

Union Calendar No. 174

107TH CONGRESS
1ST SESSION

H. R. 2269

[Report No. 107-262, Parts I and II]

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to promote the provision of retirement investment advice to workers managing their retirement income assets.

IN THE HOUSE OF REPRESENTATIVES

JUNE 21, 2001

Mr. BOEHNER (for himself, Mr. ARMEY, Mr. SAM JOHNSON of Texas, Mr. TANCREDO, Mr. BAIRD, Mr. LUCAS of Kentucky, Mr. MCINNIS, Mr. FOLEY, Mr. SMITH of Washington, Mr. OXLEY, Mr. DICKS, Mrs. ROUKEMA, Mr. BAKER, Mr. CAMP, Mr. ENGLISH, Mr. GUTKNECHT, Mr. KIRK, Mrs. TAUSCHER, and Mr. HOLT) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

OCTOBER 31, 2001

Reported from the Committee on Education and the Workforce with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

OCTOBER 31, 2001

Referral to the Committee on Ways and Means extended for a period ending not later than November 9, 2001

NOVEMBER 9, 2001

Referral to the Committee on Ways and Means extended for a period ending not later than November 13, 2001

NOVEMBER 13, 2001

Additional sponsors: Mr. SHAW, Mr. PAUL, Mr. CRANE, Mr. FROST, Mr.

CHAMBLISS, Mr. TIBERI, Mr. McCREERY, Mr. BALLENGER, Mr. FLETCHER, Mr. McKEON, Mr. SHAYS, Mr. CANTOR, Mrs. BIGGERT, Mr. PLATTS, Mr. GRAHAM, Mr. NUSSLE, Mr. ROGERS of Michigan, Mr. BLUNT, Mr. NEY, Mr. PORTMAN, Ms. DUNN, Mr. GREENWOOD, Ms. PRYCE of Ohio, Mr. CLEMENT, Mr. MATHESON, Mr. CANNON, Mr. KELLER, Mr. BASS, Mr. JONES of North Carolina, Mr. BURR of North Carolina, Mr. OSBORNE, Mr. LATHAM, Mr. CALVERT, Mr. RYUN of Kansas, Mr. CULBERSON, Mr. BROWN of South Carolina, Mr. MORAN of Virginia, Mr. SESSIONS, Mr. HERGER, and Mr. GRUCCI

Deleted sponsors: Mr. BROWN of Ohio (added July 23, 2001; deleted September 24, 2001), and Mr. PASCRELL (added July 30, 2001; deleted September 10, 2001)

NOVEMBER 13, 2001

Reported from the Committee on Ways and Means with an amendment; committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in boldface roman]

[For text of introduced bill, see copy of bill as introduced on June 21, 2001]

A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to promote the provision of retirement investment advice to workers managing their retirement income assets.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Retirement Security Ad-*
 5 *vice Act of 2001”.*

1 **SEC. 2. PROHIBITED TRANSACTION EXEMPTION FOR THE**
2 **PROVISION OF INVESTMENT ADVICE.**

3 (a) *AMENDMENTS TO THE EMPLOYEE RETIREMENT*
4 *INCOME SECURITY ACT OF 1974.*—

5 (1) *EXEMPTION FROM PROHIBITED TRANS-*
6 *ACTIONS.*—*Section 408(b) of the Employee Retirement*
7 *Income Security Act of 1974 (29 U.S.C. 1108(b)) is*
8 *amended by adding at the end the following new*
9 *paragraph:*

10 “(14)(A) *Any transaction described in subpara-*
11 *graph (B) in connection with the provision of invest-*
12 *ment advice described in section 3(21)(A)(ii), in any*
13 *case in which—*

14 “(i) *the investment of assets of the plan are*
15 *subject to the direction of plan participants or*
16 *beneficiaries,*

17 “(ii) *the advice is provided to the plan or*
18 *a participant or beneficiary of the plan by a fi-*
19 *ducuary adviser in connection with any sale, ac-*
20 *quisition, or holding of a security or other prop-*
21 *erty for purposes of investment of plan assets,*
22 *and*

23 “(iii) *the requirements of subsection (g) are*
24 *met in connection with the provision of the ad-*
25 *vice.*

1 “(B) *The transactions described in this subpara-*
2 *graph are the following:*

3 “(i) *the provision of the advice to the plan,*
4 *participant, or beneficiary;*

5 “(ii) *the sale, acquisition, or holding of a*
6 *security or other property (including any lend-*
7 *ing of money or other extension of credit associ-*
8 *ated with the sale, acquisition, or holding of a*
9 *security or other property) pursuant to the ad-*
10 *vice; and*

11 “(iii) *the direct or indirect receipt of fees or*
12 *other compensation by the fiduciary adviser or*
13 *an affiliate thereof (or any employee, agent, or*
14 *registered representative of the fiduciary adviser*
15 *or affiliate) in connection with the provision of*
16 *the advice or in connection with a sale, acquisi-*
17 *tion, or holding of a security or other property*
18 *pursuant to the advice.”.*

19 (2) *REQUIREMENTS.—Section 408 of such Act is*
20 *amended further by adding at the end the following*
21 *new subsection:*

22 “(g) *REQUIREMENTS RELATING TO PROVISION OF IN-*
23 *VESTMENT ADVICE BY FIDUCIARY ADVISERS.—*

24 “(1) *IN GENERAL.—The requirements of this sub-*
25 *section are met in connection with the provision of*

1 *investment advice referred to in section 3(21)(A)(ii)*
2 *provided to an employee benefit plan or a participant*
3 *or beneficiary of an employee benefit plan by a fidu-*
4 *ciary adviser with respect to the plan in connection*
5 *with any sale, acquisition, or holding of a security or*
6 *other property for purposes of investment of amounts*
7 *held by the plan, if—*

8 *“(A) in the case of the initial provision of*
9 *the advice with regard to the security or other*
10 *property by the fiduciary adviser to the plan,*
11 *participant, or beneficiary, the fiduciary adviser*
12 *provides to the recipient of the advice, at a time*
13 *reasonably contemporaneous with the initial pro-*
14 *vision of the advice, a written notification*
15 *(which may consist of notification by means of*
16 *electronic communication)—*

17 *“(i) of all fees or other compensation*
18 *relating to the advice that the fiduciary ad-*
19 *viser or any affiliate thereof is to receive*
20 *(including compensation provided by any*
21 *third party) in connection with the provi-*
22 *sion of the advice or in connection with the*
23 *sale, acquisition, or holding of the security*
24 *or other property,*

1 “(ii) of any material affiliation or
2 contractual relationship of the fiduciary ad-
3 viser or affiliates thereof in the security or
4 other property,

5 “(iii) of any limitation placed on the
6 scope of the investment advice to be pro-
7 vided by the fiduciary adviser with respect
8 to any such sale, acquisition, or holding of
9 a security or other property,

10 “(iv) of the types of services provided
11 by the fiduciary adviser in connection with
12 the provision of investment advice by the fi-
13 duciary adviser, and

14 “(v) that the adviser is acting as a fi-
15 duciary of the plan in connection with the
16 provision of the advice,

17 “(B) the fiduciary adviser provides appro-
18 priate disclosure, in connection with the sale, ac-
19 quisition, or holding of the security or other
20 property, in accordance with all applicable secu-
21 rities laws,

22 “(C) the sale, acquisition, or holding occurs
23 solely at the direction of the recipient of the ad-
24 vice,

1 “(D) the compensation received by the fidu-
2 ciary adviser and affiliates thereof in connection
3 with the sale, acquisition, or holding of the secu-
4 rity or other property is reasonable, and

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

9 “(2) *STANDARDS FOR PRESENTATION OF INFOR-*
10 *MATION.—The notification required to be provided to*
11 *participants and beneficiaries under paragraph*
12 *(1)(A) shall be written in a clear and conspicuous*
13 *manner and in a manner calculated to be understood*
14 *by the average plan participant and shall be suffi-*
15 *ciently accurate and comprehensive to reasonably ap-*
16 *prise such participants and beneficiaries of the infor-*
17 *mation required to be provided in the notification.*

18 “(3) *EXEMPTION CONDITIONED ON CONTINUED*
19 *AVAILABILITY OF REQUIRED INFORMATION ON RE-*
20 *QUEST FOR 1 YEAR.—The requirements of paragraph*
21 *(1)(A) shall be deemed not to have been met in con-*
22 *nection with the initial or any subsequent provision*
23 *of advice described in paragraph (1) to the plan, par-*
24 *ticipant, or beneficiary if, at any time during the 1-*
25 *year period following the provision of the advice, the*

1 *fiduciary adviser fails to maintain the information*
2 *described in clauses (i) through (iv) of subparagraph*
3 *(A) in currently accurate form or to make the infor-*
4 *mation available, upon request and without charge, to*
5 *the recipient of the advice.*

6 “(4) *MAINTENANCE FOR 6 YEARS OF EVIDENCE*
7 *OF COMPLIANCE.—A fiduciary adviser referred to in*
8 *paragraph (1) who has provided advice referred to in*
9 *such paragraph shall, for a period of not less than 6*
10 *years after the provision of the advice, maintain any*
11 *records necessary for determining whether the require-*
12 *ments of the preceding provisions of this subsection*
13 *and of subsection (b)(14) have been met. A trans-*
14 *action prohibited under section 406 shall not be con-*
15 *sidered to have occurred solely because the records are*
16 *lost or destroyed prior to the end of the 6-year period*
17 *due to circumstances beyond the control of the fidu-*
18 *ciary adviser.*

19 “(5) *EXEMPTION FOR PLAN SPONSOR AND CER-*
20 *TAIN OTHER FIDUCIARIES.—*

21 “(A) *IN GENERAL.—Subject to subpara-*
22 *graph (B), a plan sponsor or other person who*
23 *is a fiduciary (other than a fiduciary adviser)*
24 *shall not be treated as failing to meet the re-*
25 *quirements of this part solely by reason of the*

1 *provision of investment advice referred to in sec-*
2 *tion 3(21)(A)(ii) (or solely by reason of con-*
3 *tracting for or otherwise arranging for the provi-*
4 *sion of the advice), if—*

5 *“(i) the advice is provided by a fidu-*
6 *ciary adviser pursuant to an arrangement*
7 *between the plan sponsor or other fiduciary*
8 *and the fiduciary adviser for the provision*
9 *by the fiduciary adviser of investment ad-*
10 *vice referred to in such section,*

11 *“(ii) the terms of the arrangement re-*
12 *quire compliance by the fiduciary adviser*
13 *with the requirements of this subsection,*
14 *and*

15 *“(iii) the terms of the arrangement in-*
16 *clude a written acknowledgment by the fidu-*
17 *ciary adviser that the fiduciary adviser is a*
18 *fiduciary of the plan with respect to the*
19 *provision of the advice.*

20 *“(B) CONTINUED DUTY OF PRUDENT SELEC-*
21 *TION OF ADVISER AND PERIODIC REVIEW.—Noth-*
22 *ing in subparagraph (A) shall be construed to*
23 *exempt a plan sponsor or other person who is a*
24 *fiduciary from any requirement of this part for*
25 *the prudent selection and periodic review of a fi-*

1 *duciary adviser with whom the plan sponsor or*
2 *other person enters into an arrangement for the*
3 *provision of advice referred to in section*
4 *3(21)(A)(ii). The plan sponsor or other person*
5 *who is a fiduciary has no duty under this part*
6 *to monitor the specific investment advice given*
7 *by the fiduciary adviser to any particular re-*
8 *cipient of the advice.*

9 *“(C) AVAILABILITY OF PLAN ASSETS FOR*
10 *PAYMENT FOR ADVICE.—Nothing in this part*
11 *shall be construed to preclude the use of plan as-*
12 *sets to pay for reasonable expenses in providing*
13 *investment advice referred to in section*
14 *3(21)(A)(ii).*

15 *“(6) DEFINITIONS.—For purposes of this sub-*
16 *section and subsection (b)(14)—*

17 *“(A) FIDUCIARY ADVISER.—The term ‘fidu-*
18 *ciary adviser’ means, with respect to a plan, a*
19 *person who is a fiduciary of the plan by reason*
20 *of the provision of investment advice by the per-*
21 *son to the plan or to a participant or beneficiary*
22 *and who is—*

23 *“(i) registered as an investment ad-*
24 *viser under the Investment Advisers Act of*
25 *1940 (15 U.S.C. 80b-1 et seq.) or under the*

1 *laws of the State in which the fiduciary*
2 *maintains its principal office and place of*
3 *business,*

4 “(i) *a bank or similar financial insti-*
5 *tution referred to in section 408(b)(4),*

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

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

11 “(v) *an affiliate of a person described*
12 *in any of clauses (i) through (iv), or*

13 “(vi) *an employee, agent, or registered*
14 *representative of a person described in any*
15 *of clauses (i) through (v) who satisfies the*
16 *requirements of applicable insurance, bank-*
17 *ing, and securities laws relating to the pro-*
18 *vision of the advice.*

19 “(B) *AFFILIATE.*—*The term ‘affiliate’ of*
20 *another entity means an affiliated person of the*
21 *entity (as defined in section 2(a)(3) of the In-*
22 *vestment Company Act of 1940 (15 U.S.C. 80a-*
23 *2(a)(3)).*

24 “(C) *REGISTERED REPRESENTATIVE.*—*The*
25 *term ‘registered representative’ of another entity*

1 *means a person described in section 3(a)(18) of*
2 *the Securities Exchange Act of 1934 (15 U.S.C.*
3 *78c(a)(18)) (substituting the entity for the broker*
4 *or dealer referred to in such section) or a person*
5 *described in section 202(a)(17) of the Investment*
6 *Advisers Act of 1940 (15 U.S.C. 80b-2(a)(17))*
7 *(substituting the entity for the investment ad-*
8 *viser referred to in such section).”.*

9 **(b) AMENDMENTS TO THE INTERNAL REVENUE CODE**
10 *OF 1986.—*

11 **(1) IN GENERAL.—***Subsection (d) of section 4975*
12 *of the Internal Revenue Code of 1986 (relating to ex-*
13 *emptions from tax on prohibited transactions) is*
14 *amended—*

15 **(A)** *in paragraph (14), by striking “or” at*
16 *the end;*

17 **(B)** *in paragraph (15), by striking the pe-*
18 *riod at the end and inserting “; or”; and*

19 **(C)** *by adding at the end the following new*
20 *paragraph:*

21 **“(16) If the requirements of subsection (f)(7) are**
22 *met—*

23 **“(A) the provision of investment advice re-**
24 *ferred to in subsection (e)(3)(B) provided by a fi-*
25 *duciary adviser (as defined in subsection*

1 (f)(7)(C)(i)) to a plan or to a participant or
2 beneficiary of a plan,

3 “(B) the sale, acquisition, or holding of se-
4 curities or other property (including any exten-
5 sion of credit associated with the sale, acquisi-
6 tion, or holding of securities or other property)
7 pursuant to such investment advice, and

8 “(C) the direct or indirect receipt of fees or
9 other compensation by the fiduciary adviser or
10 an affiliate thereof (or any employee, agent, or
11 registered representative of the fiduciary adviser
12 or affiliate) in connection with the provision of
13 such investment advice.”

14 (2) *REQUIREMENTS*.—Subsection (f) of such sec-
15 tion 4975 (relating to other definitions and special
16 rules) is amended by adding at the end the following
17 new paragraph:

18 “(7) *REQUIREMENTS FOR EXEMPTION FOR IN-*
19 *VESTMENT ADVICE PROVIDED BY FIDUCIARY ADVIS-*
20 *ERS*.—

21 “(A) *IN GENERAL*.—The requirements of
22 this paragraph are met in connection with the
23 provision of advice referred to in subsection
24 (e)(3)(B), provided to a plan or a participant or
25 beneficiary of a plan by a fiduciary adviser with

1 *respect to such plan, in connection with any sale*
2 *or acquisition of a security or other property for*
3 *purposes of investment of amounts held by such*
4 *plan, if—*

5 *“(i) in the case of the initial provision*
6 *of such advice by such fiduciary adviser to*
7 *such plan, participant, or beneficiary, the*
8 *fiduciary adviser provides to the plan, par-*
9 *ticipant, or beneficiary, at the time of or be-*
10 *fore the initial provision of such advice, a*
11 *description, in writing or by means of elec-*
12 *tronic communication, of—*

13 *“(I) all fees or other compensation*
14 *relating to such advice that the fidu-*
15 *ciary adviser or any affiliate thereof is*
16 *to receive (including compensation*
17 *provided by any third party) in con-*
18 *nection with the provision of such ad-*
19 *vice or in connection with such acqui-*
20 *sition or sale,*

21 *“(II) any material affiliation or*
22 *contractual relationship of the fidu-*
23 *ciary adviser or affiliates thereof in*
24 *such security or other property,*

1 “(III) any limitation placed on
2 the scope of the investment advice to be
3 provided by the fiduciary adviser with
4 respect to any such sale or acquisition,
5 and

6 “(IV) the types of services offered
7 by the fiduciary adviser in connection
8 with the provision of investment advice
9 by the fiduciary adviser,

10 “(ii) in the case of the initial or any
11 subsequent provision of such advice to such
12 plan, participant, or beneficiary, the fidu-
13 ciary adviser, throughout the 1-year period
14 following the provision of such advice,
15 maintains the information described in sub-
16 clauses (I) through (IV) of clause (i) in cur-
17 rently accurate form for availability, upon
18 request and without charge, to the recipient
19 of such advice,

20 “(iii) the fiduciary adviser provides
21 appropriate disclosure, in connection with
22 any such acquisition or sale, in accordance
23 with all applicable securities laws,

1 “(iv) such acquisition or sale occurs
2 solely at the discretion of the recipient of
3 such advice,

4 “(v) the compensation received by the
5 fiduciary adviser and affiliates thereof in
6 connection with such acquisition or sale is
7 reasonable, and

8 “(vi) the terms of such acquisition or
9 sale are at least as favorable to such plan
10 as an arm’s length transaction would be.

11 “(B) MAINTENANCE OF RECORDS.—A fidu-
12 ciary adviser referred to in subparagraph (A)
13 who has provided advice referred to in such sub-
14 paragraph shall, for a period of not less than 6
15 years after the provision of such advice, main-
16 tain any records necessary for determining
17 whether the requirements of the preceding provi-
18 sions of this subsection and of subsection (d)(16)
19 have been met. A prohibited transaction de-
20 scribed in subsection (c)(1) shall not be consid-
21 ered to have occurred solely because the records
22 are lost or destroyed prior to the end of the 6-
23 year period due to circumstances beyond the con-
24 trol of the fiduciary adviser.

1 “(C) *DEFINITIONS.*—*For purposes of this*
2 *paragraph and subsection (d)(16)—*

3 “(i) *FIDUCIARY ADVISER.*—*The term*
4 *‘fiduciary adviser’ means, with respect to a*
5 *plan, a person who is a fiduciary of the*
6 *plan by reason of the provision of invest-*
7 *ment advice by such person to the plan or*
8 *to a participant or beneficiary and who*
9 *is—*

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

16 “(II) *a bank or similar financial*
17 *institution referred to in subsection*
18 *(d)(4),*

19 “(III) *an insurance company*
20 *qualified to do business under the laws*
21 *of a State,*

22 “(IV) *a person registered as a*
23 *broker or dealer under the Securities*
24 *Exchange Act of 1934 (15 U.S.C. 78a*
25 *et seq.),*

1 “(V) an affiliate of a person de-
2 scribed in any of subclauses (I)
3 through (IV), or

4 “(VI) an employee, agent, or reg-
5 istered representative of a person de-
6 scribed in any of subclauses (I)
7 through (V).

8 “(ii) *AFFILIATE*.—The term ‘affiliate’
9 means an affiliated person, as defined in
10 section 2(a)(3) of the Investment Company
11 Act of 1940 (15 U.S.C. 80a-2(a)(3)).

12 “(iii) *REGISTERED REPRESENTA-*
13 *TIVE*.—The term ‘registered representative’
14 means a person described in section
15 3(a)(18) of the Securities Exchange Act of
16 1934 (15 U.S.C. 78c(a)(18)) or section
17 202(a)(17) of the Investment Advisers Act of
18 1940 (15 U.S.C. 80b-2(a)(17)).”.

19 **SEC. 3. EFFECTIVE DATE.**

20 *The amendments made by this Act shall apply with*
21 *respect to advice referred to in section 3(21)(A)(ii) of the*
22 *Employee Retirement Income Security Act of 1974 or sec-*
23 *tion 4975(e)(3)(B) of the Internal Revenue Code of 1986*
24 *provided on or after January 1, 2002.*

1 of securities or other property) pur-
2 suant to such investment advice, and

3 “(C) the direct or indirect receipt
4 of fees or other compensation by the
5 fiduciary adviser or an affiliate there-
6 of (or any employee, agent, or reg-
7 istered representative of the fidu-
8 ciary adviser or affiliate) in connec-
9 tion with the provision of such invest-
10 ment advice.”.

11 (2) REQUIREMENTS.—Section 408 of
12 such Act is amended further by adding at
13 the end the following new subsection:

14 “(g)(1) The requirements of this sub-
15 section are met in connection with the provi-
16 sion of advice referred to in section
17 3(21)(A)(ii), provided to an employee benefit
18 plan or a participant or beneficiary of an em-
19 ployee benefit plan by a fiduciary adviser
20 with respect to such plan, in connection with
21 any sale or acquisition of a security or other
22 property for purposes of investment of
23 amounts held by such plan, if—

24 “(A) in the case of the initial provi-
25 sion of such advice with regard to a secu-

1 rity or other property, by such fiduciary
2 adviser to such plan, participant, or ben-
3 eficiary, the fiduciary adviser provides to
4 the recipient of such advice, at the time
5 of or before the initial provision of such
6 advice, a clear and conspicuous descrip-
7 tion, in writing (including by means of
8 electronic communication), of—

9 “(i) all fees or other compensation
10 relating to such advice that the fidu-
11 ciary adviser or any affiliate thereof
12 is to receive (including compensation
13 provided by any third party) in con-
14 nection with the provision of such ad-
15 vice or in connection with such ac-
16 quisition or sale,

17 “(ii) any material affiliation or
18 contractual relationship of the fidu-
19 ciary adviser or affiliates thereof in
20 such security or other property,

21 “(iii) any limitation placed on the
22 scope of the investment advice to be
23 provided by the fiduciary adviser
24 with respect to any such sale or ac-
25 quisition, and

1 “(iv) the types of services offered
2 by the fiduciary advisor in connec-
3 tion with the provision of investment
4 advice by the fiduciary adviser,

5 “(B) in the case of the initial or any
6 subsequent provision of such advice to
7 such plan, participant, or beneficiary, the
8 fiduciary adviser, throughout the 1-year
9 period following the provision of such ad-
10 vice, maintains the information described
11 in clauses (i) through (iv) of subpara-
12 graph (A) in currently accurate form for
13 availability, upon request and without
14 charge, to the recipient of such advice,

15 “(C) the fiduciary adviser provides
16 appropriate disclosure, in connection
17 with any such acquisition or sale, in ac-
18 cordance with all applicable securities
19 laws,

20 “(D) such acquisition or sale occurs
21 solely at the direction of the recipient of
22 such advice,

23 “(E) the compensation received by the
24 fiduciary adviser and affiliates thereof in

1 connection with such acquisition or sale
2 is reasonable, and

3 “(F) the terms of such acquisition or
4 sale are at least as favorable to such plan
5 as an arm’s length transaction would be.

6 “(2) A fiduciary adviser referred to in
7 paragraph (1) who has provided advice re-
8 ferred to in such paragraph shall, for a period
9 of not less than 6 years after the provision of
10 such advice, maintain any records necessary
11 for determining whether the requirements of
12 the preceding provisions of this subsection
13 and of subsection (b)(14) have been met. A
14 transaction prohibited under section 406 shall
15 not be considered to have occurred solely be-
16 cause the records are lost or destroyed prior
17 to the end of the 6-year period due to cir-
18 cumstances beyond the control of the fidu-
19 ciary adviser.

20 “(3)(A) Subject to subparagraph (B), a
21 plan sponsor or other person who is a fidu-
22 ciary shall not be treated as failing to meet
23 the requirements of this part solely by reason
24 of the provision of investment advice referred
25 to in section 3(21)(A)(ii) (or solely by reason

1 of contracting for or otherwise arranging for
2 the provision of such investment advice), if—

3 “(i) such advice is provided by a fidu-
4 ciary adviser pursuant to an arrange-
5 ment between such plan sponsor or other
6 fiduciary and such fiduciary adviser for
7 the provision by such fiduciary adviser of
8 investment advice referred to in such sec-
9 tion, and

10 “(ii) the terms of such arrangement
11 require compliance by the fiduciary ad-
12 viser with the requirements of this sub-
13 section.

14 “(B) Nothing in subparagraph (A) shall be
15 construed to exempt a plan sponsor or other
16 person who is a fiduciary from any require-
17 ment of this part for the prudent selection
18 and periodic review of a fiduciary adviser
19 with whom the plan sponsor or other person
20 enters into an arrangement for the provision
21 of advice referred to in section 3(21)(A)(ii).
22 Such plan sponsor or other person who is a
23 fiduciary has no duty under this part to mon-
24 itor the specific investment advice given by

1 **the fiduciary adviser to any particular recipi-**
2 **ent of such advice.**

3 **“(C) Nothing in this part shall be con-**
4 **strued to preclude the use of plan assets to**
5 **pay for reasonable expenses in providing in-**
6 **vestment advice referred to in section**
7 **3(21)(A)(ii).**

8 **“(4) For purposes of this subsection and**
9 **subsection (b)(14)—**

10 **“(A) The term ‘fiduciary adviser’**
11 **means, with respect to a plan, a person**
12 **who is a fiduciary of the plan by reason**
13 **of the provision of investment advice by**
14 **such person to the plan or to a partici-**
15 **pant or beneficiary and who is—**

16 **“(i) registered as an investment**
17 **adviser under the Investment Advis-**
18 **ers Act of 1940 (15 U.S.C. 80b-1 et**
19 **seq.) or under the laws of the State in**
20 **which the fiduciary maintains its**
21 **principal office and place of business,**

22 **“(ii) a bank or similar financial**
23 **institution referred to in section**
24 **408(b)(4),**

1 “(iii) an insurance company quali-
2 fied to do business under the laws of
3 a State,

4 “(iv) a person registered as a
5 broker or dealer under the Securities
6 Exchange Act of 1934 (15 U.S.C. 78a et
7 seq.),

8 “(v) an affiliate of a person de-
9 scribed in any of clauses (i) through
10 (iv), or

11 “(vi) an employee, agent, or reg-
12 istered representative of a person de-
13 scribed in any of clauses (i) through
14 (v).

15 “(B) The term ‘affiliate’ means an af-
16 filiated person, as defined in section
17 2(a)(3) of the Investment Company Act of
18 1940 (15 U.S.C. 80a-2(a)(3)).

19 “(C) The term ‘registered representa-
20 tive’ means a person described in section
21 3(a)(18) of the Securities Exchange Act of
22 1934 (15 U.S.C. 78c(a)(18)) or section
23 202(a)(17) of the Investment Advisers Act
24 of 1940 (15 U.S.C. 80b-2(a)(17)).”.

1 **(b) AMENDMENTS TO THE INTERNAL REVENUE**
2 **CODE OF 1986.—**

3 **(1) EXEMPTION FROM PROHIBITED**
4 **TRANSACTIONS.—**Subsection (d) of section
5 **4975 of the Internal Revenue Code of**
6 **1986 (relating to exemptions from tax on**
7 **prohibited transactions) is amended—**

8 **(A) in paragraph (14), by striking**
9 **“or” at the end;**

10 **(B) in paragraph (15), by striking**
11 **the period at the end and inserting**
12 **“; or”; and**

13 **(C) by adding at the end the fol-**
14 **lowing new paragraph:**

15 **“(16) any transaction described in**
16 **subsection (f)(7)(A) in connection with**
17 **the provision of investment advice de-**
18 **scribed in subsection (e)(3)(B), in any**
19 **case in which—**

20 **“(A) the investment of assets of**
21 **the plan is subject to the direction of**
22 **plan participants or beneficiaries,**

23 **“(B) the advice is provided to the**
24 **plan or a participant or beneficiary of**
25 **the plan by a fiduciary adviser in**

1 connection with any sale, acquisition,
2 or holding of a security or other
3 property for purposes of investment
4 of plan assets, and

5 “(C) the requirements of sub-
6 section (f)(7)(B) are met in connection
7 with the provision of the advice.”

8 (2) ALLOWED TRANSACTIONS AND RE-
9 QUIREMENTS.—Subsection (f) of such sec-
10 tion 4975 (relating to other definitions
11 and special rules) is amended by adding
12 at the end the following new paragraph:

13 “(7) PROVISIONS RELATING TO INVEST-
14 MENT ADVICE PROVIDED BY FIDUCIARY ADVIS-
15 ERS.—

16 “(A) TRANSACTIONS ALLOWABLE IN
17 CONNECTION WITH INVESTMENT ADVICE
18 PROVIDED BY FIDUCIARY ADVISERS.—The
19 transactions referred to in subsection
20 (d)(16), in connection with the provi-
21 sion of investment advice by a fidu-
22 ciary adviser, are the following:

23 “(i) the provision of the advice
24 to the plan, participant, or bene-
25 ficiary;

1 “(ii) the sale, acquisition, or
2 holding of a security or other
3 property (including any lending
4 of money or other extension of
5 credit associated with the sale,
6 acquisition, or holding of a secu-
7 rity or other property) pursuant
8 to the advice; and

9 “(iii) the direct or indirect re-
10 ceipt of fees or other compensa-
11 tion by the fiduciary adviser or
12 an affiliate thereof (or any em-
13 ployee, agent, or registered rep-
14 resentative of the fiduciary ad-
15 viser or affiliate) in connection
16 with the provision of the advice
17 or in connection with a sale, ac-
18 quisition, or holding of a security
19 or other property pursuant to the
20 advice.

21 “(B) REQUIREMENTS RELATING TO
22 PROVISION OF INVESTMENT ADVICE BY FI-
23 DUCIARY ADVISERS.—The requirements
24 of this subparagraph (referred to in
25 subsection (d)(16)(C)) are met in con-

1 nection with the provision of invest-
2 ment advice referred to in subsection
3 (e)(3)(B), provided to a plan or a par-
4 ticipant or beneficiary of a plan by a
5 fiduciary adviser with respect to the
6 plan in connection with any sale, ac-
7 quisition, or holding of a security or
8 other property for purposes of invest-
9 ment of amounts held by the plan,
10 if—

11 “(i) in the case of the initial
12 provision of the advice with re-
13 gard to the security or other
14 property by the fiduciary adviser
15 to the plan, participant, or bene-
16 ficiary, the fiduciary adviser pro-
17 vides to the recipient of the ad-
18 vice, at a time reasonably contem-
19 poraneous with the initial provi-
20 sion of the advice, a written noti-
21 fication (which may consist of no-
22 tification by means of electronic
23 communication)—

24 “(I) of all fees or other
25 compensation relating to the

1 **advice that the fiduciary ad-**
2 **viser or any affiliate thereof is**
3 **to receive (including com-**
4 **penetration provided by any**
5 **third party) in connection**
6 **with the provision of the ad-**
7 **vice or in connection with the**
8 **sale, acquisition, or holding of**
9 **the security or other prop-**
10 **erty,**

11 **“(II) of any material affili-**
12 **ation or contractual relation-**
13 **ship of the fiduciary adviser**
14 **or affiliates thereof in the se-**
15 **curity or other property,**

16 **“(III) of any limitation**
17 **placed on the scope of the in-**
18 **vestment advice to be pro-**
19 **vided by the fiduciary adviser**
20 **with respect to any such sale,**
21 **acquisition, or holding of a se-**
22 **curity or other property,**

23 **“(IV) of the types of serv-**
24 **ices provided by the fiduciary**
25 **advisor in connection with**

1 the provision of investment
2 advice by the fiduciary ad-
3 viser, and

4 “(V) that the adviser is
5 acting as a fiduciary of the
6 plan in connection with the
7 provision of the advice,

8 “(ii) the fiduciary adviser pro-
9 vides appropriate disclosure, in
10 connection with the sale, acquisi-
11 tion, or holding of the security or
12 other property, in accordance
13 with all applicable securities
14 laws,

15 “(iii) the sale, acquisition, or
16 holding occurs solely at the direc-
17 tion of the recipient of the advice,

18 “(iv) the compensation re-
19 ceived by the fiduciary adviser
20 and affiliates thereof in connec-
21 tion with the sale, acquisition, or
22 holding of the security or other
23 property is reasonable, and

24 “(v) the terms of the sale, ac-
25 quisition, or holding of the secu-

1 rity or other property are at least
2 as favorable to the plan as an
3 arm's length transaction would
4 be.

5 “(C) STANDARDS FOR PRESENTATION
6 OF INFORMATION.—The notification re-
7 quired to be provided to participants
8 and beneficiaries under subpara-
9 graph (B)(i) shall be written in a clear
10 and conspicuous manner and in a
11 manner calculated to be understood
12 by the average plan participant and
13 shall be sufficiently accurate and
14 comprehensive to reasonably apprise
15 such participants and beneficiaries of
16 the information required to be pro-
17 vided in the notification.

18 “(D) EXEMPTION CONDITIONED ON
19 MAKING REQUIRED INFORMATION AVAIL-
20 ABLE ANNUALLY, ON REQUEST, AND IN
21 THE EVENT OF MATERIAL CHANGE.—The
22 requirements of subparagraph (B)(i)
23 shall be deemed not to have been met
24 in connection with the initial or any
25 subsequent provision of advice de-

1 **scribed in subparagraph (B) to the**
2 **plan, participant, or beneficiary if, at**
3 **any time during the provision of advi-**
4 **sory services to the plan, participant,**
5 **or beneficiary, the fiduciary adviser**
6 **fails to maintain the information de-**
7 **scribed in subclauses (I) through (IV)**
8 **of subparagraph (B)(i) in currently**
9 **accurate form and in the manner re-**
10 **quired by subparagraph (C), or fails—**

11 **“(i) to provide, without**
12 **charge, such currently accurate**
13 **information to the recipient of**
14 **the advice no less than annually,**

15 **“(ii) to make such currently**
16 **accurate information available,**
17 **upon request and without charge,**
18 **to the recipient of the advice, or**

19 **“(iii) in the event of a material**
20 **change to the information de-**
21 **scribed in subclauses (I) through**
22 **(IV) of subparagraph (B)(i), to**
23 **provide, without charge, such**
24 **currently accurate information to**
25 **the recipient of the advice at a**

1 **time reasonably contemporaneous**
2 **to the material change in infor-**
3 **mation.**

4 **“(E) MAINTENANCE FOR 6 YEARS OF**
5 **EVIDENCE OF COMPLIANCE.—A fiduciary**
6 **adviser referred to in subparagraph**
7 **(B) who has provided advice referred**
8 **to in such subparagraph shall, for a**
9 **period of not less than 6 years after**
10 **the provision of the advice, maintain**
11 **any records necessary for deter-**
12 **mining whether the requirements of**
13 **the preceding provisions of this para-**
14 **graph and of subsection (d)(16) have**
15 **been met. A transaction prohibited**
16 **under subsection (c)(1) shall not be**
17 **considered to have occurred solely**
18 **because the records are lost or de-**
19 **stroyed prior to the end of the 6-year**
20 **period due to circumstances beyond**
21 **the control of the fiduciary adviser.**

22 **“(F) DEFINITIONS.—For purposes**
23 **of this paragraph and subsection**
24 **(d)(16)—**

1 **“(i) FIDUCIARY ADVISER.—The**
2 **term ‘fiduciary adviser’ means,**
3 **with respect to a plan, a person**
4 **who is a fiduciary of the plan by**
5 **reason of the provision of invest-**
6 **ment advice by the person to the**
7 **plan or to a participant or bene-**
8 **fiary and who is—**

9 **“(I) registered as an in-**
10 **vestment adviser under the**
11 **Investment Advisers Act of**
12 **1940 (15 U.S.C. 80b-1 et seq.)**
13 **or under the laws of the State**
14 **in which the fiduciary main-**
15 **tains its principal office and**
16 **place of business,**

17 **“(II) a bank or similar fi-**
18 **ancial institution referred to**
19 **in subsection (d)(4),**

20 **“(III) an insurance com-**
21 **pany qualified to do business**
22 **under the laws of a State,**

23 **“(IV) a person registered**
24 **as a broker or dealer under**

1 the Securities Exchange Act
2 of 1934 (15 U.S.C. 78a et seq.),

3 “(V) an affiliate of a per-
4 son described in any of sub-
5 clauses (I) through (IV), or

6 “(VI) an employee, agent,
7 or registered representative
8 of a person described in any
9 of subclauses (I) through (V)
10 who satisfies the require-
11 ments of applicable insur-
12 ance, banking, and securities
13 laws relating to the provision
14 of the advice.

15 “(ii) AFFILIATE.—The term ‘af-
16 filiate’ of another entity means an
17 affiliated person of the entity (as
18 defined in section 2(a)(3) of the
19 Investment Company Act of 1940
20 (15 U.S.C. 80a-2(a)(3))).

21 “(iii) REGISTERED REPRESENTA-
22 TIVE.—The term ‘registered rep-
23 resentative’ of another entity
24 means a person described in sec-
25 tion 3(a)(18) of the Securities Ex-

1 **change Act of 1934 (15 U.S.C.**
2 **78c(a)(18)) (substituting the entity**
3 **for the broker or dealer referred**
4 **to in such section) or a person de-**
5 **scribed in section 202(a)(17) of the**
6 **Investment Advisers Act of 1940**
7 **(15 U.S.C. 80b-2(a)(17)) (sub-**
8 **stituting the entity for the invest-**
9 **ment adviser referred to in such**
10 **section).”**

11 **SEC. 3. EFFECTIVE DATE.**

12 **The amendments made by this Act shall**
13 **apply with respect to advice referred to in**
14 **section 3(21)(A)(ii) of the Employee Retire-**
15 **ment Income Security Act of 1974 or section**
16 **4975(e)(3)(B) of the Internal Revenue Code of**
17 **1986 provided on or after January 1, 2002.**

Union Calendar No. 174

107TH CONGRESS
1ST SESSION

H. R. 2269

[Report No. 107-262, Parts I and II]

A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to promote the provision of retirement investment advice to workers managing their retirement income assets.

NOVEMBER 13, 2001

Reported from the Committee on Ways and Means with an amendment; committed to the Committee of the Whole House on the State of the Union, and ordered to be printed