H. R.  ___

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income and Security Act of 1974 to provide for a best interest standard for advice fiduciaries, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. KELLY of Pennsylvania introduced the following bill; which was referred to the Committee on ____________________

A BILL

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income and Security Act of 1974 to provide for a best interest standard for advice fiduciaries, and for other purposes.

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

SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Retirement Choice Protection Act of 2015”.

5
SEC. 2. TRANSFER TO SECRETARY OF THE TREASURY OF AUTHORITIES REGARDING INDIVIDUAL RETIREMENT PLANS.

(a) IN GENERAL.—Section 102 of Reorganization Plan No. 4 of 1978 (ratified and affirmed as law by Public Law 98–532 (98 Stat. 2705)) is amended—

(1) in subsection (a)—

(A) by striking “and” at the end of clause (ii),

(B) by striking “and” at the end of clause (iii), and

(C) by inserting after clause (iii) the following:

“(iv) regulations, rulings, opinions, and exemptions relating to individual retirement accounts described in section 408(a) of the Code and individual retirement annuities described in section 408(b) of the Code, including simplified employee pensions under section 408(k) of the Code and simple retirement accounts under section 408(p) of the Code; and

“(v) regulations described in section 103(b) of this Plan;”; and

(2) by adding at the end the following new flush sentence: “The Secretary of the Treasury shall
consult with the Securities and Exchange Commission in prescribing regulations, rulings, opinions, and exemptions under subsection (a)(iv) that provide guidance of general application as to the professional standards of care (whether involving fiduciary, suitability, or other standards) owed by brokers and investment advisors to owners and account holders of accounts and annuities described in such subsection.”.

(b) JOINT AUTHORITY.—Section 103 of such Plan is amended—

(1) by striking “In the case of” and inserting:

“(a) In the case of”; and

(2) by adding at the end the following:

“(b)(1) The Secretary of the Treasury and the Secretary of Labor shall have joint authority to issue regulations described in this subsection, and any such regulations shall be issued jointly by such Secretaries.

“(2) A regulation is described in this subsection if

(i) the regulation is not described in clause (i), (ii), (iii), or (iv) of section 102(a) of this Plan and (ii) defines or interprets a term or requirement that is included in section 4975 of the Code or section 406 of ERISA. The determination of whether any regulation is described in this subsection shall be made without regard to whether any
such term or requirement is also used or defined in any other provision of the Code or ERISA.”.

(c) Effective Date.—

(1) In general.—The amendments made by this section shall apply to regulations, rulings, opinions, and exemptions which have not been finalized as of July 8, 2013.

(2) Transition.—Any final regulation, ruling, opinion, or exemption described in section 102(a)(iv) or 103(b) of Reorganization Plan No. 4 of 1978 (as added by the amendments made by this section) which was issued by the Secretary of Labor before July 9, 2013, shall apply until such time as such regulation, ruling, opinion, or exemption is revoked or modified pursuant to such amendments.

SEC. 3. BEST INTEREST STANDARD FOR ADVICE FIDUCIARIES.

(a) Amendments to the Internal Revenue Code of 1986.—

(1) Best interest standard for advice fiduciaries regarding IRAs and non-ERISA plans.—Section 4975(c) of the Internal Revenue Code of 1986 is amended by adding the following new paragraph (7):
“(7) Best interest recommendation rule for advice fiduciaries to IRAs and non-ERISA plans.—

“(A) Best interest prohibited transaction.—For purposes of this section and with respect to plans not subject to section 404 of title I, subtitle B of the Employee Retirement Income Security Act of 1974 (relating to fiduciary obligations), the term ‘prohibited transaction’ includes the receipt of any consideration for his own personal account by any disqualified person who is a fiduciary by reason of providing investment advice (within the meaning of section 4975(e)(3)(B)) from the plan or any party in connection with a transaction involving the investment of income or assets of the plan resulting from the recommendation of such person, unless such investment advice constitutes a best interest recommendation. This paragraph shall not apply to any transaction unless such transaction is described in subparagraph (E) or (F) of subsection (c)(1) (without regard to any exemption from the prohibitions of subsection (c)).
(B) BEST INTEREST RECOMMENDATION.—

“(i) For purposes of this paragraph, the term ‘best interest recommendation’ means a recommendation provided by a person acting with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would exercise based on the information obtained through the reasonable diligence of the person regarding factors such as the advice recipient’s age, and any other information that the advice recipient discloses to the person in connection with receiving such recommendation, where the person does not subordinate the interests of the plan or advice recipient, as applicable, to its own.

“(ii) Best interest recommendations may include, without limitation, recommendations that—

“(I) are based on a limited range of products, providers or offerings (including recommendations that include, or are limited only to, proprietary...
products and providers), where such
limits are clearly disclosed to the ad-
vice recipient at any time prior to a
transaction based on the recommenda-
tion, or

“(II) may result in variable com-
pensation to the person (or its affil-
iate), such as transaction, services,
placement, or other types of com-
pensation that differ by product or
service, where the receipt of such com-
pensation is clearly disclosed to the
advice recipient.

“(iii) For purposes of this paragraph,
clear disclosure of variable compensation
means notification at any time prior to a
transaction based on the person’s rec-
ommendation, in a manner calculated to be
understood by the average individual, of
the following information, which can be
provided in one or more statements or doc-
uments:

“(I) The person (or its affiliate)
may receive varying amounts of fees
or other compensation or consider-
ation with respect to recommended transactions;

“(II) The amount of any fee or other compensation or consideration that is directly payable to the person (or its affiliate) from the plan or advice recipient with respect to recommended transactions, provided that any such amount may be expressed in terms of a monetary amount, formula, percentage of assets, per capita charge, or estimate or range of such compensation or consideration;

“(III) A description of the types and ranges of indirect compensation that may be paid to the person (or its affiliate) by any third party in connection with recommended transactions, provided that any such ranges may be expressed in terms of a monetary amount, formula, percentage of assets, per capita charge, or estimate of such compensation or consideration; and
“(IV) Upon the advice recipient’s request prior to the transaction, a disclosure of the specific amounts of compensation described in subclause (II) or (III) that the person will receive in connection with the particular transaction, provided that any such amounts may be expressed in terms of a monetary amount, formula, percentage of assets, per capita charge, or estimate of such compensation or consideration.

No recommendation will fail to be a best interest recommendation solely because the person, acting in good faith and with reasonable diligence, makes an error or omission in disclosing the information specified in this subparagraph, provided that the person discloses the correct information to the advice recipient as soon as practicable, but not later than 30 days from the date on which the person knows of such error or omission.

“(C) CORRECTION.—For purposes of this section and notwithstanding subsection (f)(5) to
the contrary, the terms ‘correction’ and ‘correct’ mean, with respect to this prohibited transaction only, the payment to, or reimbursement of, actual damages of the plan resulting directly from the plan’s reliance on such investment advice, if any, that have not otherwise been paid or reimbursed to the plan, including payments and reimbursements made pursuant to subsection (f)(5). Any such damages shall be determined in a manner consistent with the damages that would be payable with respect to such prohibited transaction under the Employee Retirement Income Security Act of 1974.

“(D) CALCULATION OF AMOUNT INVOLVED.—For purposes of this section and notwithstanding subsection (f)(4) to the contrary, the term ‘amount involved’ means, with respect to this prohibited transaction only, the amount of such consideration received by the disqualified person with respect to the transaction that has not otherwise been paid or reimbursed to the plan, including payments and reimbursements made pursuant to subsection (f)(5).”.

(2) MODIFICATION OF EXISTING STATUTORY EXEMPTIONS TO APPLY THE BEST INTEREST STAND-
ARD TO ADVICE FIDUCIARIES OF IRAS AND NON-ERISA PLANS THROUGH SECTION 4975(c)(7).—Section 4975(d) of such Code is amended by deleting the language preceding paragraph (1) and replacing it with the following:

“(d) EXEMPTIONS.—Except as provided in subsection (f)(6), the prohibitions provided in subsection (c)(1) shall not apply to—”.

(3) DEFINITION OF INVESTMENT ADVICE.—

Subparagraph (B) of subsection 4975(e)(3) of such Code is amended to read as follows:

“(B) renders investment advice for a fee or other compensation, direct or indirect, with respect to moneys or other property of such plan, or has any authority or responsibility to do so. Investment advice means a recommendation—

“(i) as to the advisability of acquiring, holding, disposing, or exchanging securities or other investment property, including a recommendation to take a distribution of benefits or a recommendation as to the investment of securities or other property to be rolled over or otherwise distributed from the plan;
“(ii) as to the management of securities or other property, including recommendations as to the management of securities or other property to be rolled over or otherwise distributed from the plan; or

“(iii) of a person who is also going to receive a fee or other compensation for providing any of the types of advice described in clause (i) or (ii);

Provided that, such recommendation is rendered pursuant to a mutual agreement, arrangement, or understanding between such person and the plan, plan fiduciary, or advice recipient that such advice is individualized to the plan and such plan, fiduciary, or advice recipient intends to materially rely on such recommendation in making investment or management decisions with respect to moneys, securities, or other investment property of the plan. A person shall not be considered to be providing investment advice if such recommendation is provided in conjunction with full and fair disclosure to the recipient, which can be written or verbal, that the person is providing or making the recommendation of services or property in its mar-
keting, sales, or educational capacity, and that
the person is not undertaking to provide impar-
tial investment advice or to give advice as a fi-
duciary (within the meaning of this subpara-
graph). In addition, a person shall not be a fi-
duciary under this subparagraph with respect to
the terms and conditions of engagement of the
person, including the scope of the obligation to
provide advice, the products or services with re-
spect to which advice is provided and the com-
pensation payable to the person, provided the
recipient has consented to the terms and condi-
tions of the engagement after disclosure of all
material aspects of such terms and conditions,
including fee disclosure that satisfies subclauses
(I), (II), and (III) of paragraph (7)(B)(i). Ex-
cept as otherwise provided in subparagraph (D)
and notwithstanding subparagraph (E), invest-
ment advice shall include a recommendation
under this subparagraph provided pursuant to a
written acknowledgment of fiduciary status with
respect to the provision of such recommenda-
tion. For purposes of this subparagraph, ‘prop-
erty’ means moneys and investment property,
and ‘management of securities’ means exer-
(4) Definition of Investment Advice.—Section 4975(e)(3) of such Code is amended by striking the period at the end of subparagraph (C) and inserting a comma and by adding the following new subparagraphs (D) and (E):

“(D) The extent of a fiduciary’s obligations as such can be defined and limited pursuant to a mutual agreement, arrangement, or understanding between the person and the party engaging the person as a fiduciary to the plan. Such limitations can include limits on scope, timing, and responsibility to provide ongoing monitoring or advice services.

“(E) A person shall not be deemed to be a fiduciary on account of section 4975(e)(3)(B) if such person meets one or more of the following:

“(i) Counterparties and Services Providers.—In such person’s capacity as a counterparty, service provider, or representative thereof, the person provides advice to a plan fiduciary who is independent of such person and who is independent of
the plan sponsor, with respect to an arm’s-length service arrangement, sale, purchase, loan, or bilateral contract between the plan and person, each a ‘transaction’ for purposes of this subclause, if, prior to entering into the transaction, the plan fiduciary represents that it understands that the person has a financial interest in the matter, and that the person is not undertaking to provide impartial financial advice or to give advice as a fiduciary (within the meaning of this paragraph); provided such person has not acknowledged in writing that it is acting as a fiduciary (within the meaning of this paragraph) with respect to the transaction.

“(ii) Swap transactions.—The person is a counterparty, service provider or representative thereof in connection with a swap or security-based swap, as defined in section 1(a) of the Commodity Exchange Act (7 U.S.C. 1(a) and section 3(a) of the Securities Exchange Act (15 U.S.C. 78c(a)), if: the plan is represented by a fiduciary independent of the person; the per-
son is a swap clearing firm or other service
provider in relation to a swap, swap dealer,
security-based swap dealer, major swap
participant, or major security-based swap
participant; the person (if a swap dealer,
security-based swap dealer, clearing firm,
or other similar service provider) is not
acting as an advisor to the plan (within the
meaning of section 4s(h) of the Commodity
Exchange Act or section 15F(h) of the Se-
curities Exchange Act of 1934) in connec-
tion with the transaction; and in advance
of providing any recommendations with re-
spect to the transaction, the person obtains
a written representation from the inde-
dependent plan fiduciary, that the fiduciary
will not rely on recommendations provided
by the person.

“(iii) EMPLOYEES.—In his or her ca-
pacity as an employee of any employer or
employee organization sponsoring the plan
or an affiliate of such plan sponsor, the
person provides the advice (directly or indi-
directly) to the plan, plan fiduciary, partici-
pant, or beneficiary, and he or she receives
no fee or other compensation, direct or indirect, in connection with the advice beyond the employee’s normal compensation for work performed for the employer or employee organization or an affiliate. In such cases, such an employee is not rendering investment advice for a fee or other compensation. No inference is intended with respect to whether any other person shall be treated as rendering investment advice for a fee or other compensation.

“(iv) PLATFORM PROVIDERS.—The person merely markets and makes available to a plan (including its participants, beneficiaries, and fiduciaries (which includes an owner of an individual retirement plan (as defined in section 7701(a)(37))), without regard to the individualized needs of the plan, its participants, or beneficiaries, securities or other property through a platform or similar mechanism (which may consist of or include one or more annuity contracts) from which a plan fiduciary may select or monitor investment alternatives, including qualified default investment al-
ternatives, into which plan participants or beneficiaries may direct the investment of assets held in, or contributed to, their individual accounts, if the person discloses in writing to the plan fiduciary that the person is not undertaking to provide impartial investment advice or to give advice as a fiduciary (within the meaning of this paragraph) when establishing or maintaining the platform.

“(v) Selection and Monitoring Assistance.—The person merely identifies investment alternatives that meet objective criteria specified by the plan fiduciary (including an owner of an individual retirement plan (as defined in section 7701(a)(37)), participant, or beneficiary (e.g., stated parameters concerning expense ratios, size of fund, type of asset, or credit quality); or merely provides objective financial data and comparisons with independent benchmarks to the plan fiduciary, participant or beneficiary.

“(vi) Financial Reports and Valuations.—The person provides or reports
valuation information, but does not rep-
resent in writing that it is undertaking to
provide such valuation information as a fi-
duciary (within the meaning of this sub-
section).

“(vii) EDUCATION.—The person pro-
vides the information—

“(I) described in Department of
Labor Interpretive Bulletin 96–1 (29
CFR 2509.96–1, as in effect on Janu-
ary 1, 2015);

“(II) described in Department of
Labor Interpretive Bulletin 96–1 (29
CFR 2509.96–1, as in effect on Janu-
ary 1, 2015) but for the fact that
such education is provided to a plan
or plan fiduciary;

“(III) described in Department
of Labor Interpretive Bulletin 96–1
(29 CFR 2509.96–1, as in effect on
January 1, 2015) but for the fact that
such education is provided to an
owner of an individual retirement plan
(as defined in section 7701(a)(37));
“(IV) to participants and beneficiaries regarding the factors to consider in deciding whether to elect to receive a distribution from a plan or an individual retirement plan (as defined in section 7701(a)(37)) and whether to roll over such distribution to a plan or an individual retirement plan (as defined in section 7701(a)(37)); such education can include examples of different distribution and rollover alternatives, so long as all material facts and assumptions on which the examples are based accompany the examples; or

“(V) any additional information treated as education by the Secretary of Labor.”.

(5) Exemption to Preserve Investor Choice.—Section 4975(d) of such Code is amended by adding at the end thereof the following new paragraph:

“(24) with respect to transactions described in sections 4975(c)(1)(A)–(F), any transaction or service in connection with the provision of investment
advice described in section 4975(e)(3)(B) if the conditions under subparagraphs (A), (B), and (C) are satisfied.

“(A) The provision of investment advice with respect to the transaction is subject to subsection (c)(7) or section 404 of title I, subtitle B of the Employee Retirement Income Security Act of 1974 (relating to fiduciary obligations).

“(B) The conditions of section 4975(d)(2) are satisfied when otherwise applicable.

“(C) With respect to plans subject to section 404 of title I, subtitle B of the Employee Retirement Income Security Act of 1974, the investment advice may include recommendations that—

“(i) are based on a limited range of products, providers, or offerings (including recommendations that include, or are limited only to, proprietary products and providers), where such limits are clearly disclosed to the advice recipient at any time prior to a transaction based on the recommendation, or
“(ii) may result in variable compensation to the person (or its affiliate), such as transaction, services, placement, or other types of compensation that differ by product or service, where the receipt of such compensation is clearly disclosed to the advice recipient.

“(D) For purposes of this paragraph, clear disclosure of variable compensation means notification at any time prior to a transaction based on the person’s recommendation, in a manner calculated to be understood by the average individual, of the following information, which can be provided in one or more statements or documents:

“(i) The person (or its affiliate) may receive varying amounts of fees or other compensation or consideration with respect to recommended transactions;

“(ii) The amount of any fee or other compensation or consideration that is directly payable to the person (or its affiliate) from the plan or advice recipient with respect to recommended transactions, provided that any such amount may be ex-
pressed in terms of a monetary amount,
formula, percentage of assets, per capita
charge, or estimate or range of such com-
pensation or consideration;

“(iii) A description of the types and
ranges of indirect compensation that may
be paid to the person (or its affiliate) by
any third-party in connection with the rec-
ommended transaction, provided that any
such range may be expressed in terms of
a monetary amount, formula, percentage of
assets, per capita charge or estimate of
such compensation or consideration; and

“(iv) Upon the advice recipient’s re-
quest prior to the transaction, a disclosure
of the specific amounts of compensation
described in clause (ii) or (iii) that the per-
son will receive in connection with the par-
ticular transaction, provided that any such
amounts may be expressed in terms of a
monetary amount, formula, percentage of
assets, per capita charge, or estimate of
such compensation or consideration.

The disclosure requirements described in this
subparagraph will not fail to be met solely be-
cause the person, acting in good faith and with reasonable diligence, makes an error or omission in disclosing the information specified in this subsection, provided that the person discloses the correct information to the advice recipient as soon as practicable, but not later than 30 days from the date on which the person knows of such error or omission.”.

(6) EFFECTIVE DATE.—The amendments made by this subsection shall apply on or after the 1st day of the 36th month after the date of the enactment of this Act, but the exemption added under section 4975(d)(24) of such Code shall be available immediately upon enactment of this Act for persons meeting its conditions (including the conditions of a best interest recommendation which may not be effective at such time). The Secretary of Labor is prohibited from amending any rules or administrative positions promulgated under section 3(21) of ERISA or section 4975(e)(3) of such Code (including Department of Labor Interpretive Bulletin 96–1 (29 CFR 2509.96–1) and Department of Labor Advisory Opinion 2005-23A) prior to the effective date of this Act, and no such rules or positions promulgated by the Secretary of Labor prior to the date of the en-
actment of this Act, but not yet effective or applicable, may become effective prior to the effective date of this Act.

(7) Grandfathered Transactions and Services.—The amendments made to section 4975(e)(3)(B) of such Code by this Act shall not apply to any services if such services—

(A) were rendered prior to the effective date of this Act,

(B) relate to a transaction entered into prior to the effective date of this Act,

(C) were paid for prior to the effective date of this Act, or

(D) are not described in subparagraphs (A), (B), or (C) but the person performing the services does not receive more compensation (either as a fixed dollar amount or as a percentage of assets) as a result of the services than the person is contractually eligible to receive for such services prior to the effective date of this Act.

(b) Amendments to the Employee Retirement Income Security Act of 1974.—

(1) Definition of Investment Advice.—

Subparagraph (A) of section 3(21) of the Employee
Retirement Security Act of 1974 is amended by amending clause (ii) to read as follows:

“(ii) renders investment advice for a fee or other compensation, direct or indirect, with respect to moneys or other property of such plan, or has any authority or responsibility to do so. Investment advice means a recommendation—

“(I) as to the advisability of acquiring, holding, disposing, or exchanging securities or other investment property, including a recommendation to take a distribution of benefits or a recommendation as to the investment of securities or other property to be rolled over or otherwise distributed from the plan;

“(II) as to the management of securities or other property, including recommendations as to the management of securities or other property to be rolled over or otherwise distributed from the plan; or

“(III) of a person who is also going to receive a fee or other com-
Compensation for providing any of the types of advice described in subclause (I) or (II);

Provided that, such recommendation is rendered pursuant to a mutual agreement, arrangement, or understanding between such person and the plan, plan fiduciary, or advice recipient that such advice is individualized to the plan and such plan, fiduciary, or advice recipient intends to materially rely on such recommendation in making investment or management decisions with respect to moneys, securities, or other investment property of the plan. A person shall not be considered to be providing investment advice if such recommendation is provided in conjunction with full and fair disclosure to the recipient, which can be written or verbal, that the person is providing or making the recommendation of services or property in its marketing, sales, or educational capacity, and that the person is not undertaking to provide impartial investment advice or to give advice as a fiduciary (within the meaning of this sub-
paragraph). In addition, a person shall not be a fiduciary under this subparagraph with respect to the terms and conditions of engagement of the person, including the scope of the obligation to provide advice, the products or services with respect to which advice is provided and the compensation payable to the person, provided the recipient has consented to the terms and conditions of the engagement after disclosure of all material aspects of such terms and conditions, including fee disclosure that satisfies clauses (i), (ii), and (iii) of section 408(b)(21)(C). Except as otherwise provided in subparagraph (C) and notwithstanding subparagraph (D), investment advice shall include a recommendation under this subparagraph provided pursuant to a written acknowledgment of fiduciary status with respect to the provision of such recommendation. For purposes of this clause, ‘property’ means moneys and investment property, and ‘management of securities’ means exercising rights or obli-
gations with respect to securities or other property.”.”.

(2) **DEFINITION OF INVESTMENT ADVICE.**—

Subsection 3(21) of such Act is amended by adding the following new subparagraphs (C) and (D):

“(C) The extent of a fiduciary’s obligations as such can be defined and limited pursuant to a mutual agreement, arrangement, or understanding between the person and the party engaging the person as a fiduciary to the plan. Such limitations can include limits on scope, timing, and responsibility to provide ongoing monitoring or advice services.

“(D) A person shall not be deemed to be a fiduciary on account of subparagraph (A)(ii) if such person meets one or more of the following:

“(i) **COUNTERPARTIES AND SERVICES PROVIDERS.**—In such person’s capacity as a counterparty, service provider, or representative thereof, the person provides advice to a plan fiduciary who is independent of such person and who is independent of the plan sponsor, with respect to an arm’s-length service arrangement, sale, purchase, loan, or bilateral contract between the plan
and person, each a ‘transaction’ for purposes of this clause if, prior to entering into the transaction, the plan fiduciary represents that it understands that the person has a financial interest in the matter, and that the person is not undertaking to provide impartial financial advice or to give advice as a fiduciary (within the meaning of this subsection); provided such person has not acknowledged in writing that it is acting as a fiduciary (within the meaning of this subsection) with respect to the transaction.

“(ii) SWAP TRANSACTIONS.—The person is a counterparty, service provider or representative thereof in connection with a swap or security-based swap, as defined in section 1(a) of the Commodity Exchange Act (7 U.S.C. 1(a) and section 3(a) of the Securities Exchange Act (15 U.S.C. 78c(a)), if: the plan is represented by a fiduciary independent of the person; the person is a swap clearing firm or other service provider in relation to a swap, swap dealer, security-based swap dealer, major swap
participant, or major security-based swap participant; the person (if a swap dealer, security-based swap dealer, clearing firm, or other similar service provider) is not acting as an advisor to the plan (within the meaning of section 4s(h) of the Commodity Exchange Act or section 15F(h) of the Securities Exchange Act of 1934) in connection with the transaction; and in advance of providing any recommendations with respect to the transaction, the person obtains a written representation from the independent plan fiduciary, that the fiduciary will not rely on recommendations provided by the person.

“(iii) EMPLOYEES.—In his or her capacity as an employee of any employer or employee organization sponsoring the plan or an affiliate of such plan sponsor, the person provides the advice (directly or indirectly) to the plan, plan fiduciary, participant, or beneficiary, and he or she receives no fee or other compensation, direct or indirect, in connection with the advice beyond the employee’s normal compensation
for work performed for the employer or employee organization or an affiliate. In such cases, such an employee is not rendering investment advice for a fee or other compensation. No inference is intended with respect to whether any other person shall be treated as rendering investment advice for a fee or other compensation.

“(iv) Platform Providers.—The person merely markets and makes available to a plan (including its participants, beneficiaries, and fiduciaries), without regard to the individualized needs of the plan, its participants, or beneficiaries, securities or other property through a platform or similar mechanism (which may consist of or include one or more annuity contracts) from which a plan fiduciary may select or monitor investment alternatives, including qualified default investment alternatives, into which plan participants or beneficiaries may direct the investment of assets held in, or contributed to, their individual accounts, if the person discloses in writing to the plan fiduciary that the per-
son is not undertaking to provide impartial
investment advice or to give advice as a fi-
duciary (within the meaning of this sub-
section) when establishing or maintaining
the platform.

“(v) SELECTION AND MONITORING AS-
SISTANCE.—The person merely identifies
investment alternatives that meet objective
criteria specified by the plan fiduciary,
participant, or beneficiary (e.g., stated pa-
rameters concerning expense ratios, size of
fund, type of asset, or credit quality); or
merely provides objective financial data
and comparisons with independent bench-
marks to the plan fiduciary, participant or
beneficiary.

“(vi) FINANCIAL REPORTS AND VALU-
ATIONS.—The person provides or reports
valuation information, but does not rep-
resent in writing that it is undertaking to
provide such valuation information as a fi-
duciary (within the meaning of this sub-
section).

“(vii) EDUCATION.—The person pro-
vides the information—
“(I) described in Department of Labor Interpretive Bulletin 96–1 (29 CFR 2509.96–1, as in effect on January 1, 2015);

“(II) described in Department of Labor Interpretive Bulletin 96–1 (29 CFR 2509.96–1, as in effect on January 1, 2015) but for the fact that such education is provided to a plan or plan fiduciary;

“(III) to participants and beneficiaries regarding the factors to consider in deciding whether to elect to receive a distribution from a plan or an individual retirement plan (as defined in section 7701(a)(37) of the Internal Revenue Code of 1986) and whether to roll over such distribution to a plan or an individual retirement plan (as defined in section 7701(a)(37) of the Internal Revenue Code of 1986); such education can include examples of different distribution and rollover alternatives, so long as all material facts and assumptions
on which the examples are based ac-
company the examples; or

“(IV) any additional information
treated as education by the Sec-
retary.”.

(3) EXEMPTION TO PRESERVE INVESTOR
CHOICE.—Section 408(b) of such Act is amended by
adding at the end thereof the following new para-
graph:

“(21) with respect to transactions described in
sections 406(a) and 406(b), any transaction or serv-
ice in connection with the provision of investment
advice described in section 3(21)(A)(ii) if the condi-
tions under subparagraphs (A), (B), and (C) are
satisfied.

“(A) The provision of investment advice
with respect to the transaction is subject to sec-
 tion 404.

“(B) The conditions of section 408(b)(2)
are satisfied when otherwise applicable.

“(C) The investment advice may include
recommendations that—

“(i) are based on a limited range of
products, providers, or offerings (including
recommendations that include, or are lim-
ited only to, proprietary products and providers), where such limits are clearly disclosed to the advice recipient at any time prior to a transaction based on the recommendation, or

“(ii) may result in variable compensation to the person (or its affiliate), such as transaction, services, placement, or other types of compensation that differ by product or service, where the receipt of such compensation is clearly disclosed to the advice recipient.

“(D) For purposes of this paragraph, clear disclosure of variable compensation means notification at any time prior to a transaction based on the person’s recommendation, in a manner calculated to be understood by the average individual, of the following information, which can be provided in one or more statements or documents:

“(i) The person (or its affiliate) may receive varying amounts of fees or other compensation or consideration with respect to recommended transactions;
“(ii) The amount of any fee or other compensation or consideration that is directly payable to the person (or its affiliate) from the plan or advice recipient with respect to recommended transactions, provided that any such amount may be expressed in terms of a monetary amount, formula, percentage of assets, per capita charge, or estimate or range of such compensation or consideration;

“(iii) A description of the types and ranges of indirect compensation that may be paid to the person (or its affiliate) by any third-party in connection with the recommended transaction, provided that any such ranges may be expressed in terms of a monetary amount, formula, percentage of assets, per capita charge or estimate of such compensation or consideration; and

“(iv) Upon the advice recipient’s request prior to the transaction, a disclosure of the specific amounts of compensation described in clauses (ii) and (iii) that the person will receive in connection with the particular transaction, provided that any
such amounts may be expressed in terms of a monetary amount, formula, percentage of assets, per capita charge, or estimate of such compensation or consideration.

The disclosure requirements described in this paragraph will not fail to be met solely because the person, acting in good faith and with reasonable diligence, makes an error or omission in disclosing the information specified in this subsection, provided that the person discloses the correct information to the advice recipient as soon as practicable, but not later than 30 days from the date on which the person knows of such error or omission.”).

(4) Effective Date.—The amendments made by this subsection shall apply on or after the 1st day of the 36th month after the date of the enactment of this Act, but the exemption added under section 408(b)(21) of the Employee Retirement Security Act of 1974 shall be available immediately upon enactment of this Act for persons meeting its conditions (including the conditions of a best interest recommendation which may not be effective at such time). The Secretary of Labor is prohibited from
amending any rules or administrative positions promulgated under section 3(21) of ERISA or section
4975(e)(3) of the Internal Revenue Code of 1986 (including Department of Labor Interpretive Bul-
letin 96–1 (29 CFR 2509.96–1) and Department of Labor Advisory Opinion 2005–23A) prior to the ef-
fective date of this Act, and no such rules or positions promulgated by the Secretary of Labor prior to
the date of the enactment of this Act, but not yet effective or applicable, may become effective prior to
the effective date of this Act.

(5) GRANDFATHERED TRANSACTIONS AND SERVICES.—The amendments made to section
3(21)(A)(ii) by this Act shall not apply to any services if such services—

(A) were rendered prior to the effective
date of this Act,

(B) relate to a transaction entered into
prior to the effective date of this Act,

(C) were paid for prior to the effective date
of this Act, or

(D) are not described in subparagraphs
(A), (B), or (C) but the person performing the
services does not receive more compensation (ei-
ther as a fixed dollar amount or as a percent-
age of assets) as a result of the services than
the person is contractually eligible to receive for
such services prior to the effective date of this
Act.

SEC. 4. REGULATIONS.

The Secretary of the Treasury and the Secretary of
Labor shall make rules, in accordance with subchapter II
of chapter 5 of title 5, United States Code, to carry out
this Act and the amendments made by this Act.