

## CHURCH PLAN INVESTMENT CLARIFICATION ACT

JULY 1, 2011.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BACHUS, from the Committee on Financial Services,  
submitted the following

### R E P O R T

[To accompany H.R. 33]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 33) to amend the Securities Act of 1933 to specify when certain securities issued in connection with church plans are treated as exempted securities for purposes of that Act, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Church Plan Investment Clarification Act”.

#### SEC. 2. SECURITIES ACT OF 1933 AMENDMENT.

Section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended—

(1) by inserting “(other than a retirement income account described in section 403(b)(9) of the Internal Revenue Code of 1986, to the extent that the interest or participation in such single trust fund or collective trust fund is issued to a church, a convention or association of churches, or an organization described in section 414(e)(3)(A) of such Code establishing or maintaining the retirement income account or to a trust established by any such entity in connection with the retirement income account)” after “403(b) of such Code”; and

(2) by inserting “(other than a person participating in a church plan who is described in section 414(e)(3)(B) of the Internal Revenue Code of 1986)” after “section 401(c)(1) of such Code”.

#### PURPOSE AND SUMMARY

H.R. 33, the Church Plan Investment Clarification Act, would make a technical correction to Public Law 108-359, which currently prevents church pension plans from investing in collective trusts. The bill would broaden and clarify an exemption that exists

in the current law to allow church pension plans to invest in collective trusts. In 2003, Congress attempted to achieve this result, but omitted a necessary exemption from the Securities Act of 1933 to provide parallel treatment for church plans with exemptions in the Investment Company Act of 1940 and the Securities Exchange Act of 1934. Without this correction, collective trusts will not permit investments from church pension plans.

#### BACKGROUND AND NEED FOR LEGISLATION

H.R. 33, the Church Plan Investment Clarification Act, introduced by Insurance, Housing and Community Opportunity Subcommittee Chairman Judy Biggert, would broaden and clarify an exemption that exists in the current law to allow church pension plans to invest in collective trusts. During the 108th Congress, in 2003, Representative Biggert sponsored H.R. 1533, which sought to amend the Investment Company Act of 1940 to exclude from its definition of “investment company” any collective trust fund maintained by a bank consisting solely of certain church pension plans, companies, or accounts specified in the Internal Revenue Code. The bill amended the Securities Act of 1933 and the Securities Exchange Act of 1934 to exempt such church pension plans, companies, or accounts from regulation under such Acts, including registration requirements. H.R. 1533 passed the house on suspension 397–0, and later became Public Law 108–359.

Unfortunately, H.R. 1533 failed to exempt church plans not funded by tax-deferred annuities or plans that did not include self-employed individuals. The 1933 Act church plan exemption failed to remove these two conditions for church plans, which is the only place that the collective trust exemptions do not provide parallel treatment among the various securities laws. H.R. 33 would fix that omission.

Representative Biggert introduced H.R. 33 on January 5, 2011. On March 10, 2011, Representative Biggert raised H.R. 33 with Ms. Meredith Cross, Securities and Exchange Commission (SEC) Director of Corporation Finance, during the Capital Markets and Government Sponsored Enterprises Subcommittee hearing entitled “Oversight of the Securities and Exchange Commission’s Operations, Activities, Challenges and FY 2012 Budget Request.” Ms. Cross indicated that the SEC wholeheartedly embraced the idea that participants in a church plan should have the same opportunities as participants in other plans and that there should not be regulatory obstacles to such investment, although the Commission itself had not officially adopted a position on the bill.

#### HEARINGS

On March 10, 2011, the Subcommittee on Capital Markets and Government Sponsored Enterprises held a hearing entitled “Oversight of the Securities and Exchange Commission’s Operations, Activities, Challenges and FY 2012 Budget Request.” The Subcommittee received testimony from the following witnesses: Mr. Robert Cook, Director, Division of Trading and Markets, Securities and Exchange Commission (SEC); Ms. Meredith Cross, Director, Division of Corporation Finance, SEC; Mr. Robert Khuzami, Director, Division of Enforcement, SEC; Ms. Eileen Rominger, Director,

Division of Investment Management, SEC; and Mr. Carlo di Florio, Director, Office of Compliance Inspections and Examinations, SEC. During the hearing, Representative Biggert asked Ms. Meredith Cross, the Securities and Exchange Commission's Director of Corporation Finance, to comment on the need for legislation to modify the treatment of church pension plan investments in collective trusts.

#### COMMITTEE CONSIDERATION

The Subcommittee on Capital Markets and Government Sponsored Enterprises met in open session on May 3 and 4, 2011, and ordered H.R. 33, as amended, favorably reported to the full Committee by voice vote.

The Committee on Financial Services met in open session on June 22, 2011 and ordered H.R. 33, without amendment, favorably reported to the House by voice vote.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto.

There were no record votes taken on amendments or in connection with ordering H.R. 33 reported to the House. A motion by Chairman Bachus to report the bill, as amended, to the House with a favorable recommendation was agreed to by voice vote.

During consideration of H.R. 33, the following motion was considered by the Committee:

1. A motion offered by Mr. Bachus, to move the previous question on H.R. 33, was agreed to by voice vote.

#### COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

#### PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

H.R. 33, Church Plan Investment Clarification Act, would make a technical correction to Public Law 108-359, which currently prevents church pension plans from investing in collective trusts. The bill would broaden and clarify an exemption that exists in the current law to allow church pension plans to invest in collective trusts. In 2003, Congress attempted to achieve this result, but omitted a necessary exemption from the Securities Act of 1933 to provide parallel treatment for church plans with exemptions in the Investment Company Act of 1940 and the Securities Exchange Act of 1934. Without this correction, collective trusts will not permit investments from church pension plans.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX  
EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

JUNE 30, 2011.

Hon. SPENCER BACHUS,  
*Chairman, Committee on Financial Services,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 33, the Church Plan Investment Clarification Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Dubary Brea and Susan Willie.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

*H.R. 33—Church Plan Investment Clarification Act*

H.R. 33 would amend the Securities and Exchange Act of 1933 to allow churches to invest pension funds in certain investment vehicles, known as collective trust funds (CTFs), that are offered by banks and trust companies. Under current law, CTFs are exempt from requirements to register with the Securities and Exchange Commission (SEC) as long as the CTF accepts investments only from certain eligible employee-benefit plans. H.R. 33 would add church pension plans to the group of plans that would be eligible to participate in a CTF.

CBO estimates that implementing H.R. 33 would affect federal spending subject to appropriation, but because the bill would have a negligible impact on the SEC's workload, such effects would not be significant. Enacting H.R. 33 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 33 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contacts for this estimate are Dubary Brea and Susan Willie. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates reform Act.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

#### EARMARK IDENTIFICATION

H.R. 33 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Short title*

This section provides a short title to the bill by citing it as the “Church Plan Investment Clarification Act.”

##### *Section 2. Securities Act of 1933 amendments*

This section amends the Securities Act of 1933 by inserting language that provides for an exemption for a church plan established under 403(b)(9) of the Internal Revenue Code of 1986 to invest in a collective trust. In addition, because of the unique tax treatment of clergy and lay workers who participate in their denominational pension plans, this section clarifies that the exemption allows them to invest in collective trusts.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

### **SECURITIES ACT OF 1933**

#### TITLE I—SHORT TITLE

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## EXEMPTED SECURITIES

SEC. 3. (a) Except as hereinafter expressly provided, the provisions of this title shall not apply to any of the following classes of securities:

(1) \* \* \*

(2) Any security issued or guaranteed by the United States or any Territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or Territory, or by any public instrumentality of one or more States or Territories, or by any person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing; or any security issued or guaranteed by any bank; or any security issued by or representing an interest in or a direct obligation of a Federal Reserve bank; or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term "investment company" under section 3(c)(3) of the Investment Company Act of 1940; or any security which is an industrial development bond (as defined in section 103(c)(2) of the Internal Revenue Code of 1954) the interest on which is excludable from gross income under section 103(a)(1) of such Code if, by reason of the application of paragraph (4) or (6) of section 103(c) of such Code (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)), paragraph (1) of such section 103(c) does not apply to such security; or any interest or participation in a single trust fund, or in a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with (A) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, (B) an annuity plan which meets the requirements for the deduction of the employer's contributions under section 404(a)(2) of such Code, (C) a governmental plan as defined in section 414(d) of such Code which has been established by an employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or their beneficiaries the corpus and income of the funds accumulated under such plan, if under such plan it is impossible, prior to the satisfaction of all liabilities with respect to such employees and their beneficiaries, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries, or (D) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940, other than any plan described in subparagraph (A), (B), (C), or (D) of this paragraph (i) the contributions under which are held in a single trust fund or in a separate account maintained by an insurance company for a single employer and under which an amount in excess of the employer's contribution is allocated to the purchase of securities (other than interests or

participations in the trust or separate account itself) issued by the employer or any company directly or indirectly controlling, controlled by, or under common control with the employer, (ii) which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of such Code (*other than a person participating in a church plan who is described in section 414(e)(3)(B) of the Internal Revenue Code of 1986*), or (iii) which is a plan funded by an annuity contract described in section 403(b) of such Code (*other than a retirement income account described in section 403(b)(9) of the Internal Revenue Code of 1986, to the extent that the interest or participation in such single trust fund or collective trust fund is issued to a church, a convention or association of churches, or an organization described in section 414(e)(3)(A) of such Code establishing or maintaining the retirement income account or to a trust established by any such entity in connection with the retirement income account*). The Commission, by rules and regulations or order, shall exempt from the provisions of section 5 of this title any interest or participation issued in connection with a stock bonus, pension, profit-sharing, or annuity plan which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of the Internal Revenue Code of 1954, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title. For purposes of this paragraph, a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank; and the term "bank" means any national bank, or any banking institution organized under the laws of any State, territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official; except that in the case of a common trust fund or similar fund, or a collective trust fund, the term "bank" has the same meaning as in the Investment Company Act of 1940;

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