

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 1988  
OFFERED BY MR. ANDREWS OF NEW JERSEY**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Conflicted Investment  
3 Advice Prohibition Act of 2009”.

**4 SEC. 2. FINDINGS.**

5       The Congress finds as follows:

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

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

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

15           (4) Individual average losses of participants in  
16 401(k) plans ranged from 7.2 percent to 11.2 per-  
17 cent in the first nine months of 2008, according to

1 an Employee Benefit Research Institute analysis of  
2 2.2 million retirements account participants.

3 (5) During the first nine months of 2008,  
4 stocks were down, with the S&P 500 index losing  
5 more than 19 percent. With over two-thirds of the  
6 assets in 401(k)-style defined contribution plans in-  
7 vested in equities, either directly or through mutual  
8 funds, participants are exposed to increased risk and  
9 lack meaningful access to independent investment  
10 advise to help them better plan for their retirement.

11 (6) Currently, 401(k) plan account holders have  
12 access to a self-interested or conflicted investment  
13 adviser.

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

18 **SEC. 3. INDEPENDENT INVESTMENT ADVISERS FOR INDI-**  
19 **VIDUAL ACCOUNT PLANS.**

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

24 “(43) INDEPENDENT INVESTMENT ADVISER.—

1           “(A) IN GENERAL.—The term ‘inde-  
2           pendent investment adviser’ means, with respect  
3           to an individual account plan that permits a  
4           participant or beneficiary to direct the invest-  
5           ment of assets in their individual account, a  
6           person who—

7                   “(i) is a fiduciary of the plan by rea-  
8                   son of the provision of investment advice  
9                   referred to in section 3(21)(A)(ii) by the  
10                  person to the plan or a participant or ben-  
11                  eficiary of the plan (irrespective of the  
12                  manner in which such advice is provided or  
13                  the extent to which such advice is based on  
14                  a computer model), and

15                  “(ii) meets the requirements of either  
16                  subparagraph (B) or (C).

17           “(B) REQUIREMENTS APPLICABLE TO IN-  
18           VESTMENT ADVISER.—An investment adviser  
19           meets the requirements of this subparagraph,  
20           if—

21                   “(i) such adviser is—

22                           “(I) registered as an investment  
23                           adviser under the Investment Advisers  
24                           Act of 1940 (15 U.S.C. 80b–1 et seq.)  
25                           or under the laws of the State in

1 which the adviser maintains its prin-  
2 cipal office and place of business,

3 “(II) a bank or similar financial  
4 institution referred to in section  
5 408(b)(4) or a savings association (as  
6 defined in section 3(b)(1) of the Fed-  
7 eral Deposit Insurance Act (12 U.S.C.  
8 1813(b)(1))), but only if the invest-  
9 ment advice referred to in section  
10 3(21)(A)(ii) which is provided by such  
11 bank or institution is provided  
12 through a trust department of the  
13 bank or similar financial institution or  
14 savings association which is subject to  
15 periodic examination and review by  
16 Federal or State banking authorities,  
17 or

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

24 “(ii) such adviser is not a plan invest-  
25 ment provider,

1           “(iii) the fees or other compensation  
2           received, directly or indirectly, by such ad-  
3           viser (and any affiliate thereof) with re-  
4           spect to the provision of investment advice  
5           to any individual account plan or the par-  
6           ticipants or beneficiaries of such a plan ei-  
7           ther—

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

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

18                               “(aa) a flat-dollar basis,

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

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

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

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

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

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

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

1 interest for the investment adviser in  
2 performing services pursuant to the  
3 arrangement with the plan and, if so,  
4 includes a description of such relation-  
5 ship or arrangement,

6 “(IV) includes a representation  
7 by the investment adviser that, before  
8 the arrangement was entered into (or  
9 extended or renewed), the investment  
10 adviser provided to the plan fiduciary  
11 that has authority to cause the em-  
12 ployee benefit plan to enter into (or  
13 extend or renew) the arrangement a  
14 written statement disclosing all fees or  
15 other compensation that the invest-  
16 ment adviser or any affiliate thereof  
17 anticipates to receive with respect to  
18 the advice during the first year, or  
19 other period if less than a year, of the  
20 arrangement,

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

1 all fees or other compensation that  
2 the investment adviser or any affiliate  
3 thereof has received with respect to  
4 the advice during the prior year, and  
5 “(VI) provides that the terms of  
6 the arrangement required under this  
7 clause and any information provided  
8 under such arrangement pursuant to  
9 subclauses (III) and (IV) will also be  
10 furnished by the investment adviser to  
11 the participant or beneficiary that is  
12 the recipient of the advice.

13 “(C) ADVICE PROVIDED TO PARTICIPANTS  
14 AND BENEFICIARIES UNDER AN INVESTMENT  
15 ADVICE COMPUTER PROGRAM MEETING RE-  
16 QUIREMENTS.—An investment adviser meets  
17 the requirements of this subparagraph if the in-  
18 vestment advice provided by the adviser, to the  
19 extent that such advice is provided to partici-  
20 pants and beneficiaries of individual account  
21 plans, is provided under an investment advice  
22 computer program with respect to which the re-  
23 quirements of clauses (i) through (x) are met.

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



1 investment adviser providing the invest-  
2 ment advice under the program is—

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

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

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

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

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

22 “(ii) COMPUTER MODEL.—The re-  
23 quirements of this clause are met if the in-  
24 vestment advice provided under the invest-

1                   ment advice computer program is provided  
2                   pursuant to a computer model that—

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

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

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

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

24                  “(V) takes into account all in-  
25                  vestment options under the plan in

1 specifying how a participant's account  
2 balance should be invested and is not  
3 inappropriately weighted with respect  
4 to any investment option.

5 “(iii) CERTIFICATION.—

6 “(I) IN GENERAL.—The require-  
7 ments of this clause are met with re-  
8 spect to the program if an eligible in-  
9 vestment expert certifies, prior to the  
10 utilization of the computer model and  
11 in accordance with rules prescribed by  
12 the Secretary, that the computer  
13 model meets the requirements of  
14 clause (ii).

15 “(II) RENEWAL OF CERTIFI-  
16 CATIONS.—If, as determined under  
17 regulations prescribed by the Sec-  
18 retary, there are material modifica-  
19 tions to the computer model, the re-  
20 quirements of this subparagraph are  
21 met only if a certification described in  
22 subclause (I) is obtained with respect  
23 to the computer model as so modified.

24 “(III) ELIGIBLE INVESTMENT  
25 EXPERT.—For purposes of this

1 clause, the term ‘eligible investment  
2 expert’ means any person—

3 “(aa) which meets such re-  
4 quirements as the Secretary may  
5 provide, and

6 “(bb) does not have any ma-  
7 terial affiliation or contractual  
8 relationship with any investment  
9 adviser or a related person there-  
10 of (or any employee, agent, or  
11 registered representative of the  
12 investment adviser or related per-  
13 son).

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

17 “(I) the only investment advice  
18 provided under the program is the ad-  
19 vice generated by the computer model  
20 described in clause (ii), and

21 “(II) any transaction pursuant to  
22 the investment advice occurs solely at  
23 the direction of the participant or  
24 beneficiary.

1                   “(v) EXPRESS AUTHORIZATION BY  
2                   SEPARATE FIDUCIARY.—The requirements  
3                   of this clause are met with respect to the  
4                   program if the program is expressly au-  
5                   thorized by a plan fiduciary other than—

6                               “(I) the person offering the pro-  
7                               gram,

8                               “(II) any person that is a plan  
9                               investment provider with respect to  
10                              the plan, and

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

13                   “(vi) ANNUAL AUDIT.—The require-  
14                   ments of this clause are met with respect  
15                   to the program if an independent auditor,  
16                   who has appropriate technical training or  
17                   experience and proficiency and so rep-  
18                   resents in writing—

19                             “(I) conducts an annual audit of  
20                             the program other than the computer  
21                             model referred to in clause (ii) which  
22                             is certified pursuant to clause (iii)) for  
23                             compliance with the requirements of  
24                             this subparagraph, and

1                   “(II) following completion of the  
2                   annual audit, issues a written report  
3                   to the fiduciary who authorized use of  
4                   the program which presents its spe-  
5                   cific findings regarding compliance of  
6                   the program with the requirements of  
7                   this subsection.

8                   For purposes of this clause, an auditor is  
9                   considered independent if it is not related  
10                  to the person offering the program to the  
11                  plan and is not affiliated with any person  
12                  providing investment options under the  
13                  plan.

14                  “(vii) DISCLOSURE.—The require-  
15                  ments of this clause are met with respect  
16                  to the program, if—

17                         “(I) the investment adviser pro-  
18                         vides to the fiduciary referred to in  
19                         clause (v) and the participant or bene-  
20                         ficiary receiving investment advice  
21                         under the program with regard to any  
22                         security or other property offered as  
23                         an investment option, before providing  
24                         the advice, a written notification

1 (which may consist of notification by  
2 means of electronic communication)—

3 “(aa) of the role of any  
4 party that has a material affili-  
5 ation or contractual relationship  
6 with the investment adviser in  
7 the development of the invest-  
8 ment advice program and in the  
9 selection of investment options  
10 available under the plan,

11 “(bb) of all fees or other  
12 compensation relating to the ad-  
13 vice that the investment adviser  
14 or any affiliate thereof is to re-  
15 ceive (including compensation  
16 provided by any third party) in  
17 connection with the provision of  
18 the advice or in connection with  
19 the sale, acquisition, or holding  
20 of the security or other property,

21 “(cc) of any material affili-  
22 ation or contractual relationship  
23 of the investment adviser or af-  
24 filiates thereof in the security or  
25 other property,

1           “(dd) of the manner, and  
2           under what circumstances, any  
3           information relating to the par-  
4           ticipant or beneficiary which is  
5           provided under the program will  
6           be used or disclosed,

7           “(ee) of the types of services  
8           provided by the investment ad-  
9           viser in connection with the pro-  
10          vision of investment advice by the  
11          investment adviser, and

12          “(ff) that a recipient of the  
13          advice may separately arrange  
14          for the provision of advice by an-  
15          other adviser, that could have no  
16          material affiliation with, and  
17          could receive no fees or other  
18          compensation, in connection with  
19          the security or other property,  
20          and

21          “(II) at all times during the pro-  
22          vision of advisory services to the par-  
23          ticipant or beneficiary, the investment  
24          adviser—



1           “(aa) maintains the infor-  
2 mation described in subclause (I)  
3 in accurate form and in the man-  
4 ner described in clause (ix),

5           “(bb) provides, without  
6 charge, accurate information to  
7 the recipient of the advice no less  
8 frequently than annually,

9           “(cc) provides, without  
10 charge, accurate information to  
11 the recipient of the advice upon  
12 request of the recipient, and

13           “(dd) provides, without  
14 charge, accurate information to  
15 the recipient of the advice con-  
16 cerning any material change to  
17 the information required to be  
18 provided to the recipient of the  
19 advice at a time reasonably con-  
20 temporaneous to the change in  
21 information.

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

1           “(I) the investment adviser pro-  
2           vides appropriate disclosure, in con-  
3           nection with the sale, acquisition, or  
4           holding of the security or other prop-  
5           erty with respect to which the invest-  
6           ment advice is provided under the  
7           program, in accordance with all appli-  
8           cable securities laws,

9           “(II) the sale, acquisition, or  
10          holding occurs solely at the direction  
11          of the recipient of the advice,

12          “(III) the compensation received  
13          by the investment adviser and affili-  
14          ates thereof in connection with the  
15          sale, acquisition, or holding of the se-  
16          curity or other property is reasonable,  
17          and

18          “(IV) the terms of the sale, ac-  
19          quisition, or holding of the security or  
20          other property are at least as favor-  
21          able to the plan as an arm’s length  
22          transaction would be.

23          “(ix) STANDARDS FOR PRESENTATION  
24          OF INFORMATION.—

1                   “(I) IN GENERAL.—The require-  
2                   ments of this clause are met with re-  
3                   spect to the program if the notifica-  
4                   tion required to be provided to partici-  
5                   pants and beneficiaries under clause  
6                   (vii)(I) is written in a clear and con-  
7                   spicuous manner and in a manner cal-  
8                   culated to be understood by the aver-  
9                   age plan participant and is sufficiently  
10                  accurate and comprehensive to rea-  
11                  sonably apprise such participants and  
12                  beneficiaries of the information re-  
13                  quired to be provided in the notifica-  
14                  tion.

15                  “(II) MODEL FORM FOR DISCLO-  
16                  SURE OF FEES AND OTHER COM-  
17                  PENSATION.—The Secretary shall  
18                  issue a model form for the disclosure  
19                  of fees and other compensation re-  
20                  quired in clause (vii)(I)(bb) which  
21                  meets the requirements of subclause  
22                  (I).

23                  “(x) MAINTENANCE FOR 6 YEARS OF  
24                  EVIDENCE OF COMPLIANCE.—The require-  
25                  ments of this clause are met with respect

1 to the program if the investment adviser  
2 who provides advice under the program  
3 maintains, for a period of not less than 6  
4 years after the provision of the advice, any  
5 records necessary for determining whether  
6 the requirements of the preceding provi-  
7 sions of this subparagraph and of sub-  
8 section (b)(14) have been met. A failure to  
9 meet the requirements of this clause shall  
10 not be considered to have occurred solely  
11 because the records are lost or destroyed  
12 prior to the end of the 6-year period due  
13 to circumstances beyond the control of the  
14 investment adviser.

15 “(D) DEFINITIONS.—For purposes of this  
16 paragraph—

17 “(i) AFFILIATE.—The term ‘affiliate’  
18 means, in connection with any other per-  
19 son, any person directly or indirectly  
20 (through one or more intermediaries) con-  
21 trolling, controlled by, or under common  
22 control with such other person, or any offi-  
23 cer, director, agent, or employee of, or  
24 partner with, such other person.

1           “(ii) REGISTERED REPRESENTA-  
2           TIVE.—The term ‘registered representa-  
3           tive’ of another entity means a person de-  
4           scribed in section 3(a)(18) of the Securi-  
5           ties Exchange Act of 1934 (15 U.S.C.  
6           78c(a)(18)) (substituting the entity for the  
7           broker or dealer referred to in such sec-  
8           tion) or a person described in section  
9           202(a)(17) of the Investment Advisers Act  
10          of 1940 (15 U.S.C. 80b–2(a)(17)) (sub-  
11          stituting the entity for the investment ad-  
12          viser referred to in such section).

13          “(iii) PLAN INVESTMENT PRO-  
14          VIDER.—The term ‘plan investment pro-  
15          vider’ means any person that creates or  
16          manages any investment in which plan as-  
17          sets of the individual account plan are in-  
18          vested and held in trust on behalf of such  
19          plan and includes any affiliate of such per-  
20          son. Such term does not include—

21                 “(I) a plan sponsor (or an affil-  
22                 iate thereof) with respect to any in-  
23                 vestment created or managed by the  
24                 plan sponsor (or affiliate), if only em-  
25                 ployee benefit plans maintained by

1 such plan sponsor or an affiliate  
2 thereof invest in such investments,

3 “(II) any person who makes the  
4 investment available to the plan, or  
5 any participant or beneficiary in the  
6 plan, as a part of a portfolio of invest-  
7 ment options, to the extent that the  
8 investment options are created and  
9 managed by a person who is not an  
10 affiliate of the person making such  
11 portfolio available, and

12 “(III) any person, solely by rea-  
13 son of authorization by a participant  
14 or beneficiary in the plan of such per-  
15 son to exercise control over the assets  
16 in the participant’s or beneficiary’s  
17 account in such plan, if such assets  
18 are not invested in any investments  
19 created or managed by such person  
20 (or an affiliate thereof).

21 “(iv) FEES OR OTHER COMPENSA-  
22 TION.—The term ‘fees or other compensa-  
23 tion’ includes money or any other thing of  
24 monetary value (for example, gifts, awards,  
25 and trips) received, or to be received, di-

1                   rectly from the plan or plan sponsor or in-  
2                   directly (i.e., from any source other than  
3                   the plan or the plan sponsor) by the invest-  
4                   ment adviser or any affiliate thereof in  
5                   connection with the advice to be provided  
6                   pursuant to the arrangement or because of  
7                   the investment adviser’s or any affiliate’s  
8                   position with the plan. Fees or other com-  
9                   pensation may be expressed in terms of a  
10                  monetary amount, percentage of the plan’s  
11                  assets, or per capita charge for each par-  
12                  ticipant or beneficiary of the plan. The  
13                  manner in which compensation or fees are  
14                  expressed shall contain sufficient informa-  
15                  tion to enable the plan fiduciary to evalu-  
16                  ate the reasonableness of such compensa-  
17                  tion or fees.”.

18                  (b) FIDUCIARY DUTIES WITH RESPECT TO INVEST-  
19                  MENT ADVICE.—

20                  (1) IN GENERAL.—Section 404(a) of such Act  
21                  (29 U.S.C. 1104(a)) is amended by adding at the  
22                  end the following new paragraph:

23                  “(3)(A) The fiduciary of an individual account plan  
24                  that permits a participant or beneficiary to direct the in-  
25                  vestment of assets in the individual account shall not ap-

1 point, contract with, or otherwise arrange for an invest-  
2 ment adviser to provide investment advice referred to in  
3 section 3(21)(A)(ii) to the plan or the participant or bene-  
4 ficiary unless the investment adviser is an independent in-  
5 vestment adviser (as defined in section 3(43)).

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

10 “(i) of the past performance and historical  
11 rates of return of the investment options available  
12 with respect to the plan and comparisons of such op-  
13 tions to relevant benchmarks, and

14 “(ii) that the investment adviser is acting as a  
15 fiduciary of the plan in connection with the provision  
16 of the advice.

17 “(C) Nothing in this paragraph shall be construed to  
18 exempt a plan sponsor or other person who is a fiduciary  
19 from any requirement of this part for the prudent selec-  
20 tion and periodic review of an independent investment ad-  
21 viser with whom the plan sponsor or other person enters  
22 into an arrangement for the provision of investment advice  
23 referred to in section 3(21)(A)(ii), except that any such  
24 requirement shall not be construed to preclude reasonable  
25 reliance by the plan sponsor or other person on the rep-



1 representation of any person that such person making the  
2 representation meets the requirements of section  
3 3(43)(A). The plan sponsor and any other person who is  
4 a fiduciary (other than the independent investment ad-  
5 viser) has no duty under this part to monitor the specific  
6 investment advice given by the independent investment ad-  
7 viser to any particular recipient of the advice and shall  
8 not be liable under this title for any loss, or by reason  
9 of any breach, which results from such specific investment  
10 advice given by the independent investment adviser.

11 “(D) Nothing in this part shall be construed to pre-  
12 clude the use of plan assets to pay for reasonable expenses  
13 in providing investment advice referred to in section  
14 3(21)(A)(ii).

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

23 “(I) is provided under an arrangement that  
24 meets the requirements set forth in Advisory Opin-

1 ion 2001-09A issued under ERISA Procedure 76-1  
2 (41 Fed. Reg. 36281 (Aug. 27, 1976)), or

3 “(II) is provided under an arrangement that  
4 meets the requirements of any Advisory Opinion  
5 issued under ERISA Procedure 76-1 or any exemp-  
6 tion issued by the Secretary under section 408(a), as  
7 determined under the law in effect immediately prior  
8 to the enactment of the Pension Protection Act of  
9 2006.

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

14 (2) REPORT ON PRIOR ADVISORY OPINIONS AND  
15 EXCEPTIONS.—The Secretary of Labor shall, as  
16 soon as practicable after the date of the enactment  
17 of this Act—

18 (A) review each Advisory Opinion and ex-  
19 ception described in section 404(a)(3)(E)(i) of  
20 the Employee Retirement Income Security Act  
21 of 1974 (as added by this paragraph (1)) to de-  
22 termine the extent to which such Advisory  
23 Opinion or exception fails to adequately serve  
24 the interests of participants and beneficiaries

1 and to be adequately protective of the rights of  
2 participants and beneficiaries, and

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

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

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

9 (2) by striking subsection (b)(14)(B) and in-  
10 sserting the following:

11 “(B) the investment advice is provided by  
12 an independent investment adviser (as defined  
13 in section 3(43)).”.

14 (d) REGULATORY AUTHORITY.—The Secretary of  
15 Labor may issue regulations providing that an investment  
16 adviser can still be considered as meeting the requirements  
17 of section 3(43)(B) of the Employee Retirement Income  
18 Security Act of 1974 despite the receipt of a de minimus  
19 amount of compensation that fails to meet the require-  
20 ments of section 3(43)(B)(iii) of such Act due to the exist-  
21 ence of previously existing contracts.

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

