meet its financial obligations and food, medicine and life itself have been hung in the balance for 8 million people.

Let us not make the same mistake and ignore another country's turmoil, until a disaster too great for the imagination or easy recovery unfolds.

The people of Haiti need food, medicine and funds to combat an HIV infection rate of 4 percent of the population, an infant mortality rate of 74 deaths out of every 1,000 babies born and to improve their quality of life.

Mr. Speaker, the people of Haiti have voted and they know who they want to govern them. Let us respect that and allow the dollars for food and medicine to flow.

LAYING ON THE TABLE HOUSE RESOLUTIONS 179, 182, 217, 220, 236, 237, 258, 267 AND 268

Ms. PRYCE of Ohio. Mr. Speaker, I ask unanimous consent to lay on the table House Resolutions 179, 182, 217, 220, 236, 237, 258, 267 and 268.

The SPEAKER pro tempore (Mr. HANSEN). Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

RETIREMENT SECURITY ADVICE ACT OF 2001

Ms. PRYCE of Ohio. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 288 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 288

Resolved, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the bill (H.R. 2269) to amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to promote the provision of retirement investment advice to workers managing their retirement income assets. The bill shall be considered as read for amendment. In lieu of the amendments recommended by the Committee on Education and the Workforce and the Committee on Ways and Means now printed in the bill, the amendment in the nature of a substitute printed in part A of the report of the Committee on Rules accompanying this resolution shall be considered as adopted. The previous question shall be considered as ordered on the bill, as amended, and on any further amendment thereto to final passage without intervening motion except: (1) one hour and 40 minutes of debate on the bill, as amended, with one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Education and the Workforce and 40 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means; (2) the further amendment printed in part B of the report of the Committee on Rules, if offered by Representative George Miller of California or his designee, which shall be in order without intervention of any point of order, shall be considered as read, and shall be separately debatable for one hour equally divided and controlled by the proponent and an opponent; and (3) one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentlewoman from Ohio (Ms. PRYCE) is recognized for 1 hour.

Ms. PRYCE of Ohio. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Texas (Mr. FROST), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, House Resolution 288 is an appropriate but fair rule providing for the consideration of H.R. 2269, the Retirement Security Advice Act of 2001, and it is consistent with previous rules that our committee has reported and the House has adopted on bills affecting tax policy.

This rule provides for 100 minutes of general debate in the House with 60 minutes equally divided and controlled by the gentleman from Ohio (Chairman BOEHNER) and the ranking member of the Committee on Education and the Workforce, the gentleman from California (Mr. GEORGE MILLER). The remaining 40 minutes are equally divided between the gentleman from California (Mr. THOMAS) and the ranking minority member of the Committee on Ways and Means, the gentleman from New York (Mr. RANGEL).

In lieu of the amendments recommended by the Committee on Education and the Workforce and the Committee on Ways and Means, the amendment printed in Part A of the Committee on Rules report accompanying this resolution shall be considered as adopted.

I would simply note for my colleagues that this Part A amendment combines the provisions reported by the respective committees into one amendment. After general debate, it will be in order to consider only the substitute amendment offered by the gentleman from California (Mr. GEORGE MILLER) or his designee, printed in Part B of the Committee on Rules report and is debatable for 1 hour.

Finally, the rule permits the minority to offer a motion to recommit, with or without instructions.

The resume waives all points of order against consideration of the bill as amended, as well as the amendment in the nature of a substitute.

Mr. Speaker, today in America more and more working men and women are investing. We are no longer living in a world where only the richest Americans participate in the stock market. Today's workers are using worker-directed or 401(k)-type plans to manage and grow their retirement funds. In fact, it is estimated that some 43 million workers are, in part, managing nearly $1.5 trillion dollars in assets through defined contribution plans.

Unfortunately, current law does not reflect the new world that we live in. For the average worker trying to get ahead, raising a family or simply pursuing the American dream in any way they choose, managing their retirement funds can be a daunting, difficult and sometimes costly task, and current law is keeping them from getting the direction that they need.

Back home, I know many young people who are in their early careers or newly married. I see them and their spouses trying to understand today's complex financial reality. And these are smart kids. They know that you can never be too young to begin planning for your future. But with a future that involves starting a family, purchasing a home and a car, planning for children's educational needs, understanding investments for retirement is just one more difficult piece of a very complicated puzzle.

Everyone who enters the workforce has dreams of one day returning to full-time private life. Some dream of a house on the shore or a ranch out west. Others dreams are more modest, a small home close to family and friends. But the common theme of all retirement dreams is security, comfort and a small reward for a lifetime's work.

Planning for retirement today is not like it was when our mothers and fathers and even some of us were new to the workforce. Retirement planning does not simply involve Social Security and a savings accounts. Today's retirement planning requires an understanding of the many investment options and their attendant risk and benefits.

To be sure, planning for the future through investment is a welcome aspect of our country's financial progress and the continued expansion of options for American workers. But we would be remiss if we did not make sure that the law kept up with these widening options.

We must recognize that with the wealth of investment options available to workers, there must also be options for advice and direction. Workers need access to sound advice to help them maximize their retirement security as well as minimize their risk.

H.R. 2269, the Retirement Security Advice Act responds to this need and provides Americans with access to this help.

It allows employers to provide their workers with access to high quality, professional investment advice. It retains critical safeguards and includes new protections to ensure that participants will receive advice solely in their best interests.

Advice will be provided by fiduciary advisors who will be personally liable for failure to act solely in the interest of a worker and subject to both criminal and civil sanctions through the Department of Labor for any breach of their fiduciary duty. It is also important to note that all existing securities and State insurance protections will continue to apply as well.

H.R. 2269 also includes a strict, plain-language disclosure requirement to inform participants about any and all potential fees or possible conflicts of interest when advice is first given. Finally, it works to educate and empower

workers who have full control over their investment decisions and help to close the investment advice gap.

Mr. Speaker, like President Bush, I too trust Americans to manage their own money. Indeed, everyone should be a part owner in the American dream. This legislation will finally allow employers to sponsor investment advice for their workers and empower them to make decisions based on solid and experienced judgment. Today's workers have more choices for their future. Let us make sure they have the tools to know which choice is best for them.

Mr. Speaker, I urge all my colleagues to support this rule and the underlying legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume.

(Mr. FROST asked and was given permission to revise and extend his remarks.)

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume, and thank my colleague, the gentlewoman from Ohio (Ms. PRYCE) for yielding me the customary 30 minutes.

Mr. Speaker, both the underlying bill and the Democratic substitute address an issue of great importance to the millions of Americans who will depend upon participant-directed pension accounts for their retirement income.

Nowadays, fewer and fewer employees have traditional pension plans. That means that more and more will depend heavily on investments for their retirement income. Currently, approximately 42 million workers participate in such accounts.

It is very important that these workers have access to sound financial planning and advice to help them make the most of their investments. It is also critical that the advice they receive is unbiased and in their best interests, not for the benefit of the advisor or counselor or the businesses they represent.

The Democratic substitute makes important improvements in the underlying bill. Specifically, the Andrews-Rangel substitute allows employees to receive investment advice and education from their employers, while still being protected from conflicts of interest and unqualified investment advisors.

The rule provides an hour and 40 minutes of debate on the bill and another hour on the substitute. Let us pass this rule so we may get on with the debate of this issue of importance to the American worker.

Mr. Speaker, I have no further speakers, and I yield back the balance of my time.

Ms. PRYCE of Ohio. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

□ 1100

Mr. BOEHNER. Mr. Speaker, pursuant to House Resolution 288, I call up the bill (H.R. 2269) to amend title 1 of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to promote the provision of retirement investment advice to workers managing their retirement income assets, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. HANSEN). Pursuant to House Resolution 288, the bill is considered read for amendment.

The text of H.R. 2269 is as follow:

H.R. 2269

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Retirement Security Advice Act of 2001''.

SEC. 2. PROHIBITED TRANSACTION EXEMPTION FOR THE PROVISION OF INVESTMENT ADVICE.

(a) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) IN GENERAL.—Section 408(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)) is amended by adding at the end the following new paragraph:

''(14) If the requirements of subsection (g) are met—

''(A) the provision of investment advice referred to in section 3(21)(A)(ii) provided by a fiduciary adviser (as defined in subsection (g)(4)(A)) to an employee benefit plan or to a participant or beneficiary of an employee benefit plan,

''(B) the sale, acquisition, or holding of securities or other property (including any lending of money or other extension of credit associated with the sale, acquisition, or holding of securities or other property) pursuant to such investment advice, and

''(C) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of such investment advice.''.

(2) REQUIREMENTS.—Section 408 of such Act is amended further by adding at the end the following new subsection:

''(g)(1) The requirements of this subsection are met in connection with the provision of advice referred to in section 3(21)(A)(ii), provided to an employee benefit plan or a participant or beneficiary of an employee benefit plan by a fiduciary adviser with respect to such plan, in connection with any sale or acquisition of a security or other property for purposes of investment of amounts held by such plan, if—

''(A) in the case of the initial provision of such advice with regard to a security or other property, by such fiduciary adviser to such plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of such advice, at the time of or before the initial provision of such advice, a clear and conspicuous description, in writing (including by means of electronic communication), of—

''(i) all fees or other compensation relating to such advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of such advice or in connection with such acquisition or sale,

''(ii) any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in such security or other property,

''(iii) any limitation placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to any such sale or acquisition, and

''(iv) the types of services offered by the fiduciary advisor in connection with the provision of investment advice by the fiduciary adviser,

''(B) in the case of the initial or any subsequent provision of such advice to such plan, participant, or beneficiary, the fiduciary adviser, throughout the 1-year period following the provision of such advice, maintains the information described in clauses (i) through (iv) of subparagraph (A) in currently accurate form for availability, upon request and without charge, to the recipient of such advice,

''(C) the fiduciary adviser provides appropriate disclosure, in connection with any such acquisition or sale, in accordance with all applicable securities laws,

''(D) such acquisition or sale occurs solely at the direction of the recipient of such advice,

''(E) the compensation received by the fiduciary adviser and affiliates thereof in connection with such acquisition or sale is reasonable, and

''(F) the terms of such acquisition or sale are at least as favorable to such plan as an arm's length transaction would be.

''(2) A fiduciary adviser referred to in paragraph (1) who has provided advice referred to in such paragraph shall, for a period of not less than 6 years after the provision of such advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this subsection and of subsection (b)(14) have been met. A transaction prohibited under section 406 shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

''(3)(A) Subject to subparagraph (B), a plan sponsor or other person who is a fiduciary shall not be treated as failing to meet the requirements of this part solely by reason of the provision of investment advice referred to in section 3(21)(A)(ii) (or solely by reason of contracting for or otherwise arranging for the provision of such investment advice), if—

''(i) such advice is provided by a fiduciary adviser pursuant to an arrangement between such plan sponsor or other fiduciary and such fiduciary adviser for the provision by such fiduciary adviser of investment advice referred to in such section, and

''(ii) the terms of such arrangement require compliance by the fiduciary adviser with the requirements of this subsection.

''(B) Nothing in subparagraph (A) shall be construed to exempt a plan sponsor or other person who is a fiduciary from any requirement of this part for the prudent selection and periodic review of a fiduciary adviser with whom the plan sponsor or other person enters into an arrangement for the provision of advice referred to in section 3(21)(A)(ii). Such plan sponsor or other person who is a fiduciary has no duty under this part to monitor the specific investment advice given by the fiduciary adviser to any particular recipient of such advice.

''(C) Nothing in this part shall be construed to preclude the use of plan assets to pay for reasonable expenses in providing investment advice referred to in section 3(21)(A)(ii).

''(4) For purposes of this subsection and subsection (b)(14)—

''(A) The term 'fiduciary adviser' means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by such person to

the plan or to a participant or beneficiary and who is—

''(i) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

''(ii) a bank or similar financial institution referred to in section 408(b)(4),

''(iii) an insurance company qualified to do business under the laws of a State,

''(iv) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

''(v) an affiliate of a person described in any of clauses (i) through (iv), or

''(vi) an employee, agent, or registered representative of a person described in any of clauses (i) through (v).

''(B) The term 'affiliate' means an affiliated person, as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3)).

''(C) The term 'registered representative' means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) or section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)).''.

(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—Subsection (d) of section 4975 of the Internal Revenue Code of 1986 (relating to exemptions from tax on prohibited transactions) is amended—

(A) in paragraph (14), by striking ''or'' at the end;

(B) in paragraph (15), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following new paragraph:

''(16) If the requirements of subsection (f)(7) are met—

''(A) the provision of investment advice referred to in subsection (e)(3)(B) provided by a fiduciary adviser (as defined in subsection (f)(7)(C)(i)) to a plan or to a participant or beneficiary of a plan,

''(B) the sale, acquisition, or holding of securities or other property (including any extension of credit associated with the sale, acquisition, or holding of securities or other property) pursuant to such investment advice, and

''(C) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of such investment advice.''.

(2) REQUIREMENTS.—Subsection (f) of such section 4975 (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

''(7) REQUIREMENTS FOR EXEMPTION FOR INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—

''(A) IN GENERAL.—The requirements of this paragraph are met in connection with the provision of advice referred to in subsection (e)(3)(B), provided to a plan or a participant or beneficiary of a plan by a fiduciary adviser with respect to such plan, in connection with any sale or acquisition of a security or other property for purposes of investment of amounts held by such plan, if—

''(i) in the case of the initial provision of such advice by such fiduciary adviser to such plan, participant, or beneficiary, the fiduciary adviser provides to the plan, participant, or beneficiary, at the time of or before the initial provision of such advice, a description, in writing or by means of electronic communication, of—

''(I) all fees or other compensation relating to such advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of such advice or in connection with such acquisition or sale,

''(II) any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in such security or other property,

''(III) any limitation placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to any such sale or acquisition, and

''(IV) the types of services offered by the fiduciary advisor in connection with the provision of investment advice by the fiduciary adviser,

''(ii) in the case of the initial or any subsequent provision of such advice to such plan, participant, or beneficiary, the fiduciary adviser, throughout the 1-year period following the provision of such advice, maintains the information described in subclauses (I) through (IV) of clause (i) in currently accurate form for availability, upon request and without charge, to the recipient of such advice,

''(iii) the fiduciary adviser provides appropriate disclosure, in connection with any such acquisition or sale, in accordance with all applicable securities laws,

''(iv) such acquisition or sale occurs solely at the discretion of the recipient of such advice,

''(v) the compensation received by the fiduciary adviser and affiliates thereof in connection with such acquisition or sale is reasonable, and

''(vi) the terms of such acquisition or sale are at least as favorable to such plan as an arm's length transaction would be.

''(B) MAINTENANCE OF RECORDS.—A fiduciary adviser referred to in subparagraph (A) who has provided advice referred to in such subparagraph shall, for a period of not less than 6 years after the provision of such advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this subsection and of subsection (d)(16) have been met. A prohibited transaction described in subsection (c)(1) shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

''(C) DEFINITIONS.—For purposes of this paragraph and subsection (d)(16)—

''(i) FIDUCIARY ADVISER.—The term 'fiduciary adviser' means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by such person to the plan or to a participant or beneficiary and who is—

''(I) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

''(II) a bank or similar financial institution referred to in subsection (d)(4),

''(III) an insurance company qualified to do business under the laws of a State,

''(IV) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

''(V) an affiliate of a person described in any of subclauses (I) through (IV), or

''(VI) an employee, agent, or registered representative of a person described in any of subclauses (I) through (V).

''(ii) AFFILIATE.—The term 'affiliate' means an affiliated person, as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3)).

''(iii) REGISTERED REPRESENTATIVE.—The term 'registered representative' means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) or section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)).''.

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall apply with respect to advice referred to in section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 or section 4975(e)(3)(B) of the Internal Revenue Code of 1986 provided on or after January 1, 2002.

The SPEAKER pro tempore. In lieu of the amendments recommended by the Committees on Education and the Workforce and Ways and Means printed in the bill, the amendment in the nature of a substitute printed in part A of House Report 107–289 is adopted.

The text of H.R. 2269, as amended pursuant to House Resolution 288, is as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Retirement Security Advice Act of 2001''.

SEC. 2. PROHIBITED TRANSACTION EXEMPTION FOR THE PROVISION OF INVESTMENT ADVICE.

(a) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) EXEMPTION FROM PROHIBITED TRANSACTIONS.—Section 408(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)) is amended by adding at the end the following new paragraph:

''(14)(A) Any transaction described in subparagraph (B) in connection with the provision of investment advice described in section 3(21)(A)(ii), in any case in which—

''(i) the investment of assets of the plan is subject to the direction of plan participants or beneficiaries,

''(ii) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

''(iii) the requirements of subsection (g) are met in connection with the provision of the advice.

''(B) The transactions described in this subparagraph are the following:

''(i) the provision of the advice to the plan, participant, or beneficiary;

''(ii) the sale, acquisition, or holding of a security or other property (including any lending of money or other extension of credit associated with the sale, acquisition, or holding of a security or other property) pursuant to the advice; and

''(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.''.

(2) REQUIREMENTS.—Section 408 of such Act is amended further by adding at the end the following new subsection:

''(g) REQUIREMENTS RELATING TO PROVISION OF INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—

''(1) IN GENERAL.—The requirements of this subsection are met in connection with the provision of investment advice referred to in section 3(21)(A)(ii), provided to an employee benefit plan or a participant or beneficiary of an employee benefit plan by a fiduciary adviser with respect to the plan in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if—

''(A) in the case of the initial provision of the advice with regard to the security or

other property by the fiduciary adviser to the plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of the advice, at a time reasonably contemporaneous with the initial provision of the advice, a written notification (which may consist of notification by means of electronic communication)—

''(i) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

''(ii) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

''(iii) of any limitation placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to any such sale, acquisition, or holding of a security or other property,

''(iv) of the types of services provided by the fiduciary advisor in connection with the provision of investment advice by the fiduciary adviser, and

''(v) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice,

''(B) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

''(C) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

''(D) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

''(E) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.

''(2) STANDARDS FOR PRESENTATION OF INFORMATION.—The notification required to be provided to participants and beneficiaries under paragraph (1)(A) shall be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

''(3) EXEMPTION CONDITIONED ON CONTINUED AVAILABILITY OF REQUIRED INFORMATION ON REQUEST FOR 1 YEAR.—The requirements of paragraph (1)(A) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in paragraph (1) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in clauses (i) through (iv) of subparagraph (A) in currently accurate form and in the manner described in paragraph (2) or fails—

''(A) to provide, without charge, such currently accurate information to the recipient of the advice no less than annually,

''(B) to make such currently accurate information available, upon request and without charge, to the recipient of the advice, or

''(C) in the event of a material change to the information described in clauses (i) through (iv) of paragraph (1)(A), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

''(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser referred to in paragraph (1) who has provided advice referred to in such paragraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this subsection and of subsection (b)(14) have been met. A transaction prohibited under section 406 shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

''(5) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—

''(A) IN GENERAL.—Subject to subparagraph (B), a plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this part solely by reason of the provision of investment advice referred to in section 3(21)(A)(ii) (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if—

''(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

''(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this subsection, and

''(iii) the terms of the arrangement include a written acknowledgment by the fiduciary adviser that the fiduciary adviser is a fiduciary of the plan with respect to the provision of the advice.

''(B) CONTINUED DUTY OF PRUDENT SELECTION OF ADVISER AND PERIODIC REVIEW.—Nothing in subparagraph (A) shall be construed to exempt a plan sponsor or other person who is a fiduciary from any requirement of this part for the prudent selection and periodic review of a fiduciary adviser with whom the plan sponsor or other person enters into an arrangement for the provision of advice referred to in section 3(21)(A)(ii). The plan sponsor or other person who is a fiduciary has no duty under this part to monitor the specific investment advice given by the fiduciary adviser to any particular recipient of the advice.

''(C) AVAILABILITY OF PLAN ASSETS FOR PAYMENT FOR ADVICE.—Nothing in this part shall be construed to preclude the use of plan assets to pay for reasonable expenses in providing investment advice referred to in section 3(21)(A)(ii).

''(6) DEFINITIONS.—For purposes of this subsection and subsection (b)(14)—

''(A) FIDUCIARY ADVISER.—The term 'fiduciary adviser' means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

''(i) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

''(ii) a bank or similar financial institution referred to in section 408(b)(4),

''(iii) an insurance company qualified to do business under the laws of a State,

''(iv) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

''(v) an affiliate of a person described in any of clauses (i) through (iv), or

''(vi) an employee, agent, or registered representative of a person described in any of clauses (i) through (v) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

''(B) AFFILIATE.—The term 'affiliate' of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3))).

''(C) REGISTERED REPRESENTATIVE.—The term 'registered representative' of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the investment adviser referred to in such section).''.

(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) EXEMPTION FROM PROHIBITED TRANSACTIONS.—Subsection (d) of section 4975 of the Internal Revenue Code of 1986 (relating to exemptions from tax on prohibited transactions) is amended—

(A) in paragraph (14), by striking ''or'' at the end;

(B) in paragraph (15), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following new paragraph:

''(16) any transaction described in subsection (f)(7)(A) in connection with the provision of investment advice described in subsection (e)(3)(B), in any case in which—

''(A) the investment of assets of the plan is subject to the direction of plan participants or beneficiaries,

''(B) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

''(C) the requirements of subsection (f)(7)(B) are met in connection with the provision of the advice.''

(2) ALLOWED TRANSACTIONS AND REQUIREMENTS.—Subsection (f) of such section 4975 (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

''(7) PROVISIONS RELATING TO INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—

''(A) TRANSACTIONS ALLOWABLE IN CONNECTION WITH INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—The transactions referred to in subsection (d)(16), in connection with the provision of investment advice by a fiduciary adviser, are the following:

''(i) the provision of the advice to the plan, participant, or beneficiary;

''(ii) the sale, acquisition, or holding of a security or other property (including any lending of money or other extension of credit associated with the sale, acquisition, or holding of a security or other property) pursuant to the advice; and

''(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.

''(B) REQUIREMENTS RELATING TO PROVISION OF INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—The requirements of this subparagraph (referred to in subsection (d)(16)(C)) are met in connection with the provision of investment advice referred to in subsection (e)(3)(B), provided to a plan or a participant or beneficiary of a plan by a fiduciary adviser with respect to the plan in connection

with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if—

''(i) in the case of the initial provision of the advice with regard to the security or other property by the fiduciary adviser to the plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of the advice, at a time reasonably contemporaneous with the initial provision of the advice, a written notification (which may consist of notification by means of electronic communication)—

''(I) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

''(II) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

''(III) of any limitation placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to any such sale, acquisition, or holding of a security or other property,

''(IV) of the types of services provided by the fiduciary advisor in connection with the provision of investment advice by the fiduciary adviser, and

''(V) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice,

''(ii) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

''(iii) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

''(iv) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

''(v) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.

''(C) STANDARDS FOR PRESENTATION OF INFORMATION.—The notification required to be provided to participants and beneficiaries under subparagraph (B)(i) shall be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

''(D) EXEMPTION CONDITIONED ON MAKING REQUIRED INFORMATION AVAILABLE ANNUALLY, ON REQUEST, AND IN THE EVENT OF MATERIAL CHANGE.—The requirements of subparagraph (B)(i) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in subparagraph (B) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in subclauses (I) through (IV) of subparagraph (B)(i) in currently accurate form and in the manner required by subparagraph (C), or fails—

''(i) to provide, without charge, such currently accurate information to the recipient of the advice no less than annually,

''(ii) to make such currently accurate information available, upon request and without charge, to the recipient of the advice, or

''(iii) in the event of a material change to the information described in subclauses (I) through (IV) of subparagraph (B)(i), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

''(E) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser referred to in subparagraph (B) who has provided advice referred to in such subparagraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this paragraph and of subsection (d)(16) have been met. A transaction prohibited under subsection (c)(1) shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

''(F) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—A plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this section solely by reason of the provision of investment advice referred to in subsection (e)(3)(B) (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if—

''(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

''(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this paragraph,

''(iii) the terms of the arrangement include a written acknowledgment by the fiduciary adviser that the fiduciary adviser is a fiduciary of the plan with respect to the provision of the advice, and

''(iv) the requirements of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 are met in connection with the provision of such advice.

''(G) DEFINITIONS.—For purposes of this paragraph and subsection (d)(16)—

''(i) FIDUCIARY ADVISER.—The term 'fiduciary adviser' means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

''(I) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

''(II) a bank or similar financial institution referred to in subsection (d)(4),

''(III) an insurance company qualified to do business under the laws of a State,

''(IV) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

''(V) an affiliate of a person described in any of subclauses (I) through (IV), or

''(VI) an employee, agent, or registered representative of a person described in any of subclauses (I) through (V) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

''(ii) AFFILIATE.—The term 'affiliate' of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3))).

''(iii) REGISTERED REPRESENTATIVE.—The term 'registered representative' of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the investment adviser referred to in such section).''

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall apply with respect to advice referred to in section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 or section 4975(e)(3)(B) of the Internal Revenue Code of 1986 provided on or after January 1, 2002.

The SPEAKER pro tempore. After debate on the bill, as amended, it shall be in order to consider a further amendment printed in part B of the report, if offered by the gentleman from California (Mr. GEORGE MILLER), or his designee, which shall be considered read, and shall be debatable for 60 minutes, equally divided and controlled by the proponent and an opponent.

The gentleman from Ohio (Mr. BOEHNER) and the gentleman from New Jersey (Mr. ANDREWS) each will control 30 minutes of debate on the bill, and the gentleman from California (Mr. THOMAS) and the gentleman from Washington (Mr. MCDERMOTT) each will control 20 minutes of debate on the bill.

The Chair recognizes the gentleman from Ohio (Mr. BOEHNER).

GENERAL LEAVE

Mr. BOEHNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include extraneous material on H.R. 2269.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. BOEHNER. Mr. Speaker, I yield myself such time as I may consume.

My colleagues, this week we found that for the first time in our Nation's history, more than half of all American families have invested in the stock market. I think that is enormously significant. For years, certainly when I was growing up, we thought of the stock market as something only the wealthy cared about. And for the most part, it was. As late as 1982, fewer than 15 percent of all American households held stocks, bonds, or mutual funds. Right now, the number is 52 percent. Today, the working class and the investor class are one and the same.

It is these new entrants into the investment markets that H.R. 2269, the Retirement Security Advice Act, is meant to help. We have seen an explosion in the number of 401(k) plans and IRAs, defined contribution plans in which the employee decides how much to invest and how to invest. As we see from this chart next to us, more than 48 million Americans participate in defined contribution plans today. These plans offer great opportunities for investors, but they also pose many risks. The best way to maximize opportunities and to minimize risk is to have access to high-quality investment advice.

But access to advice has not kept pace with participation in these defined contribution plans. Every day, workers who are trying to figure out how to best invest their money go to their employers and ask for guidance. Sadly, current law cripples employers who want to provide it.

So, how did we get to this point? The 1974 Employee Retirement Income Security Act, enacted long before the advent of 401(k)s and other defined contribution plans, continues to needlessly deny many employers the opportunity to provide their workers with investment advice benefits that could help them enhance their retirement savings.

We have heard from employers that they want to provide this service as a benefit to help retain skilled workers. We have heard from workers that they want quality advisers to guide investment decisions. The authors of ERISA never intended for millions of individuals to have to become investment experts. To illustrate this point, we have the chart next to me. Betty Shepard, the Human Resources administrator at Mohawk Industries Carpet Company in Kennesaw, Georgia, testified before our committee that, and I will quote ''Without this bill, I fear that many of our employees may overreact to market fluctuations and listen to the commentary of family, friends or the media to make retirement planning decisions.''

We know from survey after survey that a large majority of employees do not have access to quality investment guidance. In fact, as we see from this chart, only 16 percent of 401(k) participants have investment advice options available through their retirement plan, according to the Spectrum Group.

It is this investment advice gap that H.R. 2269 seeks to close, and it does it in several ways. First, it streamlines the employer's duty in selecting and monitoring investment advisers. Employers will not be responsible for every piece of advice or every transaction, but when general problems arise, they must respond to them. Employers tell us this will give them the clear guidance they need to offer quality investment advice to their employees as a benefit. The following chart summarizes how this bill changes current law.

Second, the bill maximizes competition in the investment advice market by allowing many of the most highly regarded investment firms to offer investment advice through employers. It will also protect workers by clearly requiring advisers to act at all times in the workers' best interest, and, if they have any possible conflicts of interest, to disclose them early and clearly.

If they breach that fiduciary duty, they will be subject to civil litigation and even criminal prosecution by the Labor Department. The Department of Labor, which has the responsibility for protecting workers, tells us that this structure gives it all the authority necessary to protect workers from abuses. But competition is the best consumer protection available, and our bill creates a competitive marketplace that would be flexible and dynamic enough to respond to worker needs.

I think everyone in this House shares the same ultimate goal of providing quality investment advice to workers who critically need it, and I urge Members today to support this bill. Employers, workers, both the Commerce and Treasury Secretaries, and the Nation's chief pension law enforcement official all support this commonsense measure. It takes a balanced approach for increasing worker access to advice while including safeguards to protect their investments without discouraging employers from offering any advice at all.

I want to thank my colleague, the gentleman from Texas (Mr. SAM JOHNSON), who, as a Member of the Committee on Ways and Means and also as chairman of our Subcommittee on Employer-Employee Relations, has been instrumental in moving this bill through the two committees; and I want to thank him for the vital role he has played in this process.

Mr. Speaker, we must ensure that the American dream is within the grasp of all of our Nation's workers, not just a select few. Access to quality investment advice is one way we can help rank-and-file workers maximize their retirement security.

Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore. Without objection, the time originally allotted to the gentleman from California (Mr. THOMAS) will be controlled by the gentleman from Texas (Mr. SAM JOHNSON).

There was no objection.

Mr. ANDREWS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in opposition to the bill; and later in the debate the gentleman from New York (Mr. RANGEL), the ranking member of the Committee on Ways and Means, and myself will offer a substitute which we believe is a more positive alternative.

I want to proceed by agreeing with the gentleman from Ohio (Mr. BOEHNER), the chairman, and my friend, the gentleman from Texas (Mr. SAM JOHNSON), the subcommittee chairman, that there is a serious problem that requires a remedy, and that problem is the fact that there are millions of Americans, a majority of Americans, who now hold interest in the equity markets, in the stock markets, and that many of these Americans do not receive adequate advice as to the options and strategies they should follow in investing their money.

There are too many people who get their investment advice from a neighbor, over the back yard fence, or through hearsay at an office gathering, or what have you, and we all agree that that is a situation that we want to change.

I also want to say that Chairman BOEHNER and Chairman JOHNSON have been open and fair throughout this process, and I hope that we are able to continue working together as the legislation advances to the other body so that we may reach a mutually agreeable solution, and I thank the chairman for his openness and fairness throughout this process.

We think that this bill is the wrong way to give investment advice because we think it is flawed in four essential ways:

First of all, it is important to understand that this bill will make it possible for a person to receive investment advice about their pension assets, perhaps along with their home the most important assets a person owns, from someone who has a vested interest in that decision, in addition to or other than the interest of the pension. In other words, an employee of an insurance company or a bank or a financial services company can give advice to a pensioner that would result in that pensioner putting valuable pension assets into a fund where the advisor would do better or where the advisor would profit from the result of that decision. That is an important conflict of interest that we think is a very serious and troubling one.

The bill does not properly reconcile that conflict of interest in four important ways:

First of all, its disclosure provisions do not adequately or contemporaneously disclose to the investor what the risks are. If there is to be such advice given, we believe, Mr. Speaker, that the person receiving the advice should know with great clarity exactly what the nature of a potential conflict is at the time he or she is making the decision. It is not good enough to receive that disclosure months or even years before one makes the decision. It is not good enough that that disclosure be confusing, presented in the verbiage of financial planning professionals and not the commonsense language most of us would be able to understand. Because the bill does not provide for adequate disclosure of potential or real conflicts by investment advisers, it is flawed.

Secondly, the bill does not provide for adequate qualifications of the investment advisers. If someone is going to be giving investment advice to American pensioners and American workers, that someone ought to be trained and qualified and accountable. There is a serious loophole in the underlying bill with respect to that training and qualification. Where there are cases where employees of large banks, large insurance companies, large financial services companies do not have that kind of adequate training, as we read the bill, they would still be able to give such advice. We believe that only people who are duly licensed and trained and qualified should be giving such advice.

The third major flaw of this bill is it does not take adequate measures to make the investor aware that there are alternatives, in many cases better alternatives to receiving advice other

than receiving advice from a conflicted advisor; that there is someone else to whom the pensioner could turn, someone else to whom the employee could turn who has no stake in the outcome of his or her decision, who has no conflict of interest. We believe that if conflicted advice is to be given at all, it should only be given where there is a clear disclosure of the available option of an independent advisor for that worker or retiree, so that the person receiving the advice knows that there is someone to whom she or he can turn who has no stake whatsoever in the outcome to have the decision other than the best interests of the investor.

□ 1115

Finally, this bill is significantly flawed because it does not provide adequate remedies if someone receives advice that is wrong and that is a breach of fiduciary duties. The bill recognizes the fact that the fiduciary relationship between the adviser and the investor continues under this bill.

But what happens if the advisor breaches that duty. Well, the bill would permit present law to continue, and present law permits the recovery of the lost investment; it does not permit the recovery of damages for the consequences of that lost investment. As a practical reality that means that a person who gets bad advice that is a breach of the fiduciary duty of the advisor will never get his or her claim to a court of competent jurisdiction and will never be made whole again. Once the horse has left the barn, it cannot be returned because the remedies are not sufficient under this bill.

Mr. Speaker, for these four reasons we think that this bill is flawed. That is why our position in opposing this is supported by the voice of working people in this country, the AFL–CIO and the American Association of Retired Persons.

Finally, I would recognize that the gentleman from Ohio (Mr. BOEHNER) made reference to Ms. Shepard who is the human resources administrator at Mohawk Industries. I would like to read for the RECORD some remarks she made in the October 21, 2001 issue of the New York Times. At the appropriate time I will submit the entire article for inclusion in the RECORD.

''Betty Shepard, human resources administrator at Mohawk Industries, said it had not offered advice because rules and liability were unclear,'' for the employer. That is my insertion. '' 'We want to give employees a way to get easy access to reliable investment advice within the confines of the law.' Ms. Shepard, who testified before Congress last summer in favor of the bill said she 'would prefer hiring an impartial advisor to assist employees.' '' Well, so would we.

We believe that the four reasons that I have outlined today that are weaknesses in this bill justify a vote against the bill.

Mr. Speaker, I reserve the balance of my time.

Mr. SAM JOHNSON of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, first of all, the process is entirely voluntary for the employees. The workers have full control over their investment decisions, not the investment advisor. H.R. 2269 does not require any employer to contract with an investment advisor, and no employee is under any obligation to accept or follow any of the advice.

Furthermore, it requires financial service providers to fully disclose their fees and any potential conflict because investment advice may be offered only by fiduciary advisers, qualified entities that are already fully regulated under other Federal and State laws. The courts have consistently held that fiduciary duty is the highest form of financial responsibility to which an investment advisor can be held under the law.

This bill authorizes, contrary to what the gentleman tried to imply, the individual participant and the Department of Labor can seek both criminal and civil penalties for infractions of such fiduciary duty. Comprehensive disclosure will inform participants of any financial interest advisors may have, the nature of the advisor's affiliation, if any, and any limits that may be placed on the advisor's ability.

Mr. Speaker, it is a privilege to serve as the chairman of the Subcommittee on Employer-Employee Relations under the wing of the gentleman from Ohio (Mr. BOEHNER), and I am also the only Member of the House on both committees. I am pleased to report that both committees have passed this bill, and it was passed with bipartisan support. Now, more than ever, economic security goes hand in hand with retirement security. People are concerned when they watch their nest egg dwindle.

Russell Morgan, a defined contribution consultant at Watson Wyatt Worldwide in Dallas, a management consulting firm, said ''Employees are having a tough time doing it on their own. For those who choose poorly, retirement may not be an option.'' That is just plain wrong.

It is obvious that people need investment advice and they need it now. This bill does just that. This measure removes the obstacles for employers to provide millions of workers access to professional investment advice.

The bill requires financial service providers to fully disclose their fees and any potential conflicts, as I said before. This bill protects people from fly-by-night groups or people trying to make a quick buck. There are a number of safeguards.

One, under this bill, sound investment advice can only be offered by fiduciary advisors, qualified entities that are already fully regulated under other Federal and State laws. Courts have consistently held that fiduciary duty is the highest form of financial responsibility to which an investment advisor can be held under the law.

Two, this bill authorizes the individual plan participant and the Department of Labor to seek both criminal and civil penalties for infractions of fiduciary duty.

Three, comprehensive disclosure will inform participants of any financial interest, outside interest, that advisors may have. The nature of the advisor's affiliation, if any, with the available investment options, and any limits that may be placed on the advisor's ability to provide advice, these types of disclosure obligations, along with fiduciary duties, have worked well in regulating the conduct of advisors under Federal security laws for more than 60 years in protecting innocent people from scams and fraud.

Both committees have worked hard to take a balanced approach to increasing access to advice while including safeguards to protect employers and employees.

Without this bill, employees will continue to fend for themselves in today's roller-coaster market when it comes to planning their retirement. Help people who want to help themselves and vote for this bill. It is the right thing to do.

Mr. Speaker, I reserve the balance of my time.

Mr. MCDERMOTT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 2269 is a bill that is sort of sitting out here, and there does not seem to be much interest. There are not many people over here, but this is a very important bill. American industry has moved away from fixed benefit pension systems and given people 401(k)s. People on this floor, we have 401(k)s, those of us who came after a certain date. We do not have a fixed benefit for all of our money. We have to put it in the stock market and see what happens.

In 1974, we set up a restriction that the advice investors got had to come from somebody that was disinterested. In the last few years, the stock market has gone crazy and everybody has been watching their 401(k) go up, up, up. Somebody must have gotten the idea that they were left out of the process, so they came with this piece of legislation.

This legislation eliminates workers' protections. All of us want our workers to have people give them some advice, but we also know something about human nature. Human nature says if I am going to recommend something that is in my interest or something that is not in my interest, but might be good for workers, I have a tension. I have a conflict whether I recommend investors buy my product or whether investors buy the product over here that might be better for them.

Members know everybody is not above slanting things. Everybody wants an advantage, as long it comes to them. What the present law does is prevent somebody who is offering a product from benefiting from it. What this piece of legislation does is say, we

are going to let anybody give advice, no criteria whatsoever for what they know about, financial instruments or anything else. They can recommend, if they work in the trust department of a bank, they can make a recommendation; and the American workers are putting their pension, a substantial portion of what their future pension is, in the hands of people who have a vested interest in directing them in a particular direction.

Mr. Speaker, that, in my view, is not responsible on the part of Congress. I do not think we should be doing this. We have an alternative which the gentleman from New York (Mr. RANGEL) and the gentleman from New Jersey (Mr. ANDREWS) will put forward that corrects this.

Members say included in this there is disclosure. I do not know how many Members in this Congress can honestly say that they have ever read any contract they have been involved in, such as a life insurance policy, automobile insurance policy, a policy related to homeowners insurance and whatever information that is given about investments.

Do Members read all of the way down that Charlie Brown, who is making the investment offerings or giving advice, also makes 3 percent on everything that is bought from XYZ Company? How many Members see that? Would it be the requirement that the person making the advice say, I want to bring investor's attention to page 3, line 1, that says I am going to make money off this if I recommend XYZ Company. There is nothing like that in this bill.

My belief is that this is a bad piece of legislation; if we do not adopt the Rangel-Andrews amendment or the alternative, we will be doing a disservice to the American people.

I do not know how many Members have been getting advice on their 401(k)s in this place, but I bet there are not very many Members who have made much money in the last little while. Probably they would have been smarter to get out of stocks and into government securities. Who was telling us that? Nobody.

That is what we are saying to the workers out there. Workers are going to have somebody who is running a company who says buy the stock in our company, put that in your 401(k). Of course, if the company goes belly up or whatever, we do some financial shenanigans like Enron has done and the investor gets clobbered, too bad. The investor has Enron stock, right, while the guys at the top are doing all kinds of things that are getting them in trouble with the Securities and Exchange Commission.

I think the advice should come from somebody who does not have a vested interest. I think we should all vote against this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. BOEHNER. Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. CULBERSON).

Mr. CULBERSON. Mr. Speaker, the Members of this Congress have many reasons to support this legislation, and again I believe it illustrates a fundamental difference between the Republican and Democrat philosophy. We trust people to manage their own money and their lives with intelligence. Nearly 42 million Americans have saved about $1.7 trillion in 401(k) plans, and under current law those people must either hire their own investment advisor, rely on an employer-sponsored advisor, or make investment decisions on their own; whereas this legislation, the Retirement Security Advice Act, will give workers access to professional investment advice from the administrators of their own plan for the first time, as long as those advisors make a full disclosure concerning any potential conflict.

The bill also protects employees by holding the financial advisor, not the employer, personally liable and subject to other criminal penalties if they act on behalf of any interest other than that of the investment portfolio or those who contribute to it.

□ 1130

Finally, Mr. Speaker, the best part of this legislation is that it is completely voluntary. The bill strengthens retirement security and gives workers access to expert investment advice when they need it. I urge my colleagues to join me in supporting it.

Mr. ANDREWS. Mr. Speaker, I yield myself 20 seconds. I would simply say that it is of very little comfort to a pensioner who has just lost everything in their 401(k) that the Department of Labor may someday institute some civil proceeding. People need to get their money back, and under this bill they do not.

Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. GEORGE MILLER), the ranking member of our full committee.

Mr. GEORGE MILLER of California. Mr. Speaker, I thank the gentleman from New Jersey for yielding time and I rise in opposition to this legislation.

It has been said time and again, and we all agree, that pension plan participants need to get additional advice on the investment of their moneys. We have made the point that for the new generation of workers, these pension plans, the 401(k) plans, are going to become an ever more important part of their future retirement and that we must take care with the investment of those funds by these employees to make sure that in fact that will be there when they decide to retire.

We also know that these funds, unlike their Social Security retirement, are subject to the ups and downs of the market. It will be important how they make these investment decisions because the timing of when they retire may not necessarily coincide with the good cycle in the market, as many people have found out over the last 2 years. We now hear more and more of our constituents telling us because of the loss of the markets, because of the placement of their investments, they are going to have to work a couple of more years, they are not going to be able to retire like they thought, or one of the wage earners in the family is going to have to continue to work. So these funds are subject to the volatility of the market, but that is understood. And it is also understood that we believe that over the long run people will be better off with the investment of these funds in their 401(k)s.

The question then comes, the question of the type of advice that they can be given by their employer. We know that there were many, many employers over the last many years that basically made a decision that the 401(k) funds if they were a publicly held corporation would be invested in the stock of that corporation. Obviously in many, many instances the workers in that corporation lost much of their investment, some of them did very well; but the concentration of the money in those funds, the failure to diversify that investment in many instances harmed the employees; and now we require that they be given other alternatives, that they be given other options so that they too can diversify their portfolio and they are not locked into a single stock.

But the question now that arises in this legislation when we give them the option of that advice, do we give them the right to have an independent review of their account, an independent advisor who is in the business of advising, not necessarily in the business of advising and also managing stocks and portfolios for this client and for other clients?

I think it is just basic and fundamental about treating workers with a set of rights about the dominion over their funds. The notion that somehow this changes the expense of it and is not worthwhile, this advice given to a group of participants is not that expensive but it may be terribly, terribly expensive to the employee if they do not get advice that is not conflicted.

We have great brand names. We have Lehman Brothers, we have Merrill Lynch, we have Charles Schwab. We have houses that now are not just any longer investment banks, they are not just any longer stock brokerages. They run the gamut. They are wholly owned subsidiaries of Citicorp, or in fact they own other subsidiaries; and what we have are very complicated financial arrangements.

In many instances, we have seen over the last couple of years, and especially in the downturn in the market, that a number of these companies hold on to advice long beyond the time when the prudent ordinary person would decide to sell that stock. It has become a standing joke now. I think they even have theme music on CNBC in the morning for those advisors who will not give up their recommendation to buy stocks even though the stock now

has been down for 7 or 8 months in a row; it has lost 70 to 90 percent of its value, and they are still telling them to be in there. Lo and behold, when you start to look at some of this, as the stock exchanges have, you find out that they hold a position or they are managing the money for the executives of the company, not necessarily do they hold a position in that company, but they hold another position with the executives in managing their portfolios. They do not want to upset them, so they are telling the old American public, ''Buy this stock. We're on our way back.'' The fact of the matter is people have been torched. That is subject to disciplinary actions again.

But in this legislation, that conflicted advice necessarily is not out of order here because they have a system of disclosure, and that disclosure is given once a year and then you are on your way. What you find out is the way the bill is written, under the law, that the fiduciary relationship that we keep talking about does not really exist because the law is set up that the person whose funds it is, the employee, has to make a decision, buy this stock, make this investment, put it in this fund. Once they do that act, they relieve the advisor under the law of all responsibility.

Obviously, they should be making the decisions; but the way this legislation is written, once they do that, they have cleared the decks in terms of liability under any sense of fiduciary relationships under the law, because as we see under section 404 of the ERISA law: ''No person who is otherwise a fiduciary shall be liable under this part for any loss, or by reason of any breach, which results from such participant's, or beneficiary's exercise of control.'' Then you go to the law, and the law says the beneficiary must exercise control. At that point we are home free.

I just think that we have to understand now that the change in the marketplace, the interlocking relationship between a whole range of financial services, a whole range of financial entities requires that in fact we have the means by which the employee can get independent advice to make their decision on. I do not believe that this legislation as it is currently configured does that. That is why I would hope that Members would support the Andrews-Rangel substitute, which I think is a very reasonable compromise. It provides for minimum advisor qualifications. Imagine that, having somebody who is in fact qualified to make this determination advising the individual.

How about having meaningful disclosure? We just passed here legislation where we told the banks that they had to disclose what they are going to do with your financial data. What we found out is people got in the mail, sometimes they got two or three pages, sometimes they got one page, they got little tiny print; and the Congress is running around saying to the banks, Gee, that's not the disclosure we intended. It was the disclosure the banks intended. That is why they sent it out. Most people did not recognize it when they got it. But it satisfied disclosure. So we thought you ought to have meaningful disclosure in this case since you are playing with people's future retirements. We also think you ought to have meaningful recourse when you get bad advice, when you get the wrong advice. Of course, this legislation as it is currently written does not really provide for that.

But most importantly, what we believe you ought to have is an employee who is trying to make these decisions, decisions that they must make today that can impact their livelihood 20 and 30, 40 years down the road, that they ought to have some access to independent advice through their employer so that they can in fact make that decision.

So I would hope that we would support the substitute by the gentleman from New Jersey (Mr. ANDREWS) and the gentleman from New York (Mr. Rangel); and then I think we would have a workable piece of legislation that would do what we all recognize must be done in terms of giving employees greater options about the investment and more information about how to invest their money, but to make sure that that is offered in a fair and open manner to the employees.

Mr. SAM JOHNSON of Texas. Mr. Speaker, I yield 3 minutes to the gentleman from Florida (Mr. FOLEY), a distinguished member of the Committee on Ways and Means.

Mr. FOLEY. Mr. Speaker, I thank the gentleman from Texas (Mr. SAM JOHNSON) and the gentleman from Ohio (Mr. BOEHNER) for their leadership on this issue.

In this bill there are adequate disclosure requirements. This is a good bill. I have heard some interesting debate today about whether the person should have an investment in the firm or not; should they be strictly giving advice. There are two schools of thought to that. I particularly like somebody whose money is riding along with mine investing in the market. If they are willing to put in their equity, I am a little comforted by the fact that maybe they are interested in the risk/reward.

I remember in Palm Beach County, we had a bank that sold a preferred note and on the front of the note, it was an 11 percent coupon. But huge disclosure: ''This is a risky investment. This is not FDIC insured.''

What happened was the consumer, the constituent, decided because of greed that they were willing to gamble on that. Of course when the bank went bankrupt and they lost their money, they started blaming the advisor, the person who sold them the bill. But on every document it was very emphatic, that this was risk based, highly speculative, no guarantees; and everybody then looks to the little print and says, Oh, boy, I didn't really read that. Well, you could not miss it.

This legislation updates important remedies for those who invest. I have a 401(k) here in Congress and they send me advice and they tell me that over the last several years government funds have done such, 401(k) or equities has done such. It is my decision to make whether I invest in equity bonds or other fixed incomes. I can choose the more speculative route of equities. They make it clear that that is risk based. That advice is mine for the taking. If I do not want to use it and want to test the fates and roll it all in my equity portfolio, I have the right to do that. In this bill, every American has that right.

This bill, or the base text prior to this bill, has not been updated since 1974. That is like asking people in this Chamber to drive a 1974 automobile. This provides a great balance between the ability of those savers, those consumers, to increase their retirement funds through prudent investment. It is specific. The solutions, the benefits and the problems listed in the Retirement Security Advice Act should allay any fears.

Let me underscore. Today, 42 million workers invest more than $2 trillion of assets in a 401(k). This legislation would update these rules to reflect this new pension environment. In addition, the bill would encourage employers to offer investment advisory services by clarifying liability rules that currently discourage employees from hiring employee investment advisors.

It is a balanced, fair, fundamentally sound way for consumers to ready their portfolios for retirement. I encourage the House adoption of this important measure and thank the respective chairmen for their leadership on the issue.

Mr. MCDERMOTT. Mr. Speaker, I yield 4 minutes to the gentleman from North Dakota (Mr. POMEROY).

Mr. POMEROY. I thank the gentleman for yielding time.

Mr. Speaker, I think the biggest problem today for plan participants of 401(k)s is that they have been given responsibility for the investment of their retirement funds without being given access to information to help them make informed decisions as they deal with something as important as trying to find optimal earnings on their retirement savings.

I think many of us in puzzling with our Thrift Savings Plan options think, This is hard, this is confusing, I don't quite know if I am doing this in the right way. I will tell my colleagues, looking at my returns from the last little while, I am quite sure I am not doing it the right way. I could use more advice. An awful lot of people in the workforce today are thinking exactly the same thing. And so we need a strategy to get them more advice. I think the chairman's strategy represents a very excellent and constructive way of approaching it. The chairman and I are in strong agreement that as we try and get more advice to plan

participants, we do not want to put people at risk of heavy sales practices that might be against their interest and have them investing in funds that are inappropriate for their situations.

Therefore, if we have the following standards in a new investment advice regimen advanced by this legislation, I think you can actually get more advice and still protect the employee's interest. You need to have the fiduciary standard apply so that the advisor must be providing advice solely for the interest of the plan participant or the employee. You have got to have some type of administrative recourse so that if the individual violates that advice, you can withdraw that individual's license. You can take away their employment. You can put them out of business.

I used to be an insurance regulator. There is not a better policing mechanism than being able to put the guy out of business to make certain that they are providing advice that is appropriate and comports with the legal requirements.

Thirdly, you need to have fee disclosure. These things have cost loads. Increasingly, employers have shifted all of the expense to the employees on the loads of 401(k)s. Employees need to know what it is going to cost them as they look at these different options. Having a disclosure plan and in fact having a uniform disclosure format of fees is going to help the individual make sure they know what they are getting into as they make various investment options. And so with this legislation, subject to some further amendment, we are able actually to achieve the goal of getting more investment advice out there and helping people with their choices.

I do not think that the opponents of this legislation have reflected enough upon the disservice we do to those in the workforce by giving them the responsibility of investing their own money but depriving them of the information to do it. Defined contribution plans presently represent 90 percent of all retirement savings plans in the workforce. There are $1.5 trillion worth of investment in 401(k) plans. But still we have less than a quarter of employer-sponsored defined contribution plans provide for advice to the workers in terms of how to invest within those plans.

I have held a number of round tables across North Dakota visiting with employees, visiting with employers, about how we can do a better job with facilitating retirement savings in this country. Information in terms of how to best handle their retirement money is a constant theme raised not by the big bad industry that some on this side of the aisle would talk about, but by employees themselves or by employers reflecting what employees are asking for. We can do a better job, and this legislation will do it.

Mr. BOEHNER. Mr. Speaker, I yield myself such time as I may consume, and I yield to the gentleman from North Dakota (Mr. POMEROY).

Mr. POMEROY. I thank the gentleman for yielding.

Mr. Speaker, defined contribution plans which place the burden of investment decisions on workers will be the primary source of retirement income for an increasing number of workers. Unfortunately, these workers have little access to professional investment advice which could help them grow their retirement savings in a prudent manner. Current law restricts many sources of advice to workers. We must get additional advice to participants. I salute the gentleman from Ohio for his earnest efforts in trying to achieve this goal.

This bill goes a long way in giving workers access to professional investment advice. In addition, it provides two important features that will help insulate workers from advisors who may otherwise pose a conflict of interest, a fiduciary duty owed to the worker and a disclosure of all fees and conflicts. We agree that the fiduciary duty of an advisor is a high standard not to be taken lightly and that any advisor breaching this duty should not be able to continue to give advice. We also agree that the bill's disclosure requirements will give workers a clear picture of what fees would impact their accounts and what conflicts the advisor has with any offered recommendation. However, this bill, with a few modifications, can provide further protections to workers without burdening financial institutions. I am glad that we have been able to reach an agreement in regard to these modifications.

Unfortunately, we are considering this bill under a modified closed rule and cannot make these modifications on the floor today. These modifications would require the disclosure of the availability of independent advice providers and require the Secretary to draft model disclosure forms for fees. The disclosure would remind participants that independent advice can be sought outside of the plan context and the model disclosure forms will assist service providers in complying with the disclosure requirements. Furthermore, these models will ensure uniformity among the disclosures to the reasonable understanding of the average plan participant.

Lastly, we have agreed to provide further clarity in this bill with regard to banks by restricting the provision of investment advice to their trust departments. It is my belief that every advisor giving advice under this bill should be individually licensed by a Federal or State regulatory agency so that when an advisor breaches his fiduciary duty to a participant, the regulator will have the authority to put the bad actor out of business.

However, I understand that banks operate under a special regulatory scheme in which some investment advisors are not individually licensed but work within their bank's trust department. I am satisfied that these investment advisors working within trust departments under an umbrella trust license can be subject to the same administrative sanctions as registered investment advisors, insurance agents and broker dealers under this bill.

Therefore, with these three modifications, we can provide further protections to workers without burdening financial institutions. As this bill moves through the legislative process, I ask for the chairman's support to make these modifications.

Mr. BOEHNER. Mr. Speaker, in reclaiming my time, I want to thank the gentleman from New Jersey (Mr. ANDREWS), who has worked on this bill with me over the last several years. Although we may be in some slight disagreement today over how much protection is available in this bill, he has been a faithful partner as we have tried to reach some accord. The gentleman from North Dakota and I have also been working together to try to bring the protections in this bill into a proper balance. I want to thank him for bringing these pertinent modifications to my attention.

I support the changes that the gentleman has described which will further protect workers' retirement income security. I support the creation of a model disclosure form as well as a requirement for advisors to disclose to plan participants that independent advice is available. In addition, I support the gentleman's proposed changes to the qualification section which would ensure that only licensed individuals provide this advice; or in the case of banks, such advice be provided by trust or custody department employees who are individually accountable to State or Federal regulators.

During conference negotiations with the Senate, I will work with my colleague from North Dakota and others to make these modifications for the further protection of workers managing their retirement income assets.

Mr. POMEROY. I thank the gentleman.

Mr. ANDREWS. Mr. Speaker, I am pleased to yield 3 minutes to the gentlewoman from California (Ms. SANCHEZ).

Ms. SANCHEZ. Mr. Speaker, many Americans have little knowledge about investing their own money. Mutual funds, stocks and bonds are very complicated instruments to which people pay little attention, especially when they have got other things to do all day long.

□ 1145

I know firsthand how complex these instruments can be because of my professional experience as an investment advisor.

In concept, the Retirement Security Advice Act is a great idea. We must find ways to ensure that all Americans participating in retirement savings plans are making decisions that will help them in the long run. All Americans should have access to licensed investment professionals who can advise

them on what they should be investing in, how risky their portfolio should be and when to change plans.

There is a major weakness in the current version of the bill, however. The bill allows registered, licensed banks or similar financial institutions to provide financial investment advice. The problem is that the language is not strong enough. It allows bank tellers or any unrelated subsidiary of these financial institutions to provide this advice.

Would you want investment advice from a bank teller? How about from a member of the cleanup crew at an investment banking firm? These examples may be extreme, but they are possible under the current language in this bill.

I want to make sure that all Americans are provided with the best opportunity to invest their retirement savings. Think of the time period we just went through right now. I have a father-in-law who is a banker, and he has plenty of people who would call him and say, ''I just went to a cocktail party, and why am I not getting 38 percent return this year?'' And no matter how much he tried to talk them through about their plan and their situation, they would basically say, ''I am taking my funds to somebody else who will put me in these types of investments.''

Now, my father-in-law has licenses. He has been in the investment banking world a long time. He has character, he has integrity. He also makes his living with that license. He protects it. And he would say, ''Well, if that is what you have to do, that is what you are going to do, but I will not put you in those types of investments.''

Imagine if you have someone who has no license and the pressure comes on. What do you do then? Well, you end up being in things you really should not be in.

Sometimes we forget about the people that we are really working to assist here. This bill is targeted at those who could not otherwise afford investment advice. They are working-class Americans who teach our children, build our infrastructure and make this country strong.

You probably would not take gourmet cooking advice from the fry cook at McDonald's, so why should people take investment advice from those who may not be qualified to give it?

Let us do the right thing for all Americans. Let us make sure that this advice is given by licensed individuals. There are plenty of different types of licenses. We do not have to start a new regulatory situation here.

Mr. SAM JOHNSON of Texas. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio (Mr. PORTMAN), who is a member of the Committee on Ways and Means and who has a long history of working on retirement issues.

Mr. PORTMAN. Mr. Speaker, I thank the chairman very much for yielding me time, and I congratulate him as a Member of the Committee on Ways and Means, but also as the chairman of the Subcommittee on Social Security that got this legislation to the floor today. He wears two hats, and he has done a great job in moving what is a needed piece of legislation to the floor.

Also, of course, I want to commend my colleague, the gentleman from Ohio (Mr. BOEHNER), who has spent years on this issue, understanding that there is a need to change the ERISA laws, which are way out of date.

As more and more people have moved into the defined contribution plans, the 401(k)s, the 403(b)s and the 457s, 90 percent of folks now are in these defined contribution plans. The law has not changed to allow them to get the type of advice they need. Only 16 percent of workers out there in these plans are getting any advice, only 16 percent, yet 75 percent of them say in surveys, they are desperate to get that kind of advice.

So this is a very important change in the law that has to be made in order to allow people, those school teachers, those folks who are in retirement plans all over this country who need this kind of advice, to be able to make better decisions.

Recently this Congress took the lead on retirement security by passing legislation that dramatically expands the availability of defined contribution and defined benefit options. We allowed everybody to put more money away in their 401(k), for instance. We simplified all the rules and regulations for all of the pension plans, to help small businesses to get into this area.

We also allowed portability, to be able to move your plan from job to job and to be able to integrate those plans in a seamless way into one account. This is extremely important, and we think it will allow for millions, millions more Americans, to have the kind of retirement security they need and to have the kind of peace of mind in retirement that all of us deserve.

That was passed overwhelmingly by this House, and it is great legislation. The gentleman from Maryland (Mr. CARDIN) and I worked on that for years together.

But now we need to take the next big step, which is education. It is providing people with the means to understand the importance of retirement savings, first, on a broad sense, but also to understand what their options are in terms of what they can invest in if they are indeed going to be among those who benefit from this expansion that this Congress has pushed forward to get people into 401(k)s, 403(b)s, defined benefit plans and so on.

So this is the next logical step, and I commend the chairman and the gentleman from Ohio (Mr. BOEHNER) for moving this forward, and the gentleman from California (Chairman THOMAS) for getting it to the floor today.

Now, we have heard some discussion here about what some people see as some of the deficiencies in this legislation. I would just remind people, read the legislation. If you are going to offer this advice, you have to be licensed or have to be a bank trust officer. That is in the legislation.

The gentleman from North Dakota (Mr. POMEROY), who is going to support the bill on the floor today, who worked very hard on this legislation over the years and also helped us with all the portability provisions in the Portman-Cardin bill, has just indicated he is going to support it because the chairman has agreed to even some other slight modifications to ensure that you do not have the conflicts of interest that would otherwise occur if you did not have that fiduciary duty, to be sure that people who do offer this advice are qualified, and, finally, to be sure you have the kind of disclosure that is necessary.

This legislation increases that disclosure. As it has gone through the process in the Committee on Ways and Means, we were sure that there would be yearly disclosure, disclosure upon request, and disclosure if there is a material change.

Again, this legislation is sorely needed. We wanted to encourage people to save more for retirement. One of the impediments now is the lack of good advice and the lack of good education.

So I commend those on both sides of the aisle who have brought this legislation to the floor. Let us pass it today in a bipartisan way and send a strong message to the Senate that it is about time to help people out there be able to make the kind of wise decisions they should be making for their own retirement.

□ 1200

Mr. ANDREWS. Mr. Speaker, may I inquire of the Chair how much time the Committee on Education and the Workforce minority has remaining.

The SPEAKER pro tempore (Mr. LAHOOD). The gentleman from Ohio (Mr. BOEHNER) has 19 minutes remaining; the gentleman from New Jersey (Mr. ANDREWS) has 11½ minutes remaining; the gentleman from Texas (Mr. SAM JOHNSON) has 9 minutes remaining; and the gentleman from Washington (Mr. MCDERMOTT) has 10½ minutes remaining.

Mr. ANDREWS. Mr. Speaker, I yield myself 20 seconds.

Mr. Speaker, the gentleman from Ohio (Mr. PORTMAN), my friend, just spoke about his representation that one needs to be a trust officer of a bank. I would respectfully disagree. Page 10 of the bill, line 12, indicates an employee, agent, or registered representative of a person describing an institution who satisfies the requirements is qualified. So if there are no local applicable banking or securities laws; a mere employee of a bank or an insurance company is qualified to give the advice.

So the gentlewoman from California (Ms. SANCHEZ) was correct in our description.

Mr. Speaker, I yield 4 minutes to the gentleman from Massachusetts (Mr. TIERNEY), a committee member.

Mr. TIERNEY. Mr. Speaker, I thank the gentleman from New Jersey for yielding me this time.

Like many Members, I represent people who have worked hard and whose entire hope for a secure retirement may well rest on the success of their 401(k): leather workers, jet engine assemblers, teachers, nurses, and other hard-working, intelligent folks who are bright and able, but many of whom have little experience in understanding investment fundamentals. They may lack the time or even the knowledge to work through a mountain of financial information. They need advice that is given by a provider that meets at least minimum standards, one who is qualified and one who is subject to the laws of ERISA's fiduciary standards, standards of trust, and one who is free from financial conflict, free from divided loyalties; and they need an advisor who will put the worker's or investor's interests first, above profit.

Consider this following example: two mutual funds, each posting annual gains of 12 percent consistently for 30 years. One fund has an expense fee of 1 percent, the other an expense fee of 2 percent. If you invested $10,000 in each fund, the fund with the lower expense fee at the end of 30 years would earn $229,000, but the one with the higher expense fee of 2 percent would have only $174,000. The mutual fund would pocket the difference of $55,000.

Obviously, there may be little incentive for the advisor connected to the mutual fund to highlight the significance of this conflict, of his or her potential gain in steering someone to the higher fee investment. Why should we allow such a conflict of interest to exist when it is not necessary?

Perhaps that is why the fund industry is lobbying so hard for this bill, but workers and retirees are not asking for its passage. These hard-working people, like other investors, need and want good, sound advice; but allowing money managers to make recommendations that will generate more income for themselves hardly falls into the realm of independent advice.

In 1974, Congress chose to ban transactions between pension plans and parties with a conflict of interest, except under very narrow circumstances; and they did that for a simple reason. There is too great a danger that a party with a conflict of interest will act in its own best interests rather than exclusively for the benefit of the workers. That concern is no less valid today.

Studies by the financial industry itself have found broker conflicts have harmed advice received by individuals, audit conflicts have undercut the value of audits on financial firms, analyst reports have shown significant evidence of bias in comparing ratings. The law, ERISA, was designed to protect against just these types of issues.

Our shared goal should be to increase access to investment advice for individual account plan participants. We need not obliterate long-standing protections for plan participants in order to do that. Surveys show that the most important reason advice may not now be offered is that employers have fears that they may be held liable for advice gone bad. The remedy for that, and it is in the bill, is that Congress should encourage more employers to provide independent advice by addressing employer liability. It should clarify that an employer would not be liable for specific advice if it undertook due diligence selecting and monitoring the advice provided. It is as simple as that. There is no need for conflicted advice.

Many plans already provide for investment education. Many plans now provide independent investment advice through financial institutions and other firms without conflict. Clarifying that employers would not be liable if they undertake due diligence with respect to advice providers would further increase advice as necessary.

Disclosure alone will not mitigate potential problems. The alternative bill in adding some protections and mandating a choice of alternative advice that is not conflicted is a better idea, but the best idea remains a prohibition against conflicted advice. Congress, by clearing up the liability issue, can encourage independent, unbiased investment advice that will better enable employers to improve their long-term retirement security, while minimizing the potential for employee dissatisfaction and possible litigation. This is what is in the best interests of the plan participants and, in fact, the best interests of the plan; and it certainly is in the best interests of the hard-working people in my district who need to know that their retirement is secure.

Mr. BOEHNER. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from California (Mr. DOOLEY).

Mr. DOOLEY of California. Mr. Speaker, I rise in support of H.R. 2269, and I appreciate all of the work that has gone in to crafting this piece of legislation.

In my estimation, this legislation is long overdue. What we are seeing is an increasing number of working people that are participating in plans that require a defined contribution. They need to have access to the information that allows them to make the decisions that are going to maximize the returns on their investments and their retirement accounts.

This is inevitable, as we are seeing more and more people that are coming to expect that they will have more choices, more choices in the consumer products that they are accessing, as well as more choices in the financial alternatives they have to meet their retirement needs.

I think this legislation takes a very balanced approach, and especially with some of the modifications that were agreed to by the gentleman from Ohio (Mr. BOEHNER) that were offered by the gentleman from North Dakota (Mr. POMEROY), and I think it also addresses some of the remaining concerns. It does provide for adequate disclosure. It does provide for fiduciary responsibility. Sometimes I think we are being a little bit condescending to a lot of the people who are participating in these plans when we are not giving them the credit for engaging in their own due diligence by trying to determine what the costs will be and what the values are of the various instruments of investment that they are going to be considering.

Mr. Speaker, most people today are becoming increasingly aware that you have to consider the cost of a particular plan. Most people are becoming aware that there is increasing risk and volatility with different mechanisms that you could invest in.

I remember when Mr. LIEBERMAN was engaged in his last campaign and he said, it is interesting, when I would be making some visits to labor groups and, in particular, I went into a firehouse and met with some firemen there, and he said, their questions to me were not about some of the challenges they face in their jobs, he says, their questions were all about their 401(k) plans and the investments that they were making. He said they had more information than most people that he had come into contact with often on Wall Street.

Mr. Speaker, this bill takes a balanced approach. I urge its passage. I thank all of the people involved in this.

Mr. BOEHNER. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. OXLEY), the chairman of the Committee on Financial Services.

(Mr. OXLEY asked and was given permission to revise and extend his remarks.)

Mr. OXLEY. Mr. Speaker, I want to thank the gentleman from Ohio, my good friend, for his leadership on this issue, and the gentleman from Texas.

This is an important piece of legislation that really represents bringing ERISA into the 21st century. Let us face it, ERISA was passed almost a quarter of a century ago; and times have changed. I am convinced, after looking at this piece of legislation, that the responsibilities of the investment advisors are fully covered and regulated by the Securities and Exchange Commission, and by various State regulations. I think nobody needs to fear that these folks will not be regulated. They have been regulated over the years and will continue to be so to make sure that the investors are protected.

I was reminded of a story the gentleman from California raised about the visit to the firehouse by Senator LIEBERMAN. I had a similar situation in my office just last year where I had a young worker from my congressional district who had come in to talk to me. He was a member of the machinist

union. He did not want to talk about those kinds of issues that he had just heard over at the machinist union. He wanted to talk about investments; he wanted to talk about his future, his financial future. He told me he was 30 years old, he had a couple of kids, he had an IRA, he had a 401(k) plan, and he was interested in the future of Social Security, and he was also interested in his ability to make sound decisions of his investments and his future.

That really is a striking example, I think, that we are seeing all over the country. We have over half of the households today who are invested in equities, over half of the households. That is a sea change in the way America looks at its investment opportunities. That is a huge change. Just 20, 25 years ago, two-thirds of people's savings were in bank deposits. Today, two-thirds of their savings are in equities. That is a huge change that we have seen in this country. Let us treat these workers, these folks like adults. Let us not say to them they need to make decisions on their own. They need the kind of advice that this bill provides them. I urge strong support for this legislation.

Mr. MCDERMOTT. Mr. Speaker, I yield 4 minutes to the gentleman from New York (Mr. LAFALCE).

(Mr. LAFALCE asked and was given permission to revise and extend his remarks.)

Mr. LAFALCE. Mr. Speaker, I rise in opposition to H.R. 2269. I was listening to the distinguished chairman of the House Committee on Financial Services just now, and I have the honor of serving as the ranking member. I guess we have heard different things at the committee hearings and drawn different conclusions.

I heard about the tremendous conflicts of interest that existed within securities firms. Absolutely outrageous, individuals getting participations within IPOs and then giving analyst advice concerning those IPOs. That is just one small example.

I heard testimony that in the year 2000, of all of the recommendations that were given regarding stocks, 1 percent were sell recommendations, 1 percent in the year 2000.

I heard testimony that talked about earnings management or earnings manipulation, earnings manipulation on the part of the chief financial officers and the chief executive officers of major corporations, Fortune 500 companies; earnings management, earnings manipulation by the audit committees of the board of directors, all, of course, with stock options and a vested interest in what those earnings were. And earnings management and earnings manipulation on the part of the accounting firms who often had a conflict of interest also.

Mr. Speaker, disclosure does not do the trick. Disclosure does not protect the investor. In a day when we have converted from primarily defined benefit plans to overwhelmingly defined contribution plans, the need for a strong prophylactic ERISA is greater than ever. We eviscerate those protections within ERISA and we say, well, let us disclose the conflicts. That is grossly inadequate.

Surely we need to come up with better investment advice for the participants within pension plans, but we also need to protect against conflicts. The bill does not do that. The alternative does. Maybe that is why the representatives of the employees in the 401(k) plans, the AFL–CIO and so many others, the Consumer Federation of America, et cetera, say support the substitute, but reject the bill that has been reported out of committee.

Mr. BOEHNER. Mr. Speaker, I am pleased to yield such time as he may consume to the gentleman from California (Mr. MCKEON), a subcommittee chairman over in our committee.

Mr. MCKEON. Mr. Speaker, I thank the gentleman for yielding.

I rise today in strong support of H.R. 2269, the Retirement Security Service Act. I want to thank the gentleman from Ohio (Mr. BOEHNER) and the gentleman from Texas (Mr. SAM JOHNSON), the subcommittee chairman, for bringing this important legislation to the floor for our consideration.

Many workers might not know it, but there is an outdated provision within a 27-year-old Federal law that unintentionally prohibits their employers from providing access to high-quality investment advice. The Employee Retirement Income Security Act, also known as ERISA, was written in 1974 at a time when no one had heard of 401(k) plans and no one ever imagined that so many people would participate in the stock market like they do today.

□ 1215

Under ERISA, the mutual funds, banks, and insurance companies that administer 401(k)s can only provide general investment education directly to participants in those plans. They are prohibited from providing advice about a person's specific investments.

Since last year when the market began to slide and the economy began showing signs of weakness, many workers have watched their retirement savings dwindle. People need sound advice, especially during these times, to maximize their investment opportunities by making it possible for workers to be able to get the same kind of advice that wealthy individuals are able to pay for out of pocket.

H.R. 2269 would do just that. This legislation modernizes ERISA to let employers give their employees access to high-quality, tailored investment advice, as long as financial advisors fully disclose their fees and any potential conflicts.

I have heard some scare talk here about, we need to protect people from charlatans or from people who would take advantage of them. But I think that we need to give the people credit for understanding and being able to separate advice. The important thing is that they should be able to get it.

This bill retains important safeguards and includes new protections to ensure that participants receive advice that is solely in their best interests. The measure requires that advice be given only by fiduciary advisors which are qualified, fully regulated entities, like insurance companies and banks, that would be held liable for any failure to act solely in the interests of the worker.

Moreover, the whole process is completely voluntary, because the bill does not require any employer to contract with investment advisers, and no employee will be obligated to accept any advice.

As Members can see, Mr. Speaker, H.R. 2269 provides assistance for hard-working Americans so that they can wisely plan their retirement years. Therefore, I strongly urge all my colleagues to support this much-needed legislation.

Mr. ANDREWS. Mr. Speaker, I am pleased to yield 3 minutes to the distinguished gentlewoman from Hawaii (Mrs. MINK), a member of our committee.

Mrs. MINK of Hawaii. Mr. Speaker, I thank the gentleman for yielding time to me.

I rise today, Mr. Speaker, to urge a no vote on H.R. 2269, the Retirement Security Advice Act of 2001.

When Congress enacted the Employee Retirement Income Security Act, known as ERISA, in 1964, the goal was to protect employee pension benefits, which it has done tenaciously since enactment.

In the ensuing 27 years, employees have seen significant changes to their pension plans. Many companies no longer offer predefined benefit plans, and many workers place their retirement funds in stock markets using 401(k) and other similar investment plans.

According to the Investment Company Institute, over 42 million people use 401(k)s and other similar plans. Last year, the total value of these plans reached $2.6 trillion. These plans offer higher returns and, of course, higher risks.

In today's market, the value of one's investments could change drastically in the course of a year or even 1 day. With the highly volatile stock market, no one questions the need for providing good, sound, reliable advice to invest one's retirement funds. We must therefore ensure that the underlying principles behind ERISA remain intact. We must protect the interests of workers and their beneficiaries.

H.R. 2269 fails to provide the basic protections that all workers deserve. The bill allows unqualified individuals to provide investment advice. We should make advisers obtain Federal and State licenses or other qualified certifications. They should not be connected in any way to the investment industry or investment companies who could benefit from the advice given.

Advisors often receive financial rewards for recommending certain investments over others, but H.R. 2269 does not require advisors to clearly disclose their incentives for making a particular recommendation. Advisors can bury disclosures in a mound of paperwork that the average investor will not read or understand. Advisors who will make money on giving advice should clearly and continually warn workers of any conflicts of interest.

Proponents of the bill say, well, the advice is free. This is not true. Each investment that the worker makes will pay from 1 to 1.5 percent of the money invested to the broker. There is big money at stake involved in the advice given and the advice taken. The bill allows investment companies to make billions of dollars every year.

Advisors entangled with payoffs, depending upon the advice given to the worker, should be absolutely forbidden in this access provision.

The bill does not provide any remedy or penalties for tainted advice. I urge this House to reject this legislation.

Mr. BOEHNER. Mr. Speaker, I am pleased to yield 2 minutes to the gentlewoman from Illinois (Mrs. BIGGERT), a member of our committee.

Mrs. BIGGERT. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, when a person has a cold, he can go to his local drugstore and choose among dozens of different cold remedies. When he is not sure which medicine is appropriate, there is a pharmacist available who can provide expert advice and help him to make the best selection.

Yet, when it comes to 401(k) plans in the workplace, Congress, in effect, has gagged the pharmacist. Employers pay good money to provide an excellent benefit to their employees, 401(k) plans run by professionals, yet our 27-year-old law, ERISA, effectively silences those investment professionals, denying employees a major part of the benefit their employer has intended for them.

Now, more than ever, Americans investing their retirement income in 401(k) plans need access to critical investment advice that will help them achieve their financial goals. The Retirement Security Advice Act of 2001 updates our laws so workers can have access to high-quality professional investment advice. These advisors will be required to fully disclose their fees and any potential conflicts. This legislation also establishes important safeguards to ensure that investors' goals are met.

Mr. Speaker, let us stop gagging the pharmacist or silencing the investment advisor. Let us make it easier for the 42 million Americans who participate in 401(k) plans to choose among investments. Let us pass H.R. 2269, which will increase employee participation and enable more workers to live out their American dreams.

I urge my colleagues to support the Retirement Security Advice Act of 2001.

Mr. BOEHNER. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. HOLT), a member of our committee.

Mr. HOLT. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I rise in support of the Retirement Security Advice Act of 2001. We need to be sure that the law allows families to have a wide range of investment advice as they plan for their retirement. As we do so, we need to ensure that there are adequate protections for these workers.

Under the bill, there are protections. The advisors are subject to a fiduciary duty and will be personally liable for failure to act solely in the interest of the worker. Under the bill, the Labor Department is authorized to seek both criminal and civil penalties if an advisor breaches that responsibility.

The language also contains provisions to ensure that there is full disclosure in plain language to the workers of fees and conflicts of interest. These disclosures and fiduciary protections are significantly stronger than the average investor has today.

Now, the bill is not perfect. I believe that we may strengthen the bill by adding provisions to make sure that workers know where they can get a financial second opinion. I want to express my appreciation to the gentleman from Ohio (Chairman BOEHNER) for representing my views and agreeing to take these into consideration in conference. I want to continue to work with him and the gentleman from California (Chairman THOMAS) on this subject as the bill moves through the legislative process.

This bill gives workers important new options they do not now have. That is why we want to do it. It modernizes the law to reflect the realities of the real world, the way people actually invest and plan their retirements today. This is a step forward and worthy of support.

Mr. ANDREWS. Mr. Speaker, I am happy to yield 3 minutes to the gentlewoman from California (Ms. WOOLSEY), a real authority on human resources and employee relations.

(Ms. WOOLSEY asked and was given permission to revise and extend her remarks.)

Ms. WOOLSEY. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, H.R. 2269 is a prime example of how a good idea can be turned into a bad bill. It is a good idea to make investment advice available to employees at their workplace. Of course it is a good idea. But allowing self-interested advisors, those who could benefit from the advice they give, in the workplace is not a good idea; it is an extremely bad idea. But that is exactly what H.R. 2269 does.

Please remember why ERISA was enacted in the first place. It was enacted to protect workers from abuses related to their benefits. So ERISA now prohibits investment advisors from coming to a workplace and providing employees with investment advice if there is any reason to think that the advisor might benefit from recommending one investment or another.

ERISA was enacted to protect workers from abuses related to their benefits, and this protection has worked for over 25 years. But with H.R. 2269, we are saying that it is okay to have investment sales folks at the workplace under the guise of the employer's endorsement providing investment advice to their employees.

Think about this: We have employees with 401(k) plans, many of whom have little or no knowledge of high finance. The employer brings an investment advisor to the workplace. That has to appear as if the employer endorses whatever this advisor is selling. Members cannot tell me that most employees will not be strongly inclined to accept the investment advice given them under those circumstances.

If the advice is poor or, heaven forbid, the advice is downright wrong, or if it is some kind of scam in the short run, there is no protection for that employee.

There is hope, however. Fortunately, we have a substitute to H.R. 2269. That is the Andrews substitute. The Andrews substitute keeps the good idea of making investment advice available to employees in the workplace, but it builds on the protections in current law that employees need and must have and must be able to depend on.

The Andrews substitute is a win-win for employees, and I urge my colleagues to vote against H.R. 2269 unless the substitute is included.

PARLIAMENTARY INQUIRY

Mr. BOEHNER. Parliamentary inquiry, Mr. Speaker.

The SPEAKER pro tempore (Mr. LAHOOD). The gentleman will state it.

Mr. BOEHNER. Mr. Speaker, we just have the remaining time we expect to use. Who has the right to close, or what would the order of closing be?

The SPEAKER pro tempore. The Committee on Ways and Means will finish their time first, and then the gentleman from Ohio (Mr. BOEHNER) has the right to close.

Mr. BOEHNER. I thank the Chair.

Mr. MCDERMOTT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, sometimes when I come out on this floor I think I have entered the French theater of the absurd.

We are having a bill brought here to us about financial advice. I remember, when this year started, that we had $5.6 trillion in surplus, and all the discussion was about what should we do with it: Shall we pay off the debt? Shall we save it for Social Security? Shall we save it for Medicare?

The decision was, oh, the first thing we should do is give about $2 trillion of it away.

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We are going to do that with a tax break. We said it is 130 trillion, but it