

meet its financial obligations and food, medicine and life itself have been hung in the balance for 8 million people.

Let us not make the same mistake and ignore another country's turmoil, until a disaster too great for the imagination or easy recovery unfolds.

The people of Haiti need food, medicine and funds to combat an HIV infection rate of 4 percent of the population, an infant mortality rate of 74 deaths out of every 1,000 babies born and to improve their quality of life.

Mr. Speaker, the people of Haiti have voted and they know who they want to govern them. Let us respect that and allow the dollars for food and medicine to flow.

LAYING ON THE TABLE HOUSE
RESOLUTIONS 179, 182, 217, 220, 236,
237, 258, 267 AND 268

Ms. PRYCE of Ohio. Mr. Speaker, I ask unanimous consent to lay on the table House Resolutions 179, 182, 217, 220, 236, 237, 258, 267 and 268.

The SPEAKER pro tempore (Mr. HANSEN). Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

RETIREMENT SECURITY ADVICE
ACT OF 2001

Ms. PRYCE of Ohio. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 288 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 288

Resolved, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the bill (H.R. 2269) to amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to promote the provision of retirement investment advice to workers managing their retirement income assets. The bill shall be considered as read for amendment. In lieu of the amendments recommended by the Committee on Education and the Workforce and the Committee on Ways and Means now printed in the bill, the amendment in the nature of a substitute printed in part A of the report of the Committee on Rules accompanying this resolution shall be considered as adopted. The previous question shall be considered as ordered on the bill, as amended, and on any further amendment thereto to final passage without intervening motion except: (1) one hour and 40 minutes of debate on the bill, as amended, with one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Education and the Workforce and 40 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means; (2) the further amendment printed in part B of the report of the Committee on Rules, if offered by Representative George Miller of California or his designee, which shall be in order without intervention of any point of order, shall be considered as read, and shall be separately debatable for one

hour equally divided and controlled by the proponent and an opponent; and (3) one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentlewoman from Ohio (Ms. PRYCE) is recognized for 1 hour.

Ms. PRYCE of Ohio. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Texas (Mr. FROST), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, House Resolution 288 is an appropriate but fair rule providing for the consideration of H.R. 2269, the Retirement Security Advice Act of 2001, and it is consistent with previous rules that our committee has reported and the House has adopted on bills affecting tax policy.

This rule provides for 100 minutes of general debate in the House with 60 minutes equally divided and controlled by the gentleman from Ohio (Chairman BOEHNER) and the ranking member of the Committee on Education and the Workforce, the gentleman from California (Mr. GEORGE MILLER). The remaining 40 minutes are equally divided between the gentleman from California (Mr. THOMAS) and the ranking minority member of the Committee on Ways and Means, the gentleman from New York (Mr. RANGEL).

In lieu of the amendments recommended by the Committee on Education and the Workforce and the Committee on Ways and Means, the amendment printed in Part A of the Committee on Rules report accompanying this resolution shall be considered as adopted.

I would simply note for my colleagues that this Part A amendment combines the provisions reported by the respective committees into one amendment. After general debate, it will be in order to consider only the substitute amendment offered by the gentleman from California (Mr. GEORGE MILLER) or his designee, printed in Part B of the Committee on Rules report and is debatable for 1 hour.

Finally, the rule permits the minority to offer a motion to recommit, with or without instructions.

The resume waives all points of order against consideration of the bill as amended, as well as the amendment in the nature of a substitute.

Mr. Speaker, today in America more and more working men and women are investing. We are no longer living in a world where only the richest Americans participate in the stock market. Today's workers are using worker-directed or 401(k)-type plans to manage and grow their retirement funds. In fact, it is estimated that some 43 million workers are, in part, managing nearly \$1.5 trillion dollars in assets through defined contribution plans.

Unfortunately, current law does not reflect the new world that we live in. For the average worker trying to get ahead, raising a family or simply pursuing the American dream in any way they choose, managing their retirement funds can be a daunting, difficult and sometimes costly task, and current law is keeping them from getting the direction that they need.

Back home, I know many young people who are in their early careers or newly married. I see them and their spouses trying to understand today's complex financial reality. And these are smart kids. They know that you can never be too young to begin planning for your future. But with a future that involves starting a family, purchasing a home and a car, planning for children's educational needs, understanding investments for retirement is just one more difficult piece of a very complicated puzzle.

Everyone who enters the workforce has dreams of one day returning to full-time private life. Some dream of a house on the shore or a ranch out west. Others dreams are more modest, a small home close to family and friends. But the common theme of all retirement dreams is security, comfort and a small reward for a lifetime's work.

Planning for retirement today is not like it was when our mothers and fathers and even some of us were new to the workforce. Retirement planning does not simply involve Social Security and a savings accounts. Today's retirement planning requires an understanding of the many investment options and their attendant risk and benefits.

To be sure, planning for the future through investment is a welcome aspect of our country's financial progress and the continued expansion of options for American workers. But we would be remiss if we did not make sure that the law kept up with these widening options.

We must recognize that with the wealth of investment options available to workers, there must also be options for advice and direction. Workers need access to sound advice to help them maximize their retirement security as well as minimize their risk.

H.R. 2269, the Retirement Security Advice Act responds to this need and provides Americans with access to this help.

It allows employers to provide their workers with access to high quality, professional investment advice. It retains critical safeguards and includes new protections to ensure that participants will receive advice solely in their best interests.

Advice will be provided by fiduciary advisors who will be personally liable for failure to act solely in the interest of a worker and subject to both criminal and civil sanctions through the Department of Labor for any breach of

their fiduciary duty. It is also important to note that all existing securities and State insurance protections will continue to apply as well.

H.R. 2269 also includes a strict, plain-language disclosure requirement to inform participants about any and all potential fees or possible conflicts of interest when advice is first given. Finally, it works to educate and empower workers who have full control over their investment decisions and help to close the investment advice gap.

Mr. Speaker, like President Bush, I too trust Americans to manage their own money. Indeed, everyone should be a part owner in the American dream. This legislation will finally allow employers to sponsor investment advice for their workers and empower them to make decisions based on solid and experienced judgment. Today's workers have more choices for their future. Let us make sure they have the tools to know which choice is best for them.

Mr. Speaker, I urge all my colleagues to support this rule and the underlying legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I yield myself such time as I may consume, and thank my colleague, the gentlewoman from Ohio (Ms. PRYCE) for yielding me the customary 30 minutes.

Mr. Speaker, both the underlying bill and the Democratic substitute address an issue of great importance to the millions of Americans who will depend upon participant-directed pension accounts for their retirement income.

Nowadays, fewer and fewer employees have traditional pension plans. That means that more and more will depend heavily on investments for their retirement income. Currently, approximately 42 million workers participate in such accounts.

It is very important that these workers have access to sound financial planning and advice to help them make the most of their investments. It is also critical that the advice they receive is unbiased and in their best interests, not for the benefit of the advisor or counselor or the businesses they represent.

The Democratic substitute makes important improvements in the underlying bill. Specifically, the Andrews-Rangel substitute allows employees to receive investment advice and education from their employers, while still being protected from conflicts of interest and unqualified investment advisors.

The rule provides an hour and 40 minutes of debate on the bill and another hour on the substitute. Let us pass this rule so we may get on with the debate of this issue of importance to the American worker.

Mr. Speaker, I have no further speakers, and I yield back the balance of my time.

Ms. PRYCE of Ohio. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

□ 1100

Mr. BOEHNER. Mr. Speaker, pursuant to House Resolution 288, I call up the bill (H.R. 2269) to amend title 1 of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to promote the provision of retirement investment advice to workers managing their retirement income assets, and ask for its immediate consideration.

The Clerk read the title of the bill.

THE SPEAKER pro tempore (Mr. HANSEN). Pursuant to House Resolution 288, the bill is considered read for amendment.

The text of H.R. 2269 is as follow:

H.R. 2269

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Retirement Security Advice Act of 2001".

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

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

(1) IN GENERAL.—Section 408(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)) is amended by adding at the end the following new paragraph:

"(14) If the requirements of subsection (g) are met—

"(A) the provision of investment advice referred to in section 3(21)(A)(ii) provided by a fiduciary adviser (as defined in subsection (g)(4)(A)) to an employee benefit plan or to a participant or beneficiary of an employee benefit plan,

"(B) the sale, acquisition, or holding of securities or other property (including any lending of money or other extension of credit associated with the sale, acquisition, or holding of securities or other property) pursuant to such investment advice, and

"(C) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of such investment advice.".

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

"(g)(1) The requirements of this subsection are met in connection with the provision of advice referred to in section 3(21)(A)(ii), provided to an employee benefit plan or a participant or beneficiary of an employee benefit plan by a fiduciary adviser with respect to such plan, in connection with any sale or acquisition of a security or other property for purposes of investment of amounts held by such plan, if—

"(A) in the case of the initial provision of such advice with regard to a security or other property, by such fiduciary adviser to such plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of

such advice, at the time of or before the initial provision of such advice, a clear and conspicuous description, in writing (including by means of electronic communication), of—

"(i) all fees or other compensation relating to such advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of such advice or in connection with such acquisition or sale,

"(ii) any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in such security or other property,

"(iii) any limitation placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to any such sale or acquisition, and

"(iv) the types of services offered by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser,

"(B) in the case of the initial or any subsequent provision of such advice to such plan, participant, or beneficiary, the fiduciary adviser, throughout the 1-year period following the provision of such advice, maintains the information described in clauses (i) through (iv) of subparagraph (A) in currently accurate form for availability, upon request and without charge, to the recipient of such advice,

"(C) the fiduciary adviser provides appropriate disclosure, in connection with any such acquisition or sale, in accordance with all applicable securities laws,

"(D) such acquisition or sale occurs solely at the direction of the recipient of such advice,

"(E) the compensation received by the fiduciary adviser and affiliates thereof in connection with such acquisition or sale is reasonable, and

"(F) the terms of such acquisition or sale are at least as favorable to such plan as an arm's length transaction would be.

"(2) A fiduciary adviser referred to in paragraph (1) who has provided advice referred to in such paragraph shall, for a period of not less than 6 years after the provision of such advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this subsection and of subsection (b)(14) have been met. A transaction prohibited under section 406 shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

"(3)(A) Subject to subparagraph (B), a plan sponsor or other person who is a fiduciary shall not be treated as failing to meet the requirements of this part solely by reason of the provision of investment advice referred to in section 3(21)(A)(ii) (or solely by reason of contracting for or otherwise arranging for the provision of such investment advice), if—

"(i) such advice is provided by a fiduciary adviser pursuant to an arrangement between such plan sponsor or other fiduciary and such fiduciary adviser for the provision by such fiduciary adviser of investment advice referred to in such section, and

"(ii) the terms of such arrangement require compliance by the fiduciary adviser with the requirements of this subsection.

"(B) Nothing in subparagraph (A) shall be construed to exempt a plan sponsor or other person who is a fiduciary from any requirement of this part for the prudent selection and periodic review of a fiduciary adviser with whom the plan sponsor or other person

enters into an arrangement for the provision of advice referred to in section 3(21)(A)(ii). Such plan sponsor or other person who is a fiduciary has no duty under this part to monitor the specific investment advice given by the fiduciary adviser to any particular recipient of such advice.

“(C) Nothing in this part shall be construed to preclude the use of plan assets to pay for reasonable expenses in providing investment advice referred to in section 3(21)(A)(ii).

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

“(A) The term ‘fiduciary adviser’ means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by such person to the plan or to a participant or beneficiary and who is—

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

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

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

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

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

“(vi) an employee, agent, or registered representative of a person described in any of clauses (i) through (v).

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

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

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

(1) IN GENERAL.—Subsection (d) of section 4975 of the Internal Revenue Code of 1986 (relating to exemptions from tax on prohibited transactions) is amended—

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

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

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

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

“(A) the provision of investment advice referred to in subsection (e)(3)(B) provided by a fiduciary adviser (as defined in subsection (f)(7)(C)(i)) to a plan or to a participant or beneficiary of a plan,

“(B) the sale, acquisition, or holding of securities or other property (including any extension of credit associated with the sale, acquisition, or holding of securities or other property) pursuant to such investment advice, and

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

(2) REQUIREMENTS.—Subsection (f) of such section 4975 (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

“(7) REQUIREMENTS FOR EXEMPTION FOR INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—

“(A) IN GENERAL.—The requirements of this paragraph are met in connection with the provision of advice referred to in subsection (e)(3)(B), provided to a plan or a participant or beneficiary of a plan by a fiduciary adviser with respect to such plan, in connection with any sale or acquisition of a security or other property for purposes of investment of amounts held by such plan, if—

“(i) in the case of the initial provision of such advice by such fiduciary adviser to such plan, participant, or beneficiary, the fiduciary adviser provides to the plan, participant, or beneficiary, at the time of or before the initial provision of such advice, a description, in writing or by means of electronic communication, of—

“(I) all fees or other compensation relating to such advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of such advice or in connection with such acquisition or sale,

“(II) any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in such security or other property,

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

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

“(ii) in the case of the initial or any subsequent provision of such advice to such plan, participant, or beneficiary, the fiduciary adviser, throughout the 1-year period following the provision of such advice, maintains the information described in subclauses (I) through (IV) of clause (i) in currently accurate form for availability, upon request and without charge, to the recipient of such advice,

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

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

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

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

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

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

“(i) FIDUCIARY ADVISER.—The term ‘fiduciary adviser’ means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice

by such person to the plan or to a participant or beneficiary and who is—

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

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

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

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

“(V) an affiliate of a person described in any of subclauses (I) through (IV), or

“(VI) an employee, agent, or registered representative of a person described in any of subclauses (I) through (V).

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

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

SEC. 3. EFFECTIVE DATE.

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

The SPEAKER pro tempore. In lieu of the amendments recommended by the Committees on Education and the Workforce and Ways and Means printed in the bill, the amendment in the nature of a substitute printed in part A of House Report 107-289 is adopted.

The text of H.R. 2269, as amended pursuant to House Resolution 288, is as follows:

SECTION 1. SHORT TITLE.

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

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

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

(1) EXEMPTION FROM PROHIBITED TRANSACTIONS.—Section 408(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)) is amended by adding at the end the following new paragraph:

“(14)(A) Any transaction described in subparagraph (B) in connection with the provision of investment advice described in section 3(21)(A)(ii), in any case in which—

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

“(ii) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

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

“(B) The transactions described in this subparagraph are the following:

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

“(ii) the sale, acquisition, or holding of a security or other property (including any

lending of money or other extension of credit associated with the sale, acquisition, or holding of a security or other property) pursuant to the advice; and

“(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.”.

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

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

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

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

“(i) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

“(ii) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

“(iii) of any limitation placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to any such sale, acquisition, or holding of a security or other property,

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

“(v) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice,

“(B) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

“(C) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

“(D) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

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

(2) STANDARDS FOR PRESENTATION OF INFORMATION.—The notification required to be provided to participants and beneficiaries under paragraph (1)(A) shall be written in a

clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

“(3) EXEMPTION CONDITIONED ON CONTINUED AVAILABILITY OF REQUIRED INFORMATION ON REQUEST FOR 1 YEAR.—The requirements of paragraph (1)(A) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in paragraph (1) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in clauses (i) through (iv) of subparagraph (A) in currently accurate form and in the manner described in paragraph (2) or fails—

“(A) to provide, without charge, such currently accurate information to the recipient of the advice no less than annually,

“(B) to make such currently accurate information available, upon request and without charge, to the recipient of the advice, or

“(C) in the event of a material change to the information described in clauses (i) through (iv) of paragraph (1)(A), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

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

“(5) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—

“(A) IN GENERAL.—Subject to subparagraph (B), a plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this part solely by reason of the provision of investment advice referred to in section 3(21)(A)(ii) (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if—

“(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

“(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this subsection, and

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

“(B) CONTINUED DUTY OF PRUDENT SELECTION OF ADVISER AND PERIODIC REVIEW.—Nothing in subparagraph (A) shall be construed to exempt a plan sponsor or other person who is a fiduciary from any requirement of this part for the prudent selection and periodic review of a fiduciary adviser with whom the plan sponsor or other person enters into an arrangement for the provision of advice referred to in section 3(21)(A)(ii). The plan

sponsor or other person who is a fiduciary has no duty under this part to monitor the specific investment advice given by the fiduciary adviser to any particular recipient of the advice.

“(C) AVAILABILITY OF PLAN ASSETS FOR PAYMENT FOR ADVICE.—Nothing in this part shall be construed to preclude the use of plan assets to pay for reasonable expenses in providing investment advice referred to in section 3(21)(A)(ii).

“(6) DEFINITIONS.—For purposes of this subsection and subsection (b)(14)—

“(A) FIDUCIARY ADVISER.—The term ‘fiduciary adviser’ means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

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

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

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

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

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

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

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

“(C) REGISTERED REPRESENTATIVE.—The term ‘registered representative’ of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(17)) (substituting the entity for the investment adviser referred to in such section).”.

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

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

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

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

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

“(16) any transaction described in subsection (f)(7)(A) in connection with the provision of investment advice described in subsection (e)(3)(B), in any case in which—

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

“(B) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

“(C) the requirements of subsection (f)(7)(B) are met in connection with the provision of the advice.”.

(2) ALLOWED TRANSACTIONS AND REQUIREMENTS.—Subsection (f) of such section 4975 (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

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

“(A) TRANSACTIONS ALLOWABLE IN CONNECTION WITH INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—The transactions referred to in subsection (d)(16), in connection with the provision of investment advice by a fiduciary adviser, are the following:

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

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

“(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.

“(B) REQUIREMENTS RELATING TO PROVISION OF INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—The requirements of this subparagraph (referred to in subsection (d)(16)(C)) are met in connection with the provision of investment advice referred to in subsection (e)(3)(B), provided to a plan or a participant or beneficiary of a plan by a fiduciary adviser with respect to the plan in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if—

“(i) in the case of the initial provision of the advice with regard to the security or other property by the fiduciary adviser to the plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of the advice, at a time reasonably contemporaneous with the initial provision of the advice, a written notification (which may consist of notification by means of electronic communication)—

“(I) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

“(II) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

“(III) of any limitation placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to any such sale, acquisition, or holding of a security or other property,

“(IV) of the types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser, and

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

“(ii) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

“(iii) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

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

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

“(C) STANDARDS FOR PRESENTATION OF INFORMATION.—The notification required to be provided to participants and beneficiaries under subparagraph (B)(i) shall be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

“(D) EXEMPTION CONDITIONED ON MAKING REQUIRED INFORMATION AVAILABLE ANNUALLY, ON REQUEST, AND IN THE EVENT OF MATERIAL CHANGE.—The requirements of subparagraph (B)(i) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in subparagraph (B) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in subclauses (I) through (IV) of subparagraph (B)(i) in currently accurate form and in the manner required by subparagraph (C), or fails—

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

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

“(iii) in the event of a material change to the information described in subclauses (I) through (IV) of subparagraph (B)(i), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

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

“(F) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—A plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this section solely by reason of the provision of investment advice referred to in subsection (e)(3)(B) (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if—

“(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

“(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this paragraph,

“(iii) the terms of the arrangement include a written acknowledgment by the fiduciary

adviser that the fiduciary adviser is a fiduciary of the plan with respect to the provision of the advice, and

“(iv) the requirements of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 are met in connection with the provision of such advice.

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

“(i) FIDUCIARY ADVISER.—The term ‘fiduciary adviser’ means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

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

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

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

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

“(V) an affiliate of a person described in any of subclauses (I) through (IV), or

“(VI) an employee, agent, or registered representative of a person described in any of subclauses (I) through (V) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

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

“(iii) REGISTERED REPRESENTATIVE.—The term ‘registered representative’ of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(17)) (substituting the entity for the investment adviser referred to in such section).”

SEC. 3. EFFECTIVE DATE.

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

The SPEAKER pro tempore. After debate on the bill, as amended, it shall be in order to consider a further amendment printed in part B of the report, if offered by the gentleman from California (Mr. GEORGE MILLER), or his designee, which shall be considered read, and shall be debatable for 60 minutes, equally divided and controlled by the proponent and an opponent.

The gentleman from Ohio (Mr. BOEHNER) and the gentleman from New Jersey (Mr. ANDREWS) each will control 30 minutes of debate on the bill, and the gentleman from California (Mr. THOMAS) and the gentleman from Washington (Mr. MCDERMOTT) each will control 20 minutes of debate on the bill.

The Chair recognizes the gentleman from Ohio (Mr. BOEHNER).

GENERAL LEAVE

Mr. BOEHNER. Mr. Speaker, I ask unanimous consent that all Members

may have 5 legislative days in which to revise and extend their remarks and to include extraneous material on H.R. 2269.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. BOEHNER. Mr. Speaker, I yield myself such time as I may consume.

My colleagues, this week we found that for the first time in our Nation's history, more than half of all American families have invested in the stock market. I think that is enormously significant. For years, certainly when I was growing up, we thought of the stock market as something only the wealthy cared about. And for the most part, it was. As late as 1982, fewer than 15 percent of all American households held stocks, bonds, or mutual funds. Right now, the number is 52 percent. Today, the working class and the investor class are one and the same.

It is these new entrants into the investment markets that H.R. 2269, the Retirement Security Advice Act, is meant to help. We have seen an explosion in the number of 401(k) plans and IRAs, defined contribution plans in which the employee decides how much to invest and how to invest. As we see from this chart next to us, more than 48 million Americans participate in defined contribution plans today. These plans offer great opportunities for investors, but they also pose many risks. The best way to maximize opportunities and to minimize risk is to have access to high-quality investment advice.

But access to advice has not kept pace with participation in these defined contribution plans. Every day, workers who are trying to figure out how to best invest their money go to their employers and ask for guidance. Sadly, current law cripples employers who want to provide it.

So, how did we get to this point? The 1974 Employee Retirement Income Security Act, enacted long before the advent of 401(k)s and other defined contribution plans, continues to needlessly deny many employers the opportunity to provide their workers with investment advice benefits that could help them enhance their retirement savings.

We have heard from employers that they want to provide this service as a benefit to help retain skilled workers. We have heard from workers that they want quality advisers to guide investment decisions. The authors of ERISA never intended for millions of individuals to have to become investment experts. To illustrate this point, we have the chart next to me. Betty Shepard, the Human Resources administrator at Mohawk Industries Carpet Company in Kennesaw, Georgia, testified before our committee that, and I will quote "Without this bill, I fear that many of our employees may overreact to market fluctuations and listen to the com-

mentary of family, friends or the media to make retirement planning decisions."

We know from survey after survey that a large majority of employees do not have access to quality investment guidance. In fact, as we see from this chart, only 16 percent of 401(k) participants have investment advice options available through their retirement plan, according to the Spectrum Group.

It is this investment advice gap that H.R. 2269 seeks to close, and it does it in several ways. First, it streamlines the employer's duty in selecting and monitoring investment advisers. Employers will not be responsible for every piece of advice or every transaction, but when general problems arise, they must respond to them. Employers tell us this will give them the clear guidance they need to offer quality investment advice to their employees as a benefit. The following chart summarizes how this bill changes current law.

Second, the bill maximizes competition in the investment advice market by allowing many of the most highly regarded investment firms to offer investment advice through employers. It will also protect workers by clearly requiring advisers to act at all times in the workers' best interest, and, if they have any possible conflicts of interest, to disclose them early and clearly.

If they breach that fiduciary duty, they will be subject to civil litigation and even criminal prosecution by the Labor Department. The Department of Labor, which has the responsibility for protecting workers, tells us that this structure gives it all the authority necessary to protect workers from abuses. But competition is the best consumer protection available, and our bill creates a competitive marketplace that would be flexible and dynamic enough to respond to worker needs.

I think everyone in this House shares the same ultimate goal of providing quality investment advice to workers who critically need it, and I urge Members today to support this bill. Employers, workers, both the Commerce and Treasury Secretaries, and the Nation's chief pension law enforcement official all support this commonsense measure. It takes a balanced approach for increasing worker access to advice while including safeguards to protect their investments without discouraging employers from offering any advice at all.

I want to thank my colleague, the gentleman from Texas (Mr. SAM JOHNSON), who, as a Member of the Committee on Ways and Means and also as chairman of our Subcommittee on Employer-Employee Relations, has been instrumental in moving this bill through the two committees; and I want to thank him for the vital role he has played in this process.

Mr. Speaker, we must ensure that the American dream is within the

grasp of all of our Nation's workers, not just a select few. Access to quality investment advice is one way we can help rank-and-file workers maximize their retirement security.

Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore. Without objection, the time originally allotted to the gentleman from California (Mr. THOMAS) will be controlled by the gentleman from Texas (Mr. SAM JOHNSON).

There was no objection.

Mr. ANDREWS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in opposition to the bill; and later in the debate the gentleman from New York (Mr. RANGEL), the ranking member of the Committee on Ways and Means, and myself will offer a substitute which we believe is a more positive alternative.

I want to proceed by agreeing with the gentleman from Ohio (Mr. BOEHNER), the chairman, and my friend, the gentleman from Texas (Mr. SAM JOHNSON), the subcommittee chairman, that there is a serious problem that requires a remedy, and that problem is the fact that there are millions of Americans, a majority of Americans, who now hold interest in the equity markets, in the stock markets, and that many of these Americans do not receive adequate advice as to the options and strategies they should follow in investing their money.

There are too many people who get their investment advice from a neighbor, over the back yard fence, or through hearsay at an office gathering, or what have you, and we all agree that that is a situation that we want to change.

I also want to say that Chairman BOEHNER and Chairman JOHNSON have been open and fair throughout this process, and I hope that we are able to continue working together as the legislation advances to the other body so that we may reach a mutually agreeable solution, and I thank the chairman for his openness and fairness throughout this process.

We think that this bill is the wrong way to give investment advice because we think it is flawed in four essential ways:

First of all, it is important to understand that this bill will make it possible for a person to receive investment advice about their pension assets, perhaps along with their home the most important assets a person owns, from someone who has a vested interest in that decision, in addition to or other than the interest of the pension. In other words, an employee of an insurance company or a bank or a financial services company can give advice to a pensioner that would result in that pensioner putting valuable pension assets into a fund where the advisor would do better or where the advisor would profit from the result of that decision. That is an important conflict of

interest that we think is a very serious and troubling one.

The bill does not properly reconcile that conflict of interest in four important ways:

First of all, its disclosure provisions do not adequately or contemporaneously disclose to the investor what the risks are. If there is to be such advice given, we believe, Mr. Speaker, that the person receiving the advice should know with great clarity exactly what the nature of a potential conflict is at the time he or she is making the decision. It is not good enough to receive that disclosure months or even years before one makes the decision. It is not good enough that that disclosure be confusing, presented in the verbiage of financial planning professionals and not the commonsense language most of us would be able to understand. Because the bill does not provide for adequate disclosure of potential or real conflicts by investment advisers, it is flawed.

Secondly, the bill does not provide for adequate qualifications of the investment advisers. If someone is going to be giving investment advice to American pensioners and American workers, that someone ought to be trained and qualified and accountable. There is a serious loophole in the underlying bill with respect to that training and qualification. Where there are cases where employees of large banks, large insurance companies, large financial services companies do not have that kind of adequate training, as we read the bill, they would still be able to give such advice. We believe that only people who are duly licensed and trained and qualified should be giving such advice.

The third major flaw of this bill is it does not take adequate measures to make the investor aware that there are alternatives, in many cases better alternatives to receiving advice other than receiving advice from a conflicted advisor; that there is someone else to whom the pensioner could turn, someone else to whom the employee could turn who has no stake in the outcome of his or her decision, who has no conflict of interest. We believe that if conflicted advice is to be given at all, it should only be given where there is a clear disclosure of the available option of an independent advisor for that worker or retiree, so that the person receiving the advice knows that there is someone to whom she or he can turn who has no stake whatsoever in the outcome to have the decision other than the best interests of the investor.

□ 1115

Finally, this bill is significantly flawed because it does not provide adequate remedies if someone receives advice that is wrong and that is a breach of fiduciary duties. The bill recognizes the fact that the fiduciary relationship

between the adviser and the investor continues under this bill.

But what happens if the advisor breaches that duty. Well, the bill would permit present law to continue, and present law permits the recovery of the lost investment; it does not permit the recovery of damages for the consequences of that lost investment. As a practical reality that means that a person who gets bad advice that is a breach of the fiduciary duty of the advisor will never get his or her claim to a court of competent jurisdiction and will never be made whole again. Once the horse has left the barn, it cannot be returned because the remedies are not sufficient under this bill.

Mr. Speaker, for these four reasons we think that this bill is flawed. That is why our position in opposing this is supported by the voice of working people in this country, the AFL-CIO and the American Association of Retired Persons.

Finally, I would recognize that the gentleman from Ohio (Mr. BOEHNER) made reference to Ms. Shepard who is the human resources administrator at Mohawk Industries. I would like to read for the RECORD some remarks she made in the October 21, 2001 issue of the New York Times. At the appropriate time I will submit the entire article for inclusion in the RECORD.

“Betty Shepard, human resources administrator at Mohawk Industries, said it had not offered advice because rules and liability were unclear,” for the employer. That is my insertion. “‘We want to give employees a way to get easy access to reliable investment advice within the confines of the law.’ Ms. Shepard, who testified before Congress last summer in favor of the bill said she ‘would prefer hiring an impartial advisor to assist employees.’” Well, so would we.

We believe that the four reasons that I have outlined today that are weaknesses in this bill justify a vote against the bill.

Mr. Speaker, I reserve the balance of my time.

Mr. SAM JOHNSON of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, first of all, the process is entirely voluntary for the employees. The workers have full control over their investment decisions, not the investment advisor. H.R. 2269 does not require any employer to contract with an investment advisor, and no employee is under any obligation to accept or follow any of the advice.

Furthermore, it requires financial service providers to fully disclose their fees and any potential conflict because investment advice may be offered only by fiduciary advisers, qualified entities that are already fully regulated under other Federal and State laws. The courts have consistently held that fiduciary duty is the highest form of finan-

cial responsibility to which an investment advisor can be held under the law.

This bill authorizes, contrary to what the gentleman tried to imply, the individual participant and the Department of Labor can seek both criminal and civil penalties for infractions of such fiduciary duty. Comprehensive disclosure will inform participants of any financial interest advisers may have, the nature of the advisor's affiliation, if any, and any limits that may be placed on the advisor's ability.

Mr. Speaker, it is a privilege to serve as the chairman of the Subcommittee on Employer-Employee Relations under the wing of the gentleman from Ohio (Mr. BOEHNER), and I am also the only Member of the House on both committees. I am pleased to report that both committees have passed this bill, and it was passed with bipartisan support. Now, more than ever, economic security goes hand in hand with retirement security. People are concerned when they watch their nest egg dwindle.

Russell Morgan, a defined contribution consultant at Watson Wyatt Worldwide in Dallas, a management consulting firm, said “Employees are having a tough time doing it on their own. For those who choose poorly, retirement may not be an option.” That is just plain wrong.

It is obvious that people need investment advice and they need it now. This bill does just that. This measure removes the obstacles for employers to provide millions of workers access to professional investment advice.

The bill requires financial service providers to fully disclose their fees and any potential conflicts, as I said before. This bill protects people from fly-by-night groups or people trying to make a quick buck. There are a number of safeguards.

One, under this bill, sound investment advice can only be offered by fiduciary advisers, qualified entities that are already fully regulated under other Federal and State laws. Courts have consistently held that fiduciary duty is the highest form of financial responsibility to which an investment advisor can be held under the law.

Two, this bill authorizes the individual plan participant and the Department of Labor to seek both criminal and civil penalties for infractions of fiduciary duty.

Three, comprehensive disclosure will inform participants of any financial interest, outside interest, that advisers may have. The nature of the advisor's affiliation, if any, with the available investment options, and any limits that may be placed on the advisor's ability to provide advice, these types of disclosure obligations, along with fiduciary duties, have worked well in regulating the conduct of advisers under Federal security laws for more than 60

years in protecting innocent people from scams and fraud.

Both committees have worked hard to take a balanced approach to increasing access to advice while including safeguards to protect employers and employees.

Without this bill, employees will continue to fend for themselves in today's roller-coaster market when it comes to planning their retirement. Help people who want to help themselves and vote for this bill. It is the right thing to do.

Mr. Speaker, I reserve the balance of my time.

Mr. MCDERMOTT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 2269 is a bill that is sort of sitting out here, and there does not seem to be much interest. There are not many people over here, but this is a very important bill. American industry has moved away from fixed benefit pension systems and given people 401(k)s. People on this floor, we have 401(k)s, those of us who came after a certain date. We do not have a fixed benefit for all of our money. We have to put it in the stock market and see what happens.

In 1974, we set up a restriction that the advice investors got had to come from somebody that was disinterested. In the last few years, the stock market has gone crazy and everybody has been watching their 401(k) go up, up, up. Somebody must have gotten the idea that they were left out of the process, so they came with this piece of legislation.

This legislation eliminates workers' protections. All of us want our workers to have people give them some advice, but we also know something about human nature. Human nature says if I am going to recommend something that is in my interest or something that is not in my interest, but might be good for workers, I have a tension. I have a conflict whether I recommend investors buy my product or whether investors buy the product over here that might be better for them.

Members know everybody is not above slanting things. Everybody wants an advantage, as long it comes to them. What the present law does is prevent somebody who is offering a product from benefiting from it. What this piece of legislation does is say, we are going to let anybody give advice, no criteria whatsoever for what they know about, financial instruments or anything else. They can recommend, if they work in the trust department of a bank, they can make a recommendation; and the American workers are putting their pension, a substantial portion of what their future pension is, in the hands of people who have a vested interest in directing them in a particular direction.

Mr. Speaker, that, in my view, is not responsible on the part of Congress. I

do not think we should be doing this. We have an alternative which the gentleman from New York (Mr. RANGEL) and the gentleman from New Jersey (Mr. ANDREWS) will put forward that corrects this.

Members say included in this there is disclosure. I do not know how many Members in this Congress can honestly say that they have ever read any contract they have been involved in, such as a life insurance policy, automobile insurance policy, a policy related to homeowners insurance and whatever information that is given about investments.

Do Members read all of the way down that Charlie Brown, who is making the investment offerings or giving advice, also makes 3 percent on everything that is bought from XYZ Company? How many Members see that? Would it be the requirement that the person making the advice say, I want to bring investor's attention to page 3, line 1, that says I am going to make money off this if I recommend XYZ Company. There is nothing like that in this bill.

My belief is that this is a bad piece of legislation; if we do not adopt the Rangel-Andrews amendment or the alternative, we will be doing a disservice to the American people.

I do not know how many Members have been getting advice on their 401(k)s in this place, but I bet there are not very many Members who have made much money in the last little while. Probably they would have been smarter to get out of stocks and into government securities. Who was telling us that? Nobody.

That is what we are saying to the workers out there. Workers are going to have somebody who is running a company who says buy the stock in our company, put that in your 401(k). Of course, if the company goes belly up or whatever, we do some financial shenanigans like Enron has done and the investor gets clobbered, too bad. The investor has Enron stock, right, while the guys at the top are doing all kinds of things that are getting them in trouble with the Securities and Exchange Commission.

I think the advice should come from somebody who does not have a vested interest. I think we should all vote against this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. BOEHNER. Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. CULBERSON).

Mr. CULBERSON. Mr. Speaker, the Members of this Congress have many reasons to support this legislation, and again I believe it illustrates a fundamental difference between the Republican and Democrat philosophy. We trust people to manage their own money and their lives with intelligence. Nearly 42 million Americans have saved about \$1.7 trillion in 401(k)

plans, and under current law those people must either hire their own investment advisor, rely on an employer-sponsored advisor, or make investment decisions on their own; whereas this legislation, the Retirement Security Advice Act, will give workers access to professional investment advice from the administrators of their own plan for the first time, as long as those advisors make a full disclosure concerning any potential conflict.

The bill also protects employees by holding the financial advisor, not the employer, personally liable and subject to other criminal penalties if they act on behalf of any interest other than that of the investment portfolio or those who contribute to it.

□ 1130

Finally, Mr. Speaker, the best part of this legislation is that it is completely voluntary. The bill strengthens retirement security and gives workers access to expert investment advice when they need it. I urge my colleagues to join me in supporting it.

Mr. ANDREWS. Mr. Speaker, I yield myself 20 seconds. I would simply say that it is of very little comfort to a pensioner who has just lost everything in their 401(k) that the Department of Labor may someday institute some civil proceeding. People need to get their money back, and under this bill they do not.

Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. GEORGE MILLER), the ranking member of our full committee.

Mr. GEORGE MILLER of California. Mr. Speaker, I thank the gentleman from New Jersey for yielding time and I rise in opposition to this legislation.

It has been said time and again, and we all agree, that pension plan participants need to get additional advice on the investment of their moneys. We have made the point that for the new generation of workers, these pension plans, the 401(k) plans, are going to become an ever more important part of their future retirement and that we must take care with the investment of those funds by these employees to make sure that in fact that will be there when they decide to retire.

We also know that these funds, unlike their Social Security retirement, are subject to the ups and downs of the market. It will be important how they make these investment decisions because the timing of when they retire may not necessarily coincide with the good cycle in the market, as many people have found out over the last 2 years. We now hear more and more of our constituents telling us because of the loss of the markets, because of the placement of their investments, they are going to have to work a couple of more years, they are not going to be able to retire like they thought, or one of the wage earners in the family is

going to have to continue to work. So these funds are subject to the volatility of the market, but that is understood. And it is also understood that we believe that over the long run people will be better off with the investment of these funds in their 401(k)s.

The question then comes, the question of the type of advice that they can be given by their employer. We know that there were many, many employers over the last many years that basically made a decision that the 401(k) funds if they were a publicly held corporation would be invested in the stock of that corporation. Obviously in many, many instances the workers in that corporation lost much of their investment, some of them did very well; but the concentration of the money in those funds, the failure to diversify that investment in many instances harmed the employees; and now we require that they be given other alternatives, that they be given other options so that they too can diversify their portfolio and they are not locked into a single stock.

But the question now that arises in this legislation when we give them the option of that advice, do we give them the right to have an independent review of their account, an independent advisor who is in the business of advising, not necessarily in the business of advising and also managing stocks and portfolios for this client and for other clients?

I think it is just basic and fundamental about treating workers with a set of rights about the dominion over their funds. The notion that somehow this changes the expense of it and is not worthwhile, this advice given to a group of participants is not that expensive but it may be terribly, terribly expensive to the employee if they do not get advice that is not conflicted.

We have great brand names. We have Lehman Brothers, we have Merrill Lynch, we have Charles Schwab. We have houses that now are not just any longer investment banks, they are not just any longer stock brokerages. They run the gamut. They are wholly owned subsidiaries of Citicorp, or in fact they own other subsidiaries; and what we have are very complicated financial arrangements.

In many instances, we have seen over the last couple of years, and especially in the downturn in the market, that a number of these companies hold on to advice long beyond the time when the prudent ordinary person would decide to sell that stock. It has become a standing joke now. I think they even have theme music on CNBC in the morning for those advisors who will not give up their recommendation to buy stocks even though the stock now has been down for 7 or 8 months in a row; it has lost 70 to 90 percent of its value, and they are still telling them to be in there. Lo and behold, when you

start to look at some of this, as the stock exchanges have, you find out that they hold a position or they are managing the money for the executives of the company, not necessarily do they hold a position in that company, but they hold another position with the executives in managing their portfolios. They do not want to upset them, so they are telling the old American public, "Buy this stock. We're on our way back." The fact of the matter is people have been torched. That is subject to disciplinary actions again.

But in this legislation, that conflicted advice necessarily is not out of order here because they have a system of disclosure, and that disclosure is given once a year and then you are on your way. What you find out is the way the bill is written, under the law, that the fiduciary relationship that we keep talking about does not really exist because the law is set up that the person whose funds it is, the employee, has to make a decision, buy this stock, make this investment, put it in this fund. Once they do that act, they relieve the advisor under the law of all responsibility.

Obviously, they should be making the decisions; but the way this legislation is written, once they do that, they have cleared the decks in terms of liability under any sense of fiduciary relationships under the law, because as we see under section 404 of the ERISA law: "No person who is otherwise a fiduciary shall be liable under this part for any loss, or by reason of any breach, which results from such participant's, or beneficiary's exercise of control." Then you go to the law, and the law says the beneficiary must exercise control. At that point we are home free.

I just think that we have to understand now that the change in the marketplace, the interlocking relationship between a whole range of financial services, a whole range of financial entities requires that in fact we have the means by which the employee can get independent advice to make their decision on. I do not believe that this legislation as it is currently configured does that. That is why I would hope that Members would support the Andrews-Rangel substitute, which I think is a very reasonable compromise. It provides for minimum advisor qualifications. Imagine that, having somebody who is in fact qualified to make this determination advising the individual.

How about having meaningful disclosure? We just passed here legislation where we told the banks that they had to disclose what they are going to do with your financial data. What we found out is people got in the mail, sometimes they got two or three pages, sometimes they got one page, they got little tiny print; and the Congress is running around saying to the banks, Gee, that's not the disclosure we in-

tended. It was the disclosure the banks intended. That is why they sent it out. Most people did not recognize it when they got it. But it satisfied disclosure. So we thought you ought to have meaningful disclosure in this case since you are playing with people's future retirements. We also think you ought to have meaningful recourse when you get bad advice, when you get the wrong advice. Of course, this legislation as it is currently written does not really provide for that.

But most importantly, what we believe you ought to have is an employee who is trying to make these decisions, decisions that they must make today that can impact their livelihood 20 and 30, 40 years down the road, that they ought to have some access to independent advice through their employer so that they can in fact make that decision.

So I would hope that we would support the substitute by the gentleman from New Jersey (Mr. ANDREWS) and the gentleman from New York (Mr. Rangel); and then I think we would have a workable piece of legislation that would do what we all recognize must be done in terms of giving employees greater options about the investment and more information about how to invest their money, but to make sure that that is offered in a fair and open manner to the employees.

Mr. SAM JOHNSON of Texas. Mr. Speaker, I yield 3 minutes to the gentleman from Florida (Mr. FOLEY), a distinguished member of the Committee on Ways and Means.

Mr. FOLEY. Mr. Speaker, I thank the gentleman from Texas (Mr. SAM JOHNSON) and the gentleman from Ohio (Mr. BOEHNER) for their leadership on this issue.

In this bill there are adequate disclosure requirements. This is a good bill. I have heard some interesting debate today about whether the person should have an investment in the firm or not; should they be strictly giving advice. There are two schools of thought to that. I particularly like somebody whose money is riding along with mine investing in the market. If they are willing to put in their equity, I am a little comforted by the fact that maybe they are interested in the risk/reward.

I remember in Palm Beach County, we had a bank that sold a preferred note and on the front of the note, it was an 11 percent coupon. But huge disclosure: "This is a risky investment. This is not FDIC insured."

What happened was the consumer, the constituent, decided because of greed that they were willing to gamble on that. Of course when the bank went bankrupt and they lost their money, they started blaming the advisor, the person who sold them the bill. But on every document it was very emphatic, that this was risk based, highly speculative, no guarantees; and everybody

then looks to the little print and says, Oh, boy, I didn't really read that. Well, you could not miss it.

This legislation updates important remedies for those who invest. I have a 401(k) here in Congress and they send me advice and they tell me that over the last several years government funds have done such, 401(k) or equities has done such. It is my decision to make whether I invest in equity bonds or other fixed incomes. I can choose the more speculative route of equities. They make it clear that that is risk based. That advice is mine for the taking. If I do not want to use it and want to test the fates and roll it all in my equity portfolio, I have the right to do that. In this bill, every American has that right.

This bill, or the base text prior to this bill, has not been updated since 1974. That is like asking people in this Chamber to drive a 1974 automobile. This provides a great balance between the ability of those savers, those consumers, to increase their retirement funds through prudent investment. It is specific. The solutions, the benefits and the problems listed in the Retirement Security Advice Act should allay any fears.

Let me underscore. Today, 42 million workers invest more than \$2 trillion of assets in a 401(k). This legislation would update these rules to reflect this new pension environment. In addition, the bill would encourage employers to offer investment advisory services by clarifying liability rules that currently discourage employees from hiring employee investment advisors.

It is a balanced, fair, fundamentally sound way for consumers to ready their portfolios for retirement. I encourage the House adoption of this important measure and thank the respective chairmen for their leadership on the issue.

Mr. McDERMOTT. Mr. Speaker, I yield 4 minutes to the gentleman from North Dakota (Mr. POMEROY).

Mr. POMEROY. I thank the gentleman for yielding time.

Mr. Speaker, I think the biggest problem today for plan participants of 401(k)s is that they have been given responsibility for the investment of their retirement funds without being given access to information to help them make informed decisions as they deal with something as important as trying to find optimal earnings on their retirement savings.

I think many of us in puzzling with our Thrift Savings Plan options think, This is hard, this is confusing, I don't quite know if I am doing this in the right way. I will tell my colleagues, looking at my returns from the last little while, I am quite sure I am not doing it the right way. I could use more advice. An awful lot of people in the workforce today are thinking exactly the same thing. And so we need a

strategy to get them more advice. I think the chairman's strategy represents a very excellent and constructive way of approaching it. The chairman and I are in strong agreement that as we try and get more advice to plan participants, we do not want to put people at risk of heavy sales practices that might be against their interest and have them investing in funds that are inappropriate for their situations.

Therefore, if we have the following standards in a new investment advice regimen advanced by this legislation, I think you can actually get more advice and still protect the employee's interest. You need to have the fiduciary standard apply so that the advisor must be providing advice solely for the interest of the plan participant or the employee. You have got to have some type of administrative recourse so that if the individual violates that advice, you can withdraw that individual's license. You can take away their employment. You can put them out of business.

I used to be an insurance regulator. There is not a better policing mechanism than being able to put the guy out of business to make certain that they are providing advice that is appropriate and comports with the legal requirements.

Thirdly, you need to have fee disclosure. These things have cost loads. Increasingly, employers have shifted all of the expense to the employees on the loads of 401(k)s. Employees need to know what it is going to cost them as they look at these different options. Having a disclosure plan and in fact having a uniform disclosure format of fees is going to help the individual make sure they know what they are getting into as they make various investment options. And so with this legislation, subject to some further amendment, we are able actually to achieve the goal of getting more investment advice out there and helping people with their choices.

I do not think that the opponents of this legislation have reflected enough upon the disservice we do to those in the workforce by giving them the responsibility of investing their own money but depriving them of the information to do it. Defined contribution plans presently represent 90 percent of all retirement savings plans in the workforce. There are \$1.5 trillion worth of investment in 401(k) plans. But still we have less than a quarter of employer-sponsored defined contribution plans provide for advice to the workers in terms of how to invest within those plans.

I have held a number of round tables across North Dakota visiting with employees, visiting with employers, about how we can do a better job with facilitating retirement savings in this country. Information in terms of how to best handle their retirement money is

a constant theme raised not by the big bad industry that some on this side of the aisle would talk about, but by employees themselves or by employers reflecting what employees are asking for. We can do a better job, and this legislation will do it.

Mr. BOEHNER. Mr. Speaker, I yield myself such time as I may consume, and I yield to the gentleman from North Dakota (Mr. POMEROY).

Mr. POMEROY. I thank the gentleman for yielding.

Mr. Speaker, defined contribution plans which place the burden of investment decisions on workers will be the primary source of retirement income for an increasing number of workers. Unfortunately, these workers have little access to professional investment advice which could help them grow their retirement savings in a prudent manner. Current law restricts many sources of advice to workers. We must get additional advice to participants. I salute the gentleman from Ohio for his earnest efforts in trying to achieve this goal.

This bill goes a long way in giving workers access to professional investment advice. In addition, it provides two important features that will help insulate workers from advisors who may otherwise pose a conflict of interest, a fiduciary duty owed to the worker and a disclosure of all fees and conflicts. We agree that the fiduciary duty of an advisor is a high standard not to be taken lightly and that any advisor breaching this duty should not be able to continue to give advice. We also agree that the bill's disclosure requirements will give workers a clear picture of what fees would impact their accounts and what conflicts the advisor has with any offered recommendation. However, this bill, with a few modifications, can provide further protections to workers without burdening financial institutions. I am glad that we have been able to reach an agreement in regard to these modifications.

Unfortunately, we are considering this bill under a modified closed rule and cannot make these modifications on the floor today. These modifications would require the disclosure of the availability of independent advice providers and require the Secretary to draft model disclosure forms for fees. The disclosure would remind participants that independent advice can be sought outside of the plan context and the model disclosure forms will assist service providers in complying with the disclosure requirements. Furthermore, these models will ensure uniformity among the disclosures to the reasonable understanding of the average plan participant.

Lastly, we have agreed to provide further clarity in this bill with regard to banks by restricting the provision of investment advice to their trust departments. It is my belief that every

advisor giving advice under this bill should be individually licensed by a Federal or State regulatory agency so that when an advisor breaches his fiduciary duty to a participant, the regulator will have the authority to put the bad actor out of business.

However, I understand that banks operate under a special regulatory scheme in which some investment advisors are not individually licensed but work within their bank's trust department. I am satisfied that these investment advisors working within trust departments under an umbrella trust license can be subject to the same administrative sanctions as registered investment advisors, insurance agents and broker dealers under this bill.

Therefore, with these three modifications, we can provide further protections to workers without burdening financial institutions. As this bill moves through the legislative process, I ask for the chairman's support to make these modifications.

Mr. BOEHNER. Mr. Speaker, in reclaiming my time, I want to thank the gentleman from New Jersey (Mr. ANDREWS), who has worked on this bill with me over the last several years. Although we may be in some slight disagreement today over how much protection is available in this bill, he has been a faithful partner as we have tried to reach some accord. The gentleman from North Dakota and I have also been working together to try to bring the protections in this bill into a proper balance. I want to thank him for bringing these pertinent modifications to my attention.

I support the changes that the gentleman has described which will further protect workers' retirement income security. I support the creation of a model disclosure form as well as a requirement for advisors to disclose to plan participants that independent advice is available. In addition, I support the gentleman's proposed changes to the qualification section which would ensure that only licensed individuals provide this advice; or in the case of banks, such advice be provided by trust or custody department employees who are individually accountable to State or Federal regulators.

During conference negotiations with the Senate, I will work with my colleague from North Dakota and others to make these modifications for the further protection of workers managing their retirement income assets.

Mr. POMEROY. I thank the gentleman.

Mr. ANDREWS. Mr. Speaker, I am pleased to yield 3 minutes to the gentlewoman from California (Ms. SANCHEZ).

Ms. SANCHEZ. Mr. Speaker, many Americans have little knowledge about investing their own money. Mutual funds, stocks and bonds are very complicated instruments to which people

pay little attention, especially when they have got other things to do all day long.

□ 1145

I know firsthand how complex these instruments can be because of my professional experience as an investment advisor.

In concept, the Retirement Security Advice Act is a great idea. We must find ways to ensure that all Americans participating in retirement savings plans are making decisions that will help them in the long run. All Americans should have access to licensed investment professionals who can advise them on what they should be investing in, how risky their portfolio should be and when to change plans.

There is a major weakness in the current version of the bill, however. The bill allows registered, licensed banks or similar financial institutions to provide financial investment advice. The problem is that the language is not strong enough. It allows bank tellers or any unrelated subsidiary of these financial institutions to provide this advice.

Would you want investment advice from a bank teller? How about from a member of the cleanup crew at an investment banking firm? These examples may be extreme, but they are possible under the current language in this bill.

I want to make sure that all Americans are provided with the best opportunity to invest their retirement savings. Think of the time period we just went through right now. I have a father-in-law who is a banker, and he has plenty of people who would call him and say, "I just went to a cocktail party, and why am I not getting 38 percent return this year?" And no matter how much he tried to talk them through about their plan and their situation, they would basically say, "I am taking my funds to somebody else who will put me in these types of investments."

Now, my father-in-law has licenses. He has been in the investment banking world a long time. He has character, he has integrity. He also makes his living with that license. He protects it. And he would say, "Well, if that is what you have to do, that is what you are going to do, but I will not put you in those types of investments."

Imagine if you have someone who has no license and the pressure comes on. What do you do then? Well, you end up being in things you really should not be in.

Sometimes we forget about the people that we are really working to assist here. This bill is targeted at those who could not otherwise afford investment advice. They are working-class Americans who teach our children, build our infrastructure and make this country strong.

You probably would not take gourmet cooking advice from the fry cook at McDonald's, so why should people take investment advice from those who may not be qualified to give it?

Let us do the right thing for all Americans. Let us make sure that this advice is given by licensed individuals. There are plenty of different types of licenses. We do not have to start a new regulatory situation here.

Mr. SAM JOHNSON of Texas. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio (Mr. PORTMAN), who is a member of the Committee on Ways and Means and who has a long history of working on retirement issues.

Mr. PORTMAN. Mr. Speaker, I thank the chairman very much for yielding me time, and I congratulate him as a Member of the Committee on Ways and Means, but also as the chairman of the Subcommittee on Social Security that got this legislation to the floor today. He wears two hats, and he has done a great job in moving what is a needed piece of legislation to the floor.

Also, of course, I want to commend my colleague, the gentleman from Ohio (Mr. BOEHNER), who has spent years on this issue, understanding that there is a need to change the ERISA laws, which are way out of date.

As more and more people have moved into the defined contribution plans, the 401(k)s, the 403(b)s and the 457s, 90 percent of folks now are in these defined contribution plans. The law has not changed to allow them to get the type of advice they need. Only 16 percent of workers out there in these plans are getting any advice, only 16 percent, yet 75 percent of them say in surveys, they are desperate to get that kind of advice.

So this is a very important change in the law that has to be made in order to allow people, those school teachers, those folks who are in retirement plans all over this country who need this kind of advice, to be able to make better decisions.

Recently this Congress took the lead on retirement security by passing legislation that dramatically expands the availability of defined contribution and defined benefit options. We allowed everybody to put more money away in their 401(k), for instance. We simplified all the rules and regulations for all of the pension plans, to help small businesses to get into this area.

We also allowed portability, to be able to move your plan from job to job and to be able to integrate those plans in a seamless way into one account. This is extremely important, and we think it will allow for millions, millions more Americans, to have the kind of retirement security they need and to have the kind of peace of mind in retirement that all of us deserve.

That was passed overwhelmingly by this House, and it is great legislation.

The gentleman from Maryland (Mr. CARDIN) and I worked on that for years together.

But now we need to take the next big step, which is education. It is providing people with the means to understand the importance of retirement savings, first, on a broad sense, but also to understand what their options are in terms of what they can invest in if they are indeed going to be among those who benefit from this expansion that this Congress has pushed forward to get people into 401(k)s, 403(b)s, defined benefit plans and so on.

So this is the next logical step, and I commend the chairman and the gentleman from Ohio (Mr. BOEHNER) for moving this forward, and the gentleman from California (Chairman THOMAS) for getting it to the floor today.

Now, we have heard some discussion here about what some people see as some of the deficiencies in this legislation. I would just remind people, read the legislation. If you are going to offer this advice, you have to be licensed or have to be a bank trust officer. That is in the legislation.

The gentleman from North Dakota (Mr. POMEROY), who is going to support the bill on the floor today, who worked very hard on this legislation over the years and also helped us with all the portability provisions in the Portman-Cardin bill, has just indicated he is going to support it because the chairman has agreed to even some other slight modifications to ensure that you do not have the conflicts of interest that would otherwise occur if you did not have that fiduciary duty, to be sure that people who do offer this advice are qualified, and, finally, to be sure you have the kind of disclosure that is necessary.

This legislation increases that disclosure. As it has gone through the process in the Committee on Ways and Means, we were sure that there would be yearly disclosure, disclosure upon request, and disclosure if there is a material change.

Again, this legislation is sorely needed. We wanted to encourage people to save more for retirement. One of the impediments now is the lack of good advice and the lack of good education.

So I commend those on both sides of the aisle who have brought this legislation to the floor. Let us pass it today in a bipartisan way and send a strong message to the Senate that it is about time to help people out there be able to make the kind of wise decisions they should be making for their own retirement.

□ 1200

Mr. ANDREWS. Mr. Speaker, may I inquire of the Chair how much time the Committee on Education and the Workforce minority has remaining.

The SPEAKER pro tempore (Mr. LAHOOD). The gentleman from Ohio

(Mr. BOEHNER) has 19 minutes remaining; the gentleman from New Jersey (Mr. ANDREWS) has 11½ minutes remaining; the gentleman from Texas (Mr. SAM JOHNSON) has 9 minutes remaining; and the gentleman from Washington (Mr. MCDERMOTT) has 10½ minutes remaining.

Mr. ANDREWS. Mr. Speaker, I yield myself 20 seconds.

Mr. Speaker, the gentleman from Ohio (Mr. PORTMAN), my friend, just spoke about his representation that one needs to be a trust officer of a bank. I would respectfully disagree. Page 10 of the bill, line 12, indicates an employee, agent, or registered representative of a person describing an institution who satisfies the requirements is qualified. So if there are no local applicable banking or securities laws; a mere employee of a bank or an insurance company is qualified to give the advice.

So the gentlewoman from California (Ms. SANCHEZ) was correct in our description.

Mr. Speaker, I yield 4 minutes to the gentleman from Massachusetts (Mr. TIERNEY), a committee member.

Mr. TIERNEY. Mr. Speaker, I thank the gentleman from New Jersey for yielding me this time.

Like many Members, I represent people who have worked hard and whose entire hope for a secure retirement may well rest on the success of their 401(k): leather workers, jet engine assemblers, teachers, nurses, and other hard-working, intelligent folks who are bright and able, but many of whom have little experience in understanding investment fundamentals. They may lack the time or even the knowledge to work through a mountain of financial information. They need advice that is given by a provider that meets at least minimum standards, one who is qualified and one who is subject to the laws of ERISA's fiduciary standards, standards of trust, and one who is free from financial conflict, free from divided loyalties; and they need an advisor who will put the worker's or investor's interests first, above profit.

Consider this following example: two mutual funds, each posting annual gains of 12 percent consistently for 30 years. One fund has an expense fee of 1 percent, the other an expense fee of 2 percent. If you invested \$10,000 in each fund, the fund with the lower expense fee at the end of 30 years would earn \$229,000, but the one with the higher expense fee of 2 percent would have only \$174,000. The mutual fund would pocket the difference of \$55,000.

Obviously, there may be little incentive for the advisor connected to the mutual fund to highlight the significance of this conflict, of his or her potential gain in steering someone to the higher fee investment. Why should we allow such a conflict of interest to exist when it is not necessary?

Perhaps that is why the fund industry is lobbying so hard for this bill, but workers and retirees are not asking for its passage. These hard-working people, like other investors, need and want good, sound advice; but allowing money managers to make recommendations that will generate more income for themselves hardly falls into the realm of independent advice.

In 1974, Congress chose to ban transactions between pension plans and parties with a conflict of interest, except under very narrow circumstances; and they did that for a simple reason. There is too great a danger that a party with a conflict of interest will act in its own best interests rather than exclusively for the benefit of the workers. That concern is no less valid today.

Studies by the financial industry itself have found broker conflicts have harmed advice received by individuals, audit conflicts have undercut the value of audits on financial firms, analyst reports have shown significant evidence of bias in comparing ratings. The law, ERISA, was designed to protect against just these types of issues.

Our shared goal should be to increase access to investment advice for individual account plan participants. We need not obliterate long-standing protections for plan participants in order to do that. Surveys show that the most important reason advice may not now be offered is that employers have fears that they may be held liable for advice gone bad. The remedy for that, and it is in the bill, is that Congress should encourage more employers to provide independent advice by addressing employer liability. It should clarify that an employer would not be liable for specific advice if it undertook due diligence selecting and monitoring the advice provided. It is as simple as that. There is no need for conflicted advice.

Many plans already provide for investment education. Many plans now provide independent investment advice through financial institutions and other firms without conflict. Clarifying that employers would not be liable if they undertake due diligence with respect to advice providers would further increase advice as necessary.

Disclosure alone will not mitigate potential problems. The alternative bill in adding some protections and mandating a choice of alternative advice that is not conflicted is a better idea, but the best idea remains a prohibition against conflicted advice. Congress, by clearing up the liability issue, can encourage independent, unbiased investment advice that will better enable employers to improve their long-term retirement security, while minimizing the potential for employee dissatisfaction and possible litigation. This is what is in the best interests of the plan participants and, in fact, the best interests of the plan; and it certainly is in the best interests of the

hard-working people in my district who need to know that their retirement is secure.

Mr. BOEHNER. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from California (Mr. DOOLEY).

Mr. DOOLEY of California. Mr. Speaker, I rise in support of H.R. 2269, and I appreciate all of the work that has gone in to crafting this piece of legislation.

In my estimation, this legislation is long overdue. What we are seeing is an increasing number of working people that are participating in plans that require a defined contribution. They need to have access to the information that allows them to make the decisions that are going to maximize the returns on their investments and their retirement accounts.

This is inevitable, as we are seeing more and more people that are coming to expect that they will have more choices, more choices in the consumer products that they are accessing, as well as more choices in the financial alternatives they have to meet their retirement needs.

I think this legislation takes a very balanced approach, and especially with some of the modifications that were agreed to by the gentleman from Ohio (Mr. BOEHNER) that were offered by the gentleman from North Dakota (Mr. POMEROY), and I think it also addresses some of the remaining concerns. It does provide for adequate disclosure. It does provide for fiduciary responsibility. Sometimes I think we are being a little bit condescending to a lot of the people who are participating in these plans when we are not giving them the credit for engaging in their own due diligence by trying to determine what the costs will be and what the values are of the various instruments of investment that they are going to be considering.

Mr. Speaker, most people today are becoming increasingly aware that you have to consider the cost of a particular plan. Most people are becoming aware that there is increasing risk and volatility with different mechanisms that you could invest in.

I remember when Mr. LIEBERMAN was engaged in his last campaign and he said, it is interesting, when I would be making some visits to labor groups and, in particular, I went into a firehouse and met with some firemen there, and he said, their questions to me were not about some of the challenges they face in their jobs, he says, their questions were all about their 401(k) plans and the investments that they were making. He said they had more information than most people that he had come into contact with often on Wall Street.

Mr. Speaker, this bill takes a balanced approach. I urge its passage. I thank all of the people involved in this.

Mr. BOEHNER. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio

(Mr. OXLEY), the chairman of the Committee on Financial Services.

Mr. OXLEY. Mr. Speaker, I want to thank the gentleman from Ohio, my good friend, for his leadership on this issue, and the gentleman from Texas.

This is an important piece of legislation that really represents bringing ERISA into the 21st century. Let us face it, ERISA was passed almost a quarter of a century ago; and times have changed. I am convinced, after looking at this piece of legislation, that the responsibilities of the investment advisors are fully covered and regulated by the Securities and Exchange Commission, and by various State regulations. I think nobody needs to fear that these folks will not be regulated. They have been regulated over the years and will continue to be so to make sure that the investors are protected.

I was reminded of a story the gentleman from California raised about the visit to the firehouse by Senator LIEBERMAN. I had a similar situation in my office just last year where I had a young worker from my congressional district who had come in to talk to me. He was a member of the machinist union. He did not want to talk about those kinds of issues that he had just heard over at the machinist union. He wanted to talk about investments; he wanted to talk about his future, his financial future. He told me he was 30 years old, he had a couple of kids, he had an IRA, he had a 401(k) plan, and he was interested in the future of Social Security, and he was also interested in his ability to make sound decisions of his investments and his future.

That really is a striking example, I think, that we are seeing all over the country. We have over half of the households today who are invested in equities, over half of the households. That is a sea change in the way America looks at its investment opportunities. That is a huge change. Just 20, 25 years ago, two-thirds of people's savings were in bank deposits. Today, two-thirds of their savings are in equities. That is a huge change that we have seen in this country. Let us treat these workers, these folks like adults. Let us not say to them they need to make decisions on their own. They need the kind of advice that this bill provides them. I urge strong support for this legislation.

Mr. McDERMOTT. Mr. Speaker, I yield 4 minutes to the gentleman from New York (Mr. LAFALCE).

Mr. LAFALCE. Mr. Speaker, I rise in opposition to H.R. 2269. I was listening to the distinguished chairman of the House Committee on Financial Services just now, and I have the honor of serving as the ranking member. I guess we have heard different things at the committee hearings and drawn different conclusions.

I heard about the tremendous conflicts of interest that existed within se-

curities firms. Absolutely outrageous, individuals getting participations within IPOs and then giving analyst advice concerning those IPOs. That is just one small example.

I heard testimony that in the year 2000, of all of the recommendations that were given regarding stocks, 1 percent were sell recommendations, 1 percent in the year 2000.

I heard testimony that talked about earnings management or earnings manipulation, earnings manipulation on the part of the chief financial officers and the chief executive officers of major corporations, Fortune 500 companies; earnings management, earnings manipulation by the audit committees of the board of directors, all, of course, with stock options and a vested interest in what those earnings were. And earnings management and earnings manipulation on the part of the accounting firms who often had a conflict of interest also.

Mr. Speaker, disclosure does not do the trick. Disclosure does not protect the investor. In a day when we have converted from primarily defined benefit plans to overwhelmingly defined contribution plans, the need for a strong prophylactic ERISA is greater than ever. We eviscerate those protections within ERISA and we say, well, let us disclose the conflicts. That is grossly inadequate.

Surely we need to come up with better investment advice for the participants within pension plans, but we also need to protect against conflicts. The bill does not do that. The alternative does. Maybe that is why the representatives of the employees in the 401(k) plans, the AFL-CIO and so many others, the Consumer Federation of America, et cetera, say support the substitute, but reject the bill that has been reported out of committee.

Mr. BOEHNER. Mr. Speaker, I am pleased to yield such time as he may consume to the gentleman from California (Mr. McKEON), a subcommittee chairman over in our committee.

Mr. McKEON. Mr. Speaker, I thank the gentleman for yielding.

I rise today in strong support of H.R. 2269, the Retirement Security Service Act. I want to thank the gentleman from Ohio (Mr. BOEHNER) and the gentleman from Texas (Mr. SAM JOHNSON), the subcommittee chairman, for bringing this important legislation to the floor for our consideration.

Many workers might not know it, but there is an outdated provision within a 27-year-old Federal law that unintentionally prohibits their employers from providing access to high-quality investment advice. The Employee Retirement Income Security Act, also known as ERISA, was written in 1974 at a time when no one had heard of 401(k) plans and no one ever imagined that so many people would participate in the stock market like they do today.

□ 1215

Under ERISA, the mutual funds, banks, and insurance companies that administer 401(k)s can only provide general investment education directly to participants in those plans. They are prohibited from providing advice about a person's specific investments.

Since last year when the market began to slide and the economy began showing signs of weakness, many workers have watched their retirement savings dwindle. People need sound advice, especially during these times, to maximize their investment opportunities by making it possible for workers to be able to get the same kind of advice that wealthy individuals are able to pay for out of pocket.

H.R. 2269 would do just that. This legislation modernizes ERISA to let employers give their employees access to high-quality, tailored investment advice, as long as financial advisors fully disclose their fees and any potential conflicts.

I have heard some scare talk here about, we need to protect people from charlatans or from people who would take advantage of them. But I think that we need to give the people credit for understanding and being able to separate advice. The important thing is that they should be able to get it.

This bill retains important safeguards and includes new protections to ensure that participants receive advice that is solely in their best interests. The measure requires that advice be given only by fiduciary advisors which are qualified, fully regulated entities, like insurance companies and banks, that would be held liable for any failure to act solely in the interests of the worker.

Moreover, the whole process is completely voluntary, because the bill does not require any employer to contract with investment advisers, and no employee will be obligated to accept any advice.

As Members can see, Mr. Speaker, H.R. 2269 provides assistance for hard-working Americans so that they can wisely plan their retirement years. Therefore, I strongly urge all my colleagues to support this much-needed legislation.

Mr. ANDREWS. Mr. Speaker, I am pleased to yield 3 minutes to the distinguished gentlewoman from Hawaii (Mrs. MINK), a member of our committee.

Mrs. MINK of Hawaii. Mr. Speaker, I thank the gentleman for yielding time to me.

I rise today, Mr. Speaker, to urge a no vote on H.R. 2269, the Retirement Security Advice Act of 2001.

When Congress enacted the Employee Retirement Income Security Act, known as ERISA, in 1964, the goal was to protect employee pension benefits, which it has done tenaciously since enactment.

In the ensuing 27 years, employees have seen significant changes to their pension plans. Many companies no longer offer predefined benefit plans, and many workers place their retirement funds in stock markets using 401(k) and other similar investment plans.

According to the Investment Company Institute, over 42 million people use 401(k)s and other similar plans. Last year, the total value of these plans reached \$2.6 trillion. These plans offer higher returns and, of course, higher risks.

In today's market, the value of one's investments could change drastically in the course of a year or even 1 day. With the highly volatile stock market, no one questions the need for providing good, sound, reliable advice to invest one's retirement funds. We must therefore ensure that the underlying principles behind ERISA remain intact. We must protect the interests of workers and their beneficiaries.

H.R. 2269 fails to provide the basic protections that all workers deserve. The bill allows unqualified individuals to provide investment advice. We should make advisers obtain Federal and State licenses or other qualified certifications. They should not be connected in any way to the investment industry or investment companies who could benefit from the advice given.

Advisors often receive financial rewards for recommending certain investments over others, but H.R. 2269 does not require advisors to clearly disclose their incentives for making a particular recommendation. Advisors can bury disclosures in a mound of paperwork that the average investor will not read or understand. Advisors who will make money on giving advice should clearly and continually warn workers of any conflicts of interest.

Proponents of the bill say, well, the advice is free. This is not true. Each investment that the worker makes will pay from 1 to 1.5 percent of the money invested to the broker. There is big money at stake involved in the advice given and the advice taken. The bill allows investment companies to make billions of dollars every year.

Advisors entangled with payoffs, depending upon the advice given to the worker, should be absolutely forbidden in this access provision.

The bill does not provide any remedy or penalties for tainted advice. I urge this House to reject this legislation.

Mr. BOEHNER. Mr. Speaker, I am pleased to yield 2 minutes to the gentlewoman from Illinois (Mrs. BIGGERT), a member of our committee.

Mrs. BIGGERT. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, when a person has a cold, he can go to his local drugstore and choose among dozens of different cold remedies. When he is not sure which medicine is appropriate, there is

a pharmacist available who can provide expert advice and help him to make the best selection.

Yet, when it comes to 401(k) plans in the workplace, Congress, in effect, has gagged the pharmacist. Employers pay good money to provide an excellent benefit to their employees, 401(k) plans run by professionals, yet our 27-year-old law, ERISA, effectively silences those investment professionals, denying employees a major part of the benefit their employer has intended for them.

Now, more than ever, Americans investing their retirement income in 401(k) plans need access to critical investment advice that will help them achieve their financial goals. The Retirement Security Advice Act of 2001 updates our laws so workers can have access to high-quality professional investment advice. These advisors will be required to fully disclose their fees and any potential conflicts. This legislation also establishes important safeguards to ensure that investors' goals are met.

Mr. Speaker, let us stop gagging the pharmacist or silencing the investment advisor. Let us make it easier for the 42 million Americans who participate in 401(k) plans to choose among investments. Let us pass H.R. 2269, which will increase employee participation and enable more workers to live out their American dreams.

I urge my colleagues to support the Retirement Security Advice Act of 2001.

Mr. BOEHNER. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. HOLT), a member of our committee.

Mr. HOLT. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I rise in support of the Retirement Security Advice Act of 2001. We need to be sure that the law allows families to have a wide range of investment advice as they plan for their retirement. As we do so, we need to ensure that there are adequate protections for these workers.

Under the bill, there are protections. The advisors are subject to a fiduciary duty and will be personally liable for failure to act solely in the interest of the worker. Under the bill, the Labor Department is authorized to seek both criminal and civil penalties if an advisor breaches that responsibility.

The language also contains provisions to ensure that there is full disclosure in plain language to the workers of fees and conflicts of interest. These disclosures and fiduciary protections are significantly stronger than the average investor has today.

Now, the bill is not perfect. I believe that we may strengthen the bill by adding provisions to make sure that workers know where they can get a financial second opinion. I want to express my appreciation to the gentleman from Ohio (Chairman BOEHNER)

for representing my views and agreeing to take these into consideration in conference. I want to continue to work with him and the gentleman from California (Chairman THOMAS) on this subject as the bill moves through the legislative process.

This bill gives workers important new options they do not now have. That is why we want to do it. It modernizes the law to reflect the realities of the real world, the way people actually invest and plan their retirements today. This is a step forward and worthy of support.

Mr. ANDREWS. Mr. Speaker, I am happy to yield 3 minutes to the gentleman from California (Ms. WOOLSEY), a real authority on human resources and employee relations.

Ms. WOOLSEY. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, H.R. 2269 is a prime example of how a good idea can be turned into a bad bill. It is a good idea to make investment advice available to employees at their workplace. Of course it is a good idea. But allowing self-interested advisors, those who could benefit from the advice they give, in the workplace is not a good idea; it is an extremely bad idea. But that is exactly what H.R. 2269 does.

Please remember why ERISA was enacted in the first place. It was enacted to protect workers from abuses related to their benefits. So ERISA now prohibits investment advisors from coming to a workplace and providing employees with investment advice if there is any reason to think that the advisor might benefit from recommending one investment or another.

ERISA was enacted to protect workers from abuses related to their benefits, and this protection has worked for over 25 years. But with H.R. 2269, we are saying that it is okay to have investment sales folks at the workplace under the guise of the employer's endorsement providing investment advice to their employees.

Think about this: We have employees with 401(k) plans, many of whom have little or no knowledge of high finance. The employer brings an investment advisor to the workplace. That has to appear as if the employer endorses whatever this advisor is selling. Members cannot tell me that most employees will not be strongly inclined to accept the investment advice given them under those circumstances.

If the advice is poor or, heaven forbid, the advice is downright wrong, or if it is some kind of scam in the short run, there is no protection for that employee.

There is hope, however. Fortunately, we have a substitute to H.R. 2269. That is the Andrews substitute. The Andrews substitute keeps the good idea of making investment advice available to employees in the workplace, but it builds on the protections in current

law that employees need and must have and must be able to depend on.

The Andrews substitute is a win-win for employees, and I urge my colleagues to vote against H.R. 2269 unless the substitute is included.

PARLIAMENTARY INQUIRY

Mr. BOEHNER. Parliamentary inquiry, Mr. Speaker.

The SPEAKER pro tempore (Mr. LAHOOD). The gentleman will state it.

Mr. BOEHNER. Mr. Speaker, we just have the remaining time we expect to use. Who has the right to close, or what would the order of closing be?

The SPEAKER pro tempore. The Committee on Ways and Means will finish their time first, and then the gentleman from Ohio (Mr. BOEHNER) has the right to close.

Mr. BOEHNER. I thank the Chair.

Mr. McDERMOTT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, sometimes when I come out on this floor I think I have entered the French theater of the absurd.

We are having a bill brought here to us about financial advice. I remember, when this year started, that we had \$5.6 trillion in surplus, and all the discussion was about what should we do with it: Shall we pay off the debt? Shall we save it for Social Security? Shall we save it for Medicare?

The decision was, oh, the first thing we should do is give about \$2 trillion of it away.

□ 1230

We are going to do that with a tax break. We said it is 130 trillion, but it turned out to be more like two, and so we go.

We have now spent all the Social Security money. That is the advice we are giving to the American people, and then we say, we want to turn you over to the hands of these nice salesmen, they will take care of you. We have taken away their medical security. We have not even put the money that they contributed into the Medicare program. If we were under ERISA, we would be before the courts for the way we are handling the investments of our constituents.

We got so wild around here with our tax cuts and all the problems after they figured it all out, and said, well, we need an economic stimulus bill. So we come out here with a nonsense bill, give it another \$161 billion off to major companies in this country. This is our advice to America. This is what we think and then this bill is the follow-on.

That nonsense of the stimulus package has run into the ditch over in the Senate. I never thought I would count on another body to save us from ourselves. I know they are going to save us from this bill ultimately. This really looks to me like, the other bill, sort of a fund-raising bill, and when I stand

here and think about it and listen to all this talk, I cannot help thinking about my grandfather.

He was an Irish immigrant, went to the second grade. He could read the newspaper a little bit and he could sign his name. That was the basis of his education. He was a hod carrier down in central Illinois, and in the 1920s, there was a scam in this country. A guy named Samuel Insull was selling energy stock or utility stock all over the country, and the whole rage in this little town where my grandparents lived, Streator, Illinois, everybody was buying Insull stock, you are going to get rich, real rich real quick. Everybody in the neighborhood was borrowing and putting their money into the Insull business.

My grandmother came to my grandfather and said, well, Jim, I think we should buy some of that Insull stock, and he said to her, if this is such a good idea, why are those boys from Chicago down here in the cornfield selling it to us? He did not put any of his money in. He said we have got \$500 in the bank. I tell you what, Jane, you can take your 250 and put it in the stock, but I am keeping mine in the bank.

She followed his advice, and they had their money when Insull went belly up in 1929, and everybody in Streator, Illinois, lost every blooming dime they had put in it.

Investment advice to ordinary people is a big issue. If you are a hod carrier or you are a cab driver or you are doing any one of a number of jobs in this country and you are suddenly faced with this question of what should I do with my money for when I get old and somebody comes to you who has a conflict of interest about it, what do you do at that point? You say to your employer, give me another advisor.

The bill does not allow that. It does not say you can give me this guy with the vested interest, but I would also like one who is just sort of on my side maybe, and maybe I can get back at him if he gives me bad advice. We say to the workers of this country, we are going to take this away from you at the very time when we are acting financially as irresponsible as we could be.

We are the Congress. If it was run by the House of Representatives, we would be borrowing money right now to give back to the companies of this country \$25 billion they paid back in 1986. That is the kind of financial advice we are giving this country. We are saying, well, we are going to stimulate things, we are going to give money back to IBM and Ford and all those companies while they are laying people off. We give \$15 billion to the airlines because we do not want them to get in trouble, right, and all those investment people are out there selling those stocks,

right, keep buying that American Airlines and United Airlines and all those stocks.

So we give them \$15 billion. We are going to stabilize it. We do not give one single penny to the workers for their health insurance or for their unemployment, and they lay off 100,000 people in the airline industry, and Boeing lays off 30,000 because when the airline industry goes down, so does Boeing go down and everybody else; but they have still got their 401(k), and we say, well, we are going to give you an advisor to tell you what to do with your money, and that is business.

I say this is bad legislation. It looks to me like a fund-raising piece, not a real serious effort to take care of people's investments. If the amendments that were offered here were accepted, all of us would be in favor of it. We think people ought to have advice, but it has got to be advice that is not conflicted, that does not have its own pocket interest, and I think that we will have a substitute offered by the gentleman from New Jersey (Mr. ANDREWS) and the gentleman from New York (Mr. RANGEL) which will fix this bill, but I urge people to vote against the bill.

Mr. Speaker, I yield back the balance of my time.

Mr. SAM JOHNSON of Texas. Mr. Speaker, I yield myself such time as I may consume.

There is a broad consensus that workers need access to expert investment advice. I did not know we were going to talk about tax relief and other subjects, but there are only 16 percent of 401(k) participants that have access to investment advice through their retirement plans, and only 17 percent have access through outside advisors. Seventy-five percent of full-time employees surveyed said they would take advantage of individualized advice service if their employers offered it, and we have been hearing about banks.

Banks are regularly examined. Examinations occur frequently. Bank tellers cannot provide investment advice. Bank trust departments have a long history of trust investment, and they have been managing trusts for over two centuries. Banks manage over \$2 trillion in employment benefit trusts, and banks have strong capital, which provides added protection for funds being invested. I doubt there is a bank in this country that would allow their trust department to make bad advice because the bank would be out of business.

Recent market volatility tells us investment decisions must be based on solid and experienced judgment. Yet, as of today, we continue to deny our employees the same tools that corporations and unions are allowed to use in making sound investment decisions for their defined benefit plans. This bill changes that. Simply put, this measure

ends investment ignorance and provides workers full control over their investment decisions. It repeals an outdated 1974 law that denies millions of Americans access to investment advice that could help them make the most of their retirement savings.

No longer will wealthy individuals be the only ones to enjoy the luxury of being able to afford their own professional investment advice. Now low and middle income Americans will have the same choice.

Since individuals bear the risk of stock market volatility in their 401(k) accounts, they are the ones who must have advice on how to better diversify their portfolios so they are financially prepared for retirement.

H.R. 2269 will permit employers to offer investment advice as an employee benefit. This legislation does not require any employer to contract with an investment advisor and no employee is under any obligation to accept or follow any advice.

This bill is good policy for today's workers and tomorrow's retirees. That is why the bill has been endorsed by the Department of Labor, the Department of Treasury and the Department of Commerce.

In testifying before my subcommittee, Department of Labor Assistant Secretary Ann Combs praised the bill and said, "We believe the bill creates a strong protective framework for the provision of investment advice to participants. Both the Committee on Ways and Means and the Committee on Education and the Workforce have worked hard to take a balanced approach for increasing worker access to advice while including safeguards to protect employees' interests.

I urge Members to join all of us in supporting H.R. 2269. Without it, millions of Americans will be in the dark in protecting and growing their retirement nest egg.

Mr. Speaker, I yield back the balance of my time.

Mr. ANDREWS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I urge my colleagues to vote against this bill. People need investment advice, that is true, but it is also true they are getting it from the independent sources that are out there in increasingly high numbers.

Just 2 years ago only 17 percent of employers were offering investment advice options; today it is up to 31 percent, nearly double, and it is growing. When someone goes for investment advice and the advice is being given by a conflicted advisor, that conflict ought to be disclosed at the time of the decision. That does not happen under this bill.

The advisor ought to be completely qualified and accountable. That does not happen under this bill. The person receiving the advice ought to know that he or she has other independent

choices. That does not happen under this bill. And if the advice that is given is bad and hurts the investor, there ought to be adequate remedies to make that investor whole. That does not happen under this bill.

For all of these reasons, and the others stated by my colleagues, I would urge a vote against the underlying legislation.

Mr. Speaker, I yield back the balance of my time.

Mr. BOEHNER. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, I think all of us agree that we want to do everything possible to improve the retirement security of all American workers. And I think, based on what we have heard here today, all of the Members believe that providing investment advice for those employees who have self-directed pension accounts is vital.

In 1974, when ERISA was enacted, 95 percent of pension assets were in defined benefit programs. And no one in 1974 with the enactment of ERISA ever envisioned that we would have the number of self-directed accounts, such as 401(k) accounts, and the amount of participation and the huge shift in assets away from defined benefit plans towards defined contribution plans.

What that has done is leave us in a situation today, where millions of American workers have trillions of dollars in their retirement savings, that basically they are left to their own ability to hire an investment advisor, because under the law as written in 1974, we have so protected and insulated American workers that there is really no place they can turn for advice. And so where do they turn for advice? They turn to Bob at the coffee shop.

So what we are trying to do here in this bill today is to provide a mechanism for providing specific investment advice to employees while providing safeguards to protect their retirement security. We believe that there has to be a balance between the offering of the advice and the amount of protections.

Is there risk involved in this bill? Yes, there is. Do we think American workers are smart enough and bright enough to make these decisions? Yes, they are.

It is a completely voluntary program for employers and employees. Once the advice is given within the safeguards that will be outlined in this bill, the employee has no inhibitions about making their own decisions about how they want to allocate their assets and their needs based on their own retirements.

The problem that we have with the additional safeguards that are being proposed here is that they will so restrict the ability to get advice that we will get what we have today and that is no advice at all. Now, if our goal truly

is to provide more investment advice for American workers, we have got to strike a balance, a balance that will work for employers and those who would be there to provide advice.

Now, we are hearing an awful lot of criticism about people who sell products and the fact that under this bill they would be able to give advice after they have disclosed any potential conflicts, after they have disclosed their fees, and with other protections.

Now, what they really want to do is, they want to eliminate this sector from being able to give advice. These are the most respected investment firms in the country, with the best track record of investment advice in the country, that we would want to shove out of this market and prevent these people from giving their expertise and advice to the American workers. I just do not think that that makes any sense in the marketplace we are in. And so I think if we all step back and look at where we are trying to go, I have worked with Members on both sides of the aisle trying to craft a proper set of balances.

□ 1245

And in the debate today, the gentleman from North Dakota (Mr. POMEROY) and I came to an agreement to add additional protections to this bill that I do think will protect American workers more without hindering the ability of employers or their agents to provide the kind of investment advice that American workers so sorely need and want today.

So I would ask my colleagues, as we continue to move this process along, that we continue to work together to try to find the right balance, because, as we know, the action in the House today will not be the end of the process. It is actually the beginning of the process. This bill will have to go through the Senate, and I am confident that we will be able to continue to move this in a strong bipartisan manner.

I ask all of my colleagues today to support the underlying bill and do what we can to help American workers increase their retirement security.

Mr. STARK. Mr. Speaker, I oppose H.R. 2269, the falsely named Retirement Security Advice Act of 2001, introduced by Representative BOEHNER. The bill not only neglects to provide any type of security for workers' retirement, but it actually puts worker retirement plans at greater risk for fraudulent activity.

Workers need independent financial advice, not advice plagued by self-interest. Current pension law ensures that those who manage or administer assets of a pension plan cannot engage in any transaction under the plan in which they have a financial or other conflict of interest. These rules, known as the prohibited transaction rules, are designed to ensure that the best interest of the investor is maintained. When these rules are eliminated, as H.R. 2269 calls for, the integrity of the pension system is threatened by fraud and abuse.

For example, one of our nation's premier investment companies, Prudential, in 1996, agreed to pay at least \$410 million in restitution and fines to compensate investors who suffered losses to fraud as far back as 1980. Many Wall Street brokerage firms sold limited partnerships in the 1980's to customers seeking tax deductions and the potential for profit from asset appreciation. However, these investments were typically suitable only for wealthy investors because of their speculative nature. Prudential made nearly \$1 billion in commissions and fees from the sale of its partnerships. In addition to the limited partnership claims, widespread securities law violations were made at various Prudential branches across the country. These practices included:

Lying about risk—Selling risky real estate and energy partnerships to pension funds, retirees and other individual investors who were told their investments were safe.

Lying about return—Publishing promotional material that misled investors about the return they could expect on their money.

Turning a blind eye to a subsidiary—Inadequately supervising the subsidiary that advertised and sold the partnerships.

Turning a blind eye to employees—Inadequately supervising employees in nine branch offices, whose fraudulent practices resulted in losses of hundreds of thousands of dollars from customers.

Churning—Trading excessively without authorization in clients' accounts to increase brokers' commissions.

The settlement affected 8 million investors in every state, the District of Columbia and Puerto Rico. Many of the investors were elderly and faced the risk of not being compensated in their lifetime.

Workers should have access to investment advice they can be certain is neither influenced by corporate profit motives or driven by a company's need to unload undesirable financial products. H.R. 2269 undermines that certainty by permitting advisors to provide plan participants with self-interested advice regarding the investment options under the plan, as well as asset allocation. Under H.R. 2269, both financially sophisticated and financially inexperienced workers would lose access to independent investment advice under their 401(k) plans. Clearly, this provides less security than employees currently receive and has the potential for fraudulent activity that would be virtually impossible to remedy under our judicial system.

The fraudulent Prudential activity illustrates the need for unbiased, independent investment advice for employees. We cannot allow motivation and campaign contributions from the securities, banking and insurance industry to imperil the pensions of 42 million workers who participate in self-directed pension plans. It is easy to see who will benefit from this bill when organizations like Prudential and Citigroup support the bill and organizations that oppose it include AARP and the AFL-CIO.

Workers won't get the critical independent advice from the Boehner bill, but they will from the Democratic substitute bill. The Democratic substitute bill requires that if a conflict of interest exists, that the investment advisor would

be required to provide additional independent advice at no additional charge to the investor. If Prudential is going to make a greater profit by advising the investor to invest in Prudential funds, then an independent advisor with no such direct profit interest, must be available to either validate Prudential's advice or provide alternative advice to give the employee a less biased opinion.

The debate is clear. The bill before us will hurt the retirement of millions of workers, but it will increase profits for investment advisors and investment companies. I urge my colleagues to vote for the Democratic substitute bill and vote no on H.R. 2269.

Mr. CARDIN. Mr. Speaker, over the past twenty years, this country has witnessed a revolution in the way American workers save for their retirement. The central feature of this revolution has been the shift from defined benefit to defined contribution plans, and, in particular, the explosion in the growth of 401(k) plans. Through employer-sponsored 401(k) plans, tens of millions of middle class Americans have entered the investment class, many of them encountering their first exposure to the workings of the stock markets.

This trend has important implications with respect to the retirement security of these workers. Under the defined benefit model, the risk and responsibility for making prudent investments rests with the employer. At the end of the day, the employer is on the hook to provide the promised benefits. Should the employer fail to meet this obligation, the federal government, through the Pension Benefit Guaranty Corporation, provides added protection to make sure those benefits will be there when workers retire.

In the 401(k) world, however, the risk and the responsibility rest with the worker. Individual investment choices and decisions can make a huge difference in terms of the size of the retirement nest egg that a worker accumulates. For many workers, this reality leads to one very basic question: "Where should I put my money?"

This bill recognizes the need to provide workers with a responsible, reliable answer to that question. I commend the gentleman from Ohio, the Chairman of the Education and the Workforce Committee, for his leadership on this issue. He has recognized that the need for retirement investment advice for America's workers is great, and deserves our thanks for bringing this issue to the fore.

The bill does two things to make it more possible for workers to get investment advice. First, it provides liability relief for employers. Currently, surveys of employers tell us that a major impediment to employers retaining investment advice firms for their employees is the concern that they, the employer, will ultimately be held responsible for the specific advice provided. The bill before the House says that if the employer exercises prudence in selecting the adviser, he or she will not be subject to liability for the advice provided. This is a good, sensible reform, and I support it.

The second issue addressed by the bill goes to the current restrictions within ERISA dealing with "prohibited transactions." ERISA contains important protections that prevent investment advisers from advising plan participants to invest in products where the adviser

has a conflict of interest. It is a sensible protection, and one that should only be lifted with great care.

The bill before us does not, in my judgment, provide satisfactory protections for workers faced with investment advisers providing conflicted advice. The bill will require advisers to disclose that they are in a position to make money on the advice they are offering. That is an important provision, and the disclosure provisions were strengthened by the amendment presented by the Chairman of the Ways and Means Committee.

But disclosure of the conflict by itself is not enough. Workers need to know more than that the person sitting in front of them will make money if their advice is followed. They need to have a full range of investment options. They need to know the range of fees that are charged for different types of investments, and how those fees will affect their long-term returns.

In short, this bill does not provide any assurance or requirement that workers will have the information they need to make prudent investment decisions. On the other hand, at the end of this debate, we will have a substitute that attempts to address these problems. I certainly commend the gentleman from New Jersey for his work on this issue and for his longstanding commitment to expanding retirement savings opportunities for American workers. But I am concerned that the substitute imposes requirements that will make it unlikely that employers will take the necessary first step of providing investment advice to their workers.

Mr. Speaker, America's workers need investment advice on their retirement savings accounts. Unfortunately, today we have two choices. The Republican bill takes the position that bad advice is better than no advice, and the substitute takes the position that no advice is better than bad advice. The right answer, of course, is that what the 42 million Americans who participate in a 401(k) account need is not bad advice, or no advice, but good advice. We need to put together a bill that will give employers, workers, and the investment community the chance to get that job done.

Mr. CRANE. Mr. Speaker, I rise in strong support of the Retirement Security Advice Act of 2001. As a cosponsor of this legislation, I would like to commend Mr. JOHNSON of Texas, Chairman THOMAS, and Chairman BOEHNER for crafting common sense legislation that will help millions of hard-working Americans plan more wisely for their retirement.

Mr. Speaker, while ERISA law is quite complicated, this legislation is quite simple. It allows employers to provide their workers with access to professional investment advice as long as the investment advisers fully disclose their fees and any potential conflicts. At the same time, it establishes significant safeguards to ensure that these workers receive advice that is solely in their best interests.

Under current law, employers are discouraged from providing this service because employers may be held liable for specific advice that is provided to their employees. H.R. 2269 removes the barrier to employers contracting with advice providers and their workers by clarifying that employers are not responsible for the individual advice given by professional advisers to individual participants.

Under this legislation, investment advice may only be offered by "fiduciary advisors"—qualified entities that are already fully regulated under other federal and state laws, such as registered investment advisers, registered broker dealers, insurance companies, and banks. Existing federal and state laws that regulate individual industries will continue to apply. Moreover, employers will remain responsible under ERISA fiduciary rules for the prudent selection and periodic review of any investment advisor.

I urge my colleagues to support H.R. 2269 as amended by the rule.

Mr. BOEHNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. LAHOOD). All time for general debate on this bill has expired.

AMENDMENT IN THE NATURE OF A SUBSTITUTE
OFFERED BY MR. ANDREWS

Mr. ANDREWS. Mr. Speaker, as the designee of the gentleman from California (Mr. GEORGE MILLER), I offer an amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute printed in part B of House Report 107-289 offered by Mr. ANDREWS:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Retirement Security Advice Act of 2001".

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

(a) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—Subsection (d) of section 4975 of the Internal Revenue Code of 1986 (relating to exemptions from tax on prohibited transactions) is amended by striking "or" at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting "; or"; and by adding at the end the following new paragraph:

"(16) any transaction described in subsection (f)(7)(A) in connection with the provision of investment advice described in subsection (e)(3)(B), in any case in which—

"(A) the plan provides for individual accounts and permits a participant or beneficiary to exercise control over assets in his or her account,

"(B) the advice is qualified investment advice provided to a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

"(C) the requirements of subsection (f)(7)(B) are met in connection with each instance of the provision of the advice."

(2) RULES RELATING TO INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—Subsection (f) of section 4975 of such Code (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

"(7) INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—

"(A) ALLOWABLE TRANSACTIONS.—The transactions described in this subsection, in connection with the provision of investment advice by a fiduciary adviser, are the following:

"(i) the provision of the advice to the participant or beneficiary;

"(ii) the sale, acquisition, or holding of a security or other property (including any lending of money or other extension of credit associated with the sale, acquisition, or holding of a security or other property) pursuant to the advice; and

"(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice.

"(B) REQUIREMENTS FOR EXEMPTION FROM PROHIBITED TRANSACTIONS WITH RESPECT TO PROVISION OF INVESTMENT ADVICE.—The requirements of this subparagraph are met in connection with the provision of qualified investment advice provided to a participant or beneficiary of an employee benefit plan by a fiduciary adviser with respect to the plan in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if the requirements of the following clauses are met:

"(i) WRITTEN OR ELECTRONIC DISCLOSURES.—At a time contemporaneous with the provision of the advice in connection with the sale, acquisition, or holding of the security or other property, the fiduciary adviser shall provide to the recipient of the advice a clear and conspicuous notification, written (or by electronic means) in a manner to be reasonably understood by the average plan participant pursuant to regulations which shall be prescribed by the Secretary (including mathematical examples), of the following:

"(I) INTERESTS HELD BY THE FIDUCIARY ADVISER.—Any interest of the fiduciary adviser in, or any affiliation or contractual relationship of the fiduciary adviser (or affiliates thereof) with any third party having an interest in, the security or other property.

"(II) RELATED FEES OR COMPENSATION IN CONNECTION WITH THE PROVISION OF THE ADVICE.—All fees or other compensation relating to the advice (including fees or other compensation itemized with respect to each security or other property with respect to which the advice is provided) that the fiduciary adviser (or any affiliate thereof) is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property.

"(III) ONGOING FEES OR COMPENSATION IN CONNECTION WITH THE SECURITY OR PROPERTY INVOLVED.—All fees or other compensation that the fiduciary adviser (or any affiliate thereof) is to receive, on an ongoing basis, in connection with any security or other property with respect to which the fiduciary adviser gives the advice.

"(IV) APPLICABLE LIMITATIONS ON SCOPE OF ADVICE.—Any limitation placed (in accordance with the requirements of this subsection) on the scope of the advice to be provided by the fiduciary adviser with respect to the sale, acquisition, or holding of the security or other property.

"(V) TYPES OF SERVICES GENERALLY OFFERED.—The types of services offered by the fiduciary adviser in connection with the provision of qualified investment advice by the fiduciary adviser.

"(VI) FIDUCIARY STATUS OF THE FIDUCIARY ADVISER.—That the fiduciary advisor is a fiduciary of the plan.

"(ii) DISCLOSURE BY FIDUCIARY ADVISER IN ACCORDANCE WITH APPLICABLE SECURITIES LAWS.—The fiduciary adviser shall provide appropriate disclosure, in connection with

the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws.

“(iii) TRANSACTION OCCURRING SOLELY AT DIRECTION OF RECIPIENT OF ADVICE.—The sale, acquisition, or holding of the security or other property shall occur solely at the direction of the recipient of the advice.

“(iv) REASONABLE COMPENSATION.—The compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property shall be reasonable.

“(v) ARM’S LENGTH TRANSACTION.—The terms of the sale, acquisition, or holding of the security or other property shall be at least as favorable to the plan as an arm’s length transaction would be.

“(C) CONTINUED AVAILABILITY OF INFORMATION FOR AT LEAST 1 YEAR.—The requirements of subparagraph (B)(i) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in subparagraph (B) if, at any time during the 1-year period following the provision of the advice, the fiduciary adviser fails to maintain the information described in subclauses (I) through (IV) of subparagraph (B)(i) in currently accurate form or to make the information available, upon request and without charge, to the recipient of the advice.

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

“(E) MODEL DISCLOSURE FORMS.—The Secretary shall prescribe regulations setting forth model disclosure forms to assist fiduciary advisers in complying with the disclosure requirements of under this paragraph.

“(F) ANNUAL REVIEWS BY THE SECRETARY.—The Secretary shall conduct annual reviews of randomly selected fiduciary advisers providing qualified investment advice to participants and beneficiaries. In the case of each review, the Secretary shall review the following:

“(i) COMPLIANCE BY ADVICE COMPUTER MODELS WITH REASONABLE INVESTMENT METHODOLOGIES.—The extent to which advice computer models employed by the fiduciary adviser comply with reasonable investment methodologies.

“(ii) COMPLIANCE WITH DISCLOSURE REQUIREMENTS.—The extent to which disclosures provided by the fiduciary adviser have complied with the requirements of this subsection.

“(iii) EXTENT OF VIOLATIONS.—The extent to which any violations of fiduciary duties have occurred in connection with the provision of the advice.

“(iv) EXTENT OF REPORTED COMPLAINTS.—The extent to which complaints to relevant agencies have been made in connection with the provision of the advice.

Any proprietary information obtained by the Secretary shall be treated as confidential.

“(G) DUTY OF CONFLICTED FIDUCIARY ADVISER TO PROVIDE FOR ALTERNATIVE INDEPENDENT ADVICE.—

“(i) IN GENERAL.—In connection with any qualified investment advice provided by a fiduciary adviser to a participant or beneficiary regarding any security or other property, if the fiduciary adviser—

“(I) has an interest in the security or other property, or

“(II) has an affiliation or contractual relationship with any third party that has an interest in the security or other property, the requirements of subparagraph (B) shall be treated as not met in connection with the advice unless the fiduciary adviser has arranged, as an alternative to the advice that would otherwise be provided by the fiduciary adviser, for qualified investment advice with respect to the security or other property provided by at least one alternative investment adviser meeting the requirements of clause (ii).

“(ii) INDEPENDENCE AND QUALIFICATIONS OF ALTERNATIVE INVESTMENT ADVISER.—Any alternative investment adviser whose qualified investment advice is arranged for by a fiduciary adviser pursuant to clause (i)—

“(I) shall have no material interest in, and no material affiliation or contractual relationship with any third party having a material interest in, the security or other property with respect to which the investment adviser is providing the advice, and

“(II) shall meet the requirements of a fiduciary adviser under subparagraph (H)(ii) and (iii), except that an alternative investment adviser may not be a fiduciary of the plan other than in connection with the provision of the advice.

“(iii) SCOPE AND FEES OF ALTERNATIVE INVESTMENT ADVICE.—Any qualified investment advice provided pursuant to this subparagraph by an alternative investment adviser shall be of the same type and scope, and provided under the same terms and conditions (including no additional charge to the participant or beneficiary), as apply with respect to the qualified investment advice to be provided by the fiduciary adviser.

“(H) FIDUCIARY ADVISER DEFINED.—For purposes of this paragraph and subsection (d)(16)—

“(i) IN GENERAL.—The term ‘fiduciary adviser’ means, with respect to a plan, a person who—

“(I) is a fiduciary of the plan by reason of the provision of qualified investment advice by such person to a participant or beneficiary,

“(II) meets the qualifications of clause (ii), and

“(III) meets the additional requirements of clause (iii).

“(ii) QUALIFICATIONS.—A person meets the qualifications of this clause if such person—

“(I) is registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.),

“(II) if not registered as an investment adviser under such Act by reason of section 203A(a)(1) of such Act (15 U.S.C. 80b-3a(a)(1)), is registered under the laws of the State in which the fiduciary maintains its principal office and place of business, and, at the time the fiduciary last filed the registration form most recently filed by the fiduciary with such State in order to maintain the fiduciary’s registration under the laws of such State, also filed a copy of such form with the Secretary,

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

“(IV) is a bank or similar financial institution referred to in subsection (d)(4),

“(V) is an insurance company qualified to do business under the laws of a State, or

“(VI) is any other comparable qualified entity which satisfies such criteria as the Secretary determines appropriate consistent with the purpose of this subsection.

“(iii) ADDITIONAL REQUIREMENTS WITH RESPECT TO CERTAIN EMPLOYEES OR OTHER AGENTS OF CERTAIN ADVISERS.—A person meets the additional requirements of this clause if every individual who is employed (or otherwise compensated) by such person and whose scope of duties includes the provision of qualified investment advice on behalf of such person to any participant or beneficiary is—

“(I) a registered representative of such person,

“(II) an individual described in subclause (I), (II), or (III) of clause (ii), or

“(III) such other comparable qualified individual who satisfies such criteria as the Secretary determines appropriate consistent with the purpose of this subsection.

“(I) ADDITIONAL DEFINITIONS.—For purposes of this paragraph and subsection (d)(16)—

“(i) QUALIFIED INVESTMENT ADVICE.—The term ‘qualified investment advice’ means, in connection with a participant or beneficiary, investment advice referred to in subsection (e)(3)(B) which—

“(I) consists of an individualized recommendation to the participant or beneficiary with respect to the purchase, sale, or retention of securities or other property for the individual account of the participant or beneficiary, in accordance with generally accepted investment management principles, and

“(II) takes into account all investment options under the plan.

“(ii) REGISTERED REPRESENTATIVE.—The term ‘registered representative’ of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting such entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(17)) (substituting such entity for the investment adviser referred to in such section).’.

(3) ASSUMPTION OF LIABILITY.—Subsection (b) of section 4975 of such Code is amended—

(A) by striking ‘PERSON.—In’ and inserting ‘PERSON.—

“(1) IN GENERAL.—In’, and moving the text 2 ems to the right, and

(B) by adding at the end the following new paragraph:

“(2) ASSUMPTION OF LIABILITY.—If a court determines that a fiduciary adviser has breached his fiduciary responsibility as a result of a failure to meet the requirements of subparagraph (B), (C), (D), or (G) of subsection (e)(7), then, notwithstanding any other provision of this title or the Employee Retirement Income Security Act of 1974, the fiduciary adviser shall be liable for any monetary losses suffered by a participant or beneficiary as a result of such breach.’.

(b) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) IN GENERAL.—Section 408(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)) is amended by adding at the end the following new paragraph:

“(14)(A) Any transaction described in subparagraph (B) in connection with the provision of investment advice described in section 3(21)(A)(ii), in any case in which—

“(i) the plan provides for individual accounts and permits a participant or beneficiary to exercise control over assets in his or her account,

“(ii) the advice is qualified investment advice provided to a participant or beneficiary

of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

“(iii) the requirements of subsection (g) are met in connection with each instance of the provision of the advice.

“(B) The transactions described in this subparagraph are the following:

“(i) the provision of the advice to the participant or beneficiary;

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

“(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice.”.

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

“(g) REQUIREMENTS FOR EXEMPTION FROM PROHIBITED TRANSACTIONS WITH RESPECT TO PROVISION OF INVESTMENT ADVICE.—

“(1) IN GENERAL.—The requirements of this subsection are met in connection with the provision of qualified investment advice provided to a participant or beneficiary of an employee benefit plan by a fiduciary adviser with respect to the plan in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if the requirements of the following subparagraphs are met:

“(A) WRITTEN DISCLOSURES.—At a time contemporaneous with the provision of the advice in connection with the sale, acquisition, or holding of the security or other property, the fiduciary adviser shall provide to the recipient of the advice a clear and conspicuous notification, written in a manner to be reasonably understood by the average plan participant pursuant to regulations which shall be prescribed by the Secretary (including mathematical examples), of the following:

“(i) INTERESTS HELD BY THE FIDUCIARY ADVISER.—Any interest of the fiduciary adviser in, or any affiliation or contractual relationship of the fiduciary adviser (or affiliates thereof) with any third party having an interest in, the security or other property.

“(ii) RELATED FEES OR COMPENSATION IN CONNECTION WITH THE PROVISION OF THE ADVICE.—All fees or other compensation relating to the advice (including fees or other compensation itemized with respect to each security or other property with respect to which the advice is provided) that the fiduciary adviser (or any affiliate thereof) is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property.

“(iii) ONGOING FEES OR COMPENSATION IN CONNECTION WITH THE SECURITY OR PROPERTY INVOLVED.—All fees or other compensation that the fiduciary adviser (or any affiliate thereof) is to receive, on an ongoing basis, in connection with any security or other property with respect to which the fiduciary adviser gives the advice.

“(iv) APPLICABLE LIMITATIONS ON SCOPE OF ADVICE.—Any limitation placed (in accordance with the requirements of this subsection) on the scope of the advice to be provided by the fiduciary adviser with respect

to the sale, acquisition, or holding of the security or other property.

“(v) TYPES OF SERVICES GENERALLY OFFERED.—The types of services offered by the fiduciary adviser in connection with the provision of qualified investment advice by the fiduciary adviser.

“(vi) FIDUCIARY STATUS OF THE FIDUCIARY ADVISER.—That the fiduciary adviser is a fiduciary of the plan.

“(B) DISCLOSURE BY FIDUCIARY ADVISER IN ACCORDANCE WITH APPLICABLE SECURITIES LAWS.—The fiduciary adviser shall provide appropriate disclosure, in connection with any the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws.

“(C) TRANSACTION OCCURRING SOLELY AT DIRECTION OF RECIPIENT OF ADVICE.—The sale, acquisition, or holding of the security or other property shall occur solely at the direction of the recipient of the advice.

“(D) REASONABLE COMPENSATION.—The compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property shall be reasonable.

“(E) ARM'S LENGTH TRANSACTION.—The terms of the sale, acquisition, or holding of the security or other property shall be at least as favorable to the plan as an arm's length transaction would be.

“(2) CONTINUED AVAILABILITY OF INFORMATION FOR AT LEAST 1 YEAR.—The requirements of paragraph (1)(A) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in paragraph (1) if, at any time during the 1-year period following the provision of the advice, the fiduciary adviser fails to maintain the information described in clauses (i) through (iv) of subparagraph (A) in currently accurate form or to make the information available, upon request and without charge, to the recipient of the advice.

“(3) EVIDENCE OF COMPLIANCE MAINTAINED FOR AT LEAST 6 YEARS.—A fiduciary adviser referred to in paragraph (1) who has provided advice referred to in such paragraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this subsection and of subsection (b)(14) have been met. A transaction prohibited under section 406 shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

“(4) MODEL DISCLOSURE FORMS.—The Secretary shall prescribe regulations setting forth model disclosure forms to assist fiduciary advisers in complying with the disclosure requirements of under this subsection.

“(5) EXEMPTION FOR EMPLOYERS CONTRACTING FOR QUALIFIED INVESTMENT ADVICE.—

“(A) RELIANCE ON CONTRACTUAL ARRANGEMENTS.—Subject to subparagraph (B), a plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this part solely by reason of the provision of qualified investment advice (or solely by reason of contracting for or otherwise arranging for the provision of the investment advice), if—

“(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fi-

duciary adviser of qualified investment advice, and

“(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this subsection.

“(B) CONTINUED DUTY FOR EMPLOYER TO PRUDENTLY SELECT AND REVIEW FIDUCIARY ADVISERS.—Nothing in subparagraph (A) shall be construed to exempt a plan sponsor or other person who is a fiduciary from any requirement of this part for the prudent selection and periodic review of a fiduciary adviser with whom the plan sponsor or other person enters into an arrangement for the provision of qualified investment advice. The plan sponsor or other person who is a fiduciary shall not be liable under this part with respect to the specific qualified investment advice given by the fiduciary adviser to any particular recipient of the advice. Pursuant to regulations which shall be prescribed by the Secretary, the fiduciary adviser shall provide appropriate disclosures to the plan sponsor to enable the plan sponsor to fulfill its fiduciary responsibilities under this part. In connection with the provision of the advice by a fiduciary adviser on an ongoing basis, such regulations shall provide for such disclosures on at least an annual basis.

“(C) PLAN ASSETS MAY BE USED TO PAY REASONABLE EXPENSES.—Nothing in this part shall be construed to preclude the use of plan assets to pay for reasonable expenses in providing qualified investment advice.

“(6) ANNUAL REVIEWS BY THE SECRETARY.—The Secretary shall conduct annual reviews of randomly selected fiduciary advisers providing qualified investment advice to participants and beneficiaries. In the case of each review, the Secretary shall review the following:

“(A) COMPLIANCE BY ADVICE COMPUTER MODELS WITH GENERALLY ACCEPTED INVESTMENT MANAGEMENT PRINCIPLES.—The extent to which advice computer models employed by the fiduciary adviser comply with generally accepted investment management principles.

“(B) COMPLIANCE WITH DISCLOSURE REQUIREMENTS.—The extent to which disclosures provided by the fiduciary adviser have complied with the requirements of this subsection.

“(C) EXTENT OF VIOLATIONS.—The extent to which any violations of fiduciary duties have occurred in connection with the provision of the advice.

“(D) EXTENT OF REPORTED COMPLAINTS.—The extent to which complaints to relevant agencies have been made in connection with the provision of the advice.

Any proprietary information obtained by the Secretary shall be treated as confidential.

“(7) DUTY OF CONFLICTED FIDUCIARY ADVISER TO PROVIDE FOR ALTERNATIVE INDEPENDENT ADVICE.—

“(A) IN GENERAL.—In connection with any qualified investment advice provided by a fiduciary adviser to a participant or beneficiary regarding any security or other property, if the fiduciary adviser—

“(i) has an interest in the security or other property, or

“(ii) has an affiliation or contractual relationship with any third party that has an interest in the security or other property, the requirements of paragraph (1) shall be treated as not met in connection with the advice unless the fiduciary adviser has arranged, as an alternative to the advice that would otherwise be provided by the fiduciary adviser, for qualified investment advice with respect to the security or other property provided by at least one alternative investment adviser meeting the requirements of subparagraph (B).

“(B) INDEPENDENCE AND QUALIFICATIONS OF ALTERNATIVE INVESTMENT ADVISER.—Any alternative investment adviser whose qualified investment advice is arranged for by a fiduciary adviser pursuant to subparagraph (A)—

“(i) shall have no material interest in, and no material affiliation or contractual relationship with any third party having a material interest in, the security or other property with respect to which the investment adviser is providing the advice, and

“(ii) shall meet the requirements of a fiduciary adviser under paragraph (7)(A), except that an alternative investment adviser may not be a fiduciary of the plan other than in connection with the provision of the advice.

“(C) SCOPE AND FEES OF ALTERNATIVE INVESTMENT ADVICE.—Any qualified investment advice provided pursuant to this paragraph by an alternative investment adviser shall be of the same type and scope, and provided under the same terms and conditions (including no additional charge to the participant or beneficiary), as apply with respect to the qualified investment advice to be provided by the fiduciary adviser.

“(8) FIDUCIARY ADVISER DEFINED.—For purposes of this subsection and subsection (b)(14)—

“(A) IN GENERAL.—The term ‘fiduciary adviser’ means, with respect to a plan, a person—

“(i) who is a fiduciary of the plan by reason of the provision of qualified investment advice by such person to a participant or beneficiary,

“(ii) who—

“(I) is registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.),

“(II) if not registered as an investment adviser under such Act by reason of section 203A(a)(1) of such Act (15 U.S.C. 80b-3a(a)(1)), is registered under the laws of the State in which the fiduciary maintains its principal office and place of business, and, at the time the fiduciary last filed the registration form most recently filed by the fiduciary with such State in order to maintain the fiduciary’s registration under the laws of such State, also filed a copy of such form with the Secretary,

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

“(IV) is a bank or similar financial institution referred to in section 408(b)(4),

“(V) is an insurance company qualified to do business under the laws of a State, or

“(VI) is any other comparable entity which satisfies such criteria as the Secretary determines appropriate, and

“(iii) who is an entity meeting the requirements of subparagraph (B).

“(B) ADDITIONAL REQUIREMENTS WITH RESPECT TO CERTAIN EMPLOYEES OR OTHER AGENTS OF CERTAIN ADVISERS.—The requirements of this subparagraph are met if every individual who is employed (or otherwise compensated) by a person described subparagraph (A)(ii) and whose scope of duties includes the provision of qualified investment advice on behalf of such person to any participant or beneficiary is—

“(i) a registered representative of such person,

“(ii) an individual described in subclause (I), (II), or (III) of subparagraph (A)(ii), or

“(iii) such other comparable qualified individual as may be designated in regulations of the Secretary.

“(9) ADDITIONAL DEFINITIONS.—For purposes of this subsection and subsection (b)(14)—

“(A) QUALIFIED INVESTMENT ADVICE.—The term ‘qualified investment advice’ means, in

connection with a participant or beneficiary, investment advice referred to in section 3(21)(A)(ii) which—

“(i) consists of an individualized recommendation to the participant or beneficiary with respect to the purchase, sale, or retention of securities or other property for the individual account of the participant or beneficiary, in accordance with generally accepted investment management principles, and

“(ii) takes into account all investment options under the plan.

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

“(C) REGISTERED REPRESENTATIVE.—The term ‘registered representative’ of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting such entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(17)) (substituting such entity for the investment adviser referred to in such section).”

(c) ENFORCEMENT.—

(1) LIABILITY FOR BREACH.—

(A) LIABILITY IN CONNECTION WITH INDIVIDUAL ACCOUNT PLANS.—Section 409 of such Act (29 U.S.C. 1109) is amended by adding at the end the following new subsection:

“(c)(1) In any case in which the provision by a fiduciary adviser of qualified investment advice to a participant or beneficiary regarding any security or other property consists of a breach described in subsection (a), the fiduciary adviser shall be personally liable to make good to the individual account of the participant or beneficiary any losses to the individual account resulting from the breach, and to restore to the individual account any profits of the fiduciary adviser which have been made through use of assets of the individual account by—

“(A) the fiduciary adviser, or

“(B) any other party with respect to whom a material affiliation or contractual relationship of the fiduciary adviser resulted in a violation of section 408(g)(1)(A) in connection with the advice.

“(2) In the case of any action under this title by a participant or beneficiary against a fiduciary adviser for relief under this subsection in connection with the provision of any qualified investment advice—

“(A) if the participant or beneficiary shows that the fiduciary adviser had any interest in, or had any affiliation or contractual relationship with a third party having an interest in, the security or other property, there shall be a presumption (rebuttable by a preponderance of the evidence) that the fiduciary adviser failed to meet the requirements of subparagraphs (A) and (B) of section 404(a)(1) in connection with the provision of the advice, and

“(B) the dispute may be settled by arbitration, but only pursuant to terms and conditions established by agreement entered into voluntarily by both parties after the commencement of the dispute.

“(3) For purposes of this subsection, the terms ‘fiduciary adviser’ and ‘qualified investment advice’ shall have the meanings provided such terms in subparagraphs (A) and (B), respectively, of section 406(g)(7).”

(B) LIMITATION ON EXEMPTION FROM LIABILITY.—Section 404(c) of such Act (29 U.S.C. 1104(c)) is amended—

(i) by redesignating paragraph (2) as paragraph (3) (and by adjusting the margination

of such paragraph to full measure and adjusting the margination of subparagraphs (A) through (B) thereof accordingly); and

(ii) by inserting after paragraph (1) the following new paragraph:

“(2)(A) In any case in which—

“(i) a participant or beneficiary exercises control over the assets in his or her account by means of a sale, acquisition, or holding of a security or other property with regard to which qualified investment advice was provided by a fiduciary adviser, and

“(ii) any transaction in connection with the exercise of such control is not a prohibited transaction solely by reason of section 408(b)(14),

paragraph (1) shall not apply with respect to the fiduciary adviser in connection with the provision of the advice.

“(B) For purposes of this subsection, the terms ‘fiduciary adviser’ and ‘qualified investment advice’ shall have the meanings provided such terms in subparagraphs (A) and (B), respectively, of section 408(g)(7).”

(2) ATTORNEY’S FEES.—Section 502(g) of such Act (29 U.S.C. 1132(g)) is amended—

(A) in paragraph (1), by inserting “or (3)” after “paragraph (2)”; and

(B) by adding at the end the following new paragraph:

“(3) In any action under this title by the participant or beneficiary against a fiduciary adviser for relief under section 409(c) in which the plaintiff prevails, the court shall allow a reasonable attorney’s fee and costs of action to the prevailing plaintiff.”

(3) APPLICABILITY OF STATE FRAUD LAWS.—Section 514(b) of such Act (29 U.S.C. 1144(b)) is amended—

(A) by redesignating paragraph (9) as paragraph (10); and

(B) by inserting after paragraph (8) the following new paragraph:

“(9) Nothing in this title shall be construed to supersede any State action for fraud against a fiduciary adviser for any act or failure to act by the fiduciary adviser constituting a violation of section 409(c).”

SEC. 3. EFFECTIVE DATE.

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

The SPEAKER pro tempore. Pursuant to House Resolution 288, the gentleman from New Jersey (Mr. ANDREWS) and a Member opposed each will control 30 minutes.

The Chair recognizes the gentleman from New Jersey (Mr. ANDREWS).

Mr. ANDREWS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this piece of legislation is about a person who is at the age of 30 or 40 in his or her life and starting to think about retirement, hopefully sooner than that, and they find they have a few thousand dollars in an account, in an IRA or a 401(k). They pick up the newspaper and they see wild fluctuations in the Dow Jones average, and they hear from some of their neighbors that they are doing great in their investments, and from others they are not doing so well; and they realize they need some help. They need some good sound advice as to what to do with this very crucial asset.

Both sides of this debate agree that the present situation is not very good;

that the advice does come from people who are like Bob at the coffee shop, the friend of the gentleman from Ohio (Mr. BOEHNER), someone who is not really qualified, that people get advice through hearsay, and we think something should be done about that. The proposal the gentleman from New York (Mr. RANGEL) and myself are putting forward now, we think, is a more sensible way to address this need.

We think that when this individual goes to get advice as to what to do with his or her money, that there ought to be some choices of the advisor. We do not rule out the prospect of an advisor who has an interest in a fund that he or she is advising about. We do say, though, that if such advice is going to be given, if the person giving the advice has a vested interest in our hypothetical investor putting his or her money in one fund as opposed to another, if there is a higher commission or some other gain that derives to that advisor, we say the following:

Each time a decision is made by the investor as to what to do, the advisor has to tell the investor in plain language, in plain math, in an understandable way what the nature of the advisor's interest is. The advisor has to say to the investor, You know, if you put your money in fund A instead of fund B, I make a little more money than I otherwise would, and you ought to know that before you make the decision.

Our substitute says that the person giving that advice must be qualified, and not most of the time but all of the time. The person giving the advice must have proper education. The person giving the advice must be part of a regulated industry, whether he or she is a broker or some other form of advisor. And if the person gives advice that is in violation of law, that is a violation of what we call the fiduciary duty, then the person must lose their license, and not most of the time, but all of the time, to make sure that the advisor is properly qualified.

Our substitute says that there must be some mechanism so that when our investor goes to ask for advice, and the advice may be given by a conflicted advisor, by someone having an interest in one or more of the funds, the employee should also be told that there is at least one other choice; that if they do not want to take advice from this person who has an interest in some of the funds that he or she is advising about, there is somewhere else that individual can go, to a person who has no interest whatsoever in the advice that he or she is giving. At least one other option on the menu so that the investor knows that there is somewhere else to go.

Finally, this substitute differs from the underlying bill because the substitute provides that if the advisor gives advice that is so bad that it is a violation of the law, so bad that it sub-

verts and violates the fiduciary duty of that advisor, the investor can be made whole. He or she can get their pension money back, get back any lost profits or gains they would have had while they were waiting to get it back, and can get the cost of recovering those funds back in attorneys' fees as well. The investor does not have to wait for some bureaucracy in Washington to take action on his or her behalf; they do not have to hope that they can get represented in a case that is not worth very much money to an attorney, but worth an awful lot to them. They have the ability to be made whole.

The proposal that the gentleman from New York and I are putting forward provides for more advice for people who need it, but it does so in a way that is careful and it does so in a way that does not subvert and discard the 27-year history of the ERISA statute that has provided safer pensions and sounder investments for our citizens.

Mr. Speaker, I urge Members of both sides to consider this proposal, and I urge a "yes" vote on it.

Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore. Does the gentleman from Ohio (Mr. BOEHNER) claim the time in opposition?

Mr. BOEHNER. Mr. Speaker, I am opposed to the amendment, and I do so claim the time.

The SPEAKER pro tempore. The gentleman from Ohio is recognized for 30 minutes.

Mr. BOEHNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I first want to thank the gentleman from New Jersey (Mr. ANDREWS) and the gentleman from New York (Mr. RANGEL) for the serious and hard work they have brought to our debate today. The entire process has been marked by bipartisan respect, and I am glad to see that is continuing today. I look forward to working with both my friends as this process continues.

Nonetheless, I must oppose their amendment because it falls into the trap of so overprotecting people from one set of dangers that, instead, we push them into another. If the Andrews-Rangel amendment were adopted, we could say that workers would never receive misleading or self-serving advice, but it is almost certain that they would not receive any advice at all. Despite my good friends' intentions, I believe the substitute would practically guarantee that no employers would provide investment advice at all to their workers.

First, the substitute unnecessarily intrudes upon an extensive and effective regulatory regime that protects investors who are paying for advice with their own money outside of an ERISA plan. In addition to this regulatory scheme, which includes banking, securities, insurance laws, regulations, and agencies at the Federal and State

levels, the substitute requires Department of Labor qualitative oversight on computer models of advice, the substantive qualifications of financial advisors, and the adequacy of disclosure forms. Now, this not only creates overlapping and confusing jurisdiction between the Department of Labor and the Securities and Exchange Commission, it adds additional and unnecessary regulations to existing securities laws.

H.R. 2269, the underlying bill, seeks to reduce and streamline regulatory burdens on employers and financial advisors rather than to create additional rules and regulations. The new and unnecessary burdens created by the substitute will only drive up the cost of investment advice, discourage competition, and, in the end, mean that fewer numbers of American workers will ever get real investment advice.

The substitute also requires that if investment advice is offered, two investment advisors must be offered to plan participants. Employers have told us that this simply will not work. When we are trying to make investment advice more accessible and affordable, I do not see any sense in driving up costs and compliance effort by, in effect, forcing employers to select and monitor two advisors instead of just one.

Finally, the substitute creates huge problems with ERISA's remedy structure and would subject employers to a stream of unfair and costly lawsuits by reversing the burden of proof and dramatically increasing ERISA's already intimidating remedies provisions. The substitute also erodes ERISA's careful preemption which gives employers legal certainty and clarity amongst our 50 States.

The underlying bill is meant to make very minor change to ERISA to allow employers to offer investment advice to their employees. H.R. 2269 works within the existing ERISA structure to do this without affecting ERISA's important protections or modifying the flexibility that courts have to fashion appropriate remedies within ERISA.

Amending ERISA's remedy structure will likely have unintended consequences on all ERISA claims. And before significantly changing ERISA's structure, we should look at the remedies offered in more detail. ERISA's current remedies structure permits courts to flexibly fashion appropriate remedies, including attorneys' fees, economic damages, disgorgement of profits, and banning advisors. Moreover, reversing the assumption of proof will not protect plan participants, but will only line the pockets of trial attorneys. So I urge my colleagues to vote against the substitutes for these reasons.

Put yourself in the place of an employer. Why would you offer investment advice to your workers if your litigation risks were so high that you

might lose your entire business? Or in the place of an advisor, why would you even try to enter the investment advice market when, by doing so, would subject yourself to 50 different standards of litigation, 50 States under a standard of proof that guarantees you costly litigation, even if you have done nothing wrong?

H.R. 2269 effectively protects plan participants in a way that still makes employer-provided investment advice economically viable to employers and their employees. The fiduciary duty that it imposes on employers and advisors alike is the highest duty of loyalty in the law. Its disclosure requirements are actually more consumer friendly than the Andrews-Rangel substitute because it requires disclosure on an annual basis, or when there is a material change in disclosure. And it provides for the most vital consumer protection of all, a vibrant competitive marketplace, by opening the field to many of the most highly regarded investment advice firms in the country. The underlying bill reaches the right balance of increasing worker access to advice while safeguarding the interests of the American workers without discouraging employers from offering any advice at all.

Mr. Speaker, the Andrews-Rangel substitute, I do not believe, will protect workers; and I do think it will discourage any employer from offering advice. This will not help workers that desperately need this kind of advice to try to increase their own retirement securities. So I urge my colleagues to oppose the substitute.

Mr. Speaker, I reserve the balance of my time.

Mr. ANDREWS. Mr. Speaker, I yield myself 30 seconds.

The liability provisions in this substitute do not impose new liability upon employers. What they do is impose new responsibility and liability upon advisors who breach their fiduciary duty.

And the employer-protection provisions in this substitute are essentially identical to those in the underlying bill.

Mr. Speaker, I yield 4 minutes to the gentleman from Washington (Mr. McDERMOTT), a member of the Committee on Ways and Means.

Mr. McDERMOTT. Mr. Speaker, I rise in support of the Andrews-Rangel substitute. I told a story earlier which sort of makes you wonder about why it is that the employee groups are not here saying this is such a good deal. Where is the AFL-CIO? Why are they not running in here? Why is the AARP not coming in here saying we want old folks to have this investment? Because the bill is not a good one, that is why.

Now, the substitute that has been offered, really deals with the four issues that we need to deal with: one is the disclosure of conflicts, and that has to

be done in a way that people actually hear it and know what is going on. Under the disclosure requirements contained in this substitute, plan participants or beneficiaries under the plan would receive adequate disclosure of fees and other compensation that would be received by the advisor with respect to the product being recommended.

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So they would know at the time they are getting this pitch, who is doing what.

Secondly, the qualification of advisors. We hear a lot of talk about banks are regulated. Yes, banks are regulated. But the fact is that under the Investors' Advisors Act, that is, the Federal law that controls advisors on money, banks are exempted. So all this talk about banks are regulated, blah, blah, blah, but not in this area. Our substitute closes that loophole.

Now, the ability to get some nonconflicted advice, investors should be able to have at least two, one that is selling something and someone who is not selling something.

The fourth area is the question of remedies. If someone sells us something, and most Americans do not know what is going on in the stock market, if somebody says this is the thing to buy, and they know that it is about to take a dive, maybe they have even sold short. Who knows? I do not know that. Here is somebody that gives me that advice. We close that possibility by the conflicted question, and then we give a remedy.

Mr. Speaker, to do any less than this is to say to people, yes, we are going to give Members another chance. Maybe Members can get it in the Senate or in the conference committee; or maybe we will pass a bill next year and fix this. This ought to be fixed right now. We have the opportunity. We know what the problems are.

We have the chairman suggesting he agrees with the gentleman from North Dakota (Mr. POMEROY). We should be able to do it. There is a real question here that we cannot do what we all agree from the chairman on down is the thing to do. I urge Members to vote for this Andrews-Rangel substitute, and then we will have a pretty good bill.

PERMISSION TO POSTPONE FURTHER CONSIDERATION OF H.R. 2269

Mr. FLETCHER. Mr. Speaker, I ask unanimous consent that during consideration of H.R. 2269 pursuant to House Resolution 288, notwithstanding the operation of the previous question, the Chair may postpone further consideration of the bill to a time designated by the Speaker on this legislative day.

The SPEAKER pro tempore (Mr. LAHOOD). Is there objection to the re-

quest of the gentleman from Kentucky?

There was no objection.

Mr. FLETCHER. Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. SAM JOHNSON).

(Mr. SAM JOHNSON of Texas asked and was given permission to revise and extend his remarks.)

Mr. SAM JOHNSON of Texas. Mr. Speaker, we talk about two advisors. I do not know how we keep both of them from being bad. As I mentioned, our measure removes the obstacles for employers to provide millions of workers professional investment advice.

The bill requires financial service providers to fully disclose their fees and any potential conflicts. In this bill's current form, we protect people from fly-by-night groups and scam artists looking to make a fast buck.

There are a number of safeguards that will protect workers and ensure that they receive investment advice on their 401(k) plans that is in their best interest. The pension fund managers at corporations and unions who make decisions about their defined benefit funds have access to professional portfolio managers. Now this bill will give rank and file the same protections.

The Democrat substitute will not help people. It will just add layers of bureaucracy and could prevent people from seeking advice. People value their time, and they do not have time to seek and sift through paperwork and bureaucracy and two advisors. Importantly, our bill retains critical safeguards and includes new protections to guarantee that people receive sound investment advice. Since employees will work with a plan fiduciary advisor, people will be protected by State law, Federal law, as well as the SEC. People value their time, and they do not have time to sift through a whole bunch of new regulations. That is just wrong.

Mr. Speaker, I urge my colleagues to reject the Democrat substitute and pass H.R. 2269 the way it is.

Mr. ANDREWS. Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Ms. WOOLSEY).

Ms. WOOLSEY. Mr. Speaker, as I said earlier, H.R. 2269 is a prime example of how a good idea can become a bad bill. Is it a good idea to make investment advice available to employees at the work site? Of course it is. But it is a bad idea to allow self-interested advisors, those who could benefit from the advice given, into the workplace. That is exactly what H.R. 2269 does.

Currently ERISA prohibits investment advisors from coming to a workplace to provide employees with investment advice if there is any reason to think that the advisor might benefit from recommending one investment over another. We must remember that ERISA was enacted to protect workers from abuses related to their benefits.