110TH CONGRESS 1ST SESSION  

H. R.  

To amend the Employee Retirement Income Security Act of 1974 to provide special reporting and disclosure rules for individual account plans and to establish in the Department of Labor an Advisory Council on Improving Employer-Employee Retirement Practices.

IN THE HOUSE OF REPRESENTATIVES

Mr. GEORGE MILLER of California introduced the following bill; which was referred to the Committee on ___________________

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A BILL

To amend the Employee Retirement Income Security Act of 1974 to provide special reporting and disclosure rules for individual account plans and to establish in the Department of Labor an Advisory Council on Improving Employer-Employee Retirement Practices.

1  Be it enacted by the Senate and House of Representa-
2  tives of the United States of America in Congress assembled,
3  SECTION 1. SHORT TITLE.
4  This Act may be cited as the “401(k) Fair Disclosure
5  for Retirement Security Act of 2007”.

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

(a) In General.—Part 1 of subtitle B of title I of
the Employee Retirement Income Security Act of 1974 is
amended—

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

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

“SPECIAL REPORTING AND DISCLOSURE RULES FOR
INDIVIDUAL ACCOUNT PLANS

“SEC. 111. (a) Disclosure to Employers Spon-
soring 401(k) Plans.—

“(1) Service disclosure statement.—The
plan administrator of an individual account plan
which includes a qualified cash or deferred arrange-
ment (or any other plan official with contracting au-
thority under the terms of the plan) may not enter
into any contract with any person for services to the
plan unless such plan administrator or other official
has received, reasonably in advance of entering into
the contract, a written statement from such person
which—

“(A) identifies who will be performing
services for the plan under the contract (includ-
ing any other affiliated or other third party
service provider whose services will be provided under the contract), and

“(B) describes each such service and specifies the expected total annual cost of such services, itemized as to all relevant components of the total cost, including any amounts to be paid to affiliated or other third-party service providers under the contract.

“(2) MINIMUM ITEMIZATION REQUIREMENTS.—

“(A) IN GENERAL.—The itemization required under paragraph (1)(B) shall set forth at least the following:

“(i) any commission for making a sale;

“(ii) any start-up fees;

“(iii) expenses for investment management;

“(iv) expenses for investment advice;

“(v) estimated trading expenses;

“(vi) expenses for administration and record keeping;

“(vii) legal fees;

“(viii) trustee fees;

“(ix) possible termination or surrender charges;
“(x) total asset based fees;

“(xi) remuneration paid as described in Rule 12b-1 of the Securities and Exchange Commission under the Investment Company Act of 1940 (17 CFR 270.12b-1);

“(xii) commissions paid as described in section 28(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(e)); and

“(xiii) such other costs as may be specified by the Secretary.

“(B) ESTIMATIONS.—To the extent that the actual amount with respect to any information required to be provided in the itemization required under paragraph (1)(B) is not known, the plan administrator may provide a reasonable and representative estimate and shall indicate any such estimate as being such an estimate. If any estimate provided under this paragraph is subsequently determined to be materially incorrect, the plan administrator shall provide the correct amount in an amended report as soon as practicable after such correct amount is known.
“(C) DEFINITIONS.—The Secretary shall provide by regulation definitions of the terms used in this paragraph.

“(3) DISCLOSURE OF FINANCIAL RELATIONSHIPS.—The statement required under paragraph (1) shall include a written disclosure of the nature of any conflicts of interest of each service provider identified pursuant to paragraph (1)(A) due to financial or personal relationship—

“(A) which the service provider may have with the plan sponsor, the plan, or other persons providing services to the plan, and

“(B) for which the service provider receives a payment for services, including the extent to which the service provider uses its own proprietary investment products, the extent to which payments are received by a service provider for including certain investment options as part of a menu of investment options, and such other possible conflicts as may be specified by the Secretary.

“(4) DISCLOSURE OF IMPACT OF SHARE CLASSES.—The statement required under paragraph (1) shall, to the extent applicable, disclose that the share prices of certain mutual fund investments may be
different than the retail share price outside of the plan due to the existence of different share classes.

“(5) Disclosure of Certain Arrangements in Connection with Free or Discounted Services or Rebates by Service Providers.—In any case in which services are provided to the plan, or to the plan sponsor in connection with the plan, by any service provider without charge or for fees set at a discounted rate or subject to rebate, the statement required under this subsection shall include a description of the extent to which, and the amount by which, consideration is otherwise obtained by the service provider, the plan, or the plan sponsor for such services, directly or indirectly, by means of any charges against the account of the participant or beneficiary.

“(6) Model Statement.—The Secretary shall prescribe a model statement that may be used for purposes of satisfying the requirements of this subsection.

“(7) Updating.—Each contract with a service provider entered into as described in paragraph (1) shall require that the service provider provide to the plan administrator, during the term of the contract,
an updated written statement described in paragraph (1)—

“(A) at least annually, and

“(B) within 30 days of any material change in the information provided in the statement.

“(8) AVAILABILITY TO PARTICIPANTS.—The plan sponsor or plan administrator shall—

“(A) provide to participants and beneficiaries a copy of any statement received pursuant to this subsection within 30 days after receipt of a written request for such statement, and

“(B) post a copy of such statement on any Intranet website maintained by the plan sponsor (or plan administrator on behalf of the plan sponsor).

“(9) LIMITATION.—The requirements of this subsection shall apply with respect to any contract for services only if the total cost for such services under such contract equals or exceeds $1,000.

“(10) QUALIFIED CASH OR DEFERRED ARRANGEMENT.—For purposes of this subsection, the term ‘qualified cash or deferred arrangement’ has
the meaning given such term by section 401(k)(2) of
the Internal Revenue Code of 1986.

“(b) INVESTMENT ELECTION INFORMATION.—

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

“(A) the beginning of the plan year, and

“(B) the effective date of any material
change in investment options,
or, if later, on the date on which the participant
commences participation in the plan.

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

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

“(i) the name of the option,
“(ii) the investment objectives of the
option,
“(iii) the level of risk associated with
the option,

“(iv) whether the option is a com-
prehensive investment designed to achieve
long-term retirement security or should be
combined with other options in order to
achieve such security,

“(v) the historical return and percent-
age fee assessed against amounts invested
under the option,

“(vi) an explanation of the differences
between any asset-based fees and any an-
nual fees in connection with the option,

“(vii) a comparison to a nationally
recognized market-based index or other in-
vestment option that is recommended in
the retirement industry as a benchmark re-
tirement investment option,

“(viii) where, and the manner in
which, additional, plan-specific, and gen-
erally available investment information re-
garding the option may be obtained,

“(B) include, together with any form nec-
essary for making the election of investment op-
tions, a statement explaining that investment
options should be selected not only on the basis of the level of fees charged by each option but also on the basis of careful consideration of other key factors, including the level of risk of the option and historical returns by the option, and

“(C) include a fee menu, relating to all investment options available under the plan, as provided in paragraph (3).

“(3) FEE MENU.—

“(A) IN GENERAL.—The notice provided under this subsection shall include a fee menu consisting of a menu of the potential service fees that could be assessed against the account of the participant or beneficiary with respect to the plan year. The fee menu shall be presented in a manner which is easily understood by the average participant and include such information as the Secretary determines necessary to permit participants and beneficiaries to assess the potential services that could be provided in connection with the investment options and the potential fees that could be assessed against their accounts for such services.
“(B) CATEGORIZATION OF FEES.—The fee menu shall provide information in relation to 3 categories of fees, as follows:

“(i) fees that vary depending on the investment options selected by the participant or beneficiary, including expense ratios, investment-specific asset-based fees, possible redemption fees, and possible surrender charges;

“(ii) fees that are assessed as a percentage of the total assets in the account of the participant or beneficiary, regardless of the investment option selected; and

“(iii) administration and transaction-based fees, including plan loan origination fees, that are either automatically deducted each year or result from certain transactions engaged in by the participant or beneficiary.

“(C) DESCRIPTION OF PURPOSE FOR FEES.—The fee menu shall include a general description of the purposes for each fee, including whether such fee is for investment management, commissions, administration, and record-keeping.
“(D) Potential conflicts of interest.—The fee menu shall include such information as the Secretary shall determine appropriate to describe potential conflicts of interests that may exist with respect to any service providers or other parties-in-interest receiving fees disclosed in the fee menu.

“(4) Model Notice.—The Secretary shall prescribe a model notice that may be used for purposes of satisfying the requirements of this subsection, including a model fee menu.

“(5) Estimations.—To the extent that the actual amount with respect to any information required to be provided in the fee menu is not known, the plan administrator may provide a reasonable and representative estimate and shall indicate any such estimate as being such an estimate. If any estimate provided under this subsection is subsequently determined to be materially incorrect, the plan administrator shall provide the correct amount in an amended report as soon as practicable after such correct amount is known.

“(e) Annual Benefit Statement Provided to Participants.—
“(1) IN GENERAL.—The plan administrator of an individual account plan which permits a participant or beneficiary to exercise control over the assets in the account of the participant or beneficiary shall provide to each participant and beneficiary an annual benefit statement, with respect to the assets in such account that are subject to such control, not later than 90 days after the close of each plan year. 

“(2) REQUIREMENTS.—The annual benefit statement of a plan shall disclose, for the preceding plan year—

“(A) the starting balance of the participant’s account,

“(B) the participant’s vesting status,

“(C) contributions made during the plan year, itemizing separately totals for employer and totals for employee contributions,

“(D) earnings on the account balance during the plan year,

“(E) fees assessed from the account during the plan year,

“(F) the ending balance of the account,

“(G) the participant’s asset allocation, categorized by investment option, including—

“(i) the current asset value,
“(ii) the changes in the asset value during the year, and
“(iii) the net return for the year, expressed as an amount and as a percentage,
“(H) the service fees charged against the participant’s account for the year for each investment option, indicating separately—
“(i) underlying investment fees, including expense ratios and trading costs,
“(ii) load fees,
“(iii) total asset based fees, including variable annuity charges,
“(iv) mortality and expense charges,
“(v) guaranteed investment contract fees,
“(vi) employer stock fees,
“(vii) directed brokerage charges,
“(viii) plan administration fees,
“(ix) participant transaction fees,
“(x) total fees, and
“(xi) total fees as a percentage of current assets, and
“(I) the performance of the investment options selected by the participant during the year
as compared to a nationally recognized market-based index.

“(3) HISTORICAL INFORMATION.—The plan administrator may include in the annual benefit statement information relating to the historical return and risk level of each investment option and the estimated amount that the participant needs to save each month to retire at age 65.

“(4) ESTIMATIONS.—To the extent that the actual amount with respect to any information required to be provided in the annual benefit statement is not known, the plan administrator may provide a reasonable and representative estimate and shall indicate any such estimate as being such an estimate. If any estimate provided under this subsection is subsequently determined to be materially incorrect, the plan administrator shall provide the correct amount in an amended statement as soon as practicable after such correct amount is known.

“(5) MODEL STATEMENT.—The Secretary shall prescribe a model annual benefit statement that may be used for purposes of satisfying the requirements of this subsection.

“(d) CONSTRUCTION.—Nothing in this section shall be construed to limit, or serve as the basis for any infer-
ence regarding, the duties of a fiduciary under section 404(a)(1)(A)(ii).

“(e) ASSISTANCE TO SMALL EMPLOYERS.—The Secretary shall make available to small employers—

“(1) educational and compliance materials designed to assist such employers in selecting and monitoring service providers for individual account plans, investment options under such plans, and fees relating to such options, without any bias as to the size of the service provider and the way any particular service provider delivers plan services, and

“(2) services designed to assist small employers in finding and understanding affordable investment options for such plans.

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

(b) ENFORCEMENT.—Section 502(c)(7) of such Act (29 U.S.C. 1132(c)(7)) is amended by striking “section 101.” and inserting “section 101, or to provide a statement to participants and beneficiaries in accordance with section 111.”
(c) **CONFORMING AMENDMENT.**—The table of contents in section 1 of such Act is amended by striking the item relating to section 111 and inserting the following new items:

“Sec. 111. Special reporting and disclosure rules for individual account plans.

“Sec. 112. Repeal and effective date.”

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply with respect to plan years beginning after the date of the enactment of this Act.

**SEC. 3. MINIMUM INVESTMENT OPTION REQUIREMENT.**

(a) **IN GENERAL.**—Section 402 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1102) is amended by adding at the end the following new subsection:

“(c) An individual account plan which permits a participant or beneficiary to exercise control over the assets in the account of the participant or beneficiary shall include at least one investment option which is a nationally recognized market-based index fund and which, as determined from time to time under regulations which shall be prescribed by the Secretary, offers a combination of historical returns, risk, and fees that is likely to meet retirement income needs at adequate levels of contribution.”

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply with respect to plan years beginning after the date of the enactment of this Act.
SEC. 4. ADVISORY COUNCIL ON IMPROVING EMPLOYER-EMPLOYEE RETIREMENT PRACTICES.

(a) In General.—Part 5 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding after section 518 (29 U.S.C. 1148) the following new section:

“SEC. 519. ADVISORY COUNCIL ON IMPROVING EMPLOYER-EMPLOYEE RETIREMENT PRACTICES.

“(a) Establishment.—

“(1) In General.—There is hereby established in the Department of Labor an Advisory Council on Improving Employer-Employee Retirement Practices (hereinafter in this section referred to as the ‘Council’) consisting of 12 members—

“(A) 6 of whom shall be appointed by the President,

“(B) 3 of whom shall be appointed by the Chairman of the Committee on Education and Labor of the House of Representatives, at the direction of the Committee, and 3 of whom shall be appointed by the Chairman of the Committee on Health, Education, Labor, and Pensions of the Senate, at the direction of the Committee.

“(2) Qualifications.—Members appointed under this subsection shall have demonstrated
knowledge and experience in the law governing, and
the operation of, employee pension benefit plans. In
making appointments under this subsection, the
President and the Chairmen making such appoint-
ments shall consult to as to ensure that, of the mem-
bers appointed under this subsection—

“(A) 6 shall be representatives of pension
plan participants, and

“(B) 6 shall be representatives of employ-
ers, with at least 2 of such representatives of
employers having specialized knowledge regard-
ing small business retirement plans.

“(3) TERMS.—Members shall serve for terms of
3 years. A member may be reappointed. A member
appointed to fill a vacancy shall be appointed only
for the remainder of such term.

“(4) MEETINGS.—The Council shall meet not
less often than semi-annually. A majority of mem-
bers shall constitute a quorum and action shall be
taken only by a majority vote of those present and
voting.

“(b) ADMINISTRATION AND OPERATIONS.—

“(1) COMPENSATION.—Members of the Council
appointed under this subsection and the ex officio
members of the Council shall serve without com-
penetration for their service on the Council, except that, while away from their homes or regular places of business in the performance of services for Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

"(2) ADMINISTRATIVE RESOURCES.—The Secretary shall furnish to the Council an executive secretary and such secretarial, clerical, and other services as are deemed necessary to conduct its business. The Council may call upon other agencies of the Government for statistical data, reports, and other information which will assist the Council in the performance of its duties.

"(3) FEDERAL ADVISORY COMMITTEE ACT.— Section 14(a) of the Federal Advisory Committee Act (relating to termination) shall not apply to the Council.

"(c) DUTIES OF THE COUNCIL.—It shall be the duty of the Council—

"(1) to invite members of the public to submit requests for the Council to consider any issue affect-
ing the operation of employee pension benefit plans
and to review all issues presented to the Council, to
schedule any such issues for consideration by the
Council as the Council deems appropriate,

“(2) to hold such hearings as the Council con-
siders appropriate to hear testimony of relevant ex-
erts and key stakeholders in issues relating to em-
ployee retirement income security under employee
pension benefit plans,

“(3) to issue such advisories as the Council con-
siders appropriate to pension plan practitioners,
service providers, and the public on best practices
for employee pension benefit plan design and oper-
ation,

“(4) to present to employee pension benefit
plans, plan service providers, and the public such
academic or peer-reviewed research as the Council
considers appropriate regarding best practices for
employee pension benefit plan design and operation,

“(5) to issue information directed at employee
pension benefit plan fiduciaries and participants re-
arding ways to benchmark their investment results
against other plan designs and investment options,

“(6) to establish and maintain a presence on
the website maintained by the Department of Labor
for access by the general public and to include on such website (in addition to such other means of communication as the Council deems appropriate)—

“(A) information, presented in a prominent manner, about the Council and how citizens may write to the Council raising issues concerning the operation of employee pension benefit plans,

“(B) information otherwise issued by the Council, as determined appropriate by the Council,

“(7) to issue, in addition to the Annual Report on Retirement Trends and Issues issued pursuant to subsection (d), an annual report to the Secretary, the President, the Committee on Education and Labor of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate summarizing—

“(A) those issues which were presented to the Council during the year covered by the report,

“(B) those issues which were discussed during meetings of the Council, and

“(C) recommendations made to the Council by Members of Congress, officials of the Em-
ployee Benefits Security Administration, employers, service providers, employees, and retirees, and

“(8) to make, from time to time, such recommendations to the Committee on Education and Labor of the House of Representatives, the Committee on Health, Education, Labor, and Pensions of the Senate, the Secretary, employers, service providers, employees, and the general public as the Council deems appropriate on ways to improve the delivery and operation of employee pension benefit plans.

“(d) Annual Report on Retirement Trends and Issues.—

“(1) In general.—The Council shall issue an annual report to each House of the Congress and to the general public regarding the state of retirement income security in the United States, including—

“(A) data illustrating the current operation of the employer-sponsored retirement system in the United States and emerging trends relating to such system, and

“(B) recommendations for reform to improve the delivery of employer-sponsored pension benefits to retired workers and their fami-
lies and improve adequacy of retirement income security in the United States.

“(2) OTHER SPECIFIC INFORMATION.—The Annual Report issued pursuant to paragraph (1) shall specify—

“(A) the number of private employee pension benefit plans in the United States, categorized as to types of plans as determined appropriate by the Council,

“(B) the number of active workers covered or participating in such plans,

“(C) the number of retirees and dependents receiving benefits from such plans

“(D) the number workers who have separated from service covered under such plans and who have roll-over pension accounts or deferred vested benefits,

“(E) the number of workers and retirees with no private employee pension benefit plan coverage or benefits,

“(F) current design features of employee pension benefit plans relating to retirement income security, including—

“(i) contribution levels,

“(ii) benefit levels,
“(iii) vesting periods,

“(iv) annuity features and lump sum payment features,

“(v) eligibility requirements,

“(vi) pre-retirement distributions, and

“(vii) investment of plan assets,

“(G) such other information as the Council deems appropriate.”.

(b) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act is amended by inserting after the item relating to section 518 the following new item:

“Sec. 519. Advisory Council on Employee Benefit Best Practices.”.

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

(a) IN GENERAL.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended by adding at the end the following new subsection:

“(n) ENFORCEMENT COORDINATION OF CERTAIN DISCLOSURE REQUIREMENTS AND REVIEW BY THE DEPARTMENT OF LABOR.—

“(1) IN GENERAL.—The Secretary shall notify the applicable regulatory authority (including, as determined appropriate by the Secretary, the Securities and Exchange Commission or the Comptroller of
the Currency) in any case in which the Secretary determines that a service provider is engaged in a pattern or practice that precludes compliance by plan administrators with section 111. The Secretary shall, in consultation with the applicable authority, take such timely enforcement action under this title as is necessary to assure that such pattern or practice ceases and desists and assess any appropriate penalties. The Secretary shall widely disseminate to employee pension benefit plans covered by this title and their participants and beneficiaries the identity of any service providers with respect to such plans found to be engaged in any such pattern or practice and the particulars of such pattern or practice.

“(2) Annual audit of representative sampling of individual account plans.—The Secretary shall annually audit a representative sampling of individual account plans covered by this title to determine compliance with the requirements of section 111. The Secretary shall annually report the results of such audit and any related recommendations of the Secretary to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate.”
(b) Review and Report to the Congress by Secretary of Labor Relating to Reporting and Disclosure Requirements.—

(1) Study.—As soon as practicable after the date of the enactment of this Act, the Secretary of Labor shall review the reporting and disclosure requirements of part 1 of subtitle B of this title and related provisions of the Pension Protection Act of 2006.

(2) Report.—Not later than 18 months after the date of the enactment of this Act, the Secretary shall make such recommendations as the Secretary considers appropriate to the appropriate committees of the Congress to consolidate, simplify, standardize, and improve the applicable reporting and disclosure requirements so as to simplify reporting for employee pension benefit plans and ensure that needed understandable information is provided to participants and beneficiaries of such plans.