

The Conflicted Investment Advice Prohibition Act of 2009

The Andrews Amendment in the Nature of substitute of HR 1988 would restore the Employee Retirement Income Security Act's (ERISA) prohibition on self-interested investment advisers providing advice to employer-sponsored retirement accounts. Furthermore, it would close the door opened by Pension Protection Act (PPA), which exposed millions workers to conflicted investment advice and continue to help open the door to participants desiring access to an independent investment adviser.

The Andrews Substitute differs from HR 1988 with respect to making explicit (1) an exemption from the specific requirements of the proposal for pre-PPA independent investment advice arrangements¹, which today provides independent investment advice through a computer program to millions of American workers and (2) protect from liability for employers who prudently select an independent investment adviser for the plan they offer and its participants.

Pre-PPA Investment Advice Arrangements

The Andrews Substitute provides a safe-harbor for Sun America computer model arrangements² as well as other investment advice arrangements provided for by an advisory opinion, an exemption, or any other procedures previously issued by the Department which expressed the arrangement as in compliance of ERISA. Today, this type of advice is rendered to millions of American workers through investment advisers under no requirement to report the Department. The Andrews's substitute therefore requires annually reporting of the arrangements to the Department.

Employer Liability Protection

The Andrews Substitute amends section 404(a) of ERISA by permitting employers to enter into investment advice arrangements for the plan and its participants only if they are an eligible fiduciary investment adviser who is independent (as defined by the bill) and acts in the interest of the plan participant, rather than their own. Furthermore, the Andrews Amendment would provide a strong incentive for employers to offer independent investment advice to participants by providing a safe-harbor to those employers that prudently select and periodically review the independent investment adviser for their plan.

Americans face many extraordinary challenges, which will test our retirement system in the coming years. Therefore, they cannot afford to test drive their retirement savings with advisers employed by major influential investment management firms driven by profit. A vote in favor of the Andrews Substitute is a vote to protect American workers' retirement savings and restore confidence in US retirement system.

¹ Subject to review by the Department of Labor to ensure ERISA compliance.

²Department of Labor Advisory Opinion 2001-09