

107TH CONGRESS
1ST SESSION

S. 1677

To amend title I of the Employee Retirement Income Security Act of 1974 to create a safe harbor for retirement plan sponsors in the designation and monitoring of investment advisers for workers managing their retirement income assets.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 13, 2001

Mr. BINGAMAN (for himself and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 to create a safe harbor for retirement plan sponsors in the designation and monitoring of investment advisers for 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Independent Invest-
5 ment Advice Act of 2001”.

1 **SEC. 2. SAFE HARBOR FOR PLAN SPONSORS DESIGNATING**
2 **INVESTMENT ADVISERS.**

3 (a) IN GENERAL.—Section 404 of the Employee Re-
4 tirement Income Security Act of 1974 (29 U.S.C. 1104)
5 is amended by adding at the end the following new sub-
6 section:

7 “(e)(1) In the case of a pension plan which provides
8 individual accounts and permits a plan participant or ben-
9 efiary to exercise control over the assets in such an ac-
10 count, if a plan sponsor or other person who is a fiduciary
11 designates and monitors a qualified investment adviser
12 pursuant to the requirements of paragraph (3), such
13 fiduciary—

14 “(A) shall be deemed to have satisfied the re-
15 quirements under this section for the prudent des-
16 ignation and periodic review of an investment ad-
17 viser with whom the plan sponsor or other person
18 who is a fiduciary enters into an arrangement for
19 the provision of advice referred to in section
20 3(21)(A)(ii),

21 “(B) shall not be liable under this section for
22 any loss, or by reason of any breach, with respect to
23 the provision of investment advice given by such ad-
24 viser to any plan participant or beneficiary, and

25 “(C) shall not be liable for any co-fiduciary li-
26 ability under subsections (a)(2) and (b) of section

1 405 with respect to the provision of investment ad-
2 vice given by such adviser to any plan participant or
3 beneficiary.

4 “(2) For purposes of this subsection:

5 “(A) The term ‘qualified investment adviser’
6 means, with respect to a plan, a person—

7 “(i) who is a fiduciary of the plan by rea-
8 son of the provision of investment advice by
9 such person to a plan participant or beneficiary;

10 “(ii) who—

11 “(I) is registered as an investment ad-
12 viser under the Investment Advisers Act of
13 1940 (15 U.S.C. 80b–1 et seq.),

14 “(II) is registered as an investment
15 adviser under the laws of the State in
16 which such adviser maintains the principal
17 office and place of business of such ad-
18 viser, but only if such State has an exam-
19 ination requirement to qualify for such
20 registration,

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

23 “(IV) is an insurance company quali-
24 fied to do business under the laws of a
25 State, or

1 “(V) is any other comparably qualified
2 entity which satisfies such criteria as the
3 Secretary determines appropriate, con-
4 sistent with the purposes of this sub-
5 section; and

6 “(iii) who meets the requirements of sub-
7 paragraph (B).

8 “(B) The requirements of this subparagraph
9 are met, if every individual employed (or otherwise
10 compensated) by a person described in subparagraph
11 (A)(ii) who provides investment advice on behalf of
12 such person to any plan participant or beneficiary,
13 is—

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

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

19 “(iii) a registered representative as de-
20 scribed in section 3(a)(18) of the Securities Ex-
21 change Act of 1934 (15 U.S.C. 78c(a)(18)) or
22 section 202(a)(17) of the Investment Advisers
23 Act of 1940 (15 U.S.C. 80b-2(a)(17)), or

24 “(iv) any other comparably qualified indi-
25 vidual who satisfies such criteria as the Sec-

1 retary determines appropriate, consistent with
2 the purposes of this subsection.

3 “(3) The requirements of this paragraph are met,
4 if—

5 “(A) the plan sponsor or other person who is a
6 fiduciary in designating an investment adviser, and
7 annually thereafter, receives in writing verification
8 that the investment adviser—

9 “(i) is and remains a qualified investment
10 adviser,

11 “(ii) acknowledges it is a fiduciary with re-
12 spect to the plan and is solely responsible for its
13 investment advice,

14 “(iii) has reviewed the plan documents in-
15 cluding investment options and upon review has
16 determined that its relationship with the plan
17 and the investment advice provided to any plan
18 participant or beneficiary, including any fees or
19 other compensation it will receive, will not con-
20 stitute a violation of section 406, and

21 “(iv) has the necessary insurance coverage
22 (as determined by the Secretary) for any claim
23 by any plan participant or beneficiary;

24 “(B) the plan sponsor or other person who is
25 a fiduciary in designating a qualified investment ad-

1 viser reviews the following documents it receives
2 from such adviser and determines that there is no
3 material reason not to enter into an arrangement for
4 the provision of advice by such qualified investment
5 adviser:

6 “(i) The contract with the plan sponsor or
7 other person who is a fiduciary for the services
8 to be provided by the investment adviser to the
9 plan participants and beneficiaries.

10 “(ii) A disclosure as to any fees or other
11 compensation that will be received by the in-
12 vestment adviser for the provision of such in-
13 vestment advice.

14 “(iii) The Uniform Application for Invest-
15 ment Adviser Registration as filed with the Se-
16 curities and Exchange Commission or a sub-
17 stantially similar disclosure application as de-
18 termined by and filed with the Secretary; and

19 “(C) the plan sponsor or other person who is a
20 fiduciary determines whether or not to continue the
21 designation of the investment adviser as a qualified
22 investment adviser within 30 days of having infor-
23 mation brought to its attention that the investment
24 adviser is no longer qualified or that a substantial
25 number of plan participants or beneficiaries raise

1 concerns about the services being provided by the in-
2 vestment adviser.

3 “(4) Any qualified investment adviser that acknowl-
4 edges it is a fiduciary pursuant to paragraph (3)(A)(ii)
5 shall be deemed a fiduciary under this part with respect
6 to the provision of investment advice to a plan participant
7 or beneficiary.

8 “(5) Any recovery to the plan under section 409 as
9 a result of a fiduciary breach by a qualified investment
10 adviser under this part shall inure to the benefit of the
11 individual accounts of the affected plan participants or
12 beneficiaries.”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 this section shall apply with respect to advisers designated
15 on or after the date of the enactment of this Act.

○