care, skill, prudence, and diligence that a prudent person familiar with such matters would use in similar circumstances.

The responsibilities of fiduciaries are very clear in ERISA. I know these rules exist and the ERISA lawyers know it too—The problem is that oftentimes the actual fiduciaries are not aware of or do not understand these strict rules governing their behavior.

What the Enron debacle has brought to light is that this carefully crafted law of fiduciary responsibility is not always followed with the due diligence that is expected. Many people who are charged with operating employee benefit plans do not understand what their fiduciary roles require. Even worse, many do not understand the consequences for violating their fiduciary obligations.

This was a problem at a large company like Enron, as we learned from the testimony of one Enron fiduciary, Cindy Olson. We can be assured that the fiduciaries for other companies are likewise not adequately informed about their responsibilities in managing a pension plan.

Dr. Norman Stein testified in front of the Education and Workforce Committee that during a pension-counseling clinic at the University of Alabama, a personnel manager ''indicated that she did not know what a fiduciary was, did not know what rules governed a fiduciary behavior, and did not, of course, realize that she herself was a fiduciary.''

This is what is happening in the real world. How can we, in good conscience, tell American workers to entrust their retirement security to fiduciaries who do not understand the rules that govern their behavior? How can we ensure that fiduciaries are acting in the sole interest of participants and beneficiaries if they don't even know this requirement exists?

I believe that this provision is a modest first step in addressing this lack of knowledge. The Secretary is directed ''to establish a program under which information and educational resources are made available on an ongoing basis to persons serving as fiduciaries under employee benefit plans so as to assist them in diligently and effectively carrying out their fiduciary duties.''

This provision is just common sense. It addresses an issue that most of us thought was a given in the implementation of ERISA. The Enron case has demonstrated that we were incorrect in making that assumption. The Department of Labor must ensure that fiduciaries understand their responsibilities under the law. Information dissemination is a necessary first step in preventing breaches of fiduciary duties.

I am pleased that my amendment was accepted unanimously by the Committee and thank the Chairman for ensuring that it is contained in the bill that we are voting on today.

INDEPENDENT ADVISORS FOR FIDUCIARIES

The second amendment that was unanimously accepted by the Committee and is included here requires a study of the implications of requiring an independent advisor to provide investment guidance to fiduciaries regarding the management or disposition of plan assets.

I am very concerned about the inherent problems of conflict of interest when a firm must both manage a pension plan and maximize profit. This conflict of interest is particularly acute when the employer has exclusive control over retirement plans.

As we learned all too well from our hearings on the Enron crisis, this conflict of interest is real and can be detrimental to plan participants. Outside experts would be able to give independent advice to the plan fiduciaries because they are not beholden to the employer.

It makes sense that competent professional advisors should assist with retirement plan investment management. Employers' strict fiduciary responsibilities should necessitate consultation with competent investment managers. Some employers do this. However, as we saw with Enron, others do not. In fact, in the case of Enron, the Department of Labor has taken steps to replace Enron's fiduciaries with independent experts. Every day we talk about the lessons we have learned from the Enron fiasco. This sounds like a lesson to me. How can we correct the situation of Enron and ignore the case of all other workers? Must we wait for other companies to reach the disaster point of Enron before we ensure that independent advisors assist with plan management? Every plan should have the benefit of an independent advisor to assist with plan management. If it makes sense for Enron after-the-fact, it makes sense for all businesses before there is a problem! What we saw in Enron is that when the interest of the plan participants was pitted against company interests, the participants lost.

As such, we should seriously study the implications of requiring employers to hire an independent advisor to assist in the management of plan assets. Rather than requiring that a new trustee board be created or requiring that the independent advisor serve as a plan manager, I believe we should investigate the implications of requiring that plan managers seek advice and guidance from an independent source regarding the management or disposition of plan assets. This is a common sense approach.

I do understand that some employers may be concerned about the implications of such a proposal. This bill requires a study of the issue so we can better understand the specific impact on retirement savings of requiring fiduciary consultants for individual account plans. Specifically, the study would assess:

(1) The benefits to plan participants and beneficiaries of engaging independent fiduciary advisers to provide investment advice regarding the assets of the plan to persons who have fiduciary duties.

(2) The extent to which independent advisers are currently retained by plan fiduciaries.

(3) The availability of assistance to fiduciaries from appropriate Federal agencies.

(4) The availability of qualified independent fiduciary consultants to serve the needs of accounts in individual account plans in the United States.

(5) The impact of the additional fiduciary duty of an independent advisor on the strict fiduciary obligations of plan fiduciaries.

(6) The impact of consulting fees, additional reporting requirements, and new plan duties to prudently identify and contract with qualified independent fiduciary consultants on the availability of individual account plans.

(7) The impact of a new requirement on the plan administration costs per participant for small and mid-size employers and the pension plans they sponsor.

CONCLUSION

In sum, I am committed to strengthening the retirement security of workers and their families. I believe that this bill takes important steps to further protect plan participants and I urge my colleagues to support this legislation.

PENSION SECURITY ACT OF 2002

SPEECH OF

HON. RODNEY P. FRELINGHUYSEN

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 11, 2002

Mr. FRELINGHUYSEN. Mr. Speaker, today, I rise in strong support of H.R. 3762 the Pension Security Act of 2002. I believe the time to update Federal pension law is now! I also believe this legislation could have prevented the tragic financial consequences of the Enron collapse, which is why I strongly support H.R. 3762.

This legislation will help ensure the safety of the American workers' pension fund savings through the following ways:

First, this legislation holds businesses to a higher standard of accountability. Specifically, it clarifies that company pension officials who do not act in the best interests of pension beneficiaries, can be held liable for breaching their fiduciary duty; it requires that workers be given 30 days advance notice of any blackout period affecting their pensions; and it forbids employers to sell their stock during ''black out'' periods when employees are not permitted to sell their stock. Thus, this legislation ensures that the Ken Lay's of the world, do not get rich at the expense of the American workers' pension fund savings.

Second, this legislation empowers the American worker by protecting employees against future abuses by giving them more control over their investments. Specifically, the American worker is empowered with the right to diversify employer stock contributions and the option to sell company stock three years after receiving it.

Third, this legislation also empowers the American worker by increasing their access to quality investment advice and by providing them with more information about their pensions. Specifically, it encourages employers to make investment advice available to their employees; it allows workers to use a tax-free payroll deduction to purchase investment advice on their own; and it requires companies to give quarterly reports that include account information, as well as their rights to diversify.

Notably, the Democrat's alternative for pension reform does not address the current shortcomings in the pension system. Instead, the Democratic alternative increases mandates and regulations that will result in increased costs, which will ultimately discourage employers from offering retirement plans altogether.

Finally, this legislation will help restore confidence in America's pension fund system.

A generation of American workers have enjoyed a safe and secure retirement. By passing H.R. 3762 today, we will ensure future generations enjoy the same safe and secure retirement.

WE THE PEOPLE—THE CITIZEN AND THE CONSTITUTION

HON. MICHAEL N. CASTLE

OF DELAWARE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 16, 2002

Mr. CASTLE. Mr. Speaker, it is with great pride that I rise today to congratulate the