



AMERICAN BENEFITS
COUNCIL

April 16, 2008

The Honorable George Miller
Chairman
Education and Labor Committee
2205 Rayburn House Office Building
Washington, D.C. 20515-0507

Dear Mr. Chairman:

On behalf of the American Benefits Council (the "Council"), I am writing with respect to the scheduled mark-up of H.R. 3185, the "401(k) Fair Disclosure for Retirement Security Act of 2007". Specifically, we would like to comment on the amendment in the nature of a substitute to H.R. 3185 that we understand you plan to offer. As we indicated in testimony before the Education and Labor Committee and in our other communications, the Council strongly supports meaningful and fair disclosure with respect to 401(k) plan fees. With respect to the amendment, although we believe that important modifications are needed, we believe that this bill takes an important step toward our shared goal of improved disclosure.

The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

As noted, effective disclosure and transparency in the 401(k) plan arena are critical. Plan fiduciaries need to understand the fees chargeable to the plan by current and prospective service providers. Such information is essential in providing plan fiduciaries with the tools to make appropriate decisions regarding service providers.

In addition, of course, it is critical that plan participants understand the fees that are being charged to their account, so they can make informed investment decisions regarding their retirement savings.

Our members have been very active on both fronts. Plan sponsors have been requesting and obtaining extensive fee information from their service providers. In addition, there has been ongoing and dramatic progress in providing participants with important tools and information needed to help them make retirement savings decisions. Your bill and the Education and Labor Committee's hearings have led to increased awareness and attention with respect to these critical issues that, in turn, will hopefully lead to greater transparency and a stronger private retirement plan system.

We commend you and your staff for soliciting input from plan sponsors and service providers in a very open and receptive manner. The new version of H.R. 3185 reflects many changes making it more effective and administrable in a number of ways. For example, the ability to use estimates and electronic communications are very important additions that will make compliance far less costly than under the introduced bill. The treatment of service providers' subcontractors was greatly improved so that the disclosure process focuses appropriately on the key plan service providers. The effective date was set more appropriately and the "unbundling" issue was vastly improved (though we still have concerns with respect to both points).

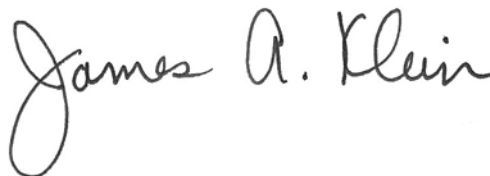
There are, however, provisions of the legislation where important changes still are required to achieve the mutually shared goal of transparency and administrability. For example, the proliferation of lawsuits and new sources of potential liabilities could seriously erode employers' commitment to defined contribution plans. H.R. 3185 would create many more duties and communications, creating more possibilities for liability. We urge you to include appropriate liability protections for any plan sponsor and service provider that acts in a reasonable manner in good faith reliance on information provided by a third party.

As our members have time to review the bill further, we look forward to continuing discussing our concerns regarding a number of other important issues. A key example is the index fund requirement, which sets a troubling precedent with respect to mandated investment options and raises additional questions about liability for the selection of a fund. There are also a number of clarifications and technical modifications of the bill that we look forward to discussing with you, as they would make the requirements more effective, less expensive for plans and participants, and prevent duplicative layers of compliance.

Fee disclosure is an important initiative and we appreciate your interest in our views. Fundamentally, it is important that a clear and positive message be sent to American workers and families that 401(k) and other retirement savings plans are a vital part of their financial security. Fees associated with these plans are just one of many important factors that plan participants need to consider in making prudent investment decisions. Legislation should serve the dual purpose of ensuring that plan sponsors and participants receive the information needed to fulfill their respective obligations, and that sponsorship of, and participation in, these vital plans be encouraged.

Thank you for your leadership with respect to disclosure issues and we believe that working together, we can strengthen the private retirement plan system.

Sincerely,

A handwritten signature in black ink that reads "James A. Klein". The signature is written in a cursive, flowing style with a large initial "J".

James A. Klein
President