To amend the Employee Retirement Income Security Act of 1974 with respect to the composition of the board of directors of the Pension Benefit Guaranty Corporation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 30, 2009

Mr. KOHL (for himself, Mr. BENNET, Mrs. MCCASKILL, and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Employee Retirement Income Security Act of 1974 with respect to the composition of the board of directors of the Pension Benefit Guaranty Corporation, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Pension Benefit Guaranty Corporation Governance Improvement Act of 2009”.
SEC. 2. BOARD OF DIRECTORS OF THE PENSION BENEFIT GUARANTY CORPORATION.

(a) IN GENERAL.—Section 4002(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302(d)) is amended to read as follows:

“(d)(1) The board of directors of the corporation consists of—

“(A) the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Commerce;

“(B) a member that is a representative of employers offering defined benefit plans;

“(C) a member that is a representative of organized labor and employees; and

“(D) 2 other members.

“(2)(A) The members of the board of directors described under subparagraphs (B) through (D) of paragraph (1)—

“(i) shall be appointed by the President by and with the advice and consent of the Senate—

“(I) at the beginning of the second year of the President’s term of office, with respect to such members described under subparagraphs (B) and (C) of paragraph (1); and
“(II) at the beginning of the fourth year of the President’s term of office, with respect to such members described under subparagraph (D) of paragraph (1); and “(ii) shall serve for a term of 4 years.

“(B) Not more than 2 members of the board of directors described under subparagraphs (B) through (D) of paragraph (1) shall be affiliated with the same political party.

“(C) Each member of the board of directors described under subparagraphs (B) through (D) of paragraph (1) shall not have a direct financial interest in the decisions of the corporation.

“(3) Each member of the board of directors described under subparagraph (A) of paragraph (1) shall designate in writing an official, not below the level of Assistant Secretary, to serve as the voting representative of such member on the board. Such designation shall be effective until revoked or until a date or event specified therein. Any such representative may refer for board action any matter under consideration by the designating board member.

“(4) The members of the board of directors described under—

“(A) subparagraph (A) of paragraph (1), shall serve without compensation, but shall be reimbursed
for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the board; and

“(B) subparagraphs (B) through (D) of paragraph (1) shall, for each day (including traveltime) during which they are attending meetings or conferences of the board or otherwise engaged in the business of the board, be compensated at a rate fixed by the corporation which is not in excess of the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code.

“(5)(A) The Secretary of Labor is the chairman of the board of directors.

“(B) The President shall designate 1 of the members appointed under paragraph (2) as the vice-chairman of the board of directors.

“(6) The Inspector General of the corporation shall report to the board of directors, and not less than twice a year, shall attend a meeting of the board of directors to provide a report on the activities and findings of the
Inspector General, including with respect to monitoring
and review of the operations of the corporation.

“(7) The General Counsel of the corporation shall—

“(A) serve as the secretary to the board of di-
rectors, and shall advise such board as needed; and

“(B) have overall responsibility for all legal
matters affecting the corporation and provide the
corporation with legal advice and opinions on all
matters of law affecting the corporation, except that
the authority of the General Counsel shall not ex-
tend to the Office of Inspector General and the inde-
pendent legal counsel of such Office.

“(8) Notwithstanding any other provision of this Act,
the Office of Inspector General and the legal counsel of
such Office is independent of the management of the cor-
poration and the General Counsel of the corporation.”.

(b) Number of Meetings; Public Availability.—Section 4002(e) of the Employee Retirement
Income Security Act of 1974 (29 U.S.C. 1302(e)) is
amended—

(1) by striking “The board” and inserting “(1)
The board”;

(2) by striking “the corporation.” and inserting
“the corporation, but in no case less than 4 times
a year with a quorum of not less than 5 members.
Not less than 1 meeting of the board of directors during each year shall be a joint meeting with the advisory committee under subsection (h).”; and

(3) by adding at the end the following:

“(2) The chairman of the board of directors shall make available to the public the minutes from each meeting of the board, unless the chairman designates a meeting or portion of a meeting as closed to the public, based on the confidentiality of the matters to be discussed during such meeting.”.

(c) ADVISORY COMMITTEE.—

(1) ISSUES CONSIDERED BY THE COMMITTEE.—Section 4002(h)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302(h)(1)) is amended—

(A) by striking “, and (D)” and inserting “, (D)” ; and

(B) by striking “time to time.” and inserting “time to time, and (E) other issues as determined appropriate by the advisory committee.”.

(2) JOINT MEETING.—Section 4002(h)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302(h)(3)) is amended by adding at the end the following: “Not less than 1 meeting
of the advisory committee during each year shall be
a joint meeting with the board of directors under
subsection (e).”.

SEC. 3. AVOIDING CONFLICTS OF INTEREST.

Section 4002 of the Employee Retirement Income Se-
curity Act of 1974 (29 U.S.C. 1302) is amended by adding
at the end the following:

“(j) The Director of the corporation, and each mem-
ber of the board of directors described under subpara-
graphs (B) through (D) of subsection (d)(1), shall agree
in writing to recuse him or herself from participation in
activities which present a potential conflict of interest or
appearance of such conflict, including by not serving on
a technical evaluation panel.”.

SEC. 4. SENSE OF CONGRESS.

(a) FORMATION OF COMMITTEES.—It is the sense of
Congress that the board of directors of the Pension Ben-
efit Guaranty Corporation established under section 4002
of the Employee Retirement Income Security Act of 1974
(29 U.S.C. 1302), as amended by this Act, should form
committees, including an audit committee and an invest-
ment committee, to enhance the overall effectiveness of the
board of directors.

(b) RISK MANAGEMENT POSITION.—It is the sense
of Congress that the Pension Benefit Guaranty Corpora-
tion established under section 4002 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302), as amended by this Act, should establish a risk management position that evaluates and mitigates the risk that the corporation might experience. The individual in such position should coordinate the risk management efforts of the corporation, explain risks and controls to senior management and the board of directors of the corporation, and make recommendations.