

**MEMO# 21911**

October 31, 2007

## **Institute Urges Making 401(k) Disclosure More Effective in Testimony to House Ways and Means Committee**

[21911]

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TO: PENSION MEMBERS No. 62-07  
FEDERAL LEGISLATION MEMBERS No. 10-07  
BANK, TRUST AND RECORDKEEPER ADVISORY COMMITTEE No. 48-07  
BROKER/DEALER ADVISORY COMMITTEE No. 70-07  
OPERATIONS COMMITTEE No. 30-07 RE: INSTITUTE URGES MAKING 401(k) DISCLOSURE MORE EFFECTIVE IN TESTIMONY TO HOUSE WAYS AND MEANS COMMITTEE

Institute President and CEO Paul Stevens testified at a hearing yesterday before the House Ways and Means Committee on the “Appropriateness of Retirement Plan Fees.” A copy of the written testimony is attached. [\[1\]](#)

The Institute’s testimony begins by reviewing the extensive research done by the Institute and others on the current state and future potential of the 401(k) system, which shows that confidence in the 401(k) is warranted. This research finds that 401(k) participants generally make sensible choices in allocating their account, concentrate assets in lower-cost funds, and generally use their 401(k) savings for their intended purpose—providing retirement income.

The testimony then describes two gaps in current disclosure rules: First, the Department of Labor’s rules produce uneven disclosure to participants, depending on the plan and the products offered for investment. Mutual funds provide the most comprehensive disclosure while other products are not required to disclose certain key information, such as historical performance and annual fees. Second, there is no specific requirement for service providers to disclose to plan fiduciaries information on the services provided and the direct and indirect fees to be charged. The Institute has consistently supported efforts to close these gaps and make disclosure rules more effective.

The testimony concludes by suggesting principles for reform. First, based on research on what information investors understand and use, participants need simple, straightforward disclosure focusing on key information, including information on fees and expenses. Fees and expenses must be disclosed in context with other key information, such as investment objective, risks, and historical performance.

Second, disclosure should apply to all products offered in 401(k) plans in a way that allows comparability. The Institute believes that the same key information should be provided on all products, not just mutual funds.

Third, employers need information about plan services and fees that allow them to fulfill their fiduciary duties. This should include information from service providers on the services that will be delivered, the fees that will be charged, and whether and to what extent the service provider receives compensation from third parties in connection with providing services to the plan.

The testimony urges Congress to resist calls by some 401(k) recordkeepers to mandate that service providers offering proprietary investment options disclose to employers a price for recordkeeping and administration and a separate price for investment management. Where services are not offered separately, this “price” breakout would have to be generated artificially and thus will be of questionable accuracy. Plan fiduciaries can fulfill their duties and compare providers if they know the services to be provided and the total cost.

Michael L. Hadley  
Assistant Counsel

## [Attachment](#)

### **endnotes**

[1] Other witnesses at the hearing were: Bradford P. Campbell, Department of Labor; W. Thomas Reeder, Department of the Treasury; Andrew J. Donohue, Securities and Exchange Commission; Barbara D. Bovbjerg, Government Accountability Office; Burgess A. “Tommy” Thomasson, Jr., on behalf of the American Society of Pension Professionals & Actuaries and the Council of Independent 401(k) Recordkeepers; Harold L. Jackson; on behalf of the U.S. Chamber of Commerce; Allison R. Klausner, on behalf of the American Benefits Council; Lew I. Minsky, on behalf of the ERISA Industry Committee; Bertram L. Scott, TIAA-CREF; Mindy L. Harris, National Association of Government Defined Contribution Administrators; David L. Wray, Profit Sharing/401(k) Council of America; Lisa A. Tavares, Venable Law Firm, LLP; Norman P. Stein, on behalf of the Pension Rights Center; and David Certner, AARP. Copies of each witness’ testimony can be found at <http://waysandmeans.house.gov/hearings.asp?formmode=detail&hearing=596>.