

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1984
OFFERED BY MR. ANDREWS OF NEW JERSEY**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “401(k) Fair Disclosure
3 for Retirement Security Act of 2009”.

4 **SEC. 2. SPECIAL REPORTING AND DISCLOSURE RULES FOR**
5 **INDIVIDUAL ACCOUNT PLANS.**

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

9 (1) by redesignating section 111 (29 U.S.C.
10 1031) as section 112; and

11 (2) by inserting after section 110 (29 U.S.C.
12 1030) the following new section:

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

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

1 “(1) SERVICE DISCLOSURE STATEMENT.—The
2 plan administrator of an individual account plan (or
3 any other plan official with contracting authority
4 under the terms of the plan) may not enter into a
5 contract or arrangement for services to the plan (in-
6 cluding, for purposes of this section, the offering of
7 any investment option to the plan) unless such plan
8 administrator or other official has received, reason-
9 ably in advance of entering into the contract or ar-
10 rangement, a single written statement from the serv-
11 ice provider which—

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

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

23 The description of the services and specification of
24 the charges for the services shall be displayed promi-
25 nently in the written statement and shall be pre-

1 sented in a format which is understandable to the
2 typical plan administrator.

3 “(2) MINIMUM ALLOCATION REQUIREMENTS.—

4 The allocation required under paragraph (1)(B) in
5 connection with the services provided under each
6 contract or arrangement shall specify component
7 charges (to the extent such services for the plan are
8 provided under the contract or arrangement) as fol-
9 lows:

10 “(A) charges for administration and rec-
11 ordkeeping,

12 “(B) transaction based charges,

13 “(C) charges for investment management,
14 and

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

17 The Secretary may by regulation provide for the ap-
18 propriate allocation of component charges among the
19 categories of charges provided in subparagraphs (A),
20 (B), (C), and (D).

21 “(3) PRESENTATION OF CHARGES.—The total
22 charges described in paragraph (2)(A) and the total
23 charges described in paragraph (2)(C) shall each be
24 presented in the written statement as an aggregate
25 total dollar amount, and, in addition, each of such

1 total charges may also be presented as a percentage
2 of assets. The charges described in paragraph (2)(B)
3 shall be itemized separately as dollar amounts or as
4 percentages of the applicable base amounts.

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

17 “(5) DISCLOSURE OF FINANCIAL RELATION-
18 SHIPS.—

19 “(A) IN GENERAL.—The statement re-
20 quired under paragraph (1) shall include a writ-
21 ten disclosure of—

22 “(i) any payment to be provided (or
23 the amount representing the value of any
24 services to be provided) to the service pro-
25 vider (or any affiliate thereof) from any

1 entity other than the plan or the accounts
2 of participants or beneficiaries pursuant
3 to, or in connection with, the contract or
4 arrangement described in paragraph (1)
5 and the amount and type of any payment
6 to be made or credit to be received for
7 such services (irrespective of whether the
8 service provider (or affiliate thereof) or
9 other person providing such services is af-
10 filiated or unaffiliated with the plan, the
11 plan sponsor, the plan administrator, or
12 any other plan official), and

13 “(ii) such other similar arrangements
14 benefitting the service provider (or any af-
15 filiate thereof) as may be specified by the
16 Secretary.

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

24 “(B) INCLUSIONS.—

1 “(i) IN GENERAL.—Disclosures de-
2 scribed under subparagraph (A)(ii) shall
3 include the extent to which the service pro-
4 vider (or any affiliate thereof) may benefit
5 from the offering of its own proprietary in-
6 vestment products or those of third par-
7 ties, including (but not limited to) cross-
8 selling of affiliated products or services to
9 the plan sponsor or participants.

10 “(ii) APPLICABLE PROHIBITED
11 TRANSACTION EXEMPTION.—Disclosures
12 under this paragraph may include a de-
13 scription of any applicable prohibited
14 transaction exemption under section 408
15 related to the services described in the
16 statement required under paragraph (1).

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

1 “(7) DISCLOSURE OF CERTAIN ARRANGEMENTS
2 IN CONNECTION WITH FREE OR DISCOUNTED SERV-
3 ICES OR REIMBURSEMENTS BY SERVICE PRO-
4 VIDERS.—In any case in which services are provided
5 to the plan, or to the plan sponsor in connection
6 with the plan, by any service provider without ex-
7 plicit charge or for charges set at a discounted rate
8 or subject to rebate, the statement required under
9 paragraph (1) shall specify the manner in which, the
10 extent to which, and the amount by which consider-
11 ation is otherwise obtained by the service provider
12 (or any affiliate thereof), the plan, or the plan spon-
13 sor for such services, directly or indirectly, by means
14 of any charges against the plan.

15 “(8) REVIEW BY THE SECRETARY.—The Sec-
16 retary shall, from time to time as determined appro-
17 priate by the Secretary, review the accuracy and suf-
18 ficiency of statements provided pursuant to this sub-
19 section.

20 “(9) UPDATING.—Each service provider shall
21 provide to the plan administrator an updated written
22 statement described in paragraph (1) describing any
23 material change in the information included in the
24 statement provided pursuant to paragraph (1) as
25 soon as is reasonable after the occurrence of the

1 change is known. Such an updated written state-
2 ment, or, in the case of a plan year in which no ma-
3 terial change in the information included in the
4 statement provided pursuant to paragraph (1) has
5 occurred, a written statement setting forth such
6 fact, shall be provided by the service provider not
7 less often than annually.

8 “(10) LIMITATIONS.—

9 “(A) DOLLAR LIMITATION.—

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

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

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

3 Nothing in this subsection shall be construed to
4 require any service provider to provide any serv-
5 ice with respect to any particular plan sponsor.

6 “(11) SATISFACTION OF FIDUCIARY RULES.—

7 Nothing in the preceding provisions of this sub-
8 section affects the obligations of fiduciaries under
9 part 4 of this subtitle.

10 “(b) DISCLOSURES TO PARTICIPANTS AND BENE-
11 FICIARIES.—

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

20 “(A) the earliest date provided for under
21 the plan for the participant’s initial investment
22 of any contribution made on behalf of such par-
23 ticipant, and

24 “(B) the effective date of any material
25 change in investment options.

1 In the case of a plan that provides for immediate eli-
2 gibility or that contains an automatic contribution
3 arrangement (as defined in subparagraphs (A) and
4 (B) of section 514(e)(2)), the notice required under
5 subparagraph (A) may be provided within any rea-
6 sonable period prior to such initial investment. With
7 respect to any notice required under this paragraph,
8 the Secretary shall prescribe regulations creating
9 specific requirements for periods of advance notice
10 to be treated as reasonable under this paragraph (of
11 not less than 10 days) in circumstances similar to
12 those described in section 101(i)(2)(C), and such no-
13 tice may be combined with any similar notice that
14 may be required under section 404(e)(5) or under
15 this section.

16 “(2) INFORMATION INCLUDED IN NOTICE.—
17 The notice required under paragraph (1) shall—

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

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

3 “(i) the name of the option,

4 “(ii) information effectively describing
5 the investment objectives of the option
6 (such as a description of a broadly recog-
7 nized asset class),

8 “(iii) the risk level associated with the
9 option,

10 “(iv) whether the option is diversified
11 among various classes of assets so as to
12 minimize the risk of large losses or should
13 be combined with other options so as to
14 obtain such diversification,

15 “(v) whether the investment option is
16 actively managed or passively managed in
17 relation to an index and the difference be-
18 tween active management and passive
19 management,

20 “(vi) where, and the manner in which,
21 additional plan-specific, option-specific,
22 and generally available investment infor-
23 mation regarding the option may be ob-
24 tained, and

1 “(vii) a statement explaining that in-
2 vestment options should not be evaluated
3 solely on the basis of the charges for each
4 option but should also be based on careful
5 consideration of other key factors, includ-
6 ing the risk level of the option, the invest-
7 ment objectives of the option, the principal
8 investment strategies of the option, and
9 historical returns of the option, and

10 “(C) include a plan fee comparison chart,
11 relating to the charges described in paragraph
12 (3) in connection with all investment options
13 available under the plan, as provided in para-
14 graph (3).

15 “(3) PLAN FEE COMPARISON CHART.—

16 “(A) IN GENERAL.—

17 “(i) IN GENERAL.—The notice pro-
18 vided under this subsection shall include a
19 plan fee comparison chart consisting of a
20 comparison of actual service and invest-
21 ment charges (including, for purposes of
22 this clause, charges for the offering of an
23 investment option) that will or could be as-
24 sessed against the account of the partici-
25 pant or beneficiary with respect to the plan

1 year. The plan fee comparison chart shall
2 be presented in a manner which is easily
3 understood by the typical participant and
4 include such information as the Secretary
5 determines necessary to permit partici-
6 pants and beneficiaries to assess the serv-
7 ices for which charges will or could be as-
8 sessed against the account.

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

20 “(B) CATEGORIZATION OF CHARGES.—The
21 plan fee comparison chart shall provide infor-
22 mation in relation to the following categories of
23 charges that will or could be assessed against
24 the account of the participant or beneficiary:

1 “(i) ASSET-BASED CHARGES SPECIFIC
2 TO INVESTMENT.—Charges that vary de-
3 pending on the investment options selected
4 by the participant or beneficiary, including
5 expense ratios and investment-specific
6 asset-based charges. The information relat-
7 ing to such charges shall include a state-
8 ment noting any charges for 1 or more in-
9 vestment options which pay for services
10 other than investment management.

11 “(ii) ASSET-BASED CHARGES NOT
12 SPECIFIC TO INVESTMENT.—Charges that
13 are assessed as a percentage of the total
14 assets in the account of the participant or
15 beneficiary, regardless of the investment
16 option selected.

17 “(iii) ADMINISTRATIVE AND TRANS-
18 ACTION-BASED CHARGES.—Administration
19 and transaction-based charges, including
20 fees charged to participants to cover plan
21 administration, compliance, and record-
22 keeping costs, plan loan origination fees,
23 possible redemption fees, and possible sur-
24 render charges, that are not assessed as a
25 percentage of the total assets in the ac-

1 count and are either automatically de-
2 ducted each year or result from certain
3 transactions engaged in by the participant
4 or beneficiary.

5 “(iv) OTHER CHARGES.—Any other
6 charges which may be deducted from par-
7 ticipants’ or beneficiaries’ accounts and
8 which are not described in clauses (i), (ii),
9 and (iii).

10 “(C) DESCRIPTION OF PURPOSE FOR
11 CHARGES.—The notice shall indicate the extent
12 to which each charge is for investment manage-
13 ment, transactions, plan administration and
14 recordkeeping, or other identified services.

15 “(D) FEES AND HISTORICAL RETURNS.—
16 In connection with each investment option listed
17 in the plan fee comparison chart, the chart
18 shall specify (as amounts or percentages) the
19 fees assessed in connection with such option
20 and the historical returns, net of fees and ex-
21 penses, together with language indicating the
22 past performance does not guarantee future re-
23 sults. The historical returns shall be specified
24 for the previous year, 5 years, and 10 years (or
25 for the period since inception, if shorter).

1 “(4) MODEL NOTICES.—The Secretary shall
2 prescribe one or more model notices that may be
3 used for purposes of satisfying the requirements of
4 this subsection, including model plan fee comparison
5 charts.

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

17 “(c) ELECTRONIC MEDIA.—Any disclosure required
18 under this section may be provided through an electronic
19 medium under rules prescribed by the Secretary. Such
20 rules shall be similar to those applicable under the Inter-
21 nal Revenue Code of 1986 with respect to notices to par-
22 ticipants in pension plans. The Secretary may modify such
23 rules from time to time as appropriate to take into account
24 new developments, including new forms of electronic
25 media, and to fairly take into consideration the interests

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

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

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

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

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

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

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

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

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

18 (b) QUARTERLY BENEFIT STATEMENTS.—Section
19 105 of such Act (29 U.S.C. 1025) is amended—

20 (1) in subsection (a)(2)—

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

23 (B) in subparagraph (B)(ii)—

24 (i) in subclause (II), by striking “di-
25 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 rules prescribed by the Secretary. Such
18 rules shall be similar to those applicable under the Inter-
19 nal Revenue Code of 1986 with respect to notices to par-
20 ticipants in pension plans. The Secretary may modify such
21 rules from time to time as appropriate to take into account
22 new developments, including new forms of electronic
23 media, and to fairly take into consideration the interests
24 of plan sponsors, service providers, and participants. The
25 rules prescribed by the Secretary pursuant to this sub-

1 section shall provide for a method for the typical partici-
2 pant or beneficiary to obtain without undue burden any
3 such disclosure in writing on paper in lieu of receipt
4 through an electronic medium.

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

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

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

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

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

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

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

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

18 “(B) Any plan administrator with respect to a plan
19 who fails or refuses to provide a statement to participants
20 and beneficiaries in accordance with section
21 105(a)(2)(B)(ii) or 111(b) may be assessed by the Sec-
22 retary a civil penalty of up to \$100 a day from the date
23 of the failure or refusal to the date on which such state-
24 ment or notice is so provided.

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

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

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

8 (e) EFFECTIVE DATES.—

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

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

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

23 (4) The Secretary shall issue final regulations
24 under the amendments made by this section not

1 later than 270 days after the date of the enactment
2 of this Act. Any act or practice in advance of the
3 issuance of final regulations under the amendments
4 made by this section which is in good faith compli-
5 ance with the requirements of such amendments
6 shall be treated as in compliance with any such final
7 regulations.

8 **SEC. 3. MINIMUM INVESTMENT OPTION REQUIREMENT**
9 **FOR INDIVIDUAL ACCOUNT PLANS.**

10 (a) IN GENERAL.—Section 404(c) of the Employee
11 Retirement Income Security Act of 1974 (29 U.S.C.
12 1104(c)) is amended by adding at the end the following
13 new paragraph:

14 “(6) MINIMUM INVESTMENT OPTION REQUIRE-
15 MENT FOR INDIVIDUAL ACCOUNT PLANS.—Para-
16 graph (1)(A)(ii) shall not apply in connection with
17 any individual account plan which permits a partici-
18 pant or beneficiary to exercise control over the as-
19 sets in the account of the participant or beneficiary
20 unless the plan includes at least one investment op-
21 tion—

22 “(A) which is a passively managed invest-
23 ment with a portfolio of securities that is de-
24 signed to be representative of the United States
25 investable equity market (including representa-

1 tion of small, mid, and large cap stocks) or the
2 United States investment grade bond market
3 (including Treasury, agency, non-agency, and
4 corporate issues), or a combination thereof, and
5 “(B) which is described in the terms of the
6 plan as offered without any endorsement of the
7 Government or the plan sponsor.

8 An investment shall not fail to satisfy the require-
9 ments of subparagraph (A) in connection with either
10 market described in subparagraph (A) solely by rea-
11 son of a failure to invest in all or substantially all
12 equities or bonds (as applicable) in such market, if
13 the methodology used to select the equities or bonds
14 is designed to approximate in a reasonable manner
15 the broad experience of such market.”.

16 (b) CONFORMING AMENDMENT.—Section
17 404(c)(1)(A)(ii) of such Act (29 U.S.C. 1104(c)(1)(A)(ii))
18 is amended by inserting “except as provided in section
19 404(c)(6) and” after “exercise of control,”.

20 (c) EFFECTIVE DATES.—

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

24 (2) The Secretary shall issue final regulations
25 under the amendments made by this section not

1 later than 270 days after the date of the enactment
2 of this Act. Any act or practice in advance of the
3 issuance of final regulations under the amendments
4 made by this section which is in good faith compli-
5 ance with the requirements of such amendments
6 shall be treated as in compliance with any such final
7 regulations.

8 **SEC. 4. ENFORCEMENT COORDINATION AND REVIEW BY**
9 **THE DEPARTMENT OF LABOR.**

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

14 “(n) ENFORCEMENT COORDINATION OF CERTAIN
15 DISCLOSURE REQUIREMENTS AND REVIEW BY THE DE-
16 PARTMENT OF LABOR.—

17 “(1) IN GENERAL.—

18 “(A) NOTIFICATION AND ACTION.—The
19 Secretary shall notify the applicable regulatory
20 authority in any case in which the Secretary de-
21 termines that a service provider is engaged in
22 a pattern or practice that precludes compliance
23 by plan administrators with section 111. The
24 Secretary shall, in consultation with the appli-
25 cable authority, take such timely enforcement

1 action under this title as is necessary to assure
2 that such pattern or practice ceases and desists
3 and assess any appropriate penalties.

4 “(B) DISSEMINATION.—The Secretary
5 shall widely disseminate to employee pension
6 benefit plans covered by this title and their par-
7 ticipants and beneficiaries the identity of any
8 service providers with respect to such plans
9 found to be engaged in any pattern or practice
10 described in subparagraph (A) with the intent
11 to preclude compliance by plan administrators
12 with section 111 and the particulars of such
13 pattern or practice. Prior to the dissemination
14 of the identity of any service providers identi-
15 fied and determined by the Secretary to be en-
16 gaged in such a pattern or practice, such serv-
17 ice provider shall receive a notice of intent to
18 disseminate, an opportunity to request an ad-
19 ministrative hearing, and a timely appeal to the
20 Secretary.

21 “(2) ANNUAL AUDIT OF REPRESENTATIVE SAM-
22 PLING OF INDIVIDUAL ACCOUNT PLANS.—The Sec-
23 retary shall annually audit a representative sampling
24 of individual account plans covered by this title to
25 determine compliance with the requirements of sec-

1 tion 111. The Secretary shall annually report the re-
2 sults of such audit and any related recommendations
3 of the Secretary to the Committee on Education and
4 Labor of the House of Representatives and the Com-
5 mittee on Health, Education, Labor, and Pensions
6 of the Senate.”.

7 (b) REVIEW AND REPORT TO THE CONGRESS BY
8 SECRETARY OF LABOR RELATING TO REPORTING AND
9 DISCLOSURE REQUIREMENTS.—

10 (1) STUDY.—As soon as practicable after the
11 date of the enactment of this Act, the Secretary of
12 Labor shall review the reporting and disclosure re-
13 quirements of part 1 of subtitle B of title I of the
14 Employee Retirement Income Security Act of 1974
15 and related provisions of the Pension Protection Act
16 of 2006.

17 (2) REPORT.—Not later than 18 months after
18 the date of the enactment of this Act, the Secretary
19 of Labor, in consultation with the Secretary of the
20 Treasury, shall make such recommendations as the
21 Secretary of Labor considers appropriate to the ap-
22 propriate committees of the Congress to consolidate,
23 simplify, standardize, and improve the applicable re-
24 porting and disclosure requirements so as to simplify
25 reporting for employee pension benefit plans and en-

- 1 sure that needed understandable information is pro-
- 2 vided to participants and beneficiaries of such plans.

