

**MEMO# 22813**

August 19, 2008

## **GAO Report on 401(k) Fiduciary Obligations**

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TO: BANK, TRUST AND RECORDKEEPER ADVISORY COMMITTEE No. 26-08    RE: GAO  
REPORT ON 401(K) FIDUCIARY OBLIGATIONS

The Government Accountability Office released a report on fiduciary obligations in 401(k) plans entitled “Fulfilling Fiduciary Obligations Can Present Challenges for 401(k) Plan Sponsors.” [\[1\]](#) The report, the latest in a series addressed to Rep. George Miller (D-CA), chairman of the House Committee on Education and Labor, does not make any new recommendations but reiterates recommendations made by GAO in previous reports on fees and conflicts of interest. [\[2\]](#)

In preparing the report, GAO conducted an online survey of plan sponsors using subscribers to Plansponsor magazine, [\[3\]](#) asking questions about how the respondent’s plan is designed, administered and monitored. The report also includes anecdotal reports from unnamed industry professionals expressing concern that some plan sponsors may not understand the extent of their fiduciary duties and may assume incorrectly that they have delegated fiduciary responsibility to the plan’s service provider. The report states that because of “hidden fees,” service providers may be steering plan sponsors toward investment products or services that may not be in the best interest of participants.

GAO reviews the Department of Labor’s various initiatives on fee disclosure and states that these proposals, if finalized, could eliminate some of the confusion surrounding the sharing of fiduciary duties between sponsors and their service providers and help sponsors provide better oversight of plan services. However, GAO states it does not agree with DOL that a statutory amendment is not necessary for DOL to complete its work. GAO reiterates previous recommendations it made to Congress:

- Congress should consider amending ERISA to require 401(k) service providers to

disclose to plan sponsors the compensation they receive from other service providers.

- Congress should consider amending ERISA to give DOL authority to recover plan losses against some service providers even if they are not currently considered fiduciaries under ERISA.

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**endnotes**

[1] A copy of the report is available at <http://www.gao.gov/new.items/d08774.pdf>.

[2] See Memorandum to Pension Members No. 71-06 and Federal Legislation Members No. 6-06 [20649], dated December 1, 2006; and Memorandum to Pension Members No. 37-07, Investment Adviser Members No. 23-07, Investment Adviser Associate Members No. 3-07 and SEC Rules Members No. 78-07 [21334], dated July 3, 2007.

[3] GAO set up a website to view the results of the survey:  
<http://www.gao.gov/special.pubs/gao-08-870sp/>.

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