

April 15, 2008

The Honorable George Miller
Chairman
Committee on Education and Labor
U.S. House of Representatives
2205 Rayburn HOB
Washington, DC 20515-0507

Dear Chairman Miller:

The undersigned associations share your commitment to meaningful 401(k) disclosure and agree that disclosure reform should focus on providing plan sponsors with sufficient information to evaluate plan service arrangements and on providing plan participants with the information they need to invest and manage their accounts. You and your staff have been open to discussing with us your objectives for H.R. 3185 and considering our recommendations on the legislation.

There are matters in the revised version of H.R. 3185 that remain of concern to us and as a result we cannot support the bill in the form in which we understand it will be presented. For example:

Mandated “unbundling” of investment and administrative services

Plan sponsors have a variety of options to choose from in obtaining administrative services and investments for their plans and may contract with a provider that offers administrative services and plan investments for a single disclosed price. A service provider that uses this business model should not be required to provide a separate price for services that are not offered separately. Congress should not require providers to develop artificial numbers, as they are not useful to plan fiduciaries. As long as plan fiduciaries can compare the services and total costs of the different options that are available to the plan, they can fulfill their ERISA duties to enter into reasonable service arrangements.

Mandated investment option

A requirement that all plans offer an index fund option, or that doing so is a condition for fiduciary protection, is unprecedented. It would take Congress down the path of prescribing investments for plans, a course we believe would be very unwise. ERISA places the obligation to determine plan investments on plan fiduciaries and holds them to strict standards in exercising their judgment. There is no evidence that plan fiduciaries are not exercising their obligations properly. As a matter of policy, Congress should not substitute its views for fiduciary judgments.

Mandated disclosure of detailed information about portfolio trading commissions

The bill calls for unnecessary, detailed disclosure of the portfolio commissions of funds in which plans invest. The information plan fiduciaries will have to analyze will be voluminous, costly to produce and could be misleading in that commissions are only one type of portfolio transaction cost. Portfolio commissions are paid when a fund's underlying investments are bought or sold by the investment manager seeking to maximize the fund's investment return. Investment managers have a strong incentive to minimize transaction costs in order to enhance the net return of the investment. Unlike fund operating expenses, investment managers cannot state with certainty what transaction costs will be in the future. Estimated portfolio commissions or prior year commissions paid do not provide plan sponsors or participants with meaningful information.

As you know, the Department of Labor is far along on a three-part regulatory agenda to ensure that employers, employees and the public have information about 401(k) fees. We are concerned that, after our members make the necessary system changes to comply with new regulations, they may have to make different changes to confirm with new legislation. We would welcome a continued dialogue with you as we seek a common objective – an effective 401(k) plan disclosure regime.

American Council of Life Insurers
Financial Services Roundtable
Financial Services Forum
Investment Adviser Association
Investment Company Institute
Securities Industry and Financial Markets Association

cc: Members, House Committee on Education and Labor