AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2989
OFFERED BY MR. GEORGE MILLER OF
CALIFORNIA

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.
(a) SHORT TITLE.—This Act may be cited as the “401(k) Fair Disclosure and Pension Security Act of 2009”.
(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title and table of contents.

TITLE I—401(K) FAIR DISCLOSURE FOR RETIREMENT
Sec. 101. Special reporting and disclosure rules for individual account plans.
Sec. 102. Minimum investment option requirement for individual account plans.
Sec. 103. Enforcement coordination and review by the Department of Labor.

TITLE II—PROHIBITION OF CONFLICTED INVESTMENT ADVICE
Sec. 201. Findings.
Sec. 202. Independent investment advisers for individual account plans.
Sec. 203. Expansion of outreach to promote retirement income savings to include promotion of education on financial literacy with respect to investment for retirement.

TITLE III—TRANSITIONAL FUNDING RELIEF FOR DEFINED BENEFIT PLANS
Sec. 301. Election to use yield curve.
Sec. 302. Effective date of regulations.
Sec. 303. Clarification of treatment of expenses.
Sec. 304. Information reporting.
Sec. 305. 5-year extension of automatic amortization extension period for multi-
employer plans.
Sec. 306. Pension plan maintained by Christian Schools International treated
as church plan.
Sec. 307. Special rule for determining adequate consideration in connection
with the purchase and sale of qualifying employer securities.

TITLE I—401(k) FAIR

DISCLOSURE FOR RETIREMENT

SEC. 101. SPECIAL REPORTING AND DISCLOSURE RULES

FOR INDIVIDUAL ACCOUNT PLANS.

(a) ADDITIONAL REPORTING AND DISCLOSURE
RULES.—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:

“SEC. 111. SPECIAL REPORTING AND DISCLOSURE RULES

FOR INDIVIDUAL ACCOUNT PLANS.

“(a) DISCLOSURE TO EMPLOYERS SPONSORING INDIVIDUAL ACCOUNT PLANS REGARDING SERVICES NECESSARY FOR ESTABLISHMENT OR OPERATION OF PLANS.—

“(1) SERVICE DISCLOSURE STATEMENT.—The plan administrator of an individual account plan (or any other plan official with contracting authority under the terms of the plan) may not enter into a contract or arrangement for services to the plan (in-
cluding, for purposes of this section, the offering of any investment option to the plan) unless such plan administrator or other official has received, reasonably in advance of entering into the contract or arrangement, a single written statement from the service provider which—

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

“(B) provides the expected total annual charges for such services for the plan that will be provided in connection with the contract or arrangement, including a reasonable allocation of such total annual charges among all relevant component charges specified in paragraph (2) (regardless of how the charges are actually assessed).

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

“(2) MINIMUM ALLOCATION REQUIREMENTS.—
The allocation required under paragraph (1)(B) in connection with the services provided under each
contract or arrangement shall specify component charges (to the extent such services for the plan are provided under the contract or arrangement) as follows:

“(A) charges for administration and recordkeeping,

“(B) transaction based charges,

“(C) charges for investment management,

and

“(D) all such charges not described in subparagraph (A), (B), or (C).

The Secretary may by regulation provide for the appropriate allocation of component charges among the categories of charges provided in subparagraphs (A), (B), (C), and (D).

“(3) PRESENTATION OF CHARGES.—The total charges described in paragraph (2)(A) and the total charges described in paragraph (2)(C) shall each be presented in the written statement as an aggregate total dollar amount, and, in addition, each of such total charges may also be presented as a percentage of assets. The charges described in paragraph (2)(B) shall be itemized separately as dollar amounts or as percentages of the applicable base amounts.
“(4) Estimations.—For purposes of providing the statement required under this subsection in connection with any service, the service provider may provide a reasonable and representative estimate of the charges required to be specified under paragraph (1)(B) and shall indicate any such estimate as being such an estimate. Any such estimate shall be based on reasonable assumptions specified in the statement (which shall include the previous year’s experience of the plan or, in the case of a new plan, a reasonable estimate, taking into account the plan’s participants and beneficiaries).

“(5) Disclosure of Financial Relationships.—

“(A) In General.—The statement required under paragraph (1) shall include a written disclosure of—

“(i) any payment to be provided (or the amount representing the value of any services to be provided) to the service provider (or any affiliate thereof) from any entity other than the plan or the accounts of participants or beneficiaries pursuant to, or in connection with, the contract or arrangement described in paragraph (1)
and the amount and type of any payment
to be made or credit to be received for
such services (irrespective of whether the
service provider (or affiliate thereof) or
other person providing such services is af-
affiliated or unaffiliated with the plan, the
plan sponsor, the plan administrator, or
any other plan official), and

“(ii) such other similar arrangements
benefitting the service provider (or any af-
affiliate thereof) as may be specified by the
Secretary.

In any case in which the contract or arrange-
ment described in paragraph (1) provides for
the payments described in clause (i) in terms of
a formula, the requirements of such clause may
be met by specifying the formula to be used in
connection with such payments and describing
the application of such formula.

“(B) INCLUSIONS.—

“(i) IN GENERAL.—Disclosures de-
scribed under subparagraph (A)(ii) shall
include the extent to which the service pro-
vider (or any affiliate thereof) may benefit
from the offering of its own proprietary in-
vestment products or those of third par-
ties, including (but not limited to) cross-
selling of affiliated products or services to
the plan sponsor or participants.

“(ii) Applicable prohibited
transaction exemption.—Disclosures
under this paragraph may include a de-
scription of any applicable prohibited
transaction exemption under section 408
related to the services described in the
statement required under paragraph (1).

“(6) Disclosure of impact of share class-
es.—The statement required under paragraph (1)
shall, to the extent applicable, disclose that the share
prices of certain mutual fund investments that are
available to the plan may be different from the share
prices outside of the plan due to the existence of dif-
ferent share classes and provide the basis for these
differences.

“(7) Disclosure of certain arrangements
in connection with free or discounted serv-
ces or reimbursements by service pro-
viders.—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 ex-
plicit charge or for charges set at a discounted rate or subject to rebate, the statement required under paragraph (1) shall specify the manner in which, the extent to which, and the amount by which consideration is otherwise obtained by the service provider (or any affiliate thereof), the plan, or the plan sponsor for such services, directly or indirectly, by means of any charges against the plan.

“(8) REVIEW BY THE SECRETARY.—The Secretary shall, from time to time as determined appropriate by the Secretary, review the accuracy and sufficiency of statements provided pursuant to this subsection.

“(9) UPDATING.—Each service provider shall provide to the plan administrator an updated written statement described in paragraph (1) describing any material change in the information included in the statement provided pursuant to paragraph (1) as soon as is reasonable after the occurrence of the change is known. Such an updated written statement, or, in the case of a plan year in which no material change in the information included in the statement provided pursuant to paragraph (1) has occurred, a written statement setting forth such
fact, shall be provided by the service provider not less often than annually.

“(10) LIMITATIONS.—

“(A) DOLLAR LIMITATION.—

“(i) IN GENERAL.—The requirements of this subsection shall apply with respect to any contract or arrangement for services provided during any plan year only if the total charged for such services under such contract or arrangement is reasonably expected to equal or exceed $5,000.

“(ii) ADJUSTMENTS BY THE SECRETARY.—The Secretary may be regulation adjust the dollar amount specified in this subparagraph to a lesser amount for small plans and to a greater amount for other plans and provide for appropriate annual adjustments in such adjusted amounts

“(B) GENERAL APPLICABILITY OF REQUIREMENTS WITH RESPECT TO SERVICES.—Nothing in this subsection shall be construed to require any service provider to provide any service with respect to any particular plan sponsor.
“(11) SATISFACTION OF FIDUCIARY RULES.—

Nothing in the preceding provisions of this subsection affects the obligations of fiduciaries under part 4 of this subtitle.

“(b) DISCLOSURES TO PARTICIPANTS AND BENEFICIARIES.—

“(1) ADVANCE NOTICE OF AVAILABLE INVESTMENT OPTIONS.—The plan administrator of an individual account plan that permits participants or beneficiaries to direct the investment of assets in their individual accounts shall provide to the participant or beneficiary notice of the investment options available for election under the plan before a reasonable period prior to—

“(A) the earliest date provided for under the plan for the participant’s initial investment of any contribution made on behalf of such participant, and

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

In the case of a plan that provides for immediate eligibility or that contains an automatic contribution arrangement (as defined in subparagraphs (A) and (B) of section 514(c)(2)), the notice required under subparagraph (A) may be provided within any rea-
sonable period prior to such initial investment. With respect to any notice required under this paragraph, the Secretary shall prescribe regulations creating specific requirements for periods of advance notice to be treated as reasonable under this paragraph (of not less than 10 days) in circumstances similar to those described in section 101(i)(2)(C), and such notice may be combined with any similar notice that may be required under section 404(e)(5) or under this section.

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

“(A) include a prominent statement, in language presented in a manner which is easily understandable by the typical participant, indicating which components of the charges (both direct and indirect) for each investment option are payable by the participant or beneficiary and how such components are to be paid,

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

“(i) the name of the option,

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

“(iii) the risk level associated with the option,

“(iv) whether the option is diversified among various classes of assets so as to minimize the risk of large losses or should be combined with other options so as to obtain such diversification,

“(v) whether the investment option is actively managed or passively managed in relation to an index and the difference between active management and passive management,

“(vi) where, and the manner in which, additional plan-specific, option-specific, and generally available investment information regarding the option may be obtained, and

“(vii) a statement explaining that investment options should not be evaluated solely on the basis of the charges for each option but should also be based on careful consideration of other key factors, including the risk level of the option, the invest-
ment objectives of the option, the principal investment strategies of the option, and historical returns of the option, and

“(C) include a plan fee comparison chart, relating to the charges described in paragraph (3) in connection with all investment options available under the plan, as provided in paragraph (3).

“(3) PLAN FEE COMPARISON CHART.—

“(A) IN GENERAL.—

“(i) IN GENERAL.—The notice provided under this subsection shall include a plan fee comparison chart consisting of a comparison of actual service and investment charges (including, for purposes of this clause, charges for the offering of an investment option) that will or could be assessed against the account of the participant or beneficiary with respect to the plan year. The plan fee comparison chart shall be presented in a manner which is easily understood by the typical participant and include such information as the Secretary determines necessary to permit participants and beneficiaries to assess the serv-
ices for which charges will or could be assessed against the account.

“(ii) FORM.—For purposes of this paragraph, the potential service charges shall be provided in the form of a dollar amount or as a formula (such as a percentage of assets), as appropriate. The form of the potential service charges shall be presented in a manner which is easily understandable by the typical participant, including examples that demonstrate how the charges will be assessed against the account of the participant or beneficiary.

“(B) CATEGORIZATION OF CHARGES.—The plan fee comparison chart shall provide information in relation to the following categories of charges that will or could be assessed against the account of the participant or beneficiary:

“(i) ASSET-BASED CHARGES SPECIFIC TO INVESTMENT.—Charges that vary depending on the investment options selected by the participant or beneficiary, including expense ratios and investment-specific asset-based charges. The information relating to such charges shall include a state-
ment noting any charges for 1 or more investment options which pay for services other than investment management.

“(ii) Asset-based charges not specific to investment.—Charges that are assessed as a percentage of the total assets in the account of the participant or beneficiary, regardless of the investment option selected.

“(iii) Administrative and transaction-based charges.—Administration and transaction-based charges, including fees charged to participants to cover plan administration, compliance, and record-keeping costs, plan loan origination fees, possible redemption fees, and possible surrender charges, that are not assessed as a percentage of the total assets in the account and are either automatically deducted each year or result from certain transactions engaged in by the participant or beneficiary.

“(iv) Other charges.—Any other charges which may be deducted from participants’ or beneficiaries’ accounts and
which are not described in clauses (i), (ii),
and (iii).

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

“(D) FEES AND HISTORICAL RETURNS.—
In connection with each investment option listed
in the plan fee comparison chart, the chart
shall also include, as determined periodically by
the Secretary in consultation with the Securities
and Exchange Commission, appropriate and
consistent benchmarks, indices, or other points
of comparison that may be used by beneficiaries
to compare each investment option’s historical
returns, net of fees and expenses, for the pre-
vious year, 5 years, and 10 years (or for the pe-
riod since inception, if shorter) as shown in the
chart pursuant to this paragraph, including a
separate point of comparison with respect to
each such time period.

“(4) MODEL NOTICES.—The Secretary shall
prescribe one or more model notices that may be
used for purposes of satisfying the requirements of
this subsection, including model plan fee comparison charts.

“(5) Estimations.—For purposes of providing the notice required under this subsection, the plan administrator may provide a reasonable and representative estimate for any charges or percentages disclosed under paragraph (2) or (3) and shall indicate any such estimate as being such an estimate. Any such estimate shall be based on reasonable assumptions stated in the notice (such as the previous year’s experience or, in the case of a new plan, a reasonable estimate, taking into account the plan’s participants and beneficiaries).

“(c) Electronic Media.—Any disclosure required under this section may be provided through an electronic medium under such rules as shall be prescribed by the Secretary not later than 1 year after the date of the enactment of the 401(k) Fair Disclosure and Pension Security Act of 2009. Such rules shall be similar to those applicable under the Internal Revenue Code of 1986 with respect to notices to participants in pension plans. The Secretary shall regularly modify such rules as appropriate to take into account new developments, including new forms of electronic media, and to fairly take into consideration the interests of plan sponsors, service providers, and partici-
pants. The rules prescribed by the Secretary pursuant to this subsection shall provide for a method for the typical participant or beneficiary to obtain without undue burden any such disclosure in writing on paper in lieu of receipt through an electronic medium.

“(d) Regulations Regarding Certain Products.—The Secretary may by regulation identify certain types of investment options, such as an option that provides a guaranteed rate of return and that does not identify specific fees, and prescribe alternative disclosures of cost and performance measures that correspond to the particular circumstances of such options.

“(e) Definitions.—For purposes of this section—

“(1) Charge.—The term ‘charge’ means, in connection with any service provided to a plan or any financial product provided to the plan in which plan assets are to be invested, any fee, credit, or other compensation charged or paid for such service or product, including money and any other thing of monetary value to be received by the provider of the service or product, or its affiliate, in connection with the service or product.

“(2) Service.—The term ‘service’ means, in connection with a plan, a service provided directly or indirectly to, or with respect to, the plan or a service
provided directly or indirectly in connection with a financial product in which plan assets are to be invested.

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

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

“(5) REGULATIONS.—The Secretary shall provide by regulation such definitions of other terms used in this section as the Secretary determines appropriate.”.

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

(1) in subsection (a)(2)—

(A) by redesignating subparagraph (C) as subparagraph (H);

(B) in subparagraph (B)(ii)—

(i) in subclause (II), by striking “diversified, and” and inserting “diversified,”;
(ii) in subclause (III), by striking the period and inserting “, and”; 

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

“(IV) with respect to the portion of a participant’s account for which the participant has the right to direct the investment of assets, the information described in subparagraph (C).”; and

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

“(C) PERIODIC ACCOUNT INFORMATION FOR PARTICIPANTS AND BENEFICIARIES.—For purposes of subparagraph (B)(ii)(IV), the information described in this subparagraph consists of the following, indicating the portion of each amount described in clauses (i) though (vii) attributable to each investment option elected in connection with the participant’s account:

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

“(ii) contributions made during the quarter, itemizing separately totals for employer and totals for employee contributions,
“(iii) investment earnings or losses on the account balance during the quarter (if any),

“(iv) actual or estimated charges (within the meaning of section 111(e)(1)) which reduce the account during the quarter, expressed in dollars or, if estimated, such estimated dollar charges as are derived from an expense ratio (which may be expressed as a specific date estimate based on reasonable assumptions stated in the disclosure (such as the previous year’s expense ratio).

“(v) any other direct charges to the participant or beneficiary in connection with the participant’s account,

“(vi) the ending balance of the account,

“(vii) the participant’s asset allocation to each investment option, expressed as an amount and as a percentage, and

“(viii) how to obtain the most recently updated version of the plan fee comparison chart prepared for purposes of section 111(b)(3).
“(D) **OTHER INFORMATION.**—The plan administrator may include in the quarterly pension benefit statement information relating to the historical return and risk of each investment option and the estimated amount that the participant needs to contribute each month or year so as to retire at retirement age (as defined in section 216(l) of the Social Security Act).

“(E) **ESTIMATIONS.**—For purposes of making the disclosure of actual charges or percentages as required under this paragraph, the plan administrator may provide a reasonable and representative estimate of such charges or percentages and shall indicate any such estimate as being such an estimate. Any such estimate shall be based on reasonable assumptions included in the statement (such as the previous year’s experience).

“(F) **MODEL STATEMENTS.**—The Secretary shall prescribe one or more model pension benefit statements that may be used for purposes of satisfying the requirements of subparagraphs (B)(ii) and (C).
“(G) Annual compliance for small plans and with respect to certain information.—In the case of a plan providing for investment as described in paragraph (1)(A)(i)—

“(i) if the plan has 100 or fewer participants and beneficiaries, the plan may provide the pension benefit statement under paragraph (1) on an annual rather than a quarterly basis, and

“(ii) the plan may comply with the requirements of subparagraph (B)(ii)(IV) on an annual rather than a quarterly basis.”;

and

(2) by adding at the end the following new subsections:

“(d) Assistance to small employers.—The Secretary shall make available to employers with 100 or fewer employees—

“(1) educational and compliance materials designed to assist such employers in selecting and monitoring service providers for individual account plans which permit a participant or beneficiary to exercise control over the assets in the account of the participant or beneficiary, investment options under
such plans, and charges relating to such options,
and
“(2) services designed to assist such employers
in finding and understanding affordable investment
options for such plans and in comparing the invest-
ment performance of, and charges for, such options
on an ongoing basis against appropriate benchmarks
or other appropriate measures.
“(e) 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.
“(f) ELECTRONIC MEDIA.—Any disclosure required
under this section may be provided through an electronic
medium under such rules as shall be prescribed by the
Secretary not later than 1 year after the date of the enact-
ment of the 401(k) Fair Disclosure and Pension Security
Act of 2009. Such rules shall be similar to those applicable
under the Internal Revenue Code of 1986 with respect to
notices to participants in pension plans. The Secretary
shall regularly modify such rules as appropriate to take
into account new developments, including new forms of
electronic media, and to fairly take into consideration the
interests of plan sponsors, service providers, and participants. The rules prescribed by the Secretary pursuant to this subsection shall provide for a method for the typical participant or beneficiary to obtain without undue burden any such disclosure in writing on paper in lieu of receipt through an electronic medium.

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

“(1) CHARGE.—The term ‘charge’ means, in connection with any service provided to a plan or any financial product provided to the plan in which plan assets are to be invested, any fee, credit, or other compensation charged or paid for such service or product, including money and any other thing of monetary value to be received by the provider of the service or product, or its affiliate, in connection with the service or product.

“(2) SERVICE PROVIDER.—The terms ‘service provider’ and ‘provider’ mean, in connection with a service (as defined in section 111(e)(2)), a person directly or indirectly providing such service.

“(3) REGULATIONS.—The Secretary shall provide by regulation such definitions of other terms used in this section as the Secretary determines appropriate.”.
(c) ENFORCEMENT.—Section 502 of such Act (29 U.S.C. 1132) is amended—

(1) in subsection (a)(6), by striking “under paragraph (2)” and all that follows through “subsection (c)” and inserting “under paragraph (2), (4), (5), (6), (7), (8), (9), (10), or (11) of subsection (e)”;

(2) in subsection (c), by redesignating the second paragraph (10) as paragraph (12), and by inserting after the first paragraph (10) the following new paragraph:

“(11)(A) In the case of any violation of section 111(a) by a service provider (as defined in section 111(e)(4)), the service provider may be assessed by the Secretary a civil penalty of up to $1,000 a day with respect to each such violation from the date of the initial violation until the date on which such violation is corrected, subject to a total maximum penalty of 10 percent of the amount involved, as determined by the Secretary.

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

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

(d) CONFORMING AMENDMENT.—The table of con-
tents in section 1 of such Act, as amended by section 2,
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.”.

(e) EFFECTIVE DATES.—

(1) Section 111(a) of the Employee Retirement
Income Security Act of 1974 (as added by sub-
section (a) of this section) shall apply with respect
to contracts or arrangements for services entered
into after one year after the date of the enactment
of this Act.

(2) Section 111(b) of such Act (as added by
subsection (a) of this section) shall apply with re-
spect to plan years beginning after one year after
the date of the enactment of this Act.

(3) The amendments made by subsection (b) of
this section shall apply with respect to pension ben-
efit statements for calendar quarters beginning after
one year after the date of the enactment of this Act.
(4) The Secretary shall issue final regulations under the amendments made by this section not later than 270 days after the date of the enactment of this Act. Any act or practice in advance of the issuance of final regulations under the amendments made by this section which is in good faith compliance with the requirements of such amendments shall be treated as in compliance with any such final regulations.

(f) **Study Regarding Use of Benchmarks, Indices, and Other Points of Comparison in Plan Fee Comparison Charts.**—

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

(2) **Matters to be Studied.**—In the study required under paragraph (1), the Secretary shall investigate whether, and the extent to which, benchmarks, indices, and other points of comparison included in plan fee comparison charts—
(A) help participants and beneficiaries und-
derstand the charges with respect to their indi-
vidual account plans,

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

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

(3) REPORT.—Not later than 180 days after
the date of the enactment of this Act, the Secretary
shall report to each House of the Congress regarding
the results of the study conducted pursuant to this
subsection, together with such recommendations as
the Secretary may consider appropriate.

SEC. 102. MINIMUM INVESTMENT OPTION REQUIREMENT
FOR INDIVIDUAL ACCOUNT PLANS.

(a) IN GENERAL.—Section 404(c) of the Employee
1104(c)) is amended by adding at the end the following
new paragraph:

“(6) MINIMUM INVESTMENT OPTION REQUIRE-
MENT FOR INDIVIDUAL ACCOUNT PLANS.—Para-
graph (1)(A)(ii) shall not apply in connection with
any individual account plan which permits a participant or beneficiary to exercise control over the assets in the account of the participant or beneficiary unless the plan includes at least one investment option—

“(A) which is a passively managed investment with a portfolio of securities that is designed to be representative of the United States investable equity market (including representation of small, mid, and large cap stocks) or the United States investment grade bond market (including Treasury, agency, non-agency, and corporate issues), or a combination thereof, and

“(B) which is described in the terms of the plan as offered without any endorsement of the Government or the plan sponsor.

An investment shall not fail to satisfy the requirements of subparagraph (A) in connection with either market described in subparagraph (A) solely by reason of a failure to invest in all or substantially all equities or bonds (as applicable) in such market, if the methodology used to select the equities or bonds is designed to approximate in a reasonable manner the broad experience of such market.”
(b) Conforming Amendment.—Section 404(c)(1)(A)(ii) of such Act (29 U.S.C. 1104(c)(1)(A)(ii)) is amended by inserting “except as provided in section 404(c)(6) and” after “exercise of control,”.

(c) Effective Dates.—

(1) The amendments made by this section shall apply with respect to plan years beginning after one year after the date of the enactment of this Act.

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

SEC. 103. 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.—

“(A) Notification and action.—The Secretary shall notify the applicable regulatory authority 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.

“(B) Dissemination.—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 pattern or practice described in subparagraph (A) with the intent to preclude compliance by plan administrators with section 111 and the particulars of such pattern or practice. Prior to the dissemination
of the identity of any service providers identified and determined by the Secretary to be engaged in such a pattern or practice, such service provider shall receive a notice of intent to disseminate, an opportunity to request an administrative hearing, and a timely appeal to the Secretary.

“(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 title I of the

(2) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Labor, in consultation with the Secretary of the Treasury, shall make such recommendations as the Secretary of Labor 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.

TITLE II—PROHIBITION OF CONFLICTED INVESTMENT ADVICE

SEC. 201. FINDINGS.

The Congress finds as follows:

(1) The market downturn of 2008 had a devastating effect on the retirement security income of millions of American workers.

(2) According to the Congressional Budget Office, $2 trillion of Americans’ retirement savings was wiped out over a 15-month period starting in 2008.
According to Congressional Budget Office estimates, the value of pension funds and retirement accounts dropped by roughly $1 trillion last year.

Individual average losses of participants in 401(k) plans ranged from 7.2 percent to 11.2 percent in the first nine months of 2008, according to an Employee Benefit Research Institute analysis of 2.2 million retirements account participants.

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

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

In 2007, the Government Accountability Office concluded that conflicts of interest can have an adverse affect on defined benefit and defined contribution plans.
SEC. 202. INDEPENDENT INVESTMENT ADVISERS FOR INDIVIDUAL ACCOUNT PLANS.

(a) In general.—Section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) is amended by adding at the end the following new paragraph:

“(43) Independent investment adviser.—

“(A) In general.—The term ‘independent investment adviser’ means, with respect to an individual account plan that permits a participant or beneficiary to direct the investment of assets in their individual account, a person who—

“(i) is a fiduciary of the plan by reason of the provision of investment advice referred to in section 3(21)(A)(ii) by the person to the plan or a participant or beneficiary of the plan (irrespective of the manner in which such advice is provided or the extent to which such advice is based on a computer model), and

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

“(B) Requirements applicable to investment adviser.—An investment adviser
meets the requirements of this subparagraph, if—

“(i) such adviser is—

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

“(II) any other person, but only if every individual providing the investment advice referred to in section 3(21)(A)(ii) on behalf of such person (or on behalf of any affiliate thereof) is a registered representative of a person described in subclause (I),

“(ii) such adviser is not the plan investment provider,

“(iii) the fees or other compensation received, directly or indirectly, by such adviser (and any affiliate thereof) with respect to the provision of investment advice to any individual account plan or the participants or beneficiaries of such a plan either—
“(I) are not received from any person or persons (or anyone affiliated with such persons) that market, sell, manage or provide investments in which plan assets of the individual account plan are invested, or

“(II) do not vary depending on the basis of any investment option selected, and are calculated pursuant to one or more of the following bases—

“(aa) a flat-dollar basis,

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

“(cc) a flat or sliding-scale percentage of the assets in a participant’s or beneficiary’s account basis, or

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

and

“(iv) such adviser provides the investment advice pursuant to a written arrangement with the individual account plan that—
“(I) provides that the investment adviser is a fiduciary of the plan with respect to the provision of the advice,

“(II) requires that the advice be provided only by registered representatives of the investment adviser or an affiliate thereof,

“(III) discloses, before a reasonable period prior to entering into such arrangement, whether the investment adviser or any affiliate thereof has any material financial, referral, or other relationship or arrangement with a money manager, broker, other client of the investment adviser or any affiliate thereof, other service provider to the plan, or any other entity that creates or may create a conflict of interest for the investment adviser in performing services pursuant to the arrangement with the plan and, if so, includes a description of such relationship or arrangement,

“(IV) includes a representation by the investment adviser that, before
the arrangement was entered into (or extended or renewed), the investment adviser provided to the plan fiduciary that has authority to cause the employee benefit plan to enter into (or extend or renew) the arrangement a written statement disclosing all fees or other compensation that the investment adviser or any affiliate thereof anticipates to receive with respect to the advice during the first year, or other period if less than a year, of the arrangement,

“(V) provides that the investment adviser will provide to such plan fiduciary (and the participant and beneficiary receiving the advice, if applicable) a statement annually disclosing all fees or other compensation that the investment adviser or any affiliate thereof has received with respect to the advice during the prior year, and

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

“(C) ADVICE PROVIDED TO PARTICIPANTS AND BENEFICIARIES UNDER AN INVESTMENT ADVICE COMPUTER PROGRAM MEETING REQUIREMENTS.—An investment adviser meets the requirements of this subparagraph if the investment advice provided by the adviser, to the extent that such advice is provided to participants and beneficiaries of individual account plans, is provided under an investment advice computer program with respect to which the requirements of clauses (i) through (x) are met.

“(i) ADVISER REQUIREMENTS.—The requirements of this clause are met if the investment adviser providing the investment advice under the program is—

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

“(II) an insurance company qualified to do business under the laws of a State,
“(III) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

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

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

“(ii) COMPUTER MODEL.—The requirements of this clause are met if the investment advice provided under the investment advice computer program is provided pursuant to a computer model that—

“(I) applies generally accepted investment theories that take into account the historic returns of different asset classes over defined periods of time,
“(II) utilizes relevant information about the participant, which may include age, life expectancy, retirement age, risk tolerance, other assets or sources of income, and preferences as to certain types of investments,

“(III) utilizes prescribed objective criteria to provide asset allocation portfolios comprised of investment options available under the plan,

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

“(V) takes into account all investment options under the plan in specifying how a participant’s account balance should be invested and is not inappropriately weighted with respect to any investment option,

“(VI) operates so that it does not, directly or indirectly, in any manner act to benefit the investment ad-
viser (or any affiliate of the adviser or any person with a material affiliation or contractual relationship with the adviser) at the expense of plan participants and beneficiaries,

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

“(VIII) conforms to such other requirements as shall be prescribed by the Secretary to ensure that it operates in the best interest of plan participants and beneficiaries.

“(iii) CERTIFICATION.—

“(I) IN GENERAL.—The requirements of this clause are met with respect to the program if an eligible investment expert certifies, prior to the utilization of the computer model and in accordance with rules prescribed by the Secretary, that the computer model meets the requirements of clause (ii).

“(II) RENEWAL OF CERTIFICATIONS.—If, as determined under
regulations prescribed by the Secretary, there are material modifications to the computer model, the requirements of this subparagraph are met only if a certification described in subclause (I) is obtained with respect to the computer model as so modified.

“(III) Eligible Investment Expert.—For purposes of this clause, the term ‘eligible investment expert’ means any person—

“(aa) which meets such requirements as the Secretary may provide, and

“(bb) does not have any material affiliation or contractual relationship with any investment adviser or a related person thereof (or any employee, agent, or registered representative of the investment adviser or related person).

“(iv) Exclusivity of Recommendation.—The requirements of this clause are met with respect to the program, if—
“(I) the only investment advice provided under the program is the advice generated by the computer model described in clause (ii), and

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

“(v) EXPRESS AUTHORIZATION BY SEPARATE FIDUCIARY.—The requirements of this clause are met with respect to the program if the program is expressly authorized by a plan fiduciary other than—

“(I) the person offering the program,

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

“(III) any affiliate of either person described in subclause (I) or (II).

“(vi) ANNUAL AUDIT.—The requirements of this clause are met with respect to the program if an independent auditor, who has appropriate technical training or
experience and proficiency and so represents in writing—

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

“(II) following completion of the annual audit, issues a written report to the fiduciary who authorized use of the program which presents its specific findings regarding compliance of the program with the requirements of this subsection.

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

“(vii) DISCLOSURE.—The requirements of this clause are met with respect to the program, if—
“(I) the investment adviser provides to the fiduciary referred to in clause (v) and the participant or beneficiary receiving investment advice under the program with regard to any security or other property offered as an investment option, before providing the advice, a written notification (which may consist of notification by means of electronic communication)—

“(aa) of the role of any party that has a material affiliation or contractual relationship with the investment adviser in the development of the investment advice program and in the selection of investment options available under the plan,

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

“(cc) of any material affili-
ation or contractual relationship
of the investment adviser or af-
iliates thereof in the security or
other property,

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

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

“(ff) that a recipient of the
advice may separately arrange
for the provision of advice by an-
other adviser, that could have no
material affiliation with, and
could receive no fees or other
compensation, in connection with
the security or other property,
and
“(II) at all times during the pro-
vision of advisory services to the par-
ticipant or beneficiary, the investment
adviser—
“(aa) maintains the infor-
mation described in subclause (I)
in accurate form and in the man-
ner described in clause (ix),
“(bb) provides, without
charge, accurate information to
the recipient of the advice no less
frequently than annually,
“(cc) provides, without
charge, accurate information to
the recipient of the advice upon
request of the recipient, and
“(dd) provides, without
charge, accurate information to
the recipient of the advice con-
cerning any material change to
the information required to be
provided to the recipient of the
advice at a time reasonably contemporaneous to the change in information.

“(viii) OTHER CONDITIONS.—The requirements of this clause are met with respect to the program, if—

“(I) the investment adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property with respect to which the investment advice is provided under the program, in accordance with all applicable securities laws,

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

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

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

“(ix) Standards for presentation of information.—

“(I) In general.—The requirements of this clause are met with respect to the program if the notification required to be provided to participants and beneficiaries under clause (vii)(I) is written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and is sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

“(II) Model form for disclosure of fees and other compensation.—The Secretary shall issue a model form for the disclosure of fees and other compensation required in clause (vii)(I)(bb) which
meets the requirements of subclause (I).

“(x) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—The requirements of this clause are met with respect to the program if the investment adviser who provides advice under the program maintains, for a period of not less than 6 years after the provision of the advice, any records necessary for determining whether the requirements of the preceding provisions of this subparagraph and of subsection (b)(14) have been met. A failure to meet the requirements of this clause shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the investment adviser.

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

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

“(ii) Registered representative.—The term ‘registered representa-
tive’ of another entity means a person de-
scribed in section 3(a)(18) of the Securi-
78c(a)(18)) (substituting the entity for the
broker or dealer referred to in such sec-
tion) or a person described in section
202(a)(17) of the Investment Advisers Act
of 1940 (15 U.S.C. 80b–2(a)(17)) (sub-
stituting the entity for the investment ad-
viser referred to in such section).

“(iii) Plan investment provider.—The term ‘plan investment pro-
vider’ means any person (or any person af-
iliated with such person) that creates or
manages any investment in which any indi-
vidual account plan invests. Such term
does not include—

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

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

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

“(iv) FEES OR OTHER COMPENSA-
tion.—The term ‘fees or other compensa-
tion’ includes money or any other thing of monetary value (for example, gifts, awards, and trips) received, or to be received, directly from the plan or plan sponsor or indirectly (i.e., from any source other than the plan or the plan sponsor) by the investment adviser or any affiliate thereof in connection with the advice to be provided pursuant to the arrangement or because of the investment adviser’s or any affiliate’s position with the plan. Fees or other compensation may be expressed in terms of a monetary amount, percentage of the plan’s assets, or per capita charge for each participant or beneficiary of the plan. The manner in which compensation or fees are expressed shall contain sufficient information to enable the plan fiduciary to evaluate the reasonableness of such compensation or fees.’’.

(b) FIDUCIARY DUTIES WITH RESPECT TO INVESTMENT ADVICE.—

(1) IN GENERAL.—Section 404(a) of such Act (29 U.S.C. 1104(a)) is amended by adding at the end the following new paragraph:
“(3)(A) The fiduciary of an individual account plan that permits a participant or beneficiary to direct the investment of assets in the individual account shall not appoint, contract with, or otherwise arrange for an investment adviser to provide investment advice referred to in section 3(21)(A)(ii) to the plan or the participant or beneficiary unless the investment adviser is an independent investment adviser (as defined in section 3(43)).

“(B) The independent investment adviser providing investment advice to a plan or to a participant or beneficiary shall provide, before a reasonable period prior to the initial provision of the advice, a written notification—

“(i) of the past performance and historical rates of return of the investment options available with respect to the plan and comparisons of such options to relevant benchmarks, and

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

“(C) Nothing in this paragraph shall be construed to exempt a plan sponsor or other person who is a fiduciary from any requirement of this part for the prudent selection and periodic review of an independent investment adviser with whom the plan sponsor or other person enters into an arrangement for the provision of investment advice
referred to in section 3(21)(A)(ii), except that any such
type of back-referential reference shall not be construed to preclude reasonable
reliance by the plan sponsor or other person on the rep-
representation of any person that such person making the
representation meets the requirements of section
3(43)(A). The plan sponsor and any other person who is
a fiduciary (other than the independent investment ad-
viser) has no duty under this part to monitor the specific
investment advice given by the independent investment ad-
viser to any particular recipient of the advice and shall
not be liable under this title for any loss, or by reason
of any breach, which results from such specific investment
advice given by the independent investment adviser.

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

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

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

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

(e) Conforming Amendments.—Section 408 of such Act (29 U.S.C. 1108) is amended—

(1) by striking subsection (g); and

(2) by striking subsection (b)(14)(B) and inserting the following:

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

(d) Regulatory Authority.—The Secretary of Labor may issue regulations providing that an investment adviser can still be considered as meeting the requirements of section 3(43)(B) of the Employee Retirement Income Security Act of 1974 despite the receipt of a de minimus amount of compensation that fails to meet the requirements of section 3(43)(B)(iii) of such Act due to the existence of previously existing contracts.
(e) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after one year after the date of the enactment of this Act.

SEC. 203. EXPANSION OF OUTREACH TO PROMOTE RETIREMENT INCOME SAVINGS TO INCLUDE PROMOTION OF EDUCATION ON FINANCIAL LITERACY WITH RESPECT TO INVESTMENT FOR RETIREMENT.

(a) IN GENERAL.—Section 516 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1146) is amended—

(1) in subsection (b), by inserting after “creation of educational materials,” the following: “promotion of education in financial literacy with respect to investment for retirement as provided in subsection (e),”;

(2) by redesignating subsection (e) as subsection (f); and

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

“(e) PROMOTION OF EDUCATION IN FINANCIAL LITERACY WITH RESPECT TO INVESTMENT FOR RETIREMENT.—The Secretary, in consultation with the Secretary of Education and the Secretary of the Treasury, shall establish a program under which—
“(1) employees and the general public are provided with information and materials—

“(A) informing them about resources available for attaining financial literacy with respect to investment for retirement,

“(B) effectively educating them about the importance of, and appropriate techniques with respect to, personal finance, saving for retirement, and choosing independent investment advisers when managing their accounts under individual account plans, and

“(C) effectively educating them about debt obligations, the relationship of debt to savings, and the potential consequences of debt with respect to saving for retirement,

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

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

(4) Study and report to the Congress.—
(A) IN GENERAL.—The Secretary of Labor shall conduct a survey of ongoing efforts by the Federal Government to assist employees and the general public with attainment of financial literacy with respect to investment for retirement and to educate them about the importance of, and appropriate techniques with respect to, personal finance, debt obligations, saving for retirement, and choosing independent investment advisers when managing their accounts under individual account plans.

(B) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit a report to each House of the Congress setting forth the results of the Secretary's survey conducted pursuant to subparagraph (A), together with such recommendations as the Secretary considers appropriate for improvement in efforts by the Federal Government in assisting employees and the general public with attainment of financial literacy in connection with investment for retirement and educating them about the importance of, and appropriate techniques with respect to, personal finance, debt obligations, saving for retirement,
and choosing independent investment advisers when managing their accounts under individual account plans.

TITLE III—TRANSITIONAL FUNDING RELIEF FOR DEFINED BENEFIT PLANS

SEC. 301. ELECTION TO USE YIELD CURVE.

(a) AMENDMENT TO ERISA.—The last sentence of clause (ii) of section 303(h)(2)(D) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1083(h)(2)(D)(ii)) is amended to read as follows: “Such election, once made, may be revoked only with the consent of the Secretary, except that any election in effect for a plan with respect to a plan year beginning in 2009 may be revoked for the plan year beginning in 2010 without such consent.”.

(b) AMENDMENT TO IRC.—The last sentence of clause (ii) of section 430(h)(2)(D) of the Internal Revenue Code of 1986 (relating to election to use yield curve) is amended to read as follows: “Such election, once made, may be revoked only with the consent of the Secretary, except that any election in effect for a plan with respect to a plan year beginning in 2009 may be revoked for the plan year beginning in 2010 without such consent.”.
(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to plan years beginning after December 31, 2009.

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

The Secretary of the Treasury shall—

(1) make the final regulations issued under sections 206(g) and 303 of the Employee Retirement Income Security Act of 1974 and sections 430 and 436 of the Internal Revenue Code of 1986 effective no earlier than plan years beginning after December 31, 2009; and

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

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

(a) **AMENDMENTS TO ERISA.**—

is amended by striking “plan-related expenses” and inserting “plan-related administrative expenses”.

(2) CONFORMING AMENDMENT.—Subclause (II) of section 303(i)(2)(A)(i) of such Act (29 U.S.C. 1083(i)(2)(A)(i)(II)) is amended by striking “plan-related expenses” and inserting “plan-related administrative expenses”.

(b) AMENDMENTS TO IRC.—

(1) IN GENERAL.—Clause (ii) of section 430(b)(1)(A) of the Internal Revenue Code of 1986 (relating to target normal cost) is amended by striking “plan-related expenses” and inserting “plan-related administrative expenses”.

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

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of paragraphs (1)(A), (1)(F)(i), (2)(A), and (2)(F)(i) of section 101(b) of the Worker, Retiree, and Employer Recovery Act of 2008 (Public Law 110-458; 122 Stat. 5093).
SEC. 304. INFORMATION REPORTING.

(a) In General.—Paragraph (1) of section 4010(b) of the Employee Retirement Security Act of 1974 (29 U.S.C. 1310(b)(1)) is amended to read as follows:

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

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

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

(b) Effective Date.—The amendment made by this section shall apply to years beginning after 2009.
SEC. 305. 5-YEAR EXTENSION OF AUTOMATIC AMORTIZATION EXTENSION PERIOD FOR MULTIEMPLOYER PLANS.

(a) ERISA AMENDMENTS.—Section 304(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1084(d)) is amended—

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

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

(b) IRC AMENDMENTS.—Section 431(d) of the Internal Revenue Code of 1986 (relating to extension of amortization periods for multiemployer plans) is amended—

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

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

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to applications for extension filed on or after the date of the enactment of this Act.

SEC. 306. PENSION PLAN MAINTAINED BY CHRISTIAN SCHOOLS INTERNATIONAL TREATED AS CHURCH PLAN.

(a) IN GENERAL.—For purposes of title I of the Employee Retirement Income Security Act of 1974 and the
Internal Revenue Code of 1986, any pension plan maintained by Christian Schools International as of January 1, 2009, shall be treated as a church plan within the meaning of section 3(33) of such Act and section 414(e) of such Code which is maintained by an organization described in section 3(33)(C)(ii)(II) of such Act and section 414(e)(3)(B)(ii) of such Code.

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

SEC. 307. SPECIAL RULE FOR DETERMINING ADEQUATE CONSIDERATION IN CONNECTION WITH THE PURCHASE AND SALE OF QUALIFYING EMPLOYER SECURITIES.

(a) In general.—Section 3(18) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(18)) is amended—

(1) by redesignating clauses (i) and (ii) of subparagraph (A) as subclauses (I) and (II), respectively, and by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(2) by inserting “(A)” after “(18)”;

(3) by adding at the end the following new subparagraph:

“(B) In the case of a plan described in section 407(d)(3)(A) which was in existence on the date of the
enactment of this Act, if the valuation set for the purchase
or sale by the plan of a qualifying employer security (as
defined in section 407(d)(5)) is set at a price which has
not been found by the Secretary to be in violation of this
Act and which is book value computed annually in accord-
ance with generally accepted accounting principles and the
provisions of the plan, and if the valuations set for all
prior purchases or sales by the plan of qualifying employer
securities have been consistently so priced, then all such
valuations for qualifying employer securities shall be
deemed to be adequate consideration within the meaning
of subparagraph (A).”.

(b) Effect Date.—The amendments made by
this section shall apply to purchases and sales of quali-
fying employer securities on or after September 2, 1974.