

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2823
OFFERED BY MR. ROE OF TENNESSEE**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Affordable Retirement
3 Advice for Savers Act”.

4 SEC. 2. REPEAL OF FIDUCIARY DEFINITION RULEMAKING.

5 (a) IN GENERAL.—The Fiduciary Definition rule-
6 making described in subsection (b) is repealed and shall
7 have no force or effect, and the regulations and prohibited
8 transaction exemptions amended or repealed by such rule-
9 making are restored or revived as if such rulemaking had
10 not been issued.

11 (b) FIDUCIARY DEFINITION RULEMAKING.—The Fi-
12 duciary Definition rulemaking described in this subsection
13 consists of the following:

14 (1) The final rule of the Department of Labor
15 titled “Definition of the Term ‘Fiduciary’; Conflict
16 of Interest Rule—Retirement Investment Advice”
17 published April 8, 2016 (81 Fed. Reg. 20946).

1 (2) The “Best Interest Contract Exemption”
2 published April 8, 2016 (81 Fed. Reg. 21002), and
3 the technical correction published July 11, 2016 (81
4 Fed. Reg. 44773).

5 (3) The “Class Exemption for Principal Trans-
6 actions in Certain Assets Between Investment Ad-
7 vice Fiduciaries and Employee Benefit Plans and
8 IRAs” published April 8, 2016 (81 Fed. Reg.
9 21089), and the technical correction published July
10 11, 2016 (81 Fed. Reg. 44784).

11 (4) The “Amendment to Prohibited Transaction
12 Exemption (PTE) 75–1, Part V, Exemptions From
13 Prohibitions Respecting Certain Classes of Trans-
14 actions Involving Employee Benefit Plans and Cer-
15 tain Broker-Dealers, Reporting Dealers and Banks”
16 published April 8, 2016 (81 Fed. Reg. 21139).

17 (5) The “Amendment to and Partial Revocation
18 of Prohibited Transaction Exemption (PTE) 86–128
19 for Securities Transactions Involving Employee Ben-
20 efit Plans and Broker-Dealers; Amendment to and
21 Partial Revocation of PTE 75–1, Exemptions From
22 Prohibitions Respecting Certain Classes of Trans-
23 actions Involving Employee Benefits Plans and Cer-
24 tain Broker-Dealers, Reporting Dealers and Banks”
25 published April 8, 2016 (81 Fed. Reg. 21181).

1 (6) The “Amendments to Class Exemptions
2 75–1, 77–4, 80–83 and 83–1” published April 8,
3 2016 (81 Fed. Reg. 21208).

4 (7) The “Amendment to and Partial Revocation
5 of Prohibited Transaction Exemption (PTE) 84–24
6 for Certain Transactions Involving Insurance Agents
7 and Brokers, Pension Consultants, Insurance Com-
8 panies, and Investment Company Principal Under-
9 writers” published April 8, 2016 (81 Fed. Reg.
10 21147).

11 **SEC. 3. RULES RELATING TO THE PROVISION OF INVEST-**
12 **MENT ADVICE.**

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

15 (1) DEFINITION OF INVESTMENT ADVICE.—

16 Section 3(21) of the Employee Retirement Income
17 Security Act of 1974 (29 U.S.C. 1002(21)) is
18 amended by adding at the end the following:

19 “(C)(i) For purposes of clause (ii) of subparagraph
20 (A), the term ‘investment advice’ means a recommenda-
21 tion communicated electronically, on paper, or orally
22 that—

23 “(I) relates to—

24 “(aa) the advisability of acquiring, holding,
25 disposing, or exchanging any moneys or other

1 property of a plan by the plan, plan partici-
2 pants, or plan beneficiaries, including any rec-
3 ommendation whether to take a distribution of
4 benefits from such plan or any recommendation
5 relating to the investment of any moneys or
6 other property of such plan to be distributed
7 from such plan;

8 “(bb) the management of moneys or other
9 property of such plan, including recommenda-
10 tions relating to the management of moneys or
11 other property to be distributed from such plan;
12 or

13 “(cc) the advisability of retaining or ceas-
14 ing to retain a person who would receive a fee
15 or other compensation for providing any of the
16 types of advice described in this subclause; and
17 “(II) is rendered pursuant to—

18 “(aa) a written acknowledgment, provided
19 electronically or on paper, of the obligation of
20 the advisor to comply with section 404 with re-
21 spect to the provision of such recommendation;
22 or

23 “(bb) a mutual agreement, arrangement,
24 or understanding, which may include limitations
25 on scope, timing, and responsibility to provide

1 ongoing monitoring or advice services, between
2 the person making such recommendation and
3 the plan that such recommendation is individ-
4 ualized to the plan and such plan intends to
5 materially rely on such recommendation in
6 making investment or management decisions
7 with respect to any moneys or other property of
8 such plan.

9 “(ii) For purposes of clause (i)(II)(bb), any dis-
10 claimer of a mutual agreement, arrangement, or under-
11 standing shall state only the following: ‘This communica-
12 tion is not individualized to you, and you are not intended
13 to rely materially on this communication in making invest-
14 ment or management decisions.’. Such disclaimer shall not
15 be effective unless such disclaimer is in writing and is
16 communicated in a clear and prominent manner and an
17 objective person would reasonably conclude that, based on
18 all the facts and circumstances, there was not a mutual
19 agreement, arrangement, or understanding.

20 “(iii) For purposes of clause (i)(II)(bb), a commu-
21 nication shall not be considered to be a recommendation
22 made pursuant to a mutual agreement, arrangement, or
23 understanding, if such communication contains the dis-
24 claimer required by clause (ii), and—

1 “(I) it is provided in conjunction with clear and
2 prominent disclosure in writing to a plan, plan par-
3 ticipant, or beneficiary that the person providing the
4 communication is doing so in its marketing or sales
5 capacity, including any communication regarding the
6 terms and conditions of the engagement of the per-
7 son providing the communication, and that the per-
8 son is not intending to provide investment advice
9 within the meaning of this subparagraph or to other-
10 wise act as a fiduciary to the plan;

11 “(II) the person providing the communication is
12 a current or potential counterparty or service pro-
13 vider to the plan in connection with any transaction
14 based on the communication, but only if—

15 “(aa) the plan is represented, in connection
16 with such transaction, by a plan fiduciary that
17 is independent of the person providing the com-
18 munication, and, except in the case of a swap
19 (as defined in section 1a of the Commodity Ex-
20 change Act (7 U.S.C. 1a) or security-based
21 swap (as defined in section 3(a) of the Securi-
22 ties Exchange Act (15 U.S.C. 78c(a))), inde-
23 pendent of the plan sponsor; and

24 “(bb) prior to such transaction, the inde-
25 pendent plan fiduciary represents in writing to

1 the person providing the communication that it
2 is aware that the person has a financial interest
3 in the transaction and that it has determined
4 that the person is not intending to provide in-
5 vestment advice within the meaning of this sub-
6 paragraph or to otherwise act as a fiduciary to
7 the plan subject to section 404;

8 “(III) the person providing the communication
9 is an employee of any sponsoring employer or affil-
10 iate or employee organization who provides the com-
11 munication to the plan for no fee or other compensa-
12 tion other than the employee’s normal compensation;

13 “(IV) the person providing the communication
14 discloses in writing to the plan fiduciary that the
15 person is not undertaking to provide investment ad-
16 vice as a fiduciary to the plan subject to section 404
17 and the communication consists solely of—

18 “(aa) making available to the plan, without
19 regard to the individualized needs of the plan,
20 securities or other property or investment prod-
21 ucts through a platform or similar mechanism
22 from which a plan fiduciary may select or mon-
23 itor investment alternatives; or

24 “(bb) in connection with a platform or
25 similar mechanism described in item (aa)—

1 “(AA) identifying investment alter-
2 natives that meet objective criteria speci-
3 fied by the plan, such as criteria con-
4 cerning expense ratios, fund sizes, types of
5 asset, or credit quality;

6 “(BB) providing objective financial
7 data and comparisons with independent
8 benchmarks to the plan; or

9 “(CC) identifying a sample set of in-
10 vestment alternatives based on the plan’s
11 stated criteria in response to an inquiry
12 from a plan fiduciary;

13 “(V) the communication consists solely of valu-
14 ation information; or

15 “(VI) the communication consists solely of—

16 “(aa) information described in Department
17 of Labor Interpretive Bulletin 96–1 (29 C.F.R.
18 2509.96–1, as in effect on January 1, 2015),
19 regardless of whether such education is pro-
20 vided to a plan or plan fiduciary or a partici-
21 pant or beneficiary;

22 “(bb) information provided to participants
23 or beneficiaries regarding the factors to con-
24 sider in deciding whether to elect to receive a
25 distribution from a plan or an individual retire-

1 ment plan (as defined in section 7701(a)(37) of
2 the Internal Revenue Code of 1986) and wheth-
3 er to roll over such distribution to a plan or an
4 individual retirement plan (as defined in section
5 7701(a)(37) of the Internal Revenue Code of
6 1986), so long as any examples of different dis-
7 tribution alternatives are accompanied by all
8 material facts and assumptions on which the
9 examples are based; or

10 “(cc) any additional information treated as
11 education by the Secretary.”.

12 (2) EXEMPTION RELATING TO INVESTMENT AD-
13 VICE.—Section 408(b) of the Employee Retirement
14 Income Security Act of 1974 is amended by adding
15 at the end the following:

16 “(21)(A) Any transaction, including a contract
17 for service, between a person providing investment
18 advice described in section 3(21)(A)(ii) and the ad-
19 vice recipient in connection with such investment ad-
20 vice, and any transaction consisting of the provision
21 of such investment advice, if the following conditions
22 are satisfied:

23 “(i) No more than reasonable compensa-
24 tion is paid (as determined under section
25 408(b)(2)) for such investment advice.

1 “(ii) If the investment advice is based on
2 a limited range of investment options (which
3 may consist, in whole or in part, of proprietary
4 products), such limitations shall be clearly dis-
5 closed to the advice recipient prior to any trans-
6 action based on the investment advice in the
7 form of a notice that only states the following:
8 ‘This recommendation is based on a limited
9 range of investment options, and the same or
10 similar investments may be available at a dif-
11 ferent cost (greater or lesser) from other
12 sources.’.

13 “(iii) If the investment advice may result
14 in variable compensation to the person pro-
15 viding the investment advice (or any affiliate of
16 such person), the receipt of such compensation
17 shall be clearly disclosed to the advice recipient
18 prior to any transaction based on the invest-
19 ment advice. For purposes of this subpara-
20 graph, clear disclosure of variable compensation
21 shall include, in a manner calculated to be un-
22 derstood by the average individual, each of the
23 following:

24 “(I) A notice that states only the fol-
25 lowing: ‘This recommendation may result

1 in varying amounts of fees or other com-
2 pensation to the person providing the rec-
3 ommendation (or its affiliate), and the
4 same or similar investments may be avail-
5 able at a different cost (greater or lesser)
6 from other sources.’. Any regulations or
7 administrative guidance implementing this
8 subclause may not require this notice to be
9 updated more than annually.

10 “(II) A description of any fee or other
11 compensation that is directly or indirectly
12 payable to the person (or its affiliate) by
13 the advice recipient with respect to such
14 transaction (expressed as an amount, for-
15 mula, percentage of assets, per capita
16 charge, or estimate or range of such com-
17 pensation).

18 “(III) A description of the types and
19 ranges of any compensation that are rea-
20 sonably expected to be directly or indirectly
21 payable to the person (or its affiliate) by
22 any third party in connection with such
23 transaction (expressed as an amount, for-
24 mula, percentage of assets, per capita

1 charge, or estimate or range of such com-
2 pensation).

3 “(IV) Upon request of the advice re-
4 cipient, a disclosure of the specific
5 amounts of compensation described in
6 clause (iii) that the person will receive in
7 connection with the particular transaction
8 (expressed as an amount, formula, percent-
9 age of assets, per capita charge, or esti-
10 mate of such compensation).

11 “(B) No recommendation will fail to satisfy the
12 conditions described in clauses (i) through (iii) of
13 subparagraph (A) solely because the person, acting
14 in good faith and with reasonable diligence, makes
15 an error or omission in disclosing the information
16 specified in such clauses, provided that the person
17 discloses the correct information to the advice recipi-
18 ent as soon as practicable, but not later than 30
19 days from the date on which the person knows of
20 such error or omission.

21 “(C) Any notice provided pursuant to a require-
22 ment under clause (ii) or clause (iii)(I) of subpara-
23 graph (A) shall have no effect on any other notice
24 otherwise required without regard to this title, and

1 shall be provided in addition to, and not in lieu of,
2 any other such notice.

3 “(D) For purposes of this paragraph, the term
4 ‘affiliate’ has the meaning given in subsection
5 (g)(11)(B).”.

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

8 (1) EXEMPTION FOR INVESTMENT ADVICE
9 WHICH IS BEST INTEREST RECOMMENDATION.—Sec-
10 tion 4975(d) of the Internal Revenue Code of 1986
11 is amended by striking “or” at the end of paragraph
12 (22), by striking the period at the end of paragraph
13 (23) and inserting “, or”, and by inserting after
14 paragraph (23) the following:

15 “(24) provision of investment advice by a fidu-
16 ciary to a plan, plan participant, or beneficiary with
17 respect to the plan, which is a best interest rec-
18 ommendation or a transaction connected to such ad-
19 vice.”.

20 (2) INVESTMENT ADVICE; BEST INTEREST REC-
21 OMMENDATION.—Section 4975(e) of such Code is
22 amended by adding at the end the following:

23 “(10) INVESTMENT ADVICE.—

24 “(A) IN GENERAL.—For purposes of this
25 section, the term ‘investment advice’ means a

1 recommendation, communicated electronically,
2 on paper, or orally, that—

3 “(i) relates to—

4 “(I) the advisability of acquiring,
5 holding, disposing, or exchanging any
6 moneys or other property of a plan by
7 the plan, plan participants, or plan
8 beneficiaries, including any rec-
9 ommendation whether to take a dis-
10 tribution of benefits from such plan or
11 any recommendation relating to the
12 investment of any moneys or other
13 property of such plan to be distrib-
14 uted from such plan;

15 “(II) the management of moneys
16 or other property of such plan, includ-
17 ing recommendations relating to the
18 management of moneys or other prop-
19 erty to be distributed from such plan;
20 or

21 “(III) the advisability of retain-
22 ing or ceasing to retain a person who
23 would receive a fee or other com-
24 pensation for providing any of the

1 types of advice described in this sub-
2 clause; and

3 “(ii) is rendered pursuant to—

4 “(I) a written acknowledgment,
5 provided electronically or on paper,
6 that the person is a fiduciary with re-
7 spect to the provision of such rec-
8 ommendation; or

9 “(II) a mutual agreement, ar-
10 rangement, or understanding which
11 may include limitations on scope, tim-
12 ing, and responsibility to provide on-
13 going monitoring or advice services,
14 between the person making such rec-
15 ommendation and the plan, plan par-
16 ticipant, or beneficiary that such rec-
17 ommendation is individualized to the
18 plan, plan participant, or beneficiary
19 and such plan, plan participant, or
20 beneficiary intends to materially rely
21 on such recommendation in making
22 investment or management decisions
23 with respect to any moneys or other
24 property of such plan.

1 “(B) DISCLAIMER OF A MUTUAL AGREE-
2 MENT, ARRANGEMENT, OR UNDERSTANDING.—
3 For purposes of subparagraph (A)(ii)(II), any
4 disclaimer of a mutual agreement, arrangement,
5 or understanding shall state only the following:
6 ‘This communication is not individualized to
7 you, and you are not intended to rely materially
8 on this communication in making investment or
9 management decisions.’. Such disclaimer shall
10 not be effective unless such disclaimer is in
11 writing and is communicated in a clear and
12 prominent manner and an objective person
13 would reasonably conclude that, based on all
14 the facts and circumstances, there was not a
15 mutual agreement, arrangement, or under-
16 standing.

17 “(C) WHEN RECOMMENDATION TREATED
18 AS MADE PURSUANT TO A MUTUAL AGREE-
19 MENT, ARRANGEMENT, OR UNDERSTANDING.—
20 For purposes of subparagraph (A)(ii)(II), a
21 communication shall not be treated as a rec-
22 ommendation made pursuant to a mutual
23 agreement, arrangement, or understanding, if
24 such communication contains the disclaimer re-
25 quired by subparagraph (B), and—

1 “(i) SELLER’S EXCEPTION.—The
2 communication is provided in conjunction
3 with clear and prominent disclosure in
4 writing to a plan, plan participant, or ben-
5 eficiary that the person providing the com-
6 munication is doing so in its marketing or
7 sales capacity, including any communica-
8 tion regarding the terms and conditions of
9 the engagement of the person providing
10 the communication, and that the person is
11 not intending to provide investment advice
12 within the meaning of this subparagraph
13 or to otherwise act as a fiduciary to the
14 plan or under the obligations of a best in-
15 terest recommendation.

16 “(ii) CERTAIN COUNTERPARTIES OR
17 SERVICE PROVIDERS.—The person pro-
18 viding the communication is a current or
19 potential counterparty or service provider
20 to the plan in connection with any trans-
21 action based on the communication, but
22 only if—

23 “(I) the plan is represented, in
24 connection with such transaction, by a
25 plan fiduciary that is independent of

1 the person providing the communica-
2 tion, and, except in the case of a swap
3 (as defined in section 1a of the Com-
4 modity Exchange Act (7 U.S.C. 1a) or
5 security-based swap (as defined in
6 section 3(a) of the Securities Ex-
7 change Act (15 U.S.C. 78c(a))),
8 independent of the plan sponsor; and

9 “(II) prior to entering into such
10 transaction, the independent plan fi-
11 duciary represents in writing to the
12 person providing the communication
13 that it is aware that the person has a
14 financial interest in the transaction
15 and that it has determined that the
16 person is not intending to provide in-
17 vestment advice within the meaning of
18 this subparagraph or to otherwise act
19 as a fiduciary to the plan, plan par-
20 ticipants, or plan beneficiaries.

21 “(iii) EMPLOYEES OF A PLAN SPON-
22 SOR.—The person providing the commu-
23 nication is an employee of any sponsoring
24 employer or affiliate or employee organiza-
25 tion who provides the communication to

1 the plan for no fee or other compensation
2 other than the employee's normal com-
3 pensation.

4 “(iv) PLATFORM PROVIDERS SELEC-
5 TION AND MONITORING ASSISTANCE.—The
6 person providing the communication dis-
7 closes in writing to the plan fiduciary that
8 the person is not undertaking to provide
9 investment advice as a fiduciary (within
10 the meaning of this paragraph) or under
11 the obligations of a best interest rec-
12 ommendation and the communication con-
13 sists solely of—

14 “(I) making available to the plan,
15 plan participants, or plan bene-
16 ficiaries, without regard to the indi-
17 vidualized needs of the plan, plan par-
18 ticipants, or plan beneficiaries, securi-
19 ties or other property or investment
20 products through a platform or simi-
21 lar mechanism from which a plan fi-
22 duciary may select or monitor invest-
23 ment alternatives; or

1 “(II) in connection with a plat-
2 form or similar mechanism described
3 in subclause (I)—

4 “(aa) identifying investment
5 alternatives that meet objective
6 criteria specified by the plan,
7 such as criteria concerning ex-
8 pense ratios, fund sizes, types of
9 asset, or credit quality;

10 “(bb) providing objective fi-
11 nancial data and comparisons
12 with independent benchmarks to
13 the plan; or

14 “(cc) identifying a sample
15 set of investment alternatives
16 based on the plan’s stated cri-
17 teria in response to an inquiry
18 from a plan fiduciary.

19 “(v) VALUATION.—The communica-
20 tion consists solely of valuation informa-
21 tion.

22 “(vi) FINANCIAL EDUCATION.—The
23 communication consists solely of—

24 “(I) information described in De-
25 partment of Labor Interpretive Bul-

1 letin 96–1 (29 C.F.R. 2509.96–1, as
2 in effect on January 1, 2015), regard-
3 less of whether such education is pro-
4 vided to a plan or plan fiduciary or a
5 participant or beneficiary;

6 “(II) information provided to
7 participants or beneficiaries regarding
8 the factors to consider in deciding
9 whether to elect to receive a distribu-
10 tion from a plan and whether to roll
11 over such distribution to a plan, so
12 long as any examples of different dis-
13 tribution alternatives are accompanied
14 by all material facts and assumptions
15 on which the examples are based; or

16 “(III) any additional information
17 treated as education by the Secretary.

18 “(11) BEST INTEREST RECOMMENDATION.—

19 For purposes of this subsection—

20 “(A) IN GENERAL.—The term ‘best inter-
21 est recommendation’ means a recommenda-
22 tion—

23 “(i) for which no more than reason-
24 able compensation is paid (as determined
25 under subsection (d)(2));

1 “(ii) provided by a person acting with
2 the care, skill, prudence, and diligence
3 under the circumstances then prevailing
4 that a prudent person would exercise based
5 on—

6 “(I) the information obtained
7 through the reasonable diligence of
8 the person regarding factors such as
9 the advice recipient’s age; and

10 “(II) any other information that
11 the advice recipient discloses to the
12 person in connection with receiving
13 such recommendation; and

14 “(iii) where the person places the in-
15 terests of the plan or advice recipient
16 above its own.

17 “(B) INVESTMENT OPTIONS; VARIABLE
18 COMPENSATION.—A best interest recommenda-
19 tion may include a recommendation that—

20 “(i) is based on a limited range of in-
21 vestment options (which may consist, in
22 whole or in part, of proprietary products),
23 but only if any such limitations shall be
24 clearly disclosed to the advice recipient
25 prior to any transaction based on the in-

1 vestment advice in the form of a notice
2 that only states the following: ‘This rec-
3 ommendation is based on a limited range
4 of investment options, and the same or
5 similar investments may be available at a
6 different cost (greater or lesser) from other
7 sources.’; or

8 “(ii) may result in variable compensa-
9 tion to the person providing the rec-
10 ommendation (or any affiliate of such per-
11 son), but only if the receipt of such com-
12 pensation shall be clearly disclosed to the
13 advice recipient prior to any transaction
14 based on the investment advice.

15 “(C) CLEAR DISCLOSURE OF VARIABLE
16 COMPENSATION.—For purposes of this para-
17 graph, clear disclosure of variable compensation
18 shall include, in a manner calculated to be un-
19 derstood by the average individual, each of the
20 following:

21 “(i) A notice that states only the fol-
22 lowing: ‘This recommendation may result
23 in varying amounts of fees or other com-
24 pensation to the person providing the rec-
25 ommendation (or its affiliate), and the

1 same or similar investments may be avail-
2 able at a different cost (greater or lesser)
3 from other sources.’. Any regulations or
4 administrative guidance implementing this
5 clause may not require this notice to be
6 updated more than annually.

7 “(ii) A description of any fee or other
8 compensation that is directly or indirectly
9 payable to the person (or its affiliate) by
10 the advice recipient with respect to such
11 transaction (expressed as an amount, for-
12 mula, percentage of assets, per capita
13 charge, or estimate or range of such com-
14 pensation).

15 “(iii) A description of the types and
16 ranges of any compensation that are rea-
17 sonably expected to be directly or indirectly
18 payable to the person (or its affiliate) by
19 any third party in connection with such
20 transaction (expressed as an amount, for-
21 mula, percentage of assets, per capita
22 charge, or estimate or range of such com-
23 pensation).

24 “(iv) Upon request of the advice re-
25 cipient, a disclosure of the specific

1 amounts of compensation described in
2 clause (iii) that the person will receive in
3 connection with the particular transaction
4 (expressed as an amount, formula, percent-
5 age of assets, per capita charge, or esti-
6 mate of such compensation).

7 “(D) DEFINITION OF AFFILIATE.—For
8 purposes of this paragraph, the term ‘affiliate’
9 has the meaning given in subsection
10 (f)(8)(J)(ii).

11 “(E) CORRECTION OF CERTAIN ERRORS
12 AND OMISSIONS.—A recommendation shall not
13 fail to be a best interest recommendation solely
14 because a person who, acting in good faith and
15 with reasonable diligence, makes an error or
16 omission in disclosing the information specified
17 in subparagraph (B), if the person discloses the
18 correct information to the advice recipient as
19 soon as practicable but not later than 30 days
20 from the date on which the person knows of
21 such error or omission.

22 “(F) SPECIAL RULE.—Any notice provided
23 pursuant to a requirement under subparagraph
24 (B)(i) or subparagraph (C)(i) shall have no ef-
25 fect on any other notice otherwise required

1 without regard to this title, and shall be pro-
2 vided in addition to, and not in lieu of, any
3 other such notice.”.

4 (3) FAILURES RELATING TO BEST INTEREST
5 RECOMMENDATION.—

6 (A) CORRECTION.—Section 4975(f)(5) of
7 such Code is amended—

8 (i) by striking “(5) CORRECTION-
9 The terms” and inserting:

10 “(5) CORRECTION.—

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (B), the terms”, and

13 (ii) by adding at the end the fol-
14 lowing:

15 “(B) DETERMINATION OF ‘CORRECTION’
16 AND ‘CORRECT’ WITH RESPECT TO BEST INTER-
17 EST ADVICE RECOMMENDATIONS.—In the case
18 of a prohibited transaction arising by the fail-
19 ure of investment advice to be a best interest
20 recommendation, the terms ‘correction’ and
21 ‘correct’ mean the payment to, or reimburse-
22 ment of, actual damages of the plan, plan par-
23 ticipants, or plan beneficiaries resulting directly
24 from the plan’s, plan participant’s, or plan
25 beneficiary’s reliance on such investment advice,

1 if any, that have not otherwise been paid or re-
2 imbursed to the plan, plan participants, or plan
3 beneficiaries, including payments and reim-
4 bursements made pursuant to subparagraph
5 (A) if such amount is greater than the amount
6 determined under subparagraph (A).”.

7 (B) AMOUNT INVOLVED FOR PURPOSES OF
8 EXCISE TAX.—The first sentence of section
9 4975(f)(4) of such Code is amended by striking
10 “excess compensation.” and inserting “excess
11 compensation, and in the case of a prohibited
12 transaction arising by the failure of investment
13 advice to be a best interest recommendation,
14 the amount involved shall be the amount paid
15 to the person providing the advice (or its affil-
16 iate, as defined in paragraph (8)(J)(ii)) that
17 has not been paid or reimbursed to the plan,
18 plan participants, or plan beneficiaries, includ-
19 ing payments and reimbursements made pursu-
20 ant to paragraph (5).”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 subsections (a) and (b) shall take effect on the date of
23 the enactment of this Act and shall apply with respect to
24 communications provided or recommendations made on or
25 after 2 years after such date.

1 (d) GRANDFATHERED TRANSACTIONS AND SERV-
2 ICES.—The amendments made by subsections (a) and (b)
3 shall not apply to any service or transaction rendered, en-
4 tered into, or for which a person has been compensated
5 prior to the date on which the amendments become effec-
6 tive under subsection (c).

7 (e) TRANSITION.—Until such time as regulations or
8 other guidance are issued to carry out the amendments
9 made by subsections (a) and (b), a plan or a fiduciary
10 shall be treated as meeting the requirements of such
11 amendments if the plan or fiduciary, as the case may be,
12 complies with a reasonable good faith interpretation of
13 such amendments.

