

MoneyVoices: ICI's Stevens Backs Rival 401(k) Fee Bill

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The Investment Company Institute and its mutual fund members have been advocating better 401(k) disclosure for more than 30 years. The market turmoil and losses of the past two years have only made the case more compelling. Employers need to understand thoroughly the services and investment options that they are securing for their 401(k) plans and the costs that plans and their participants will incur. Employees must receive clear, concise information about their plan's investment choices, including fees. And they should have access to investment advice.

These are goals that all the players in the 401(k) system—employers, service and investment providers, workers, and policymakers—share. Recognizing the importance of bolstering the 401(k) system, Congress is weighing changes that will impact the system and its participants for decades to come. Policymakers have a one-time opportunity now to get this right.

House of Representatives (H.R.) Bill 2989, the 401(k) Fair Disclosure and Pension Security Act, as passed by the House Education and Labor Committee last month, does not hit the mark. While the bill is a strong initiative in many respects, its disclosures fall short of providing the clear, concise and usable information needed by employers and workers. The bill, co-sponsored by Rep. George Miller, (D-Calif.) , also would distort a vibrant competitive market and would bring government into the task of picking investment options for plans.

Fortunately, the shortcomings of this legislation can be addressed. In fact, Rep. John Kline (R-Minn.), the committee's ranking member, offered a better approach—mandating 401(k) disclosure in a simpler and more effective way—at the committee's markup session. Unfortunately, the committee did not adopt this alternative, but Congress should take another look.

The Kline proposal addresses the same disclosure needs as H.R. 2989, but takes a more comprehensive approach. While H.R. 2989 covers 401(k) plans but not defined benefit plans, the Kline substitute requires disclosure to employers by providers of all Erisa retirement plans, including defined benefit plans. The result: new insight on costs and services for plans covering millions more workers. The substitute (like H.R. 2989) would require fee and performance disclosure for all products in a plan, not just mutual funds. For products that currently aren't required to provide this information—products that account for 53% of assets in 401(k) plans—the Kline substitute would require a cost illustration so that employees can accurately compare all options as they make investment decisions.

The Kline substitute also clarifies how important disclosures for employees and employers should be provided. It puts responsibility for full disclosure on plan service providers dealing directly with plan sponsors. The duty to make and consider disclosures—and the liability for shortcomings—remains with the parties that are best able to provide and assess the information. H.R. 2989, on the other hand, diffuses the responsibility for disclosure. This is a misstep that means a plan could be obligated to collect disclosures from dozens of businesses that have no direct contractual relationship with the plan.

The Kline substitute also preserves features of the 401(k) market that have served employers and workers well. The Kline approach would help employers decide whether they want to purchase their 401(k) services as a bundle or a la carte. Providers who offer proprietary investment products as well as recordkeeping should not be required to price these separately if they are offered as a package for a total cost that is disclosed. By contrast, H.R. 2989 would require unbundling, an approach that favors one business model of 401(k) recordkeeping.

The Kline approach would continue to permit any employer to include an index fund in its menu of plan options, but not mandate an index fund option. It is consistent with our support for index investing as a useful approach and our opposition to mandating any single product's use in every plan. No single type of fund is right for all retirement savers at all times and in all market conditions, and no single type of fund should have the government's stamp of approval. H.R. 2989 would mandate that every plan include an index fund as an investment option.

We have worked for years to improve employees' access to investment advice to help them make better decisions about their 401(k) investments. Unfortunately, H.R. 2989 would roll back more than 25 years of U.S. Department of Labor guidance now being used to provide quality investment advice to 401(k) participants to manage their retirement accounts.

We urge the U.S. House of Representatives to seriously weigh the Kline proposal. We also believe that another 401(k) disclosure proposal, a bill offered by Rep. Richard Neal (D-Mass.) of the Ways and Means Committee, should receive a full airing.

Getting 401(k) disclosure rules right isn't easy. Legislation must be carefully crafted to provide clear, focused information that helps plan sponsors and workers make smarter, better decisions. While we think the legislation passed out of the House Education and Labor Committee misses the mark, we support other approaches that would truly achieve better disclosure and a stronger 401(k) system.

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