 2 *provider’ and ‘provider’ mean, in connection with a*
 3 *service, a person directly or indirectly providing such*
 4 *service.*

5 “(5) *REGULATIONS.*—*The Secretary shall pro-*
 6 *vide by regulation such definitions of other terms used*
 7 *in this section as the Secretary determines appro-*
 8 *priate.”.*

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

11 *(1) in subsection (a)(2)—*

12 *(A) by redesignating subparagraph (C) as*
 13 *subparagraph (H);*

14 *(B) in subparagraph (B)(ii)—*

15 *(i) in subclause (II), by striking “di-*
 16 *versified, and” and inserting “diversified,”;*

17 *(ii) in subclause (III), by striking the*
 18 *period and inserting “, and”;*

19 *(iii) by adding after subclause (III) the*
 20 *following new subclause:*

21 *“(IV) with respect to the portion*
 22 *of a participant’s account for which*
 23 *the participant has the right to direct*
 24 *the investment of assets, the informa-*

1 tion described in subparagraph (C).”;

2 and

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

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

13 “(i) *the starting balance of the partici-*
14 *pant’s account,*

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

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

22 “(iv) *actual or estimated charges*
23 *(within the meaning of section 111(e)(1))*
24 *which reduce the account during the quar-*
25 *ter, expressed in dollars or, if estimated,*

1 *such estimated dollar charges as are derived*
2 *from an expense ratio (which may be ex-*
3 *pressed as a specific date estimate based on*
4 *reasonable assumptions stated in the disclo-*
5 *sure (such as the previous year's expense*
6 *ratio).*

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

10 “(vi) *the ending balance of the account,*

11 “(vii) *the participant's asset allocation*
12 *to each investment option, expressed as an*
13 *amount and as a percentage, and*

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

18 “(D) *OTHER INFORMATION.—The plan ad-*
19 *ministrator may include in the quarterly pen-*
20 *sion benefit statement information relating to the*
21 *historical return and risk of each investment op-*
22 *tion and the estimated amount that the partici-*
23 *pant needs to contribute each month or year so*
24 *as to retire at retirement age (as defined in sec-*
25 *tion 216(l) of the Social Security Act).*

1 “(E) *ESTIMATIONS.*—For purposes of mak-
2 ing the disclosure of actual charges or percent-
3 ages as required under this paragraph, the plan
4 administrator may provide a reasonable and
5 representative estimate of such charges or per-
6 centages and shall indicate any such estimate as
7 being such an estimate. Any such estimate shall
8 be based on reasonable assumptions included in
9 the statement (such as the previous year’s experi-
10 ence).

11 “(F) *MODEL STATEMENTS.*—The Secretary
12 shall prescribe one or more model pension benefit
13 statements that may be used for purposes of sat-
14 isfying the requirements of subparagraphs
15 (B)(ii) and (C).

16 “(G) *ANNUAL COMPLIANCE FOR SMALL*
17 *PLANS AND WITH RESPECT TO CERTAIN INFOR-*
18 *MATION.*—In the case of a plan providing for in-
19 vestment as described in paragraph (1)(A)(i)—

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

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

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

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

10 “(1) educational and compliance materials de-
11 signed to assist such employers in selecting and moni-
12 toring service providers for individual account plans
13 which permit a participant or beneficiary to exercise
14 control over the assets in the account of the partici-
15 pant or beneficiary, investment options under such
16 plans, and charges relating to such options, and

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

23 “(e) ASSISTANCE TO PLAN SPONSORS AND PLAN PAR-
24 TICIPANTS AND BENEFICIARIES.—The Secretary shall pro-
25 vide assistance to plan sponsors of individual account plans

1 *and participants and beneficiaries under such plans with*
 2 *any questions or problems regarding compliance with the*
 3 *requirements of this section.*

4 “(f) *ELECTRONIC MEDIA.*—Any disclosure required
 5 under this section may be provided through an electronic
 6 medium under such rules as shall be prescribed by the Sec-
 7 retary not later than 1 year after the date of the enactment
 8 of the 401(k) Fair Disclosure and Pension Security Act of
 9 2009. Such rules shall be similar to those applicable under
 10 the Internal Revenue Code of 1986 with respect to notices
 11 to participants in pension plans. The Secretary shall regu-
 12 larly modify such rules as appropriate to take into account
 13 new developments, including new forms of electronic media,
 14 and to fairly take into consideration the interests of plan
 15 sponsors, service providers, and participants. The rules pre-
 16 scribed by the Secretary pursuant to this subsection shall
 17 provide for a method for the typical participant or bene-
 18 ficiary to obtain without undue burden any such disclosure
 19 in writing on paper in lieu of receipt through an electronic
 20 medium.

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

22 “(1) *CHARGE.*—The term ‘charge’ means, in con-
 23 nection with any service provided to a plan or any
 24 financial product provided to the plan in which plan
 25 assets are to be invested, any fee, credit, or other com-

1 *pensation charged or paid for such service or product,*
 2 *including money and any other thing of monetary*
 3 *value to be received by the provider of the service or*
 4 *product, or its affiliate, in connection with the service*
 5 *or product.*

6 “(2) *SERVICE PROVIDER.*—*The terms ‘service*
 7 *provider’ and ‘provider’ mean, in connection with a*
 8 *service (as defined in section 111(e)(2)), a person di-*
 9 *rectly or indirectly providing such service.*

10 “(3) *REGULATIONS.*—*The Secretary shall pro-*
 11 *vide by regulation such definitions of other terms used*
 12 *in this section as the Secretary determines appro-*
 13 *priate.”.*

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

16 (1) *in subsection (a)(6), by striking “under*
 17 *paragraph (2)” and all that follows through “sub-*
 18 *section (c)” and inserting “under paragraph (2), (4),*
 19 *(5), (6), (7), (8), (9), (10), or (11) of subsection (c)”;*
 20 *and*

21 (2) *in subsection (c), by redesignating the second*
 22 *paragraph (10) as paragraph (12), and by inserting*
 23 *after the first paragraph (10) the following new para-*
 24 *graph:*

1 “(11)(A) *In the case of any violation of section 111(a)*
 2 *by a service provider (as defined in section 111(e)(4)), the*
 3 *service provider may be assessed by the Secretary a civil*
 4 *penalty of up to \$1,000 a day with respect to each such*
 5 *violation from the date of the initial violation until the date*
 6 *on which such violation is corrected, subject to a total max-*
 7 *imum penalty of 10 percent of the amount involved, as de-*
 8 *termined by the Secretary.*

9 “(B) *Any plan administrator with respect to a plan*
 10 *who fails or refuses to provide a statement to participants*
 11 *and beneficiaries in accordance with section*
 12 *105(a)(2)(B)(ii) or 111(b) may be assessed by the Secretary*
 13 *a civil penalty of up to \$100 a day from the date of the*
 14 *failure or refusal to the date on which such statement or*
 15 *notice is so provided.*

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

19 (d) *CONFORMING AMENDMENT.—The table of contents*
 20 *in section 1 of such Act is amended by striking the item*
 21 *relating to section 111 and inserting the following new*
 22 *items:*

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

23 (e) *EFFECTIVE DATES.—*

1 (1) *Section 111(a) of the Employee Retirement*
 2 *Income Security Act of 1974 (as added by subsection*
 3 *(a) of this section) shall apply with respect to con-*
 4 *tracts or arrangements for services entered into after*
 5 *one year after the date of the enactment of this Act.*

6 (2) *Section 111(b) of such Act (as added by sub-*
 7 *section (a) of this section) shall apply with respect to*
 8 *plan years beginning after one year after the date of*
 9 *the enactment of this Act.*

10 (3) *The amendments made by subsection (b) of*
 11 *this section shall apply with respect to pension benefit*
 12 *statements for calendar quarters beginning after one*
 13 *year after the date of the enactment of this Act.*

14 (4) *The Secretary shall issue final regulations*
 15 *under the amendments made by this section not later*
 16 *than 270 days after the date of the enactment of this*
 17 *Act. Any act or practice in advance of the issuance*
 18 *of final regulations under the amendments made by*
 19 *this section which is in good faith compliance with*
 20 *the requirements of such amendments shall be treated*
 21 *as in compliance with any such final regulations.*

22 (f) *STUDY REGARDING USE OF BENCHMARKS, INDI-*
 23 *CES, AND OTHER POINTS OF COMPARISON IN PLAN FEE*
 24 *COMPARISON CHARTS.—*

1 (1) *STUDY.*—As soon as practicable after the
2 date of the enactment of this Act, the Secretary of
3 Labor shall study the efficacy of including bench-
4 marks, indices, and other points of comparison in
5 plan fee comparison charts provided to participants
6 and beneficiaries pursuant to section 111(b)(3) of the
7 Employee Retirement Income Security Act of 1974
8 (as added by this Act).

9 (2) *MATTERS TO BE STUDIED.*—In the study re-
10 quired under paragraph (1), the Secretary shall in-
11 vestigate whether, and the extent to which, bench-
12 marks, indices, and other points of comparison in-
13 cluded in plan fee comparison charts—

14 (A) help participants and beneficiaries un-
15 derstand the charges with respect to their indi-
16 vidual account plans,

17 (B) help participants and beneficiaries
18 make more informed decisions on which invest-
19 ment options to choose under such plans, and

20 (C) bias participants and beneficiaries
21 against particular investment options under
22 such plans, types of investment, or individual
23 account plans as a whole.

24 (3) *REPORT.*—Not later than 180 days after the
25 date of the enactment of this Act, the Secretary shall

1 *report to each House of the Congress regarding the re-*
 2 *sults of the study conducted pursuant to this sub-*
 3 *section, together with such recommendations as the*
 4 *Secretary may consider appropriate.*

5 **SEC. 102. MINIMUM INVESTMENT OPTION REQUIREMENT**
 6 **FOR INDIVIDUAL ACCOUNT PLANS.**

7 *(a) IN GENERAL.—Section 404(c) of the Employee Re-*
 8 *tirement Income Security Act of 1974 (29 U.S.C. 1104(c))*
 9 *is amended by adding at the end the following new para-*
 10 *graph:*

11 *“(6) MINIMUM INVESTMENT OPTION REQUIRE-*
 12 *MENT FOR INDIVIDUAL ACCOUNT PLANS.—Paragraph*
 13 *(1)(A)(ii) shall not apply in connection with any in-*
 14 *dividual account plan which permits a participant or*
 15 *beneficiary to exercise control over the assets in the*
 16 *account of the participant or beneficiary unless the*
 17 *plan includes at least one investment option—*

18 *“(A) which is a passively managed invest-*
 19 *ment with a portfolio of securities that is de-*
 20 *signed to be representative of the United States*
 21 *investable equity market (including representa-*
 22 *tion of small, mid, and large cap stocks) or the*
 23 *United States investment grade bond market (in-*
 24 *cluding Treasury, agency, non-agency, and cor-*
 25 *porate 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 is
10 designed to approximate in a reasonable manner the
11 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 later
22 than 270 days after the date of the enactment of this
23 Act. Any act or practice in advance of the issuance
24 of final regulations under the amendments made by
25 this section which is in good faith compliance with

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

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

5 *(a) IN GENERAL.—Section 502 of the Employee Re-*
 6 *tirement Income Security Act of 1974 (29 U.S.C. 1132) is*
 7 *amended by adding at the end the following new subsection:*
 8 *“(n) ENFORCEMENT COORDINATION OF CERTAIN DIS-*
 9 *CLOSURE REQUIREMENTS AND REVIEW BY THE DEPART-*
 10 *MENT OF LABOR.—*

11 *“(1) IN GENERAL.—*

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

23 *“(B) DISSEMINATION.—The Secretary shall*
 24 *widely disseminate to employee pension benefit*
 25 *plans covered by this title and their participants*

1 *and beneficiaries the identity of any service pro-*
2 *viders with respect to such plans found to be en-*
3 *gaged in any pattern or practice described in*
4 *subparagraph (A) with the intent to preclude*
5 *compliance by plan administrators with section*
6 *111 and the particulars of such pattern or prac-*
7 *tice. Prior to the dissemination of the identity of*
8 *any service providers identified and determined*
9 *by the Secretary to be engaged in such a pattern*
10 *or practice, such service provider shall receive a*
11 *notice of intent to disseminate, an opportunity*
12 *to request an administrative hearing, and a*
13 *timely appeal to the Secretary.*

14 “(2) ANNUAL AUDIT OF REPRESENTATIVE SAM-
15 PLING OF INDIVIDUAL ACCOUNT PLANS.—The Sec-
16 retary shall annually audit a representative sampling
17 of individual account plans covered by this title to de-
18 termine compliance with the requirements of section
19 111. The Secretary shall annually report the results
20 of such audit and any related recommendations of the
21 Secretary to the Committee on Education and Labor
22 of the House of Representatives and the Committee on
23 Health, Education, Labor, and Pensions of the Sen-
24 ate.”.

1 **(b) REVIEW AND REPORT TO THE CONGRESS BY SEC-**
2 **RETARY OF LABOR RELATING TO REPORTING AND DISCLO-**
3 **SURE REQUIREMENTS.—**

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

11 **(2) REPORT.**—Not later than 18 months after the
12 date of the enactment of this Act, the Secretary of
13 Labor, in consultation with the Secretary of the
14 Treasury, shall make such recommendations as the
15 Secretary of Labor considers appropriate to the ap-
16 propriate committees of the Congress to consolidate,
17 simplify, standardize, and improve the applicable re-
18 porting and disclosure requirements so as to simplify
19 reporting for employee pension benefit plans and en-
20 sure that needed understandable information is pro-
21 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 Office,*
10 *\$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 es-*
13 *timates, the value of pension funds and retirement ac-*
14 *counts 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 percent*
17 *in the first nine months of 2008, according to an Em-*
18 *ployee Benefit Research Institute analysis of 2.2 mil-*
19 *lion retirements account participants.*

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

1 *meaningful access to independent investment advise*
 2 *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 ad-*
 5 *viser.*

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 contribu-*
 9 *tion 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 paragraph:*

15 “(43) *INDEPENDENT INVESTMENT ADVISER.*—

16 “(A) *IN GENERAL.*—*The term ‘independent*
 17 *investment adviser’ means, with respect to an in-*
 18 *dividual account plan that permits a partici-*
 19 *pant or beneficiary to direct the investment of*
 20 *assets in their individual account, a person*
 21 *who—*

22 “(i) *is a fiduciary of the plan by rea-*
 23 *son of the provision of investment advice re-*
 24 *ferred to in section 3(21)(A)(ii) by the per-*
 25 *son to the plan or a participant or bene-*

1 *ficiary of the plan (irrespective of the man-*
 2 *ner in which such advice is provided or the*
 3 *extent to which such advice is based on a*
 4 *computer model), and*

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

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

11 *“(i) such adviser is—*

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

18 *“(II) any other person, but only if*
 19 *every individual providing the invest-*
 20 *ment advice referred to in section*
 21 *3(21)(A)(ii) on behalf of such person*
 22 *(or on behalf of any affiliate thereof) is*
 23 *a registered representative of a person*
 24 *described in subclause (I),*

1 “(ii) such adviser is not the plan in-
2 vestment provider,

3 “(iii) the fees or other compensation re-
4 ceived, directly or indirectly, by such ad-
5 viser (and any affiliate thereof) with respect
6 to the provision of investment advice to any
7 individual account plan or the participants
8 or beneficiaries of such a plan either—

9 “(I) are not received from any
10 person or persons (or anyone affiliated
11 with such persons) that market, sell,
12 manage or provide investments in
13 which plan assets of the individual ac-
14 count plan are invested, or

15 “(II) do not vary depending on
16 the basis of any investment option se-
17 lected, and are calculated pursuant to
18 one or more of the following bases—

19 “(aa) a flat-dollar basis,

20 “(bb) a flat percentage of
21 total plan assets basis,

22 “(cc) a flat or sliding-scale
23 percentage of the assets in a par-
24 ticipant’s or beneficiary’s account
25 basis, or

1 “(dd) a per-participant or
2 per-beneficiary account basis, and

3 “(iv) such adviser provides the invest-
4 ment advice pursuant to a written arrange-
5 ment with the individual account plan
6 that—

7 “(I) provides that the investment
8 adviser is a fiduciary of the plan with
9 respect to the provision of the advice,

10 “(II) requires that the advice be
11 provided only by registered representa-
12 tives of the investment adviser or an
13 affiliate thereof,

14 “(III) discloses, before a reason-
15 able period prior to entering into such
16 arrangement, whether the investment
17 adviser or any affiliate thereof has any
18 material financial, referral, or other
19 relationship or arrangement with a
20 money manager, broker, other client of
21 the investment adviser or any affiliate
22 thereof, other service provider to the
23 plan, or any other entity that creates
24 or may create a conflict of interest for
25 the investment adviser in performing

1 *services pursuant to the arrangement*
2 *with the plan and, if so, includes a de-*
3 *scription of such relationship or ar-*
4 *rangement,*

5 *“(IV) includes a representation by*
6 *the investment adviser that, before the*
7 *arrangement was entered into (or ex-*
8 *tended or renewed), the investment ad-*
9 *viser provided to the plan fiduciary*
10 *that has authority to cause the em-*
11 *ployee benefit plan to enter into (or ex-*
12 *tend or renew) the arrangement a*
13 *written statement disclosing all fees or*
14 *other compensation that the investment*
15 *adviser or any affiliate thereof antici-*
16 *pates to receive with respect to the ad-*
17 *vice during the first year, or other pe-*
18 *riod if less than a year, of the arrange-*
19 *ment,*

20 *“(V) provides that the investment*
21 *adviser will provide to such plan fidu-*
22 *ciary (and the participant and bene-*
23 *ficiary receiving the advice, if applica-*
24 *ble) a statement annually disclosing all*
25 *fees or other compensation that the in-*

1 *vestment adviser or any affiliate there-*
 2 *of has received with respect to the ad-*
 3 *vice during the prior year, and*

4 *“(VI) provides that the terms of*
 5 *the arrangement required under this*
 6 *clause and any information provided*
 7 *under such arrangement pursuant to*
 8 *subclauses (III) and (IV) will also be*
 9 *furnished by the investment adviser to*
 10 *the participant or beneficiary that is*
 11 *the recipient of the advice.*

12 *“(C) ADVICE PROVIDED TO PARTICIPANTS*
 13 *AND BENEFICIARIES UNDER AN INVESTMENT AD-*
 14 *VICE COMPUTER PROGRAM MEETING REQUIRE-*
 15 *MENTS.—An investment adviser meets the re-*
 16 *quirements of this subparagraph if the invest-*
 17 *ment advice provided by the adviser, to the ex-*
 18 *tent that such advice is provided to participants*
 19 *and beneficiaries of individual account plans, is*
 20 *provided under an investment advice computer*
 21 *program with respect to which the requirements*
 22 *of clauses (i) through (x) are met.*

23 *“(i) ADVISER REQUIREMENTS.—The*
 24 *requirements of this clause are met if the*

1 *investment adviser providing the investment*
2 *advice under the program is—*

3 “(I) *described in subclauses (I) or*
4 *(II) of subparagraph (B)(i),*

5 “(II) *an insurance company*
6 *qualified to do business under the laws*
7 *of a State,*

8 “(III) *a person registered as a*
9 *broker or dealer under the Securities*
10 *Exchange Act of 1934 (15 U.S.C. 78a*
11 *et seq.),*

12 “(IV) *an affiliate of a person de-*
13 *scribed in any of subclauses (I)*
14 *through (III), or*

15 “(V) *an employee, agent, or reg-*
16 *istered representative of a person de-*
17 *scribed in subclauses (I) through (IV)*
18 *who satisfies the requirements of appli-*
19 *cable insurance, banking, and securi-*
20 *ties laws relating to the provision of*
21 *the advice.*

22 “(ii) *COMPUTER MODEL.—The require-*
23 *ments of this clause are met if the invest-*
24 *ment advice provided under the investment*

1 *advice computer program is provided pur-*
2 *suant to a computer model that—*

3 *“(I) applies generally accepted in-*
4 *vestment theories that take into ac-*
5 *count the historic returns of different*
6 *asset classes over defined periods of*
7 *time,*

8 *“(II) utilizes relevant information*
9 *about the participant, which may in-*
10 *clude age, life expectancy, retirement*
11 *age, risk tolerance, other assets or*
12 *sources of income, and preferences as to*
13 *certain types of investments,*

14 *“(III) utilizes prescribed objective*
15 *criteria to provide asset allocation*
16 *portfolios comprised of investment op-*
17 *tions available under the plan,*

18 *“(IV) operates in a manner that*
19 *is not biased in favor of investments*
20 *offered by the investment adviser or*
21 *any person with a material affiliation*
22 *or contractual relationship with the in-*
23 *vestment adviser,*

24 *“(V) takes into account all invest-*
25 *ment options under the plan in speci-*

1 *fying how a participant’s account bal-*
2 *ance should be invested and is not in-*
3 *appropriately weighted with respect to*
4 *any investment option,*

5 “(VI) operates so that it does not,
6 *directly or indirectly, in any manner*
7 *act to benefit the investment adviser*
8 *(or any affiliate of the adviser or any*
9 *person with a material affiliation or*
10 *contractual relationship with the ad-*
11 *viser) at the expense of plan partici-*
12 *pants and beneficiaries,*

13 “(VII) takes into account the fees
14 *associated with each investment option,*
15 *and*

16 “(VIII) conforms to such other re-
17 *quirements as shall be prescribed by*
18 *the Secretary to ensure that it operates*
19 *in the best interest of plan participants*
20 *and beneficiaries.*

21 “(iii) CERTIFICATION.—

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

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

5 “(II) *RENEWAL OF CERTIFI-*
 6 *CATIONS.—If, as determined under reg-*
 7 *ulations prescribed by the Secretary,*
 8 *there are material modifications to the*
 9 *computer model, the requirements of*
 10 *this subparagraph are met only if a*
 11 *certification described in subclause (I)*
 12 *is obtained with respect to the com-*
 13 *puter model as so modified.*

14 “(III) *ELIGIBLE INVESTMENT EX-*
 15 *PERT.—For purposes of this clause, the*
 16 *term ‘eligible investment expert’ means*
 17 *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 re-*
 23 *lationship with any investment*
 24 *adviser or a related person thereof*
 25 *(or any employee, agent, or reg-*

1 *istered representative of the in-*
2 *vestment 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 ben-*
14 *eficiary.*

15 “(v) *EXPRESS AUTHORIZATION BY*
16 *SEPARATE FIDUCIARY.—The requirements of*
17 *this clause are met with respect to the pro-*
18 *gram if the program is expressly authorized*
19 *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 the*
24 *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 to
5 the program if an independent auditor, who
6 has appropriate technical training or expe-
7 rience and proficiency and so represents in
8 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 specific
19 findings regarding compliance of the
20 program with the requirements of this
21 subsection.

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

1 *and is not affiliated with any person pro-*
2 *viding investment options under the plan.*

3 “(vii) *DISCLOSURE.*—*The requirements*
4 *of this clause are met with respect to the*
5 *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 an*
12 *investment option, before providing the*
13 *advice, a written notification (which*
14 *may consist of notification by means of*
15 *electronic communication)—*

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

24 “(bb) *of all fees or other com-*
25 *ensation relating to the advice*

1 *that the investment adviser or any*
2 *affiliate thereof is to receive (in-*
3 *cluding compensation provided by*
4 *any third party) in connection*
5 *with the provision of the advice or*
6 *in connection with the sale, acqui-*
7 *sition, or holding of the security*
8 *or other property,*

9 *“(cc) of any material affili-*
10 *ation or contractual relationship*
11 *of the investment adviser or affili-*
12 *ates thereof in the security or*
13 *other property,*

14 *“(dd) of the manner, and*
15 *under what circumstances, any*
16 *information relating to the partic-*
17 *ipant or beneficiary which is pro-*
18 *vided under the program will be*
19 *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 for
3 the provision of advice by another
4 adviser, that could have no mate-
5 rial affiliation with, and could re-
6 ceive no fees or other compensa-
7 tion, in connection with the secu-
8 rity or other property, and

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

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

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

21 “(cc) provides, without
22 charge, accurate information to
23 the recipient of the advice upon
24 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 in-
9 formation.

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 pro-
19 gram, in accordance with all applica-
20 ble securities laws,

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

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

1 *thereof in connection with the sale, ac-*
2 *quisition, or holding of the security or*
3 *other property is reasonable, and*

4 “(IV) *the terms of the sale, acqui-*
5 *sition, or holding of the security or*
6 *other property are at least as favorable*
7 *to the plan as an arm’s length trans-*
8 *action would be.*

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

11 “(I) *IN GENERAL.—The require-*
12 *ments of this clause are met with re-*
13 *spect to the program if the notification*
14 *required to be provided to participants*
15 *and beneficiaries under clause (vii)(I)*
16 *is written in a clear and conspicuous*
17 *manner and in a manner calculated to*
18 *be understood by the average plan par-*
19 *ticipant and is sufficiently accurate*
20 *and comprehensive to reasonably ap-*
21 *prise such participants and bene-*
22 *ficiaries of the information required to*
23 *be provided in the notification.*

24 “(II) *MODEL FORM FOR DISCLO-*
25 *SURE OF FEES AND OTHER COMPENSA-*

1 TION.—*The Secretary shall issue a*
 2 *model form for the disclosure of fees*
 3 *and other compensation required in*
 4 *clause (vii)(I)(bb) which meets the re-*
 5 *quirements of subclause (I).*

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

22 “(D) *DEFINITIONS.—For purposes of this*
 23 *paragraph—*

24 “(i) *AFFILIATE.—The term ‘affiliate’*
 25 *means, in connection with any other person,*

1 any person directly or indirectly (through
2 one or more intermediaries) controlling,
3 controlled by, or under common control
4 with such other person, or any officer, direc-
5 tor, agent, or employee of, or partner with,
6 such other person.

7 “(ii) REGISTERED REPRESENTA-
8 TIVE.—The term ‘registered representative’
9 of another entity means a person described
10 in section 3(a)(18) of the Securities Ex-
11 change Act of 1934 (15 U.S.C. 78c(a)(18))
12 (substituting the entity for the broker or
13 dealer referred to in such section) or a per-
14 son described in section 202(a)(17) of the
15 Investment Advisers Act of 1940 (15 U.S.C.
16 80b–2(a)(17)) (substituting the entity for
17 the investment adviser referred to in such
18 section).

19 “(iii) PLAN INVESTMENT PROVIDER.—
20 The term ‘plan investment provider’ means
21 any person (or any person affiliated with
22 such person) that creates or manages any
23 investment in which any individual ac-
24 count plan invests. Such term does not in-
25 clude—

1 “(I) a plan sponsor (or an affil-
2 iate thereof) with respect to any invest-
3 ment created or managed by the plan
4 sponsor (or affiliate), if only employee
5 benefit plans maintained by such plan
6 sponsor or an affiliate thereof invest in
7 such investments,

8 “(II) any person who makes the
9 investment available to the plan, or
10 any participant or beneficiary in the
11 plan, as a part of a portfolio of invest-
12 ment options, to the extent that the in-
13 vestment options are created and man-
14 aged by a person who is not an affil-
15 iate of the person making such port-
16 folio available, and

17 “(III) any person, solely by rea-
18 son of authorization by a participant
19 or beneficiary in the plan of such per-
20 son to exercise control over the assets
21 in the participant’s or beneficiary’s ac-
22 count in such plan, if such assets are
23 not invested in any investments cre-
24 ated or managed by such person (or an
25 affiliate thereof).

1 “(iv) *FEEES OR OTHER COMPENSA-*
2 *TION.—The term ‘fees or other compensa-*
3 *tion’ includes money or any other thing of*
4 *monetary value (for example, gifts, awards,*
5 *and trips) received, or to be received, di-*
6 *rectly from the plan or plan sponsor or in-*
7 *directly (i.e., from any source other than the*
8 *plan or the plan sponsor) by the investment*
9 *adviser or any affiliate thereof in connec-*
10 *tion with the advice to be provided pursu-*
11 *ant to the arrangement or because of the in-*
12 *vestment adviser’s or any affiliate’s position*
13 *with the plan. Fees or other compensation*
14 *may be expressed in terms of a monetary*
15 *amount, percentage of the plan’s assets, or*
16 *per capita charge for each participant or*
17 *beneficiary of the plan. The manner in*
18 *which compensation or fees are expressed*
19 *shall contain sufficient information to en-*
20 *able the plan fiduciary to evaluate the rea-*
21 *sonableness of such compensation or fees.”.*

22 **(b) FIDUCIARY DUTIES WITH RESPECT TO INVEST-**
23 **MENT ADVICE.—**

1 (1) *IN GENERAL.*—Section 404(a) of such Act
2 (29 U.S.C. 1104(a)) is amended by adding at the end
3 the following new paragraph:

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

12 “(B) *The independent investment adviser providing*
13 *investment advice to a plan or to a participant or bene-*
14 *ficiary shall provide, before a reasonable period prior to the*
15 *initial provision of the advice, a written notification—*

16 “(i) *of the past performance and historical rates*
17 *of return of the investment options available with re-*
18 *spect to the plan and comparisons of such options to*
19 *relevant benchmarks, and*

20 “(ii) *that the investment adviser is acting as a*
21 *fiduciary of the plan in connection with the provision*
22 *of the advice.*

23 “(C) *Nothing in this paragraph shall be construed to*
24 *exempt a plan sponsor or other person who is a fiduciary*
25 *from any requirement of this part for the prudent selection*

1 *and periodic review of an independent investment adviser*
2 *with whom the plan sponsor or other person enters into an*
3 *arrangement for the provision of investment advice referred*
4 *to in section 3(21)(A)(ii), except that any such requirement*
5 *shall not be construed to preclude reasonable reliance by the*
6 *plan sponsor or other person on the representation of any*
7 *person that such person making the representation meets*
8 *the requirements of section 3(43)(A). The plan sponsor and*
9 *any other person who is a fiduciary (other than the inde-*
10 *pendent investment adviser) has no duty under this part*
11 *to monitor the specific investment advice given by the inde-*
12 *pendent investment adviser to any particular recipient of*
13 *the advice and shall not be liable under this title for any*
14 *loss, or by reason of any breach, which results from such*
15 *specific investment advice given by the independent invest-*
16 *ment adviser.*

17 “(D) *Nothing in this part shall be construed to pre-*
18 *clude the use of plan assets to pay for reasonable expenses*
19 *in providing investment advice referred to in section*
20 *3(21)(A)(ii).”.*

21 (2) *REPORT ON PRIOR ADVISORY OPINIONS AND*
22 *EXCEPTIONS.—The Secretary of Labor shall, as soon*
23 *as practicable after the date of the enactment of this*
24 *Act—*

1 (A) review each Advisory Opinion and ex-
 2 ception described in section 404(a)(3)(E)(i) of
 3 the Employee Retirement Income Security Act of
 4 1974 (as added by this paragraph (1)) to deter-
 5 mine the extent to which such Advisory Opinion
 6 or exception fails to adequately serve the interests
 7 of participants and beneficiaries and to be ade-
 8 quately protective of the rights of participants
 9 and beneficiaries, and

10 (B) submit a report to each House of the
 11 Congress describing the extent of any such failure
 12 by any such Advisory Opinion or exception.

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

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

16 (2) by striking subsection (b)(14)(B) and insert-
 17 ing the following:

18 “(B) the investment advice is provided by
 19 an independent investment adviser (as defined
 20 in section 3(43)).”.

21 (d) REGULATORY AUTHORITY.—The Secretary of
 22 Labor may issue regulations providing that an investment
 23 adviser can still be considered as meeting the requirements
 24 of section 3(43)(B) of the Employee Retirement Income Se-
 25 curity Act of 1974 despite the receipt of a *de minimus*

1 *amount of compensation that fails to meet the requirements*
 2 *of section 3(43)(B)(iii) of such Act due to the existence of*
 3 *previously existing contracts.*

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

7 **SEC. 203. EXPANSION OF OUTREACH TO PROMOTE RETIRE-**
 8 **MENT INCOME SAVINGS TO INCLUDE PRO-**
 9 **MOTION OF EDUCATION ON FINANCIAL LIT-**
 10 **ERACY WITH RESPECT TO INVESTMENT FOR**
 11 **RETIREMENT.**

12 *Section 516 of the Employee Retirement Income Secu-*
 13 *rity Act of 1974 (29 U.S.C. 1146) is amended—*

14 *(1) in subsection (b), by inserting after “creation*
 15 *of educational materials,” the following: “promotion*
 16 *of education in financial literacy with respect to in-*
 17 *vestment for retirement as provided in subsection*
 18 *(e),”;*

19 *(2) by redesignating subsection (e) as subsection*
 20 *(f); and*

21 *(3) by inserting after subsection (d) the following*
 22 *new subsection:*

23 *“(e) PROMOTION OF EDUCATION IN FINANCIAL LIT-*
 24 *ERACY WITH RESPECT TO INVESTMENT FOR RETIRE-*
 25 *MENT.—The Secretary, in consultation with the Secretary*

1 *of Education and the Secretary of the Treasury, shall estab-*
2 *lish a program under which—*

3 “(1) employees and the general public are pro-
4 *vided with information and materials—*

5 “(A) informing them about resources avail-
6 *able for attaining financial literacy with respect*
7 *to investment for retirement,*

8 “(B) effectively educating them about the
9 *importance of, and appropriate techniques with*
10 *respect to, personal finance, saving for retire-*
11 *ment, and choosing independent investment ad-*
12 *visers when managing their accounts under indi-*
13 *vidual account plans, and*

14 “(C) effectively educating them about debt
15 *obligations, the relationship of debt to savings,*
16 *and the potential consequences of debt with re-*
17 *spect to saving for retirement,*

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

22 “(3) appropriate standards of financial literacy
23 *of employees and the general public with respect to*
24 *investment for retirement are developed and published*
25 *for utilization under such program.”.*

1 (4) *STUDY AND REPORT TO THE CONGRESS.*—

2 (A) *IN GENERAL.*—*The Secretary of Labor*
3 *shall conduct a survey of ongoing efforts by the*
4 *Federal Government to assist employees and the*
5 *general public with attainment of financial lit-*
6 *eracy with respect to investment for retirement*
7 *and to educate them about the importance of,*
8 *and appropriate techniques with respect to, per-*
9 *sonal finance, debt obligations, saving for retire-*
10 *ment, and choosing independent investment ad-*
11 *visers when managing their accounts under indi-*
12 *vidual account plans.*

13 (B) *REPORT.*—*Not later than 180 days*
14 *after the date of the enactment of this Act, the*
15 *Secretary shall submit a report to each House of*
16 *the Congress setting forth the results of the Sec-*
17 *retary's survey conducted pursuant to subpara-*
18 *graph (A), together with such recommendations*
19 *as the Secretary considers appropriate for im-*
20 *provement in efforts by the Federal Government*
21 *in assisting employees and the general public*
22 *with attainment of financial literacy in connec-*
23 *tion with investment for retirement and edu-*
24 *cating them about the importance of, and appro-*
25 *priate techniques with respect to, personal fi-*

1 nance, debt obligations, saving for retirement,
 2 and choosing independent investment advisers
 3 when managing their accounts under individual
 4 account plans.

5 **TITLE III—TRANSITIONAL FUND-**
 6 **ING RELIEF FOR DEFINED**
 7 **BENEFIT PLANS**

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

9 (a) *AMENDMENT TO ERISA.*—The last sentence of
 10 clause (ii) of section 303(h)(2)(D) of the Employee Retire-
 11 ment Income Security Act of 1974 (29 U.S.C.
 12 1083(h)(2)(D)(ii)) is amended to read as follows: “Such
 13 election, once made, may be revoked only with the consent
 14 of the Secretary, except that any election in effect for a plan
 15 with respect to a plan year beginning in 2009 may be re-
 16 voked for the plan year beginning in 2010 without such con-
 17 sent.”.

18 (b) *AMENDMENT TO IRC.*—The last sentence of clause
 19 (ii) of section 430(h)(2)(D) of the Internal Revenue Code
 20 of 1986 (relating to election to use yield curve) is amended
 21 to read as follows: “Such election, once made, may be re-
 22 voked only with the consent of the Secretary, except that
 23 any election in effect for a plan with respect to a plan year
 24 beginning in 2009 may be revoked for the plan year begin-
 25 ning in 2010 without such consent.”.

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
 2 *section shall apply to plan years beginning after December*
 3 *31, 2009.*

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

5 *The Secretary of the Treasury shall—*

6 (1) *make the final regulations issued under sec-*
 7 *tions 206(g) and 303 of the Employee Retirement In-*
 8 *come Security Act of 1974 and sections 430 and 436*
 9 *of the Internal Revenue Code of 1986 effective no ear-*
 10 *lier than plan years beginning after December 31,*
 11 *2009; and*

12 (2) *provide rules, for plan years beginning before*
 13 *the effective date of such final regulations, under*
 14 *which compliance with a reasonable interpretation of*
 15 *an applicable provision under section 206(g) or 303*
 16 *of the Employee Retirement Income Security Act of*
 17 *1974 or section 430 or 436 of the Internal Revenue*
 18 *Code of 1986 shall be treated as compliance with such*
 19 *provision.*

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

21 (a) *AMENDMENTS TO ERISA.*—

22 (1) *IN GENERAL.*—*Clause (ii) of section*
 23 *303(b)(1)(A) of the Employee Retirement Income Se-*
 24 *curity Act of 1974 (29 U.S.C. 1083(b)(1)(A)(ii)) is*

1 *amended by striking “plan-related expenses” and in-*
 2 *serting “plan-related administrative expenses”.*

3 (2) *CONFORMING AMENDMENT.—Subclause (II)*
 4 *of section 303(i)(2)(A)(i) of such Act (29 U.S.C.*
 5 *1083(i)(2)(A)(i)(II)) is amended by striking “plan-re-*
 6 *lated expenses” and inserting “plan-related adminis-*
 7 *trative expenses”.*

8 (b) *AMENDMENTS TO IRC.—*

9 (1) *IN GENERAL.—Clause (ii) of section*
 10 *430(b)(1)(A) of the Internal Revenue Code of 1986*
 11 *(relating to target normal cost) is amended by strik-*
 12 *ing “plan-related expenses” and inserting “plan-re-*
 13 *lated administrative expenses”.*

14 (2) *CONFORMING AMENDMENT.—Subclause (II)*
 15 *of section 430(i)(2)(A)(i) of such Code is amended by*
 16 *striking “plan-related expenses” and inserting “plan-*
 17 *related administrative expenses”.*

18 (c) *EFFECTIVE DATE.—The amendments made by this*
 19 *section shall take effect as if included in the enactment of*
 20 *paragraphs (1)(A), (1)(F)(i), (2)(A), and (2)(F)(i) of sec-*
 21 *tion 101(b) of the Worker, Retiree, and Employer Recovery*
 22 *Act of 2008 (Public Law 110-458; 122 Stat. 5093).*

1 **SEC. 304. INFORMATION REPORTING.**

2 (a) *IN GENERAL.*—Paragraph (1) of section 4010(b)
3 of the Employee Retirement Income Security Act of 1974
4 (29 U.S.C. 1310(b)(1)) is amended to read as follows:

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

6 “(A) the funding target attainment percent-
7 age (as defined in subsection (d)) at the end of
8 the preceding plan year of a plan maintained by
9 the contributing sponsor or any member of its
10 controlled group is less than 80 percent; or

11 “(B) the aggregate unfunded vested benefits
12 (as determined under section 4006(a)(3)(E)(iii))
13 of plans maintained by the contributing sponsor
14 and the members of its controlled group exceed
15 \$50,000,000 (disregarding plans with no un-
16 funded vested benefits);”.

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

19 **SEC. 305. 5-YEAR EXTENSION OF AUTOMATIC AMORTIZA-**
20 **TION EXTENSION PERIOD FOR MULTIEM-**
21 **PLOYER PLANS.**

22 (a) *ERISA AMENDMENTS.*—Section 304(d) of the Em-
23 ployee Retirement Income Security Act of 1974 (29 U.S.C.
24 1084(d)) is amended—

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

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

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

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

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

10 (c) *EFFECTIVE DATE.*—The amendments made by this
 11 section shall apply with respect to applications for exten-
 12 sion filed on or after the date of the enactment of this Act.

13 **SEC. 306. PENSION PLAN MAINTAINED BY CHRISTIAN**
 14 **SCHOOLS INTERNATIONAL TREATED AS**
 15 **CHURCH PLAN.**

16 (a) *IN GENERAL.*—For purposes of title I of the *Em-*
 17 *ployee Retirement Income Security Act of 1974 and the In-*
 18 *ternal Revenue Code of 1986, any pension plan maintained*
 19 *by Christian Schools International as of January 1, 2009,*
 20 *shall be treated as a church plan within the meaning of*
 21 *section 3(33) of such Act and section 414(e) of such Code*
 22 *which is maintained by an organization described in sec-*
 23 *tion 3(33)(C)(ii)(II) of such Act and section*
 24 *414(e)(3)(B)(ii) of such Code.*

1 (b) *EFFECTIVE DATE.*—*This section shall apply to*
 2 *plan years beginning on or after January 1, 2007.*

3 **SEC. 307. SPECIAL RULE FOR DETERMINING ADEQUATE**
 4 **CONSIDERATION IN CONNECTION WITH THE**
 5 **PURCHASE AND SALE OF QUALIFYING EM-**
 6 **PLOYER SECURITIES.**

7 (a) *IN GENERAL.*—*Section 3(18) of the Employee Re-*
 8 *tirement Income Security Act of 1974 (29 U.S.C. 1002(18))*
 9 *is amended—*

10 (1) *by redesignating clauses (i) and (ii) of sub-*
 11 *paragraph (A) as subclauses (I) and (II), respectively,*
 12 *and by redesignating subparagraphs (A) and (B) as*
 13 *clauses (i) and (ii), respectively;*

14 (2) *by inserting “(A)” after “(18)”;* and

15 (3) *by adding at the end the following new sub-*
 16 *paragraph:*

17 “(B) *In the case of a plan described in section*
 18 *407(d)(3)(A) which was in existence on the date of the en-*
 19 *actment of this Act, if the valuation set for the purchase*
 20 *or sale by the plan of a qualifying employer security (as*
 21 *defined in section 407(d)(5)) is set at a price which has*
 22 *not been found by the Secretary to be in violation of this*
 23 *Act and which is book value computed annually in accord-*
 24 *ance with generally accepted accounting principles and the*
 25 *provisions of the plan, and if the valuations set for all prior*

1 purchases or sales by the plan of qualifying employer secu-
 2 rities have been consistently so priced, then all such valu-
 3 ations for qualifying employer securities shall be deemed
 4 to be adequate consideration within the meaning of sub-
 5 paragraph (A).”.

6 (b) *EFFECTIVE DATE.*—The amendments made by this
 7 section shall apply to purchases and sales of qualifying em-
 8 ployer securities on or after September 2, 1974.

9 **SEC. 308. EXTENDED PERIOD FOR SINGLE-EMPLOYER DE-**
 10 **FINED BENEFIT PLANS TO AMORTIZE THE**
 11 **SHORTFALL AMORTIZATION BASE FOR 2009**
 12 **AND 2010.**

13 (a) *AMENDMENTS TO ERISA.*—

14 (1) *IN GENERAL.*—Paragraph (2) of section
 15 303(c) of the Employee Retirement Income Security
 16 Act of 1974 is amended by adding at the end the fol-
 17 lowing new subparagraph:

18 “(D) *SPECIAL RULE FOR 2009 AND 2010.*—In
 19 the case of the shortfall amortization base of the
 20 plan for any plan year beginning in 2009 or
 21 2010 (hereafter in this subparagraph referred to
 22 as the ‘base year’)—

23 “(i) *DETERMINATION OF INSTALL-*
 24 *MENTS.*—The shortfall amortization install-
 25 ments are—

1 “(I) in the case of the last 7 plan
 2 years in the 9-plan-year period begin-
 3 ning with the base year, the amounts
 4 necessary to amortize the shortfall am-
 5 ortization base of the plan for the base
 6 year in level annual installments over
 7 such last 7 plan years, and

8 “(II) in the case of the first 2
 9 plan years in such 9-plan-year period,
 10 interest on such shortfall amortization
 11 base (determined as provided in sub-
 12 paragraph (C)).

13 “(ii) *SHORTFALL INSTALLMENT.*—The
 14 shortfall amortization installment for any
 15 plan year in the 9-plan-year period under
 16 clause (i) with respect to such shortfall am-
 17 ortization base is the annual installment
 18 determined under clause (i) for that year
 19 for that base.”.

20 (2) *CONFORMING AMENDMENT.*—Paragraph (1)
 21 of section 303(c) of such Act is amended by striking
 22 “the shortfall amortization bases for such plan year
 23 and each of the 6 preceding plan years” and inserting
 24 “any shortfall amortization base which has not been
 25 fully amortized under this subsection”.

1 **(b) *EFFECTIVE DATE.***—*The amendments made by this*
2 *section shall apply to plan years beginning after December*
3 *31, 2008.*

Union Calendar No. 289

11TH CONGRESS
2^D Session

H. R. 2989

[Report No. 111-244, Part I]

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.

MAY 28, 2010

Discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed