

107TH CONGRESS  
1ST SESSION

# 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.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 21, 2001

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

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## A BILL

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

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

1 **SECTION 1. SHORT TITLE.**

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

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

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

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

12 “(14) If the requirements of subsection (g) are  
13 met—

14 “(A) the provision of investment advice re-  
15 ferred to in section 3(21)(A)(ii) provided by a  
16 fiduciary adviser (as defined in subsection  
17 (g)(4)(A)) to an employee benefit plan or to a  
18 participant or beneficiary of an employee ben-  
19 efit plan,

20 “(B) the sale, acquisition, or holding of se-  
21 curities or other property (including any lending  
22 of money or other extension of credit associated  
23 with the sale, acquisition, or holding of securi-  
24 ties or other property) pursuant to such invest-  
25 ment advice, and

1           “(C) the direct or indirect receipt of fees  
2           or other compensation by the fiduciary adviser  
3           or an affiliate thereof (or any employee, agent,  
4           or registered representative of the fiduciary ad-  
5           viser or affiliate) in connection with the provi-  
6           sion of such investment advice.”.

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

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

18                 “(A) in the case of the initial provision of such  
19                 advice with regard to a security or other property,  
20                 by such fiduciary adviser to such plan, participant,  
21                 or beneficiary, the fiduciary adviser provides to the  
22                 recipient of such advice, at the time of or before the  
23                 initial provision of such advice, a clear and con-  
24                 spicuous description, in writing (including by means  
25                 of electronic communication), of—

1           “(i) all fees or other compensation relating  
2           to such advice that the fiduciary adviser or any  
3           affiliate thereof is to receive (including com-  
4           pensation provided by any third party) in con-  
5           nection with the provision of such advice or in  
6           connection with such acquisition or sale,

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

10           “(iii) any limitation placed on the scope of  
11           the investment advice to be provided by the fi-  
12           duciary adviser with respect to any such sale or  
13           acquisition, and

14           “(iv) the types of services offered by the fi-  
15           duciary advisor in connection with the provision  
16           of investment advice by the fiduciary adviser,

17           “(B) in the case of the initial or any subsequent  
18           provision of such advice to such plan, participant, or  
19           beneficiary, the fiduciary adviser, throughout the 1-  
20           year period following the provision of such advice,  
21           maintains the information described in clauses (i)  
22           through (iv) of subparagraph (A) in currently accu-  
23           rate form for availability, upon request and without  
24           charge, to the recipient of such advice,

1           “(C) the fiduciary adviser provides appropriate  
2 disclosure, in connection with any such acquisition  
3 or sale, in accordance with all applicable securities  
4 laws,

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

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

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

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

24           “(3)(A) Subject to subparagraph (B), a plan sponsor  
25 or other person who is a fiduciary shall not be treated

1 as failing to meet the requirements of this part solely by  
2 reason of the provision of investment advice referred to  
3 in section 3(21)(A)(ii) (or solely by reason of contracting  
4 for or otherwise arranging for the provision of such invest-  
5 ment advice), if—

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

11           “(ii) the terms of such arrangement require  
12          compliance by the fiduciary adviser with the require-  
13          ments of this subsection.

14          “(B) Nothing in subparagraph (A) shall be construed  
15          to exempt a plan sponsor or other person who is a fidu-  
16          ciary from any requirement of this part for the prudent  
17          selection and periodic review of a fiduciary adviser with  
18          whom the plan sponsor or other person enters into an ar-  
19          rangement for the provision of advice referred to in section  
20          3(21)(A)(ii). Such plan sponsor or other person who is a  
21          fiduciary has no duty under this part to monitor the spe-  
22          cific investment advice given by the fiduciary adviser to  
23          any particular recipient of such advice.

24          “(C) Nothing in this part shall be construed to pre-  
25          clude the use of plan assets to pay for reasonable expenses

1 in providing investment advice referred to in section  
2 3(21)(A)(ii).

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

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

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

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

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

19 “(iv) a person registered as a broker or  
20 dealer under the Securities Exchange Act of  
21 1934 (15 U.S.C. 78a et seq.),

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

1           “(vi) an employee, agent, or registered rep-  
2           resentative of a person described in any of  
3           clauses (i) through (v).

4           “(B) The term ‘affiliate’ means an affiliated  
5           person, as defined in section 2(a)(3) of the Invest-  
6           ment Company Act of 1940 (15 U.S.C. 80a-  
7           2(a)(3)).

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

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

15                 (1) IN GENERAL.—Subsection (d) of section  
16                 4975 of the Internal Revenue Code of 1986 (relating  
17                 to exemptions from tax on prohibited transactions)  
18                 is amended—

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

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

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



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

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

8                   “(B) the sale, acquisition, or holding of se-  
9                   curities or other property (including any exten-  
10                  sion of credit associated with the sale, acquisi-  
11                  tion, or holding of securities or other property)  
12                  pursuant to such investment advice, and

13                  “(C) the direct or indirect receipt of fees  
14                  or other compensation by the fiduciary adviser  
15                  or an affiliate thereof (or any employee, agent,  
16                  or registered representative of the fiduciary ad-  
17                  viser or affiliate) in connection with the provi-  
18                  sion of such investment advice.”.

19           (2) REQUIREMENTS.—Subsection (f) of such  
20           section 4975 (relating to other definitions and spe-  
21           cial rules) is amended by adding at the end the fol-  
22           lowing new paragraph:

23                   “(7) REQUIREMENTS FOR EXEMPTION FOR IN-  
24                   VESTMENT ADVICE PROVIDED BY FIDUCIARY ADVIS-  
25                   ERS.—

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

10           “(i) in the case of the initial provision  
11 of such advice by such fiduciary adviser to  
12 such plan, participant, or beneficiary, the  
13 fiduciary adviser provides to the plan, par-  
14 ticipant, or beneficiary, at the time of or  
15 before the initial provision of such advice,  
16 a description, in writing or by means of  
17 electronic communication, of—

18           “(I) all fees or other compensa-  
19 tion relating to such advice that the  
20 fiduciary adviser or any affiliate  
21 thereof is to receive (including com-  
22 pensation provided by any third  
23 party) in connection with the provi-  
24 sion of such advice or in connection  
25 with such acquisition or sale,

1           “(II) any material affiliation or  
2 contractual relationship of the fidu-  
3 ciary adviser or affiliates thereof in  
4 such security or other property,

5           “(III) any limitation placed on  
6 the scope of the investment advice to  
7 be provided by the fiduciary adviser  
8 with respect to any such sale or acqui-  
9 sition, and

10           “(IV) the types of services of-  
11 fered by the fiduciary advisor in con-  
12 nection with the provision of invest-  
13 ment advice by the fiduciary adviser,

14           “(ii) in the case of the initial or any  
15 subsequent provision of such advice to such  
16 plan, participant, or beneficiary, the fidu-  
17 ciary adviser, throughout the 1-year period  
18 following the provision of such advice,  
19 maintains the information described in  
20 subclauses (I) through (IV) of clause (i) in  
21 currently accurate form for availability,  
22 upon request and without charge, to the  
23 recipient of such advice,

24           “(iii) the fiduciary adviser provides  
25 appropriate disclosure, in connection with

1 any such acquisition or sale, in accordance  
2 with all applicable securities laws,

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

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

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

13 “(B) MAINTENANCE OF RECORDS.—A fi-  
14 duciary adviser referred to in subparagraph (A)  
15 who has provided advice referred to in such  
16 subparagraph shall, for a period of not less  
17 than 6 years after the provision of such advice,  
18 maintain any records necessary for determining  
19 whether the requirements of the preceding pro-  
20 visions of this subsection and of subsection  
21 (d)(16) have been met. A prohibited transaction  
22 described in subsection (c)(1) shall not be con-  
23 sidered to have occurred solely because the  
24 records are lost or destroyed prior to the end of

1 the 6-year period due to circumstances beyond  
2 the control of the fiduciary adviser.

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

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

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

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

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

24 “(IV) a person registered as a  
25 broker or dealer under the Securities

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

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

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

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

14 “(iii) REGISTERED REPRESENTA-  
15 TIVE.—The term ‘registered representa-  
16 tive’ means a person described in section  
17 3(a)(18) of the Securities Exchange Act of  
18 1934 (15 U.S.C. 78c(a)(18)) or section  
19 202(a)(17) of the Investment Advisers Act  
20 of 1940 (15 U.S.C. 80b–2(a)(17)).”.

21 **SEC. 3. EFFECTIVE DATE.**

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

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

○