

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3185
OFFERED BY MR. GEORGE MILLER OF
CALIFORNIA**

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 2008”.

**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 “SPECIAL REPORTING AND DISCLOSURE RULES FOR
14 INDIVIDUAL ACCOUNT PLANS

15 “SEC. 111. (a) DISCLOSURE TO EMPLOYERS SPON-
16 SORING INDIVIDUAL ACCOUNT PLANS REGARDING SERV-

1 ICES NECESSARY FOR ESTABLISHMENT OR OPERATION
2 OF PLANS.—

3 “(1) SERVICE DISCLOSURE STATEMENT.—The
4 plan administrator of an individual account plan (or
5 any other plan official with contracting authority
6 under the terms of the plan) and any other person
7 may not enter into a contract for services to the
8 plan (including, for purposes of this section, the of-
9 fering of any investment option to the plan) unless
10 such plan administrator or other official has re-
11 ceived, not less than 10 business days in advance of
12 entering into the contract, a single written statement
13 from such person which—

14 “(A) describes such services for the plan
15 that will be provided in connection with the con-
16 tract, and

17 “(B) provides the expected total annual
18 charges for such services for the plan that will
19 be provided in connection with the contract, in-
20 cluding a reasonable allocation of such total an-
21 nual charges among all relevant component
22 charges specified in paragraph (2) (regardless
23 of how the charges are actually assessed).

24 The description of the services and the charges for
25 the services shall be displayed prominently in the

1 written statement and shall be presented in a format
2 which is understandable to the typical plan adminis-
3 trator.

4 “(2) MINIMUM ALLOCATION REQUIREMENTS.—
5 The allocation required under paragraph (1)(B) in
6 connection with the services provided under each
7 contract shall specify component charges (to the ex-
8 tent such services for the plan are provided under
9 the contract) as follows:

10 “(A) Charges for plan administration and
11 recordkeeping;

12 “(B) Transaction-based charges;

13 “(C) Charges for investment management;
14 and

15 “(D) All such charges not described in
16 subparagraph (A), (B), or (C) as may be speci-
17 fied by the Secretary.

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

1 shall be itemized separately as dollar amounts or as
2 percentages of the applicable base amounts.

3 “(4) ESTIMATIONS.—For purposes of providing
4 the statement required under this subsection in con-
5 nection with any service, the service provider may
6 provide a reasonable and representative estimate of
7 the charges required to be disclosed under para-
8 graph (1)(B) and shall indicate any such estimate as
9 being such an estimate. Any such estimate shall be
10 based on the previous year’s experience.

11 “(5) RELIANCE.—To the extent any of the in-
12 formation required to be disclosed by a service pro-
13 vider under this subsection is given to the service
14 provider by an unaffiliated person which is regulated
15 by the Federal Government or a State, the service
16 provider may rely on the completeness and accuracy
17 of such information unless the service provider—

18 “(A) knows that the information is inac-
19 curate or incomplete,

20 “(B) has reason to know that the informa-
21 tion is inaccurate or incomplete, or

22 “(C) has notice of facts or information
23 that would prompt a reasonable service provider
24 to inquire into the accuracy or completeness of
25 the information.

1 “(6) DISCLOSURE OF FINANCIAL RELATION-
2 SHIPS.—

3 “(A) IN GENERAL.—The statement re-
4 quired under paragraph (1) shall include a writ-
5 ten disclosure of—

6 “(i) any payment (or the amount rep-
7 resenting the value of any services) pro-
8 vided to the service provider (or any affil-
9 iate thereof) pursuant to, or in connection
10 with, the contract described in paragraph
11 (1) and the amount and type of any pay-
12 ment made or credit received for such serv-
13 ices (irrespective of whether the service
14 provider (or affiliate thereof) or other per-
15 son providing such services is affiliated or
16 unaffiliated with the plan, the plan spon-
17 sor, the plan administrator, or any other
18 plan official),

19 “(ii) any personal, business, or finan-
20 cial relationship with the plan sponsor, the
21 plan, or the service provider (or any affil-
22 iate thereof) or any totality of such rela-
23 tionships which is material, if such rela-
24 tionship results in the service provider (or

1 any affiliate thereof) deriving any material
2 benefit, and

3 “(iii) such other similar arrangements
4 benefitting the service provider (or any af-
5 filiate thereof) as may be specified by the
6 Secretary.

7 “(B) INCLUSIONS.—

8 “(i) IN GENERAL.—Disclosures de-
9 scribed under subparagraph (A)(ii) shall
10 include the extent to which the service pro-
11 vider (or any affiliate thereof) may benefit
12 from the offering of its own proprietary in-
13 vestment products or those of third par-
14 ties.

15 “(ii) APPLICABLE PROHIBITED
16 TRANSACTION EXEMPTION.—Disclosures
17 under this paragraph may include a de-
18 scription of any applicable prohibited
19 transaction exemption under section 408
20 related to the services described in the
21 statement required under paragraph (1).

22 “(7) DISCLOSURE OF IMPACT OF SHARE CLASS-
23 ES.—The statement required under paragraph (1)
24 shall, to the extent applicable, disclose that the share
25 prices of certain mutual fund investments that are

1 available to the plan may be different from the share
2 price outside of the plan due to the existence of dif-
3 ferent share classes and provide the basis for these
4 differences.

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

20 “(9) MODEL STATEMENT.—The Secretary shall
21 prescribe a model statement that may be used for
22 purposes of satisfying the requirements of this sub-
23 section.

24 “(10) UPDATING.—Each contract described in
25 paragraph (1) shall require that the service provider

1 must provide to the plan administrator an updated
2 written statement described in paragraph (1) de-
3 scribing the material change as soon as is reasonable
4 after the occurrence of the change is known. The
5 contract shall provide that such an updated written
6 statement, or, in the case of a plan year in which
7 no material change in the information included in
8 the statement provided pursuant to paragraph (1)
9 has occurred, a written statement setting forth such
10 fact, must be provided not less often than annually.

11 “(11) LIMITATIONS.—

12 “(A) DOLLAR LIMITATION.—

13 “(i) IN GENERAL.—The requirements
14 of this subsection shall apply with respect
15 to any contract for services provided dur-
16 ing any plan year only if the total charged
17 for such services under such contract (re-
18 gardless of whether, in connection with
19 such services under such contract, such
20 charges are received by the service provider
21 (or any affiliate thereof) directly or are re-
22 ceived by the service provider (or any affil-
23 iate thereof) indirectly from other affiliated
24 or unaffiliated parties) equals or exceeds
25 \$5,000.

1 “(ii) COST OF LIVING ADJUSTMENT.—

2 “(I) IN GENERAL.—In the case
3 of any plan year beginning during a
4 calendar year beginning after 2010,
5 the dollar amount in clause (i) shall
6 be increased by an amount equal to
7 such dollar amount, multiplied by the
8 percentage (if any) by which the aver-
9 age of the Consumer Price Index for
10 all urban consumers (United States
11 city average) for the 12-month period
12 ending with September of the pre-
13 ceding calendar year exceeds such av-
14 erage for the 12-month period ending
15 with September 2009.

16 “(II) ROUNDING.—If any dollar
17 amount after being increased under
18 subclause (I) is not a multiple of
19 \$500, such dollar amount shall be
20 rounded to the next lower multiple of
21 \$500.

22 “(iii) ADJUSTMENTS BY THE SEC-
23 RETARY.—The Secretary may by regula-
24 tion adjust the dollar amount specified in
25 this subparagraph to a lesser amount for

1 small plans and to a greater amount for
2 other plans and provide for appropriate an-
3 nual adjustments in such adjusted
4 amounts at the same rate as would apply
5 under clause (ii).

6 “(B) GENERAL APPLICABILITY OF RE-
7 QUIREMENTS WITH RESPECT TO SERVICES.—
8 Nothing in this subsection shall be construed to
9 require any service provider to provide any serv-
10 ice with respect to any particular plan sponsor.

11 “(12) COORDINATION WITH FIDUCIARY
12 RULES.—Nothing in this subsection affects the obli-
13 gations of plan sponsors and fiduciaries under part
14 4 of this subtitle.

15 “(b) INVESTMENT ELECTION INFORMATION.—

16 “(1) ADVANCE NOTICE OF AVAILABLE INVEST-
17 MENT OPTIONS.—The plan administrator of an indi-
18 vidual account plan which permits a participant or
19 beneficiary to exercise control over the assets in the
20 account of the participant or beneficiary shall pro-
21 vide to the participant or beneficiary with respect to
22 each plan year notice of the investment options
23 available for election under the plan at least 10 busi-
24 ness days prior to—

1 “(A) the earliest date provided for under
2 the plan for the participant’s initial investment
3 of any contribution made on behalf of such par-
4 ticipant, and

5 “(B) the effective date of any material
6 change in investment options.

7 In the case of a plan that provides for immediate eli-
8 gibility or that contains an automatic contribution
9 arrangement (as defined in paragraphs (A) and (B)
10 of section 514(e)(2)), the notice required under sub-
11 paragraph (A) may be provided within any reason-
12 able period prior to such initial investment. With re-
13 spect to the notice required under this paragraph,
14 the Secretary shall prescribe regulations creating ex-
15 ceptions to the 10-day notice requirement in cir-
16 cumstances similar to those described in section
17 101(i)(2)(C), and such notice may be combined with
18 any similar notice that may be required under sec-
19 tion 404(c)(5) or under this section.

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

22 “(A) include a prominent statement, in
23 language presented in a manner which is easily
24 understandable by the average participant, indi-
25 cating which components of the charges (both

1 direct and indirect) for each investment option
2 are payable by the participant or beneficiary
3 and how such components are to be paid,

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

6 “(i) the name of the option,

7 “(ii) the investment objectives and
8 principal investment strategies of the op-
9 tion,

10 “(iii) the risk level associated with the
11 option,

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

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

22 “(vi) where, and the manner in which,
23 additional plan-specific, option-specific,
24 and generally available investment infor-

1 mation regarding the option may be ob-
2 tained, and

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

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

18 “(3) PLAN FEE COMPARISON CHART.—

19 “(A) IN GENERAL.—

20 “(i) IN GENERAL.—The notice pro-
21 vided under this subsection shall include a
22 plan fee comparison chart consisting of a
23 comparison of actual service and invest-
24 ment charges (including, for purposes of
25 this clause, charges for the offering of an

1 investment option) that will or could be as-
2 sessed against the account of the partici-
3 pant or beneficiary with respect to the plan
4 year. The plan fee comparison chart shall
5 be presented in a manner which is easily
6 understood by the average participant and
7 include such information as the Secretary
8 determines necessary to permit partici-
9 pants and beneficiaries to assess the serv-
10 ices for which charges will or could be as-
11 sessed against the account.

12 “(ii) FORM.—For purposes of this
13 paragraph, the potential service charges
14 shall be provided in the form of a dollar
15 amount and may also be provided, in addi-
16 tion, as a percentage of assets. The form
17 of the potential service charges shall be
18 presented in a manner which is easily un-
19 derstandable by the average participant,
20 including examples that demonstrate how
21 the charges will be assessed against the ac-
22 count of the participant or beneficiary.

23 “(B) CATEGORIZATION OF CHARGES.—The
24 plan fee comparison chart shall provide infor-
25 mation in relation to 4 categories of charges

1 that will or could be assessed against the ac-
2 count of the participant or beneficiary, as fol-
3 lows:

4 “(i) Charges that vary depending on
5 the investment options selected by the par-
6 ticipant or beneficiary, including expense
7 ratios and investment-specific asset-based
8 charges. The information relating to such
9 charges shall include a statement noting
10 any charges for 1 or more investment op-
11 tions which pay for services other than in-
12 vestment management.

13 “(ii) Charges that are assessed as a
14 percentage of the total assets in the ac-
15 count of the participant or beneficiary, re-
16 gardless of the investment option selected.

17 “(iii) Administration and transaction-
18 based charges, including fees charged to
19 participants to cover plan administration,
20 compliance, and recordkeeping costs, plan
21 loan origination fees, possible redemption
22 fees, and possible surrender charges, that
23 are not assessed as a percentage of the
24 total assets in the account and are either
25 automatically deducted each year or result

1 from certain transactions engaged in by
2 the participant or beneficiary.

3 “(iv) Any other charges which may be
4 deducted from participants’ or bene-
5 ficiaries’ accounts and which are not de-
6 scribed in clauses (i), (ii), and (iii).

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

12 “(D) FEES AND HISTORICAL RETURNS.—
13 In connection with each investment option listed
14 in the plan fee comparison chart, the chart
15 shall include the amounts of the fees assessed
16 in connection with such option and a history of
17 the returns derived net of fees and expenses.
18 Any such history shall be for the previous year,
19 5 years, and 10 years (or since inception if
20 later).

21 “(4) MODEL NOTICE.—The Secretary shall pre-
22 scribe a model notice that may be used for purposes
23 of satisfying the requirements of this subsection, in-
24 cluding a model plan fee comparison chart.

1 “(5) ESTIMATIONS.—For purposes of providing
2 the notice required under this subsection, the plan
3 administrator may provide a reasonable and rep-
4 resentative estimate for any charges or percentages
5 disclosed under paragraph (2) or (3) and shall indi-
6 cate any such estimate as being such an estimate.
7 Any such estimate shall be based on the previous
8 year’s experience.

9 “(c) ELECTRONIC MEDIA.—Any disclosure required
10 under this section may be provided through an electronic
11 medium under rules prescribed by the Secretary. Such
12 rules shall be similar to those applicable under the Inter-
13 nal Revenue Code of 1986 with respect to notices to par-
14 ticipants in pension plans. The Secretary shall have the
15 authority to modify such rules as appropriate to take into
16 account new developments, including new forms of elec-
17 tronic media. The rules prescribed by the Secretary pursu-
18 ant to this subsection shall also provide for a method, de-
19 signed so as not to be overly burdensome for the average
20 participant, for the participant or beneficiary to obtain
21 upon request any such disclosure in writing on paper in
22 lieu of receipt through an electronic medium.

23 “(d) REGULATIONS REGARDING CERTAIN PROD-
24 UCTS.—The Secretary shall prescribe regulations identi-
25 fying (and establishing separate rules, if necessary, to

1 identify) any investment options that provide a guaranteed
2 rate of return and that do not identify specific fees.

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

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

13 “(2) SERVICE.—The term ‘service’ means, in
14 connection with a plan, a service provided directly or
15 indirectly to, or with respect to, the plan or a service
16 provided directly or indirectly in connection with a
17 financial product in which plan assets are to be in-
18 vested.

19 “(3) CONTRACT.—The term ‘contract’ means,
20 in connection with any 2 or more parties, any con-
21 tract or arrangement entered into between or among
22 such parties, and any extension or renewal thereof.

23 “(4) SERVICE PROVIDER.—The terms ‘service
24 provider’ and ‘provider’ mean, in connection with a

1 service, a person directly or indirectly providing such
2 service.

3 “(5) REGULATIONS.—The Secretary shall pro-
4 vide by regulation definitions of other terms used in
5 this section.”.

6 (b) QUARTERLY BENEFIT STATEMENTS.—Section
7 105 of such Act (29 U.S.C. 1025) is amended—

8 (1) in subsection (a)(2)—

9 (A) by redesignating subparagraph (C) as
10 subparagraph (H);

11 (B) in subparagraph (B)(ii)—

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

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

16 (iii) by adding after subclause (III)
17 the following new subclause:

18 “(IV) with respect to the portion of a
19 participant’s account for which the partici-
20 pant has the right to direct the investment
21 of assets, the information described in sub-
22 paragraph (C).”; and

23 (C) by inserting after subparagraph (B)
24 the following new subparagraphs:

1 “(C) INFORMATION RELATING TO AC-
2 COUNTS FOR WHICH PARTICIPANT MAY DIRECT
3 INVESTMENT OF ASSETS.—For purposes of sub-
4 paragraph (B)(ii)(IV), the information de-
5 scribed in this subparagraph consists of the fol-
6 lowing, indicating the portion of each amount
7 described in clauses (i) through (vii) attributable
8 to each investment option elected in connection
9 with the participant’s account:

10 “(i) the starting balance of the par-
11 ticipant’s account,

12 “(ii) contributions made during the
13 quarter, itemizing separately totals for em-
14 ployer and totals for employee contribu-
15 tions,

16 “(iii) investment earnings or losses on
17 the account balance during the quarter (if
18 any),

19 “(iv) actual or estimated charges
20 (within the meaning of section 111(e)(1))
21 which reduce the account during the quar-
22 ter, expressed in dollars or, if estimated,
23 such estimated dollar charges as derived
24 from an expense ratio (which may be ex-

1 pressed as a specific date estimate based
2 on the previous year's expense ratio),

3 “(v) any other charges to the partici-
4 pant or beneficiary in connection with the
5 participant's account,

6 “(vi) the ending balance of the ac-
7 count,

8 “(vii) the participant's asset allocation
9 to each investment option, including the
10 net return, expressed as an amount and as
11 a percentage, and

12 “(viii) how to obtain the most recently
13 updated version of the plan fee comparison
14 chart prepared for purposes of section
15 111(b)(3).

16 “(D) OTHER INFORMATION.—The plan ad-
17 ministrator may include in the quarterly pen-
18 sion benefit statement information relating to
19 the historical return and risk of each invest-
20 ment option and the estimated amount that the
21 participant needs to contribute each month or
22 year so as to retire at retirement age (as de-
23 fined in section 216(l) of the Social Security
24 Act).

1 “(E) ESTIMATIONS.—For purposes of
2 making the disclosure of actual charges or per-
3 centages as required under this paragraph, the
4 plan administrator may provide a reasonable
5 and representative estimate of such charges or
6 percentages and shall indicate any such esti-
7 mate as being such an estimate. Any such esti-
8 mate shall be based on the previous year’s expe-
9 rience.

10 “(F) MODEL STATEMENT.—The Secretary
11 shall prescribe a model pension benefit state-
12 ment that may be used for purposes of satis-
13 fying the requirements of this subparagraph
14 and subparagraph (B)(ii).

15 “(G) ANNUAL COMPLIANCE FOR SMALL
16 PLANS AND WITH RESPECT TO CERTAIN INFOR-
17 MATION.—In the case of a plan providing for
18 investment as described in paragraph
19 (1)(A)(i)—

20 “(i) if the plan has fewer than 100
21 participants and beneficiaries, the plan
22 may provide the pension benefit statement
23 under paragraph (1) on an annual rather
24 than a quarterly basis, and

1 “(ii) the plan may comply with the re-
2 quirements of subclauses (IV) and (V) of
3 subparagraph (B)(ii) on an annual rather
4 than a quarterly basis.”; and

5 (2) by adding at the end the following new sub-
6 sections:

7 “(d) ASSISTANCE TO SMALL EMPLOYERS.—The Sec-
8 retary shall make available to employers with fewer than
9 100 employees—

10 “(1) educational and compliance materials de-
11 signed to assist such employers in selecting and
12 monitoring service providers for individual account
13 plans which permit a participant or beneficiary to
14 exercise control over the assets in the account of the
15 participant or beneficiary, investment options under
16 such plans, and charges relating to such options,
17 and

18 “(2) services designed to assist such employers
19 in finding and understanding affordable investment
20 options for such plans and in comparing the invest-
21 ment performance of, and charges for, such options
22 on an ongoing basis against appropriate benchmarks
23 or other appropriate measures.

24 “(e) ASSISTANCE TO PLAN SPONSORS AND PLAN
25 PARTICIPANTS AND BENEFICIARIES.—The Secretary shall

1 provide assistance to plan sponsors of individual account
2 plans and participants and beneficiaries under such plans
3 with any questions or problems regarding compliance with
4 the requirements of this section.

5 “(f) ELECTRONIC MEDIA.—Any disclosure required
6 under this section may be provided through an electronic
7 medium under rules prescribed by the Secretary. Such
8 rules shall be similar to those applicable under the Inter-
9 nal Revenue Code of 1986 with respect to notices to par-
10 ticipants in pension plans. The Secretary shall have the
11 authority to modify such rules as appropriate to take into
12 account new developments, including new forms of elec-
13 tronic media. The rules prescribed by the Secretary pursu-
14 ant to this subsection shall also provide for a method, de-
15 signed so as not to be overly burdensome for the average
16 participant, for the participant or beneficiary to obtain
17 upon request any such disclosure in writing on paper in
18 lieu of receipt through an electronic medium.”

19 (c) ENFORCEMENT.—Section 502(c)(7) of such Act
20 (29 U.S.C. 1132(c)(7)) is amended—

21 (1) by inserting “(A)” after “(7)”; and
22 (2) by adding at the end the following new sub-
23 paragraph:

24 “(B)(i) In the case of any violation of section 111(a)
25 by a service provider (as defined in section 111(e)(4)), the

1 service provider shall be assessed by the Secretary a civil
2 penalty of up to \$1,000 a day from the date of the initial
3 violation until the date on which such violation is cor-
4 rected, subject to a total maximum penalty of 10 percent
5 of the amount involved.

6 “(ii) Any plan administrator or other person who is
7 a service provider with respect to the plan who fails or
8 refuses to provide a statement to participants and bene-
9 ficiaries in accordance with section 105(a)(2)(B)(ii) or
10 111(b) shall be assessed by the Secretary a civil penalty
11 of up to \$100 a day from the date of the failure or refusal
12 to the date on which such statement or notice is so pro-
13 vided.

14 “(iii) For purposes of this subparagraph, each viola-
15 tion with respect to any single participant, beneficiary, or
16 plan administrator shall be treated as a separate violation.
17 The Secretary may compromise, modify, or remit any civil
18 penalty imposed on any person under this subparagraph
19 if the Secretary determines—

20 “(I) that the person acted reasonably and in
21 good faith or that severe financial hardship would
22 otherwise occur to the plan sponsor, and

23 “(II) that such compromise, modification, or re-
24 mission is in the interests of participants and bene-
25 ficiaries.”.

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

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

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

8 **SEC. 3 MINIMUM INVESTMENT OPTION REQUIREMENT.**

9 (a) IN GENERAL.—Section 402 of the Employee Re-
10 tirement Income Security Act of 1974 (29 U.S.C. 1102)
11 is amended by adding at the end the following new sub-
12 section:

13 “(c) An individual account plan which permits a par-
14 ticipant or beneficiary to exercise control over the assets
15 in the account of the participant or beneficiary shall in-
16 clude at least one investment option which is an appro-
17 priate broad-based securities market index fund and which
18 offers a combination of historical returns, risk, and fees
19 that is likely to meet retirement income needs at adequate
20 levels of contribution.”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall apply with respect to plan years begin-
23 ning after one year after the date of the enactment of this
24 Act.

1 **SEC. 4 IMPROVING EMPLOYER-EMPLOYEE RETIREMENT**
2 **PRACTICES.**

3 (a) IN GENERAL.—Part 5 of subtitle B of title I of
4 the Employee Retirement Income Security Act of 1974 is
5 amended by adding after section 518 (29 U.S.C. 1148)
6 the following new section:

7 **“SEC. 519. IMPROVING EMPLOYER-EMPLOYEE RETIREMENT**
8 **PRACTICES.**

9 “(a) PUBLIC INPUT AND OUTREACH.—The Secretary
10 shall—

11 “(1) take such steps as the Secretary considers
12 appropriate to solicit input from the public, relevant
13 experts, and key stakeholders regarding issues re-
14 lated to employee retirement income security under
15 employee pension benefit plans,

16 “(2) issue such educational materials as the
17 Secretary considers appropriate to pension plan
18 practitioners, service providers, and the public on
19 best practices for employee pension benefit design
20 and operation,

21 “(3) issue such information as the Secretary
22 considers appropriate to employee pension benefit
23 plan fiduciaries and participants regarding ways to
24 benchmark their investment results against other
25 plan designs and investment options, and

1 “(4) make, on a biennial basis, such rec-
2 ommendations to the Committee on Education and
3 Labor of the House of Representatives, the Com-
4 mittee on Health, Education, Labor, and Pensions
5 of the Senate, employers, service providers, employ-
6 ees, and the general public as the Secretary deems
7 appropriate on ways to improve the delivery and op-
8 eration of employee pension benefit plans.

9 “(b) ANNUAL REPORT ON RETIREMENT TRENDS
10 AND ISSUES.—

11 “(1) IN GENERAL.—The Secretary shall issue
12 an annual report to each House of the Congress and
13 to the general public regarding the state of retire-
14 ment income security in the United States, includ-
15 ing—

16 “(A) data illustrating the current operation
17 of the employer-sponsored retirement system in
18 the United States and emerging trends relating
19 to such system, and

20 “(B) recommendations for reform to im-
21 prove the delivery of employer-sponsored pen-
22 sion benefits to retired workers and their fami-
23 lies and improve adequacy of retirement income
24 security in the United States.

1 “(2) OTHER SPECIFIC INFORMATION.—The An-
2 nual Report issued pursuant to paragraph (1) shall
3 specify—

4 “(A) the number of private employee pen-
5 sion benefit plans in the United States, cat-
6 egorized as to types of plans as determined ap-
7 propriate by the Secretary,

8 “(B) the number of active workers covered
9 or participating in such plans,

10 “(C) the number of retirees and depend-
11 ents receiving benefits from such plans,

12 “(D) the number workers who have sepa-
13 rated from service covered under such plans
14 and who have roll-over pension accounts or de-
15 ferred vested benefits,

16 “(E) the number of workers and retirees
17 with no private employee pension benefit plan
18 coverage or benefits,

19 “(F) current design features of employee
20 pension benefit plans relating to retirement in-
21 come security, including—

22 “(i) contribution levels,

23 “(ii) benefit levels,

24 “(iii) vesting periods,

1 “(iv) annuity features and lump sum
2 payment features,
3 “(v) eligibility requirements,
4 “(vi) pre-retirement distributions, and
5 “(vii) investment of plan assets, and
6 “(G) such other information as the Sec-
7 retary deems appropriate.”.

8 (b) CONFORMING AMENDMENT.—The table of con-
9 tents in section 1 of such Act is amended by inserting
10 after the item relating to section 518 the following new
11 item:

 “Sec. 519. Improving Employer-Employee Retirement Practices.”.

12 **SEC. 5. ENFORCEMENT COORDINATION AND REVIEW BY**
13 **THE DEPARTMENT OF LABOR.**

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

18 “(n) ENFORCEMENT COORDINATION OF CERTAIN
19 DISCLOSURE REQUIREMENTS AND REVIEW BY THE DE-
20 PARTMENT OF LABOR.—

21 “(1) IN GENERAL.—

22 “(A) NOTIFICATION AND ACTION.—The
23 Secretary shall notify the applicable regulatory
24 authority in any case in which the Secretary de-
25 termines that a service provider is engaged in

1 a pattern or practice that precludes compliance
2 by plan administrators with section 111. The
3 Secretary shall, in consultation with the appli-
4 cable authority, take such timely enforcement
5 action under this title as is necessary to assure
6 that such pattern or practice ceases and desists
7 and assess any appropriate penalties.

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

1 “(2) ANNUAL AUDIT OF REPRESENTATIVE SAM-
2 PLING OF INDIVIDUAL ACCOUNT PLANS.—The Sec-
3 retary shall annually audit a representative sampling
4 of individual account plans covered by this title to
5 determine compliance with the requirements of sec-
6 tions 111. The Secretary shall annually report the
7 results of such audit and any related recommenda-
8 tions of the Secretary to the Committee on Edu-
9 cation and Labor of the House of Representatives
10 and the Committee on Health, Education, Labor,
11 and Pensions of the Senate.”.

12 (b) REVIEW AND REPORT TO THE CONGRESS BY
13 SECRETARY OF LABOR RELATING TO REPORTING AND
14 DISCLOSURE REQUIREMENTS.—

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

22 (2) REPORT.—Not later than 18 months after
23 the date of the enactment of this Act, the Secretary
24 of Labor, in consultation with the Secretary of the
25 Treasury, shall make such recommendations as the

1 Secretary of Labor considers appropriate to the ap-
2 propriate committees of the Congress to consolidate,
3 simplify, standardize, and improve the applicable re-
4 porting and disclosure requirements so as to simplify
5 reporting for employee pension benefit plans and en-
6 sure that needed understandable information is pro-
7 vided to participants and beneficiaries of such plans.

