

**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.

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “401(k) Fair Disclosure and Pension Security Act of
4 2009”.

5 (b) **TABLE OF CONTENTS.**—The table of contents for
6 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.

1 **TITLE I—401(k) FAIR**
2 **DISCLOSURE FOR RETIREMENT**

3 **SEC. 101. SPECIAL REPORTING AND DISCLOSURE RULES**
4 **FOR INDIVIDUAL ACCOUNT PLANS.**

5 (a) ADDITIONAL REPORTING AND DISCLOSURE
6 RULES.—Part 1 of subtitle B of title I of the Employee
7 Retirement Income Security Act of 1974 is amended—

8 (1) by redesignating section 111 (29 U.S.C.
9 1031) as section 112; and

10 (2) by inserting after section 110 (29 U.S.C.
11 1030) the following new section:

12 **“SEC. 111. SPECIAL REPORTING AND DISCLOSURE RULES**
13 **FOR INDIVIDUAL ACCOUNT PLANS.**

14 “(a) DISCLOSURE TO EMPLOYERS SPONSORING INDI-
15 VIDUAL ACCOUNT PLANS REGARDING SERVICES NEC-
16 ESSARY FOR ESTABLISHMENT OR OPERATION OF
17 PLANS.—

18 “(1) SERVICE DISCLOSURE STATEMENT.—The
19 plan administrator of an individual account plan (or
20 any other plan official with contracting authority
21 under the terms of the plan) may not enter into a
22 contract or arrangement for services to the plan (in-

1 cluding, for purposes of this section, the offering of
2 any investment option to the plan) unless such plan
3 administrator or other official has received, reason-
4 ably in advance of entering into the contract or ar-
5 rangement, a single written statement from the serv-
6 ice provider which—

7 “(A) specifies such services for the plan
8 that will be provided in connection with the con-
9 tract or arrangement, and

10 “(B) provides the expected total annual
11 charges for such services for the plan that will
12 be provided in connection with the contract or
13 arrangement, including a reasonable allocation
14 of such total annual charges among all relevant
15 component charges specified in paragraph (2)
16 (regardless of how the charges are actually as-
17 sessed).

18 The description of the services and specification of
19 the charges for the services shall be displayed promi-
20 nently in the written statement and shall be pre-
21 sented in a format which is understandable to the
22 typical plan administrator.

23 “(2) MINIMUM ALLOCATION REQUIREMENTS.—
24 The allocation required under paragraph (1)(B) in
25 connection with the services provided under each

1 contract or arrangement shall specify component
2 charges (to the extent such services for the plan are
3 provided under the contract or arrangement) as fol-
4 lows:

5 “(A) charges for administration and rec-
6 ordkeeping,

7 “(B) transaction based charges,

8 “(C) charges for investment management,
9 and

10 “(D) all such charges not described in sub-
11 paragraph (A), (B), or (C).

12 The Secretary may by regulation provide for the ap-
13 propriate allocation of component charges among the
14 categories of charges provided in subparagraphs (A),
15 (B), (C), and (D).

16 “(3) PRESENTATION OF CHARGES.—The total
17 charges described in paragraph (2)(A) and the total
18 charges described in paragraph (2)(C) shall each be
19 presented in the written statement as an aggregate
20 total dollar amount, and, in addition, each of such
21 total charges may also be presented as a percentage
22 of assets. The charges described in paragraph (2)(B)
23 shall be itemized separately as dollar amounts or as
24 percentages of the applicable base amounts.

1 “(4) ESTIMATIONS.—For purposes of providing
2 the statement required under this subsection in con-
3 nection with any service, the service provider may
4 provide a reasonable and representative estimate of
5 the charges required to be specified under paragraph
6 (1)(B) and shall indicate any such estimate as being
7 such an estimate. Any such estimate shall be based
8 on reasonable assumptions specified in the statement
9 (which shall include the previous year’s experience of
10 the plan or, in the case of a new plan, a reasonable
11 estimate, taking into account the plan’s participants
12 and beneficiaries).

13 “(5) DISCLOSURE OF FINANCIAL RELATION-
14 SHIPS.—

15 “(A) IN GENERAL.—The statement re-
16 quired under paragraph (1) shall include a writ-
17 ten disclosure of—

18 “(i) any payment to be provided (or
19 the amount representing the value of any
20 services to be provided) to the service pro-
21 vider (or any affiliate thereof) from any
22 entity other than the plan or the accounts
23 of participants or beneficiaries pursuant
24 to, or in connection with, the contract or
25 arrangement described in paragraph (1)

1 and the amount and type of any payment
2 to be made or credit to be received for
3 such services (irrespective of whether the
4 service provider (or affiliate thereof) or
5 other person providing such services is af-
6 filiated or unaffiliated with the plan, the
7 plan sponsor, the plan administrator, or
8 any other plan official), and

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

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

20 “(B) INCLUSIONS.—

21 “(i) IN GENERAL.—Disclosures de-
22 scribed under subparagraph (A)(ii) shall
23 include the extent to which the service pro-
24 vider (or any affiliate thereof) may benefit
25 from the offering of its own proprietary in-

1 investment products or those of third par-
2 ties, including (but not limited to) cross-
3 selling of affiliated products or services to
4 the plan sponsor or participants.

5 “(ii) APPLICABLE PROHIBITED
6 TRANSACTION EXEMPTION.—Disclosures
7 under this paragraph may include a de-
8 scription of any applicable prohibited
9 transaction exemption under section 408
10 related to the services described in the
11 statement required under paragraph (1).

12 “(6) DISCLOSURE OF IMPACT OF SHARE CLASS-
13 ES.—The statement required under paragraph (1)
14 shall, to the extent applicable, disclose that the share
15 prices of certain mutual fund investments that are
16 available to the plan may be different from the share
17 prices outside of the plan due to the existence of dif-
18 ferent share classes and provide the basis for these
19 differences.

20 “(7) DISCLOSURE OF CERTAIN ARRANGEMENTS
21 IN CONNECTION WITH FREE OR DISCOUNTED SERV-
22 ICES OR REIMBURSEMENTS BY SERVICE PRO-
23 VIDERS.—In any case in which services are provided
24 to the plan, or to the plan sponsor in connection
25 with the plan, by any service provider without ex-

1 plicit charge or for charges set at a discounted rate
2 or subject to rebate, the statement required under
3 paragraph (1) shall specify the manner in which, the
4 extent to which, and the amount by which consider-
5 ation is otherwise obtained by the service provider
6 (or any affiliate thereof), the plan, or the plan spon-
7 sor for such services, directly or indirectly, by means
8 of any charges against the plan.

9 “(8) REVIEW BY THE SECRETARY.—The Sec-
10 retary shall, from time to time as determined appro-
11 priate by the Secretary, review the accuracy and suf-
12 ficiency of statements provided pursuant to this sub-
13 section.

14 “(9) UPDATING.—Each service provider shall
15 provide to the plan administrator an updated written
16 statement described in paragraph (1) describing any
17 material change in the information included in the
18 statement provided pursuant to paragraph (1) as
19 soon as is reasonable after the occurrence of the
20 change is known. Such an updated written state-
21 ment, or, in the case of a plan year in which no ma-
22 terial change in the information included in the
23 statement provided pursuant to paragraph (1) has
24 occurred, a written statement setting forth such

1 fact, shall be provided by the service provider not
2 less often than annually.

3 “(10) LIMITATIONS.—

4 “(A) DOLLAR LIMITATION.—

5 “(i) IN GENERAL.—The requirements
6 of this subsection shall apply with respect
7 to any contract or arrangement for services
8 provided during any plan year only if the
9 total charged for such services under such
10 contract or arrangement is reasonably ex-
11 pected to equal or exceed \$5,000.

12 “(ii) ADJUSTMENTS BY THE SEC-
13 RETARY.—The Secretary may be regula-
14 tion adjust the dollar amount specified in
15 this subparagraph to a lesser amount for
16 small plans and to a greater amount for
17 other plans and provide for appropriate an-
18 nual adjustments in such adjusted
19 amounts

20 “(B) GENERAL APPLICABILITY OF RE-
21 QUIREMENTS WITH RESPECT TO SERVICES.—

22 Nothing in this subsection shall be construed to
23 require any service provider to provide any serv-
24 ice with respect to any particular plan sponsor.

1 “(11) SATISFACTION OF FIDUCIARY RULES.—

2 Nothing in the preceding provisions of this sub-
3 section affects the obligations of fiduciaries under
4 part 4 of this subtitle.

5 “(b) DISCLOSURES TO PARTICIPANTS AND BENE-
6 FICIARIES.—

7 “(1) ADVANCE NOTICE OF AVAILABLE INVEST-
8 MENT OPTIONS.—The plan administrator of an indi-
9 vidual account plan that permits participants or
10 beneficiaries to direct the investment of assets in
11 their individual accounts shall provide to the partici-
12 pant or beneficiary notice of the investment options
13 available for election under the plan before a reason-
14 able period prior to—

15 “(A) the earliest date provided for under
16 the plan for the participant’s initial investment
17 of any contribution made on behalf of such par-
18 ticipant, and

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

21 In the case of a plan that provides for immediate eli-
22 gibility or that contains an automatic contribution
23 arrangement (as defined in subparagraphs (A) and
24 (B) of section 514(e)(2)), the notice required under
25 subparagraph (A) may be provided within any rea-

1 sonable period prior to such initial investment. With
2 respect to any notice required under this paragraph,
3 the Secretary shall prescribe regulations creating
4 specific requirements for periods of advance notice
5 to be treated as reasonable under this paragraph (of
6 not less than 10 days) in circumstances similar to
7 those described in section 101(i)(2)(C), and such no-
8 tice may be combined with any similar notice that
9 may be required under section 404(c)(5) or under
10 this section.

11 “(2) INFORMATION INCLUDED IN NOTICE.—

12 The notice required under paragraph (1) shall—

13 “(A) include a prominent statement, in
14 language presented in a manner which is easily
15 understandable by the typical participant, indi-
16 cating which components of the charges (both
17 direct and indirect) for each investment option
18 are payable by the participant or beneficiary
19 and how such components are to be paid,

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

22 “(i) the name of the option,

23 “(ii) information effectively describing
24 the investment objectives of the option

1 (such as a description of a broadly recog-
2 nized asset class),

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

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

10 “(v) whether the investment option is
11 actively managed or passively managed in
12 relation to an index and the difference be-
13 tween active management and passive
14 management,

15 “(vi) where, and the manner in which,
16 additional plan-specific, option-specific,
17 and generally available investment infor-
18 mation regarding the option may be ob-
19 tained, and

20 “(vii) a statement explaining that in-
21 vestment options should not be evaluated
22 solely on the basis of the charges for each
23 option but should also be based on careful
24 consideration of other key factors, includ-
25 ing the risk level of the option, the invest-

1 ment objectives of the option, the principal
2 investment strategies of the option, and
3 historical returns of the option, and

4 “(C) include a plan fee comparison chart,
5 relating to the charges described in paragraph
6 (3) in connection with all investment options
7 available under the plan, as provided in para-
8 graph (3).

9 “(3) PLAN FEE COMPARISON CHART.—

10 “(A) IN GENERAL.—

11 “(i) IN GENERAL.—The notice pro-
12 vided under this subsection shall include a
13 plan fee comparison chart consisting of a
14 comparison of actual service and invest-
15 ment charges (including, for purposes of
16 this clause, charges for the offering of an
17 investment option) that will or could be as-
18 sessed against the account of the partici-
19 pant or beneficiary with respect to the plan
20 year. The plan fee comparison chart shall
21 be presented in a manner which is easily
22 understood by the typical participant and
23 include such information as the Secretary
24 determines necessary to permit partici-
25 pants and beneficiaries to assess the serv-

1 ices for which charges will or could be as-
2 sessed against the account.

3 “(ii) FORM.—For purposes of this
4 paragraph, the potential service charges
5 shall be provided in the form of a dollar
6 amount or as a formula (such as a per-
7 centage of assets), as appropriate. The
8 form of the potential service charges shall
9 be presented in a manner which is easily
10 understandable by the typical participant,
11 including examples that demonstrate how
12 the charges will be assessed against the ac-
13 count of the participant or beneficiary.

14 “(B) CATEGORIZATION OF CHARGES.—The
15 plan fee comparison chart shall provide infor-
16 mation in relation to the following categories of
17 charges that will or could be assessed against
18 the account of the participant or beneficiary:

19 “(i) ASSET-BASED CHARGES SPECIFIC
20 TO INVESTMENT.—Charges that vary de-
21 pending on the investment options selected
22 by the participant or beneficiary, including
23 expense ratios and investment-specific
24 asset-based charges. The information relat-
25 ing to such charges shall include a state-

1 ment noting any charges for 1 or more in-
2 vestment options which pay for services
3 other than investment management.

4 “(ii) ASSET-BASED CHARGES NOT
5 SPECIFIC TO INVESTMENT.—Charges that
6 are assessed as a percentage of the total
7 assets in the account of the participant or
8 beneficiary, regardless of the investment
9 option selected.

10 “(iii) ADMINISTRATIVE AND TRANS-
11 ACTION-BASED CHARGES.—Administration
12 and transaction-based charges, including
13 fees charged to participants to cover plan
14 administration, compliance, and record-
15 keeping costs, plan loan origination fees,
16 possible redemption fees, and possible sur-
17 render charges, that are not assessed as a
18 percentage of the total assets in the ac-
19 count and are either automatically de-
20 ducted each year or result from certain
21 transactions engaged in by the participant
22 or beneficiary.

23 “(iv) OTHER CHARGES.—Any other
24 charges which may be deducted from par-
25 ticipants’ or beneficiaries’ accounts and

1 which are not described in clauses (i), (ii),
2 and (iii).

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

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

23 “(4) MODEL NOTICES.—The Secretary shall
24 prescribe one or more model notices that may be
25 used for purposes of satisfying the requirements of

1 this subsection, including model plan fee comparison
2 charts.

3 “(5) ESTIMATIONS.—For purposes of providing
4 the notice required under this subsection, the plan
5 administrator may provide a reasonable and rep-
6 resentative estimate for any charges or percentages
7 disclosed under paragraph (2) or (3) and shall indi-
8 cate any such estimate as being such an estimate.
9 Any such estimate shall be based on reasonable as-
10 sumptions stated in the notice (such as the previous
11 year’s experience or, in the case of a new plan, a
12 reasonable estimate, taking into account the plan’s
13 participants and beneficiaries).

14 “(c) ELECTRONIC MEDIA.—Any disclosure required
15 under this section may be provided through an electronic
16 medium under such rules as shall be prescribed by the
17 Secretary not later than 1 year after the date of the enact-
18 ment of the 401(k) Fair Disclosure and Pension Security
19 Act of 2009. Such rules shall be similar to those applicable
20 under the Internal Revenue Code of 1986 with respect to
21 notices to participants in pension plans. The Secretary
22 shall regularly modify such rules as appropriate to take
23 into account new developments, including new forms of
24 electronic media, and to fairly take into consideration the
25 interests of plan sponsors, service providers, and partici-

1 pants. The rules prescribed by the Secretary pursuant to
2 this subsection shall provide for a method for the typical
3 participant or beneficiary to obtain without undue burden
4 any such disclosure in writing on paper in lieu of receipt
5 through an electronic medium.

6 “(d) REGULATIONS REGARDING CERTAIN PROD-
7 UCTS.—The Secretary may by regulation identify certain
8 types of investment options, such as an option that pro-
9 vides a guaranteed rate of return and that does not iden-
10 tify specific fees, and prescribe alternative disclosures of
11 cost and performance measures that correspond to the
12 particular circumstances of such options.

13 “(e) DEFINITIONS.—For purposes of this section—

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

23 “(2) SERVICE.—The term ‘service’ means, in
24 connection with a plan, a service provided directly or
25 indirectly to, or with respect to, the plan or a service

1 provided directly or indirectly in connection with a
2 financial product in which plan assets are to be in-
3 vested.

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

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

13 “(5) REGULATIONS.—The Secretary shall pro-
14 vide by regulation such definitions of other terms
15 used in this section as the Secretary determines ap-
16 propriate.”.

17 (b) QUARTERLY BENEFIT STATEMENTS.—Section
18 105 of such Act (29 U.S.C. 1025) is amended—

19 (1) in subsection (a)(2)—

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

22 (B) in subparagraph (B)(ii)—

23 (i) in subclause (II), by striking “di-
24 versified, and” and inserting “diversified,”;

1 (ii) in subclause (III), by striking the
2 period and inserting “, and”;

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

5 “(IV) with respect to the portion of a
6 participant’s account for which the partici-
7 pant has the right to direct the investment
8 of assets, the information described in sub-
9 paragraph (C).”; and

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

12 “(C) PERIODIC ACCOUNT INFORMATION
13 FOR PARTICIPANTS AND BENEFICIARIES.—For
14 purposes of subparagraph (B)(ii)(IV), the infor-
15 mation described in this subparagraph consists
16 of the following, indicating the portion of each
17 amount described in clauses (i) through (vii) at-
18 tributable to each investment option elected in
19 connection with the participant’s account:

20 “(i) the starting balance of the par-
21 ticipant’s account,

22 “(ii) contributions made during the
23 quarter, itemizing separately totals for em-
24 ployer and totals for employee contribu-
25 tions,

1 “(iii) investment earnings or losses on
2 the account balance during the quarter (if
3 any),

4 “(iv) actual or estimated charges
5 (within the meaning of section 111(e)(1))
6 which reduce the account during the quar-
7 ter, expressed in dollars or, if estimated,
8 such estimated dollar charges as are de-
9 rived from an expense ratio (which may be
10 expressed as a specific date estimate based
11 on reasonable assumptions stated in the
12 disclosure (such as the previous year’s ex-
13 pense ratio).

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

17 “(vi) the ending balance of the ac-
18 count,

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

22 “(viii) how to obtain the most recently
23 updated version of the plan fee comparison
24 chart prepared for purposes of section
25 111(b)(3).

1 “(D) OTHER INFORMATION.—The plan ad-
2 ministrators may include in the quarterly pen-
3 sion benefit statement information relating to
4 the historical return and risk of each invest-
5 ment option and the estimated amount that the
6 participant needs to contribute each month or
7 year so as to retire at retirement age (as de-
8 fined in section 216(l) of the Social Security
9 Act).

10 “(E) ESTIMATIONS.—For purposes of
11 making the disclosure of actual charges or per-
12 centages as required under this paragraph, the
13 plan administrator may provide a reasonable
14 and representative estimate of such charges or
15 percentages and shall indicate any such esti-
16 mate as being such an estimate. Any such esti-
17 mate shall be based on reasonable assumptions
18 included in the statement (such as the previous
19 year’s experience).

20 “(F) MODEL STATEMENTS.—The Sec-
21 retary shall prescribe one or more model pen-
22 sion benefit statements that may be used for
23 purposes of satisfying the requirements of sub-
24 paragraphs (B)(ii) and (C).

1 “(G) ANNUAL COMPLIANCE FOR SMALL
2 PLANS AND WITH RESPECT TO CERTAIN INFOR-
3 MATION.—In the case of a plan providing for
4 investment as described in paragraph
5 (1)(A)(i)—

6 “(i) if the plan has 100 or fewer par-
7 ticipants and beneficiaries, the plan may
8 provide the pension benefit statement
9 under paragraph (1) on an annual rather
10 than a quarterly basis, and

11 “(ii) the plan may comply with the re-
12 quirements of subparagraph (B)(ii)(IV) on
13 an annual rather than a quarterly basis.”;
14 and

15 (2) by adding at the end the following new sub-
16 sections:

17 “(d) ASSISTANCE TO SMALL EMPLOYERS.—The Sec-
18 retary shall make available to employers with 100 or fewer
19 employees—

20 “(1) educational and compliance materials de-
21 signed to assist such employers in selecting and
22 monitoring service providers for individual account
23 plans which permit a participant or beneficiary to
24 exercise control over the assets in the account of the
25 participant or beneficiary, investment options under

1 such plans, and charges relating to such options,
2 and

3 “(2) services designed to assist such employers
4 in finding and understanding affordable investment
5 options for such plans and in comparing the invest-
6 ment performance of, and charges for, such options
7 on an ongoing basis against appropriate benchmarks
8 or other appropriate measures.

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

15 “(f) ELECTRONIC MEDIA.—Any disclosure required
16 under this section may be provided through an electronic
17 medium under such rules as shall be prescribed by the
18 Secretary not later than 1 year after the date of the enact-
19 ment of the 401(k) Fair Disclosure and Pension Security
20 Act of 2009. Such rules shall be similar to those applicable
21 under the Internal Revenue Code of 1986 with respect to
22 notices to participants in pension plans. The Secretary
23 shall regularly modify such rules as appropriate to take
24 into account new developments, including new forms of
25 electronic media, and to fairly take into consideration the

1 interests of plan sponsors, service providers, and partici-
2 pants. The rules prescribed by the Secretary pursuant to
3 this subsection shall provide for a method for the typical
4 participant or beneficiary to obtain without undue burden
5 any such disclosure in writing on paper in lieu of receipt
6 through an electronic medium.

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

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

17 “(2) SERVICE PROVIDER.—The terms ‘service
18 provider’ and ‘provider’ mean, in connection with a
19 service (as defined in section 111(e)(2)), a person di-
20 rectly or indirectly providing such service.

21 “(3) REGULATIONS.—The Secretary shall pro-
22 vide by regulation such definitions of other terms
23 used in this section as the Secretary determines ap-
24 propriate.”.

1 (c) ENFORCEMENT.—Section 502 of such Act (29
2 U.S.C. 1132) is amended—

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

8 (2) in subsection (c), by redesignating the sec-
9 ond paragraph (10) as paragraph (12), and by in-
10 sserting after the first paragraph (10) the following
11 new paragraph:

12 “(11)(A) In the case of any violation of section
13 111(a) by a service provider (as defined in section
14 111(e)(4)), the service provider may be assessed by the
15 Secretary a civil penalty of up to \$1,000 a day with re-
16 spect to each such violation from the date of the initial
17 violation until the date on which such violation is cor-
18 rected, subject to a total maximum penalty of 10 percent
19 of the amount involved, as determined by the Secretary.

20 “(B) Any plan administrator with respect to a plan
21 who fails or refuses to provide a statement to participants
22 and beneficiaries in accordance with section
23 105(a)(2)(B)(ii) or 111(b) may be assessed by the Sec-
24 retary a civil penalty of up to \$100 a day from the date

1 of the failure or refusal to the date on which such state-
2 ment or notice is so provided.

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

6 (d) CONFORMING AMENDMENT.—The table of con-
7 tents in section 1 of such Act, as amended by section 2,
8 is amended by striking the item relating to section 111
9 and inserting the following new items:

“Sec. 111. Special reporting and disclosure rules for individual account plans.
“Sec. 112. Repeal and effective date.”.

10 (e) EFFECTIVE DATES.—

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

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

21 (3) The amendments made by subsection (b) of
22 this section shall apply with respect to pension ben-
23 efit statements for calendar quarters beginning after
24 one year after the date of the enactment of this Act.

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

10 (f) STUDY REGARDING USE OF BENCHMARKS, INDI-
11 CES, AND OTHER POINTS OF COMPARISON IN PLAN FEE
12 COMPARISON CHARTS.—

13 (1) STUDY.—As soon as practicable after the
14 date of the enactment of this Act, the Secretary of
15 Labor shall study the efficacy of including bench-
16 marks, indices, and other points of comparison in
17 plan fee comparison charts provided to participants
18 and beneficiaries pursuant to section 111(b)(3) of
19 the Employee Retirement Income Security Act of
20 1974 (as added by this Act).

21 (2) MATTERS TO BE STUDIED.—In the study
22 required under paragraph (1), the Secretary shall in-
23 vestigate whether, and the extent to which, bench-
24 marks, indices, and other points of comparison in-
25 cluded in plan fee comparison charts—

1 (A) help participants and beneficiaries un-
2 derstand the charges with respect to their indi-
3 vidual account plans,

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

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

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

17 **SEC. 102. MINIMUM INVESTMENT OPTION REQUIREMENT**
18 **FOR INDIVIDUAL ACCOUNT PLANS.**

19 (a) IN GENERAL.—Section 404(c) of the Employee
20 Retirement Income Security Act of 1974 (29 U.S.C.
21 1104(c)) is amended by adding at the end the following
22 new paragraph:

23 “(6) MINIMUM INVESTMENT OPTION REQUIRE-
24 MENT FOR INDIVIDUAL ACCOUNT PLANS.—Para-
25 graph (1)(A)(ii) shall not apply in connection with

1 any individual account plan which permits a partici-
2 pant or beneficiary to exercise control over the as-
3 sets in the account of the participant or beneficiary
4 unless the plan includes at least one investment op-
5 tion—

6 “(A) which is a passively managed invest-
7 ment with a portfolio of securities that is de-
8 signed to be representative of the United States
9 investable equity market (including representa-
10 tion of small, mid, and large cap stocks) or the
11 United States investment grade bond market
12 (including Treasury, agency, non-agency, and
13 corporate issues), or a combination thereof, and

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

17 An investment shall not fail to satisfy the require-
18 ments of subparagraph (A) in connection with either
19 market described in subparagraph (A) solely by rea-
20 son of a failure to invest in all or substantially all
21 equities or bonds (as applicable) in such market, if
22 the methodology used to select the equities or bonds
23 is designed to approximate in a reasonable manner
24 the broad experience of such market.”.

1 (b) CONFORMING AMENDMENT.—Section
2 404(c)(1)(A)(ii) of such Act (29 U.S.C. 1104(c)(1)(A)(ii))
3 is amended by inserting “except as provided in section
4 404(c)(6) and” after “exercise of control,”.

5 (c) EFFECTIVE DATES.—

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

9 (2) The Secretary shall issue final regulations
10 under the amendments made by this section not
11 later than 270 days after the date of the enactment
12 of this Act. Any act or practice in advance of the
13 issuance of final regulations under the amendments
14 made by this section which is in good faith compli-
15 ance with the requirements of such amendments
16 shall be treated as in compliance with any such final
17 regulations.

18 **SEC. 103. ENFORCEMENT COORDINATION AND REVIEW BY**
19 **THE DEPARTMENT OF LABOR.**

20 (a) IN GENERAL.—Section 502 of the Employee Re-
21 tirement Income Security Act of 1974 (29 U.S.C. 1132)
22 is amended by adding at the end the following new sub-
23 section:

1 “(n) ENFORCEMENT COORDINATION OF CERTAIN
2 DISCLOSURE REQUIREMENTS AND REVIEW BY THE DE-
3 PARTMENT OF LABOR.—

4 “(1) IN GENERAL.—

5 “(A) NOTIFICATION AND ACTION.—The
6 Secretary shall notify the applicable regulatory
7 authority in any case in which the Secretary de-
8 termines that a service provider is engaged in
9 a pattern or practice that precludes compliance
10 by plan administrators with section 111. The
11 Secretary shall, in consultation with the appli-
12 cable authority, take such timely enforcement
13 action under this title as is necessary to assure
14 that such pattern or practice ceases and desists
15 and assess any appropriate penalties.

16 “(B) DISSEMINATION.—The Secretary
17 shall widely disseminate to employee pension
18 benefit plans covered by this title and their par-
19 ticipants and beneficiaries the identity of any
20 service providers with respect to such plans
21 found to be engaged in any pattern or practice
22 described in subparagraph (A) with the intent
23 to preclude compliance by plan administrators
24 with section 111 and the particulars of such
25 pattern or practice. Prior to the dissemination

1 of the identity of any service providers identi-
2 fied and determined by the Secretary to be en-
3 gaged in such a pattern or practice, such serv-
4 ice provider shall receive a notice of intent to
5 disseminate, an opportunity to request an ad-
6 ministrative hearing, and a timely appeal to the
7 Secretary.

8 “(2) ANNUAL AUDIT OF REPRESENTATIVE SAM-
9 PLING OF INDIVIDUAL ACCOUNT PLANS.—The Sec-
10 retary shall annually audit a representative sampling
11 of individual account plans covered by this title to
12 determine compliance with the requirements of sec-
13 tion 111. The Secretary shall annually report the re-
14 sults of such audit and any related recommendations
15 of the Secretary to the Committee on Education and
16 Labor of the House of Representatives and the Com-
17 mittee on Health, Education, Labor, and Pensions
18 of the Senate.”.

19 (b) REVIEW AND REPORT TO THE CONGRESS BY
20 SECRETARY OF LABOR RELATING TO REPORTING AND
21 DISCLOSURE REQUIREMENTS.—

22 (1) STUDY.—As soon as practicable after the
23 date of the enactment of this Act, the Secretary of
24 Labor shall review the reporting and disclosure re-
25 quirements of part 1 of subtitle B of title I of the

1 Employee Retirement Income Security Act of 1974
2 and related provisions of the Pension Protection Act
3 of 2006.

4 (2) REPORT.—Not later than 18 months after
5 the date of the enactment of this Act, the Secretary
6 of Labor, in consultation with the Secretary of the
7 Treasury, shall make such recommendations as the
8 Secretary of Labor considers appropriate to the ap-
9 propriate committees of the Congress to consolidate,
10 simplify, standardize, and improve the applicable re-
11 porting and disclosure requirements so as to simplify
12 reporting for employee pension benefit plans and en-
13 sure that needed understandable information is pro-
14 vided to participants and beneficiaries of such plans.

15 **TITLE II—PROHIBITION OF CON-**
16 **FLICTED INVESTMENT AD-**
17 **VICE**

18 **SEC. 201. FINDINGS.**

19 The Congress finds as follows:

20 (1) The market downturn of 2008 had a dev-
21 astating effect on the retirement security income of
22 millions of American workers.

23 (2) According to the Congressional Budget Of-
24 fice, \$2 trillion of Americans' retirement savings was
25 wiped out over a 15-month period starting in 2008.

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

4 (4) Individual average losses of participants in
5 401(k) plans ranged from 7.2 percent to 11.2 per-
6 cent in the first nine months of 2008, according to
7 an Employee Benefit Research Institute analysis of
8 2.2 million retirements account participants.

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

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

20 (7) In 2007, the Government Accountability Of-
21 fice concluded that conflicts of interest can have an
22 adverse affect on defined benefit and defined con-
23 tribution plans.

1 **SEC. 202. INDEPENDENT INVESTMENT ADVISERS FOR INDI-**
2 **VIDUAL ACCOUNT PLANS.**

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

7 “(43) INDEPENDENT INVESTMENT ADVISER.—

8 “(A) IN GENERAL.—The term ‘inde-
9 pendent investment adviser’ means, with respect
10 to an individual account plan that permits a
11 participant or beneficiary to direct the invest-
12 ment of assets in their individual account, a
13 person who—

14 “(i) is a fiduciary of the plan by rea-
15 son of the provision of investment advice
16 referred to in section 3(21)(A)(ii) by the
17 person to the plan or a participant or ben-
18 eficiary of the plan (irrespective of the
19 manner in which such advice is provided or
20 the extent to which such advice is based on
21 a computer model), and

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

24 “(B) REQUIREMENTS APPLICABLE TO IN-
25 VESTMENT ADVISER.—An investment adviser

1 meets the requirements of this subparagraph,
2 if—

3 “(i) such adviser is—

4 “(I) registered as an investment
5 adviser under the Investment Advisers
6 Act of 1940 (15 U.S.C. 80b–1 et seq.)
7 or under the laws of the State in
8 which the adviser maintains its prin-
9 cipal office and place of business, or

10 “(II) any other person, but only
11 if every individual providing the in-
12 vestment advice referred to in section
13 3(21)(A)(ii) on behalf of such person
14 (or on behalf of any affiliate thereof)
15 is a registered representative of a per-
16 son described in subclause (I),

17 “(ii) such adviser is not the plan in-
18 vestment provider,

19 “(iii) the fees or other compensation
20 received, directly or indirectly, by such ad-
21 viser (and any affiliate thereof) with re-
22 spect to the provision of investment advice
23 to any individual account plan or the par-
24 ticipants or beneficiaries of such a plan ei-
25 ther—

1 “(I) are not received from any
2 person or persons (or anyone affili-
3 ated with such persons) that market,
4 sell, manage or provide investments in
5 which plan assets of the individual ac-
6 count plan are invested, or

7 “(II) do not vary depending on
8 the basis of any investment option se-
9 lected, and are calculated pursuant to
10 one or more of the following bases—

11 “(aa) a flat-dollar basis,

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

14 “(cc) a flat or sliding-scale
15 percentage of the assets in a par-
16 ticipant’s or beneficiary’s account
17 basis, or

18 “(dd) a per-participant or
19 per-beneficiary account basis,
20 and

21 “(iv) such adviser provides the invest-
22 ment advice pursuant to a written arrange-
23 ment with the individual account plan
24 that—

1 “(I) provides that the investment
2 adviser is a fiduciary of the plan with
3 respect to the provision of the advice,

4 “(II) requires that the advice be
5 provided only by registered represent-
6 atives of the investment adviser or an
7 affiliate thereof,

8 “(III) discloses, before a reason-
9 able period prior to entering into such
10 arrangement, whether the investment
11 adviser or any affiliate thereof has
12 any material financial, referral, or
13 other relationship or arrangement
14 with a money manager, broker, other
15 client of the investment adviser or any
16 affiliate thereof, other service provider
17 to the plan, or any other entity that
18 creates or may create a conflict of in-
19 terest for the investment adviser in
20 performing services pursuant to the
21 arrangement with the plan and, if so,
22 includes a description of such relation-
23 ship or arrangement,

24 “(IV) includes a representation
25 by the investment adviser that, before

1 the arrangement was entered into (or
2 extended or renewed), the investment
3 adviser provided to the plan fiduciary
4 that has authority to cause the em-
5 ployee benefit plan to enter into (or
6 extend or renew) the arrangement a
7 written statement disclosing all fees or
8 other compensation that the invest-
9 ment adviser or any affiliate thereof
10 anticipates to receive with respect to
11 the advice during the first year, or
12 other period if less than a year, of the
13 arrangement,

14 “(V) provides that the investment
15 adviser will provide to such plan fidu-
16 ciary (and the participant and bene-
17 ficiary receiving the advice, if applica-
18 ble) a statement annually disclosing
19 all fees or other compensation that
20 the investment adviser or any affiliate
21 thereof has received with respect to
22 the advice during the prior year, and

23 “(VI) provides that the terms of
24 the arrangement required under this
25 clause and any information provided

1 under such arrangement pursuant to
2 subclauses (III) and (IV) will also be
3 furnished by the investment adviser to
4 the participant or beneficiary that is
5 the recipient of the advice.

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

17 “(i) ADVISER REQUIREMENTS.—The
18 requirements of this clause are met if the
19 investment adviser providing the invest-
20 ment advice under the program is—

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

23 “(II) an insurance company
24 qualified to do business under the
25 laws of a State,

1 “(III) a person registered as a
2 broker or dealer under the Securities
3 Exchange Act of 1934 (15 U.S.C. 78a
4 et seq.),

5 “(IV) an affiliate of a person de-
6 scribed in any of subclauses (I)
7 through (III), or

8 “(V) an employee, agent, or reg-
9 istered representative of a person de-
10 scribed in subclauses (I) through (IV)
11 who satisfies the requirements of ap-
12 plicable insurance, banking, and secu-
13 rities laws relating to the provision of
14 the advice.

15 “(ii) COMPUTER MODEL.—The re-
16 quirements of this clause are met if the in-
17 vestment advice provided under the invest-
18 ment advice computer program is provided
19 pursuant to a computer model that—

20 “(I) applies generally accepted
21 investment theories that take into ac-
22 count the historic returns of different
23 asset classes over defined periods of
24 time,

1 “(II) utilizes relevant information
2 about the participant, which may in-
3 clude age, life expectancy, retirement
4 age, risk tolerance, other assets or
5 sources of income, and preferences as
6 to certain types of investments,

7 “(III) utilizes prescribed objective
8 criteria to provide asset allocation
9 portfolios comprised of investment op-
10 tions available under the plan,

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

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

23 “(VI) operates so that it does
24 not, directly or indirectly, in any man-
25 ner act to benefit the investment ad-

1 viser (or any affiliate of the adviser or
2 any person with a material affiliation
3 or contractual relationship with the
4 adviser) at the expense of plan partici-
5 pants and beneficiaries,

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

9 “(VIII) conforms to such other
10 requirements as shall be prescribed by
11 the Secretary to ensure that it oper-
12 ates in the best interest of plan par-
13 ticipants and beneficiaries.

14 “(iii) CERTIFICATION.—

15 “(I) IN GENERAL.—The require-
16 ments of this clause are met with re-
17 spect to the program if an eligible in-
18 vestment expert certifies, prior to the
19 utilization of the computer model and
20 in accordance with rules prescribed by
21 the Secretary, that the computer
22 model meets the requirements of
23 clause (ii).

24 “(II) RENEWAL OF CERTIFI-
25 CATIONS.—If, as determined under

1 regulations prescribed by the Sec-
2 retary, there are material modifica-
3 tions to the computer model, the re-
4 quirements of this subparagraph are
5 met only if a certification described in
6 subclause (I) is obtained with respect
7 to the computer model as so modified.

8 “(III) ELIGIBLE INVESTMENT
9 EXPERT.—For purposes of this
10 clause, the term ‘eligible investment
11 expert’ means any person—

12 “(aa) which meets such re-
13 quirements as the Secretary may
14 provide, and

15 “(bb) does not have any ma-
16 terial affiliation or contractual
17 relationship with any investment
18 adviser or a related person there-
19 of (or any employee, agent, or
20 registered representative of the
21 investment adviser or related per-
22 son).

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

1 “(I) the only investment advice
2 provided under the program is the ad-
3 vice generated by the computer model
4 described in clause (ii), and

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

9 “(v) EXPRESS AUTHORIZATION BY
10 SEPARATE FIDUCIARY.—The requirements
11 of this clause are met with respect to the
12 program if the program is expressly au-
13 thorized by a plan fiduciary other than—

14 “(I) the person offering the pro-
15 gram,

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

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

21 “(vi) ANNUAL AUDIT.—The require-
22 ments of this clause are met with respect
23 to the program if an independent auditor,
24 who has appropriate technical training or

1 experience and proficiency and so rep-
2 resents in writing—

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

9 “(II) following completion of the
10 annual audit, issues a written report
11 to the fiduciary who authorized use of
12 the program which presents its spe-
13 cific findings regarding compliance of
14 the program with the requirements of
15 this subsection.

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

22 “(vii) DISCLOSURE.—The require-
23 ments of this clause are met with respect
24 to the program, if—

1 “(I) the investment adviser pro-
2 vides to the fiduciary referred to in
3 clause (v) and the participant or bene-
4 ficiary receiving investment advice
5 under the program with regard to any
6 security or other property offered as
7 an investment option, before providing
8 the advice, a written notification
9 (which may consist of notification by
10 means of electronic communication)—

11 “(aa) of the role of any
12 party that has a material affili-
13 ation or contractual relationship
14 with the investment adviser in
15 the development of the invest-
16 ment advice program and in the
17 selection of investment options
18 available under the plan,

19 “(bb) of all fees or other
20 compensation relating to the ad-
21 vice that the investment adviser
22 or any affiliate thereof is to re-
23 ceive (including compensation
24 provided by any third party) in
25 connection with the provision of

1 the advice or in connection with
2 the sale, acquisition, or holding
3 of the security or other property,
4 “(cc) of any material affili-
5 ation or contractual relationship
6 of the investment adviser or af-
7 filiates thereof in the security or
8 other property,
9 “(dd) of the manner, and
10 under what circumstances, any
11 information relating to the par-
12 ticipant or beneficiary which is
13 provided under the program will
14 be used or disclosed,
15 “(ee) of the types of services
16 provided by the investment ad-
17 viser in connection with the pro-
18 vision of investment advice by the
19 investment adviser, and
20 “(ff) that a recipient of the
21 advice may separately arrange
22 for the provision of advice by an-
23 other adviser, that could have no
24 material affiliation with, and
25 could receive no fees or other

1 compensation, in connection with
2 the security or other property,
3 and

4 “(II) at all times during the pro-
5 vision of advisory services to the par-
6 ticipant or beneficiary, the investment
7 adviser—

8 “(aa) maintains the infor-
9 mation described in subclause (I)
10 in accurate form and in the man-
11 ner described in clause (ix),

12 “(bb) provides, without
13 charge, accurate information to
14 the recipient of the advice no less
15 frequently than annually,

16 “(cc) provides, without
17 charge, accurate information to
18 the recipient of the advice upon
19 request of the recipient, and

20 “(dd) provides, without
21 charge, accurate information to
22 the recipient of the advice con-
23 cerning any material change to
24 the information required to be
25 provided to the recipient of the

1 advice at a time reasonably con-
2 temporaneous to the change in
3 information.

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

7 “(I) the investment adviser pro-
8 vides appropriate disclosure, in con-
9 nection with the sale, acquisition, or
10 holding of the security or other prop-
11 erty with respect to which the invest-
12 ment advice is provided under the
13 program, in accordance with all appli-
14 cable securities laws,

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

18 “(III) the compensation received
19 by the investment adviser and affili-
20 ates thereof in connection with the
21 sale, acquisition, or holding of the se-
22 curity or other property is reasonable,
23 and

24 “(IV) the terms of the sale, ac-
25 quisition, or holding of the security or

1 other property are at least as favor-
2 able to the plan as an arm's length
3 transaction would be.

4 “(ix) STANDARDS FOR PRESENTATION
5 OF INFORMATION.—

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

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

1 meets the requirements of subclause
2 (I).

3 “(x) MAINTENANCE FOR 6 YEARS OF
4 EVIDENCE OF COMPLIANCE.—The require-
5 ments of this clause are met with respect
6 to the program if the investment adviser
7 who provides advice under the program
8 maintains, for a period of not less than 6
9 years after the provision of the advice, any
10 records necessary for determining whether
11 the requirements of the preceding provi-
12 sions of this subparagraph and of sub-
13 section (b)(14) have been met. A failure to
14 meet the requirements of this clause shall
15 not be considered to have occurred solely
16 because the records are lost or destroyed
17 prior to the end of the 6-year period due
18 to circumstances beyond the control of the
19 investment adviser.

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

22 “(i) AFFILIATE.—The term ‘affiliate’
23 means, in connection with any other per-
24 son, any person directly or indirectly
25 (through one or more intermediaries) con-

1 trolling, controlled by, or under common
2 control with such other person, or any offi-
3 cer, director, agent, or employee of, or
4 partner with, such other person.

5 “(ii) REGISTERED REPRESENTA-
6 TIVE.—The term ‘registered representa-
7 tive’ of another entity means a person de-
8 scribed in section 3(a)(18) of the Securi-
9 ties Exchange Act of 1934 (15 U.S.C.
10 78c(a)(18)) (substituting the entity for the
11 broker or dealer referred to in such sec-
12 tion) or a person described in section
13 202(a)(17) of the Investment Advisers Act
14 of 1940 (15 U.S.C. 80b–2(a)(17)) (sub-
15 stituting the entity for the investment ad-
16 viser referred to in such section).

17 “(iii) PLAN INVESTMENT PRO-
18 VIDER.—The term ‘plan investment pro-
19 vider’ means any person (or any person af-
20 filiated with such person) that creates or
21 manages any investment in which any indi-
22 vidual account plan invests. Such term
23 does not include—

24 “(I) a plan sponsor (or an affil-
25 iate thereof) with respect to any in-

1 vestment created or managed by the
2 plan sponsor (or affiliate), if only em-
3 ployee benefit plans maintained by
4 such plan sponsor or an affiliate
5 thereof invest in such investments,

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

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

24 “(iv) FEES OR OTHER COMPENSA-
25 TION.—The term ‘fees or other compensa-

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

21 (b) FIDUCIARY DUTIES WITH RESPECT TO INVEST-
22 MENT ADVICE.—

23 (1) IN GENERAL.—Section 404(a) of such Act
24 (29 U.S.C. 1104(a)) is amended by adding at the
25 end the following new paragraph:

1 “(3)(A) The fiduciary of an individual account plan
2 that permits a participant or beneficiary to direct the in-
3 vestment of assets in the individual account shall not ap-
4 point, contract with, or otherwise arrange for an invest-
5 ment adviser to provide investment advice referred to in
6 section 3(21)(A)(ii) to the plan or the participant or bene-
7 ficiary unless the investment adviser is an independent in-
8 vestment adviser (as defined in section 3(43)).

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

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

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

20 “(C) Nothing in this paragraph shall be construed to
21 exempt a plan sponsor or other person who is a fiduciary
22 from any requirement of this part for the prudent selec-
23 tion and periodic review of an independent investment ad-
24 viser with whom the plan sponsor or other person enters
25 into an arrangement for the provision of investment advice

1 referred to in section 3(21)(A)(ii), except that any such
2 requirement shall not be construed to preclude reasonable
3 reliance by the plan sponsor or other person on the rep-
4 resentation of any person that such person making the
5 representation meets the requirements of section
6 3(43)(A). The plan sponsor and any other person who is
7 a fiduciary (other than the independent investment ad-
8 viser) has no duty under this part to monitor the specific
9 investment advice given by the independent investment ad-
10 viser to any particular recipient of the advice and shall
11 not be liable under this title for any loss, or by reason
12 of any breach, which results from such specific investment
13 advice given by the independent investment adviser.

14 “(D) Nothing in this part shall be construed to pre-
15 clude the use of plan assets to pay for reasonable expenses
16 in providing investment advice referred to in section
17 3(21)(A)(ii).”.

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

22 (A) review each Advisory Opinion and ex-
23 ception described in section 404(a)(3)(E)(i) of
24 the Employee Retirement Income Security Act
25 of 1974 (as added by this paragraph (1)) to de-

1 termine the extent to which such Advisory
2 Opinion or exception fails to adequately serve
3 the interests of participants and beneficiaries
4 and to be adequately protective of the rights of
5 participants and beneficiaries, and

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

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

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

12 (2) by striking subsection (b)(14)(B) and in-
13 serting the following:

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

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

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

4 **SEC. 203. EXPANSION OF OUTREACH TO PROMOTE RETIRE-**
5 **MENT INCOME SAVINGS TO INCLUDE PRO-**
6 **MOTION OF EDUCATION ON FINANCIAL LIT-**
7 **ERACY WITH RESPECT TO INVESTMENT FOR**
8 **RETIREMENT.**

9 (a) IN GENERAL.—Section 516 of the Employee Re-
10 tirement Income Security Act of 1974 (29 U.S.C. 1146)
11 is amended—

12 (1) in subsection (b), by inserting after “cre-
13 ation of educational materials,” the following: “pro-
14 motion of education in financial literacy with respect
15 to investment for retirement as provided in sub-
16 section (e),”;

17 (2) by redesignating subsection (e) as sub-
18 section (f); and

19 (3) by inserting after subsection (d) the fol-
20 lowing new subsection:

21 “(e) PROMOTION OF EDUCATION IN FINANCIAL LIT-
22 ERACY WITH RESPECT TO INVESTMENT FOR RETIRE-
23 MENT.—The Secretary, in consultation with the Secretary
24 of Education and the Secretary of the Treasury, shall es-
25 tablish a program under which—

1 “(1) employees and the general public are pro-
2 vided with information and materials—

3 “(A) informing them about resources avail-
4 able for attaining financial literacy with respect
5 to investment for retirement,

6 “(B) effectively educating them about the
7 importance of, and appropriate techniques with
8 respect to, personal finance, saving for retire-
9 ment, and choosing independent investment ad-
10 visers when managing their accounts under in-
11 dividual account plans, and

12 “(C) effectively educating them about debt
13 obligations, the relationship of debt to savings,
14 and the potential consequences of debt with re-
15 spect to saving for retirement,

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

21 “(3) appropriate standards of financial literacy
22 of employees and the general public with respect to
23 investment for retirement are developed and pub-
24 lished for utilization under such program.”.

25 (4) STUDY AND REPORT TO THE CONGRESS.—

1 (A) IN GENERAL.—The Secretary of Labor
2 shall conduct a survey of ongoing efforts by the
3 Federal Government to assist employees and
4 the general public with attainment of financial
5 literacy with respect to investment for retire-
6 ment and to educate them about the importance
7 of, and appropriate techniques with respect to,
8 personal finance, debt obligations, saving for re-
9 tirement, and choosing independent investment
10 advisers when managing their accounts under
11 individual account plans.

12 (B) REPORT.—Not later than 180 days
13 after the date of the enactment of this Act, the
14 Secretary shall submit a report to each House
15 of the Congress setting forth the results of the
16 Secretary's survey conducted pursuant to sub-
17 paragraph (A), together with such recommenda-
18 tions as the Secretary considers appropriate for
19 improvement in efforts by the Federal Govern-
20 ment in assisting employees and the general
21 public with attainment of financial literacy in
22 connection with investment for retirement and
23 educating them about the importance of, and
24 appropriate techniques with respect to, personal
25 finance, debt obligations, saving for retirement,

1 and choosing independent investment advisers
2 when managing their accounts under individual
3 account plans.

4 **TITLE III—TRANSITIONAL FUND-**
5 **ING RELIEF FOR DEFINED**
6 **BENEFIT PLANS**

7 **SEC. 301. ELECTION TO USE YIELD CURVE.**

8 (a) AMENDMENT TO ERISA.—The last sentence of
9 clause (ii) of section 303(h)(2)(D) of the Employee Retire-
10 ment Income Security Act of 1974 (29 U.S.C.
11 1083(h)(2)(D)(ii)) is amended to read as follows: “Such
12 election, once made, may be revoked only with the consent
13 of the Secretary, except that any election in effect for a
14 plan with respect to a plan year beginning in 2009 may
15 be revoked for the plan year beginning in 2010 without
16 such consent.”.

17 (b) AMENDMENT TO IRC.—The last sentence of
18 clause (ii) of section 430(h)(2)(D) of the Internal Revenue
19 Code of 1986 (relating to election to use yield curve) is
20 amended to read as follows: “Such election, once made,
21 may be revoked only with the consent of the Secretary,
22 except that any election in effect for a plan with respect
23 to a plan year beginning in 2009 may be revoked for the
24 plan year beginning in 2010 without such consent.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to plan years beginning after De-
3 cember 31, 2009.

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

5 The Secretary of the Treasury shall—

6 (1) make the final regulations issued under sec-
7 tions 206(g) and 303 of the Employee Retirement
8 Income Security Act of 1974 and sections 430 and
9 436 of the Internal Revenue Code of 1986 effective
10 no earlier than plan years beginning after December
11 31, 2009; and

12 (2) provide rules, for plan years beginning be-
13 fore the effective date of such final regulations,
14 under which compliance with a reasonable interpre-
15 tation of an applicable provision under section
16 206(g) or 303 of the Employee Retirement Income
17 Security Act of 1974 or section 430 or 436 of the
18 Internal Revenue Code of 1986 shall be treated as
19 compliance with such provision.

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

21 (a) AMENDMENTS TO ERISA.—

22 (1) IN GENERAL.—Clause (ii) of section
23 303(b)(1)(A) of the Employee Retirement Income
24 Security Act of 1974 (29 U.S.C. 1083(b)(1)(A)(ii))

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

3 (2) CONFORMING AMENDMENT.—Subclause (II)
4 of section 303(i)(2)(A)(i) of such Act (29 U.S.C.
5 1083(i)(2)(A)(i)(II)) is amended by striking “plan-
6 related expenses” and inserting “plan-related admin-
7 istrative expenses”.

8 (b) AMENDMENTS TO IRC.—

9 (1) IN GENERAL.—Clause (ii) of section
10 430(b)(1)(A) of the Internal Revenue Code of 1986
11 (relating to target normal cost) is amended by strik-
12 ing “plan-related expenses” and inserting “plan-re-
13 lated administrative expenses”.

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

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall take effect as if included in the enact-
20 ment of paragraphs (1)(A), (1)(F)(i), (2)(A), and
21 (2)(F)(i) of section 101(b) of the Worker, Retiree, and
22 Employer Recovery Act of 2008 (Public Law 110-458;
23 122 Stat. 5093).

1 **SEC. 304. INFORMATION REPORTING.**

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

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

7 “(A) the funding target attainment per-
8 centage (as defined in subsection (d)) at the
9 end of the preceding plan year of a plan main-
10 tained by the contributing sponsor or any mem-
11 ber of its controlled group is less than 80 per-
12 cent; or

13 “(B) the aggregate unfunded vested bene-
14 fits (as determined under section
15 4006(a)(3)(E)(iii)) of plans maintained by the
16 contributing sponsor and the members of its
17 controlled group exceed \$50,000,000 (dis-
18 regarding plans with no unfunded vested bene-
19 fits);”.

20 (b) EFFECTIVE DATE.—The amendment made by
21 this section shall apply to years beginning after 2009.

1 **SEC. 305. 5-YEAR EXTENSION OF AUTOMATIC AMORTIZA-**
2 **TION EXTENSION PERIOD FOR MULTIEM-**
3 **PLOYER PLANS.**

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

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

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

11 (b) IRC AMENDMENTS.—Section 431(d) of the Inter-
12 nal Revenue Code of 1986 (relating to extension of amorti-
13 zation periods for multiemployer plans) is amended—

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

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

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply with respect to applications for ex-
20 tension filed on or after the date of the enactment of this
21 Act.

22 **SEC. 306. PENSION PLAN MAINTAINED BY CHRISTIAN**
23 **SCHOOLS INTERNATIONAL TREATED AS**
24 **CHURCH PLAN.**

25 (a) IN GENERAL.—For purposes of title I of the Em-
26 ployee Retirement Income Security Act of 1974 and the

1 Internal Revenue Code of 1986, any pension plan main-
2 tained by Christian Schools International as of January
3 1, 2009, shall be treated as a church plan within the
4 meaning of section 3(33) of such Act and section 414(e)
5 of such Code which is maintained by an organization de-
6 scribed in section 3(33)(C)(ii)(II) of such Act and section
7 414(e)(3)(B)(ii) of such Code.

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

10 **SEC. 307. SPECIAL RULE FOR DETERMINING ADEQUATE**
11 **CONSIDERATION IN CONNECTION WITH THE**
12 **PURCHASE AND SALE OF QUALIFYING EM-**
13 **PLOYER SECURITIES.**

14 (a) IN GENERAL.—Section 3(18) of the Employee
15 Retirement Income Security Act of 1974 (29 U.S.C.
16 1002(18)) is amended—

17 (1) by redesignating clauses (i) and (ii) of sub-
18 paragraph (A) as subclauses (I) and (II), respec-
19 tively, and by redesignating subparagraphs (A) and
20 (B) as clauses (i) and (ii), respectively;

21 (2) by inserting “(A)” after “(18)”; and

22 (3) by adding at the end the following new sub-
23 paragraph:

24 “(B)) In the case of a plan described in section
25 407(d)(3)(A) which was in existence on the date of the

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

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



AMENDMENT TO H.R. 2989**OFFERED BY MR. GUTHRIE**

Add at the end the following new section:

~~SEC. EXPANSION OF CORRIDOR WITHIN WHICH SE-~~~~2 GLE-EMPLOYER DEFINED BENEFIT PLANS
3 ARE ALLOWED TO AVERAGE ASSET VALUES.~~~~4 (a) AMENDMENT TO ERISA.—Paragraph (3) of sec-
5 tion 303(g) of the Employee Retirement Income Security
6 Act of 1974 is amended by adding at the end the following
7 new subparagraph:~~~~8 “(C) SPECIAL RULE FOR 2009 AND 2010.—~~~~9 In the case of plan years beginning in 2009 or
10 2010, subparagraph (B)(iii) shall be applied—~~~~11 “(i) by substituting ‘80 percent’ for
12 ‘90 percent’, and~~~~13 “(ii) by substituting ‘120 percent’ for
14 ‘110 percent’.”.~~~~15 (b) EFFECTIVE DATE.—The amendment made by
16 this section shall apply to plan years beginning after De-
17 cember 31, 2008.~~

1 SEC. ____ . EXTENDED PERIOD FOR SINGLE-EMPLOYER
2 DEFINED BENEFIT PLANS TO AMORTIZE THE
3 SHORTFALL AMORTIZATION BASE FOR 2009
4 AND 2010.

5 (a) AMENDMENTS TO ERISA.—

6 (1) IN GENERAL.—Paragraph (2) of section
7 303(c) of the Employee Retirement Income Security
8 Act of 1974 is amended by adding at the end the
9 following new subparagraph:

10 “(D) SPECIAL RULE FOR 2009 AND 2010.—

11 In the case of the shortfall amortization base of
12 the plan for any plan year beginning in 2009 or
13 2010 (hereafter in this subparagraph referred
14 to as the ‘base year’)—

15 “(i) DETERMINATION OF INSTALL-
16 MENTS.—The shortfall amortization in-
17 stallments are—

18 “(I) in the case of the last 7 plan
19 years in the 9-plan-year period begin-
20 ning with the base year, the amounts
21 necessary to amortize the shortfall
22 amortization base of the plan for the
23 base year in level annual installments
24 over such last 7 plan years, and

25 “(II) in the case of the first 2
26 plan years in such 9-plan-year period,

1 interest on such shortfall amortization
2 base (determined as provided in sub-
3 paragraph (C)).

4 “(ii) SHORTFALL INSTALLMENT.—
5 The shortfall amortization installment for
6 any plan year in the 9-plan-year period
7 under clause (i) with respect to such short-
8 fall amortization base is the annual install-
9 ment determined under clause (i) for that
10 year for that base.”.

11 (2) CONFORMING AMENDMENT.—Paragraph (1)
12 of section 303(e) of such Act is amended by striking
13 “the shortfall amortization bases for such plan year
14 and each of the 6 preceding plan years” and insert-
15 ing “any shortfall amortization base which has not
16 been fully amortized under this subsection”.

17 (b) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to plan years beginning after De-
19 cember 31, 2008.

