

MEMO# 23563

June 19, 2009

Subcommittee of House Education and Labor Committee Approves Fee Disclosure and Investment Advice Bills

[23563]

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TO: FEDERAL LEGISLATION MEMBERS No. 4-09
BANK, TRUST AND RECORDKEEPER ADVISORY COMMITTEE No. 24-09
BROKER/DEALER ADVISORY COMMITTEE No. 31-09
OPERATIONS COMMITTEE No. 10-09 RE: SUBCOMMITTEE OF HOUSE EDUCATION AND
LABOR COMMITTEE APPROVES FEE DISCLOSURE AND INVESTMENT ADVICE BILLS

The Health, Education, Labor and Pensions Subcommittee of the House Education and Labor Committee held a mark-up on June 17 on H.R. 1988, the "Conflicted Investment Advice Prohibition Act of 2009," and H.R. 1984, the "401(k) Fair Disclosure for Retirement Security Act of 2009." Both bills were reported favorably out of the Subcommittee on a party-line vote.

The bills approved by the Subcommittee include a few changes to the bills as originally introduced. Copies of the bills as reported by the Subcommittee are attached.

H.R. 1988 would repeal the investment advice provisions in the Pension Protection Act of 2006 [\[1\]](#) and create detailed new requirements on the offering of investment advice to 401(k) plans and participants. Generally, under the legislation, a "plan investment provider" – a person who creates or manages an investment in which plan assets of an individual account plan are invested (and any affiliate of that person) – may not provide investment advice to that plan or its participants except pursuant to a non-discretionary

computer model. The substitute language approved by the Subcommittee includes a provision exempting advice programs provided under Advisory Opinion 2001-09A (generally called SunAmerica arrangements) or an arrangement that meets the requirements of any Advisory Opinion or any exemption issued by DOL, as determined under the law in effect immediately prior to the enactment of the PPA.

At the mark-up, the Subcommittee approved an amendment offered by Carolyn McCarthy (D-NY) that would require the Department of Labor to promote financial literacy on investing for retirement. A copy of Rep. McCarthy's amendment is attached.

H.R. 1984, as approved by the Subcommittee, includes changes to the version of the legislation introduced by George Miller (D-Ca), [\[2\]](#) although the majority of the provisions remain unchanged. H.R. 1984 requires detailed disclosure by service providers of 401(k) and similar plans to employers and by employers to participants and effectively mandates that every 401(k) offer an index fund as an investment option. [\[3\]](#)

The next step for both of these bills is for the full House Education and Labor Committee to consider them. Timing for full Committee consideration has not been announced. We will provide detailed analysis of both bills if and when they are voted on by the full Committee.

Michael L. Hadley
Associate Counsel

[Attachment](#)

endnotes

[\[1\]](#) The current version of the bill repeals only those provisions of the PPA investment advice provision in ERISA. No changes are made to the corresponding Internal Revenue Code provisions.

[\[2\]](#) See Institute [Memorandum](#) to Pension Members No. 19-09, Federal Legislation Members No. 3-09, Bank, Trust and Recordkeeper Advisory Committee No. 18-09, Broker/Dealer Advisory Committee No. 22-09 and Operations Committee No. 8-09 [23419], dated April 24, 2009.

[\[3\]](#) The bill approved by the Subcommittee modifies the description of the required index fund. Under the new language, the fund must be "a passively managed investment with a portfolio of securities that is designed to be representative of the United States investable equity market (including representation of small, mid, and large cap stocks) or the United States investment grade bond market (including Treasury, agency, non-agency, and corporate issues), or a combination thereof." Accordingly, it does not appear that an S&P 500 index fund would qualify.

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