

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2269, AS REPORTED**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Retirement Security
3 Advice Act of 2001”.

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

6 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
7 INCOME SECURITY ACT OF 1974.—

8 (1) EXEMPTION FROM PROHIBITED TRANS-
9 ACTIONS.—Section 408(b) of the Employee Retirement
10 Income Security Act of 1974 (29 U.S.C.
11 1108(b)) is amended by adding at the end the fol-
12 lowing new paragraph:

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

17 “(i) the investment of assets of the plan is
18 subject to the direction of plan participants or
19 beneficiaries,



1 “(ii) the advice is provided to the plan or
2 a participant or beneficiary of the plan by a fi-
3 duciary adviser in connection with any sale, ac-
4 quisition, or holding of a security or other prop-
5 erty for purposes of investment of plan assets,
6 and

7 “(iii) the requirements of subsection (g)
8 are met in connection with the provision of the
9 advice.

10 “(B) The transactions described in this sub-
11 paragraph are the following:

12 “(i) the provision of the advice to the plan,
13 participant, or beneficiary;

14 “(ii) the sale, acquisition, or holding of a
15 security or other property (including any lend-
16 ing of money or other extension of credit associ-
17 ated with the sale, acquisition, or holding of a
18 security or other property) pursuant to the ad-
19 vice; and

20 “(iii) the direct or indirect receipt of fees
21 or other compensation by the fiduciary adviser
22 or an affiliate thereof (or any employee, agent,
23 or registered representative of the fiduciary ad-
24 viser or affiliate) in connection with the provi-
25 sion of the advice or in connection with a sale,



1 acquisition, or holding of a security or other
2 property pursuant to the advice.”.

3 (2) REQUIREMENTS.—Section 408 of such Act
4 is amended further by adding at the end the fol-
5 lowing new subsection:

6 “(g) REQUIREMENTS RELATING TO PROVISION OF
7 INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—

8 “(1) IN GENERAL.—The requirements of this
9 subsection are met in connection with the provision
10 of investment advice referred to in section
11 3(21)(A)(ii), provided to an employee benefit plan or
12 a participant or beneficiary of an employee benefit
13 plan by a fiduciary adviser with respect to the plan
14 in connection with any sale, acquisition, or holding
15 of a security or other property for purposes of in-
16 vestment of amounts held by the plan, if—

17 “(A) in the case of the initial provision of
18 the advice with regard to the security or other
19 property by the fiduciary adviser to the plan,
20 participant, or beneficiary, the fiduciary adviser
21 provides to the recipient of the advice, at a time
22 reasonably contemporaneous with the initial
23 provision of the advice, a written notification
24 (which may consist of notification by means of
25 electronic communication)—



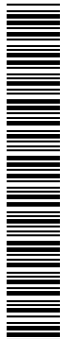
1 “(i) of all fees or other compensation
2 relating to the advice that the fiduciary ad-
3 viser or any affiliate thereof is to receive
4 (including compensation provided by any
5 third party) in connection with the provi-
6 sion of the advice or in connection with the
7 sale, acquisition, or holding of the security
8 or other property,

9 “(ii) of any material affiliation or con-
10 tractual relationship of the fiduciary ad-
11 viser or affiliates thereof in the security or
12 other property,

13 “(iii) of any limitation placed on the
14 scope of the investment advice to be pro-
15 vided by the fiduciary adviser with respect
16 to any such sale, acquisition, or holding of
17 a security or other property,

18 “(iv) of the types of services provided
19 by the fiduciary advisor in connection with
20 the provision of investment advice by the
21 fiduciary adviser, and

22 “(v) that the adviser is acting as a fi-
23 duciary of the plan in connection with the
24 provision of the advice,



1 “(B) the fiduciary adviser provides appro-
2 priate disclosure, in connection with the sale,
3 acquisition, or holding of the security or other
4 property, in accordance with all applicable secu-
5 rities laws,

6 “(C) the sale, acquisition, or holding oc-
7 curs solely at the direction of the recipient of
8 the advice,

9 “(D) the compensation received by the fi-
10 duciary adviser and affiliates thereof in connec-
11 tion with the sale, acquisition, or holding of the
12 security or other property is reasonable, and

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

17 “(2) STANDARDS FOR PRESENTATION OF IN-
18 FORMATION.—The notification required to be pro-
19 vided to participants and beneficiaries under para-
20 graph (1)(A) shall be written in a clear and con-
21 spicuous manner and in a manner calculated to be
22 understood by the average plan participant and shall
23 be sufficiently accurate and comprehensive to rea-
24 sonably apprise such participants and beneficiaries



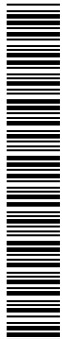
1 of the information required to be provided in the no-
2 tification.

3 “(3) EXEMPTION CONDITIONED ON CONTINUED
4 AVAILABILITY OF REQUIRED INFORMATION ON RE-
5 QUEST FOR 1 YEAR.—The requirements of para-
6 graph (1)(A) shall be deemed not to have been met
7 in connection with the initial or any subsequent pro-
8 vision of advice described in paragraph (1) to the
9 plan, participant, or beneficiary if, at any time dur-
10 ing the provision of advisory services to the plan,
11 participant, or beneficiary, the fiduciary adviser fails
12 to maintain the information described in clauses (i)
13 through (iv) of subparagraph (A) in currently accu-
14 rate form and in the manner described in paragraph
15 (2) or fails—

16 “(A) to provide, without charge, such cur-
17 rently accurate information to the recipient of
18 the advice no less than annually,

19 “(B) to make such currently accurate in-
20 formation available, upon request and without
21 charge, to the recipient of the advice, or

22 “(C) in the event of a material change to
23 the information described in clauses (i) through
24 (iv) of paragraph (1)(A), to provide, without
25 charge, such currently accurate information to



1 the recipient of the advice at a time reasonably
2 contemporaneous to the material change in in-
3 formation.

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

17 “(5) EXEMPTION FOR PLAN SPONSOR AND CER-
18 TAIN OTHER FIDUCIARIES.—

19 “(A) IN GENERAL.—Subject to subpara-
20 graph (B), a plan sponsor or other person who
21 is a fiduciary (other than a fiduciary adviser)
22 shall not be treated as failing to meet the re-
23 quirements of this part solely by reason of the
24 provision of investment advice referred to in
25 section 3(21)(A)(ii) (or solely by reason of con-



1 tracting for or otherwise arranging for the pro-
2 vision of the advice), if—

3 “(i) the advice is provided by a fidu-
4 ciary adviser pursuant to an arrangement
5 between the plan sponsor or other fidu-
6 ciary and the fiduciary adviser for the pro-
7 vision by the fiduciary adviser of invest-
8 ment advice referred to in such section,

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

13 “(iii) the terms of the arrangement
14 include a written acknowledgment by the
15 fiduciary adviser that the fiduciary adviser
16 is a fiduciary of the plan with respect to
17 the provision of the advice.

18 “(B) CONTINUED DUTY OF PRUDENT SE-
19 LECTION OF ADVISER AND PERIODIC REVIEW.—
20 Nothing in subparagraph (A) shall be construed
21 to exempt a plan sponsor or other person who
22 is a fiduciary from any requirement of this part
23 for the prudent selection and periodic review of
24 a fiduciary adviser with whom the plan sponsor
25 or other person enters into an arrangement for



1 the provision of advice referred to in section
2 3(21)(A)(ii). The plan sponsor or other person
3 who is a fiduciary has no duty under this part
4 to monitor the specific investment advice given
5 by the fiduciary adviser to any particular recipi-
6 ent of the advice.

7 “(C) AVAILABILITY OF PLAN ASSETS FOR
8 PAYMENT FOR ADVICE.—Nothing in this part
9 shall be construed to preclude the use of plan
10 assets to pay for reasonable expenses in pro-
11 viding investment advice referred to in section
12 3(21)(A)(ii).

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

15 “(A) FIDUCIARY ADVISER.—The term ‘fi-
16 duciary adviser’ means, with respect to a plan,
17 a person who is a fiduciary of the plan by rea-
18 son of the provision of investment advice by the
19 person to the plan or to a participant or bene-
20 ficiary and who is—

21 “(i) registered as an investment ad-
22 viser under the Investment Advisers Act of
23 1940 (15 U.S.C. 80b–1 et seq.) or under
24 the laws of the State in which the fiduciary



1 maintains its principal office and place of
2 business,

3 “(ii) a bank or similar financial insti-
4 tution referred to in section 408(b)(4),

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

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

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

12 “(vi) an employee, agent, or registered
13 representative of a person described in any
14 of clauses (i) through (v) who satisfies the
15 requirements of applicable insurance,
16 banking, and securities laws relating to the
17 provision of the advice.

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

23 “(C) REGISTERED REPRESENTATIVE.—
24 The term ‘registered representative’ of another
25 entity means a person described in section



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

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

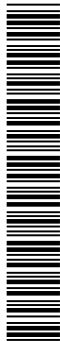
11 (1) EXEMPTION FROM PROHIBITED TRANS-
12 ACTIONS.—Subsection (d) of section 4975 of the In-
13 ternal Revenue Code of 1986 (relating to exemptions
14 from tax on prohibited transactions) is amended—

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) any transaction described in subsection
22 (f)(7)(A) in connection with the provision of invest-
23 ment advice described in subsection (e)(3)(B), in
24 any case in which—



1 “(A) the investment of assets of the plan
 2 is subject to the direction of plan participants
 3 or beneficiaries,

4 “(B) the advice is provided to the plan or
 5 a participant or beneficiary of the plan by a fi-
 6 duciary adviser in connection with any sale, ac-
 7 quisition, or holding of a security or other prop-
 8 erty for purposes of investment of plan assets,
 9 and

10 “(C) the requirements of subsection
 11 (f)(7)(B) are met in connection with the provi-
 12 sion of the advice.”

13 (2) ALLOWED TRANSACTIONS AND REQUIRE-
 14 MENTS.—Subsection (f) of such section 4975 (relat-
 15 ing to other definitions and special rules) is amended
 16 by adding at the end the following new paragraph:

17 “(7) PROVISIONS RELATING TO INVESTMENT
 18 ADVICE PROVIDED BY FIDUCIARY ADVISERS.—

19 “(A) TRANSACTIONS ALLOWABLE IN CON-
 20 NECTION WITH INVESTMENT ADVICE PROVIDED
 21 BY FIDUCIARY ADVISERS.—The transactions re-
 22 ferred to in subsection (d)(16), in connection
 23 with the provision of investment advice by a fi-
 24 duciary adviser, are the following:



1 “(i) the provision of the advice to the
2 plan, participant, or beneficiary;

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

9 “(iii) the direct or indirect receipt of
10 fees or other compensation by the fiduciary
11 adviser or an affiliate thereof (or any em-
12 ployee, agent, or registered representative
13 of the fiduciary adviser or affiliate) in con-
14 nection with the provision of the advice or
15 in connection with a sale, acquisition, or
16 holding of a security or other property pur-
17 suant to the advice.

18 “(B) REQUIREMENTS RELATING TO PROVI-
19 SION OF INVESTMENT ADVICE BY FIDUCIARY
20 ADVISERS.—The requirements of this subpara-
21 graph (referred to in subsection (d)(16)(C)) are
22 met in connection with the provision of invest-
23 ment advice referred to in subsection (e)(3)(B),
24 provided to a plan or a participant or bene-
25 ficiary of a plan by a fiduciary adviser with re-



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

5 “(i) in the case of the initial provision
6 of the advice with regard to the security or
7 other property by the fiduciary adviser to
8 the plan, participant, or beneficiary, the fi-
9 duciary adviser provides to the recipient of
10 the advice, at a time reasonably contem-
11 poraneous with the initial provision of the
12 advice, a written notification (which may
13 consist of notification by means of elec-
14 tronic communication)—

15 “(I) of all fees or other com-
16 pensation relating to the advice that
17 the fiduciary adviser or any affiliate
18 thereof is to receive (including com-
19 pensation provided by any third
20 party) in connection with the provi-
21 sion of the advice or in connection
22 with the sale, acquisition, or holding
23 of the security or other property,

24 “(II) of any material affiliation
25 or contractual relationship of the fidu-



1 ciary adviser or affiliates thereof in
2 the security or other property,

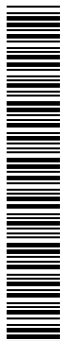
3 “(III) of any limitation placed on
4 the scope of the investment advice to
5 be provided by the fiduciary adviser
6 with respect to any such sale, acquisi-
7 tion, or holding of a security or other
8 property,

9 “(IV) of the types of services
10 provided by the fiduciary advisor in
11 connection with the provision of in-
12 vestment advice by the fiduciary ad-
13 viser, and

14 “(V) that the adviser is acting as
15 a fiduciary of the plan in connection
16 with the provision of the advice,

17 “(ii) the fiduciary adviser provides ap-
18 propriate disclosure, in connection with the
19 sale, acquisition, or holding of the security
20 or other property, in accordance with all
21 applicable securities laws,

22 “(iii) the sale, acquisition, or holding
23 occurs solely at the direction of the recipi-
24 ent of the advice,



1 “(iv) the compensation received by the
2 fiduciary adviser and affiliates thereof in
3 connection with the sale, acquisition, or
4 holding of the security or other property is
5 reasonable, and

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

10 “(C) STANDARDS FOR PRESENTATION OF
11 INFORMATION.—The notification required to be
12 provided to participants and beneficiaries under
13 subparagraph (B)(i) shall be written in a clear
14 and conspicuous manner and in a manner cal-
15 culated to be understood by the average plan
16 participant and shall be sufficiently accurate
17 and comprehensive to reasonably apprise such
18 participants and beneficiaries of the information
19 required to be provided in the notification.

20 “(D) EXEMPTION CONDITIONED ON MAK-
21 ING REQUIRED INFORMATION AVAILABLE ANNU-
22 ALLY, ON REQUEST, AND IN THE EVENT OF MA-
23 TERIAL CHANGE.—The requirements of sub-
24 paragraph (B)(i) shall be deemed not to have
25 been met in connection with the initial or any



1 subsequent provision of advice described in sub-
2 paragraph (B) to the plan, participant, or bene-
3 ficiary if, at any time during the provision of
4 advisory services to the plan, participant, or
5 beneficiary, the fiduciary adviser fails to main-
6 tain the information described in subclauses (I)
7 through (IV) of subparagraph (B)(i) in cur-
8 rently accurate form and in the manner re-
9 quired by subparagraph (C), or fails—

10 “(i) to provide, without charge, such
11 currently accurate information to the re-
12 cipient of the advice no less than annually,

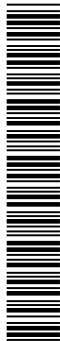
13 “(ii) to make such currently accurate
14 information available, upon request and
15 without charge, to the recipient of the ad-
16 vice, or

17 “(iii) in the event of a material
18 change to the information described in
19 subclauses (I) through (IV) of subpara-
20 graph (B)(i), to provide, without charge,
21 such currently accurate information to the
22 recipient of the advice at a time reasonably
23 contemporaneous to the material change in
24 information.



1 “(E) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser
2 referred to in subparagraph (B) who has provided advice referred to in such subparagraph
3 shall, for a period of not less than 6 years after the provision of the advice, maintain any
4 records necessary for determining whether the requirements of the preceding provisions of this
5 paragraph and of subsection (d)(16) have been met. A transaction prohibited under subsection
6 (c)(1) shall not be considered to have occurred solely because the records are lost or destroyed
7 prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary
8 adviser.
9

10 “(F) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—A plan sponsor
11 or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as fail-
12 ing to meet the requirements of this section solely by reason of the provision of investment
13 advice referred to in subsection (e)(3)(B) (or solely by reason of contracting for or otherwise
14 arranging for the provision of the advice), if—
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1 “(i) the advice is provided by a fidu-
2 ciary adviser pursuant to an arrangement
3 between the plan sponsor or other fidu-
4 ciary and the fiduciary adviser for the pro-
5 vision by the fiduciary adviser of invest-
6 ment advice referred to in such section,

7 “(ii) the terms of the arrangement re-
8 quire compliance by the fiduciary adviser
9 with the requirements of this paragraph,

10 “(iii) the terms of the arrangement
11 include a written acknowledgment by the
12 fiduciary adviser that the fiduciary adviser
13 is a fiduciary of the plan with respect to
14 the provision of the advice, and

15 “(iv) the requirements of part 4 of
16 subtitle B of title I of the Employee Re-
17 tirement Income Security Act of 1974 are
18 met in connection with the provision of
19 such advice.

20 “(G) DEFINITIONS.—For purposes of this
21 paragraph and subsection (d)(16)—

22 “(i) FIDUCIARY ADVISER.—The term
23 ‘fiduciary adviser’ means, with respect to a
24 plan, a person who is a fiduciary of the
25 plan by reason of the provision of invest-



1 ment advice by the person to the plan or
2 to a participant or beneficiary and who
3 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 fiduciary maintains its prin-
9 cipal office and place of business,

10 “(II) a bank or similar financial
11 institution referred to in subsection
12 (d)(4),

13 “(III) an insurance company
14 qualified to do business under the
15 laws of a State,

16 “(IV) a person registered as a
17 broker or dealer under the Securities
18 Exchange Act of 1934 (15 U.S.C. 78a
19 et seq.),

20 “(V) an affiliate of a person de-
21 scribed in any of subclauses (I)
22 through (IV), or

23 “(VI) an employee, agent, or reg-
24 istered representative of a person de-
25 scribed in any of subclauses (I)



1 through (V) who satisfies the require-
2 ments of applicable insurance, bank-
3 ing, and securities laws relating to the
4 provision of the advice.

5 “(ii) AFFILIATE.—The term ‘affiliate’
6 of another entity means an affiliated per-
7 son of the entity (as defined in section
8 2(a)(3) of the Investment Company Act of
9 1940 (15 U.S.C. 80a-2(a)(3))).

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

22 **SEC. 3. EFFECTIVE DATE.**

23 The amendments made by this Act shall apply with
24 respect to advice referred to in section 3(21)(A)(ii) of the
25 Employee Retirement Income Security Act of 1974 or sec-



1 tion 4975(e)(3)(B) of the Internal Revenue Code of 1986
2 provided on or after January 1, 2002.

