

## DB funding relief at risk over an advice provision

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A House committee yanked a pension bill provision safeguarding existing investment advice arrangements for DC plans — jeopardizing employer support for a package that also provides critical funding relief for DB plans.

At the 11th hour, Democrats on the House Education and Labor Committee deleted the provision that would have made clear the legislation would not pre-empt existing investment advice arrangements that rely on the Department of Labor's SunAmerica advisory opinion or other DOL advice exemptions.

The deletion of the SunAmerica exception could invalidate existing investment advice arrangements affecting millions of plan participants, lobbyists for employer and service provider groups said.

Lobbyists said Rep. Rob Andrews, D-N.J., who had sponsored the investment-advice provisions, deleted the SunAmerica exemption after the committee received a statement criticizing other investment-advice-related provisions in the legislation.

That statement — coordinated by Ed Ferrigno, vice president of Washington affairs for the Profit Sharing/401(k) Council of America, Chicago — included endorsements from the Investment Company Institute, the Securities Industry and Financial Markets Association and other major business associations.

Among other things, the statement claimed that provisions in the legislation would impose new reporting and disclosure obligations on advice arrangements offered under the SunAmerica opinion, and could undermine the validity of the DOL's other advice exemptions and advisory opinions.

“By establishing new barriers for firms who are well qualified to provide advice, (the investment advice provisions in the legislation) will result in fewer American workers ... receiving critically important investment advice,” the statement said.

Mr. Ferrigno said he was “mystified” by what happened. “I don't believe Rep. Andrews would retaliate in that way in response to a letter,” he said. “The letter merely discusses some legitimate concerns.”

**'Concerns were raised'**

Aaron Albright, a spokesman for the House Education and Labor Committee, said: "A number of concerns were raised regarding this provision, and we decided to remove it in order to have some time to address those concerns. We will continue to work with stakeholders to work out this issue as the bill progresses." Rep. George Miller, D-Calif., chairman of the committee, sponsored the bill (H.R. 2989) that was approved by the committee June 24.

"The DB relief would be very helpful, but we were very disappointed that the SunAmerica exception was removed," said Jan Jacobson, senior counsel, retirement policy, at the American Benefits Council, Washington.

Said Judy Schub, managing director of the Committee on Investment of Employee Benefit Assets, Bethesda, Md.: "We may support part of it (the bill) and oppose part of it."

Service providers, on the other hand, were taking a harder line against the bill.

"It is with regret that we cannot support (the 401(k) Fair Disclosure and Pension Security Act of 2009) as drafted today, given its significant shortcomings," said Paul Schott Stevens, president and CEO of the Washington-based ICI, in a news release.

"Overall, we're concerned about the legislation," added Elizabeth Varley, managing director, government affairs, at SIFMA, Washington.

Both organizations have concerns about the bill's provisions on investment advice, fee disclosure and a provision that effectively would force plan sponsors to offer at least one index fund as an investment option to participants in their plans.

But the legislation's defined benefit funding provisions would provide employers with significant relief, employer group representatives said.

Tops is a provision, added as an amendment during the June 24 vote, that would permit plan sponsors to pay only the interest on their 2008 losses over the subsequent two years — then amortize the year's loss over the following seven-year period.

"This will provide much needed relief to many plan sponsors," said Judy Miller, chief of actuarial issues, American Society of Pension Professionals & Actuaries, Arlington, Va.

The bill also permits plan sponsors using the spot yield curve to value pension liabilities this year to use the smoothed yield curve to value liabilities in 2010 and subsequent years.

Other defined benefit provisions in the legislation would:

- Postpone the effective date of the funding provisions in the Pension Protection Act of 2006 to plan years beginning after Dec. 31, 2009. Without this provision, the rules could go into effect for plan years starting July 1 of this year, according to a committee summary.

- Make clear that plans may amortize investment expenses over seven years. Without this clarification, plans could be required to fund investment expenses immediately, according to the committee summary.
- Require all plans that are underfunded by more than \$50 million to report actuarial and financial information to the Pension Benefit Guaranty Corp. Under current law, plans only have to report that information to the PBGC if they are less than 80% funded.

Representatives of employers and DC plan service providers also remain concerned that the fee-disclosure provisions in the bill will continue to have the effect of requiring defined contribution plan sponsors to offer at least one index fund as an investment option.

“We don't think policymakers should be mandating specific investments,” said CIEBA's Ms. Schub. “Today it's an index fund and tomorrow it's a green fund, and the next day it's do not invest in a fund that invests in Somalia.”

Employers also are upset that the legislation did not provide them with fiduciary protection to rely on the accuracy of the fee information that plan service providers are supposed to give them under the new legislation. They are concerned that without the fiduciary protection they will have to independently verify the accuracy of the vendor disclosures.

### **Next step unclear**

In an interview, Mr. Miller said it had yet to be determined whether the bill would go directly to the House floor or would first be referred to the Ways and Means Committee.

Complicating the prospects for the defined benefit relief provisions in Mr. Miller's bill is that Rep. Earl Pomeroy, D-N.D., a member of the House Ways and Means Committee, is also working on legislation to provide employers with plan funding relief.

While Mr. Pomeroy's measure would provide sponsors with additional relief sought by employers to smooth their asset values, it would come at a cost, according to a summary of the lawmaker's draft legislation.

However, sponsors who elect to use the funding relief that Mr. Pomeroy would provide could not freeze an ongoing DB plan or suspend matching contributions to a 401(k) plan, if the DB plan had been frozen by Dec. 31, 2008, according to the summary.

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