AMERICAN BENEFITS COUNCIL

SUMMARY OF THE 401(K) FAIR DISCLOSURE FOR RETIREMENT SECURITY ACT OF 2007[1]

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OVERVIEW				
IN GENERAL	The Employee Retirement Income Security Act of 1974 ("ERISA") generally does not impose specific rules with respect to the fees that plans pay for services. However, ERISA imposes disclosure requirements, such as requiring disclosure to each participant or beneficiary of a summary plan description. In addition, ERISA imposes general fiduciary responsibilities on persons with discretionary authority and control over the plan. Further, ERISA prohibits certain transactions where there may be a potential conflict of	Would amend ERISA to add three new requirements related to fees paid by plans for services. The new requirements would: • Mandate fee disclosures from service providers to plans; • Require extensive fee disclosures from plans to participants; and • Regulate the investment options that must be available under a plan that permits participants to direct the investment of their accounts. Directs the Department of	Governmental plans, church plans and other non-ERISA plans would be exempt from the Miller bill. Defined benefit plans, unfunded nonqualified deferred compensation plans and health plans would likewise be exempt from the new requirements. DOL and the Securities and Exchange Commission ("SEC") are working on a number of regulatory projects that are expected to impose new disclosure requirements related to the fees paid by plans for services. The regulatory	Any new disclosure requirements should provide information that participants need in a manner that is useful to participants. More disclosure is not necessarily useful disclosure. Use of electronic technology including web-based disclosure should be encouraged. Providing voluminous and granular fee information to participants will not aid in their decision-making process and will unjustly increase participant, sponsor and provider costs. Disclosure to plan sponsors and fiduciaries

[1] The 401(k) Fair Disclosure for Retirement Security Act of 2007, H.R. 3185, (the "Miller bill") was introduced on July 26, 2007 by Representative George Miller (D-CA), Chairman of the House Committee on Education and Labor.

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	interest.	Labor ("DOL") to enforce the new rules and creates statutory penalties for failure to comply. Would generally apply to defined contribution plans subject to ERISA.	initiatives cover similar ground to the Miller bill and would mandate fee disclosures from service providers to plans and expand participant fee disclosures.	may differ from participant disclosures. Plan sponsors are often plan fiduciaries with the duty of prudently selecting the plan's investment choices. Requiring a particular investment would result in additional work for plan sponsors and potential fiduciary liability for ensuring that the offered investment meets regulatory requirements. If a particular investment is required, individual participants may misinterpret this new requirement as specifying the best investment choice for that participant (which is not necessarily the case.)
SERVICE PROVIDER DISCLOSURES				
IN GENERAL	ERISA generally requires that plan fiduciaries discharge their duties with respect to a plan by acting solely in the interest of participants and beneficiaries and with the care, skill, prudence and diligence that a prudent person acting in like capacity would exercise. Thus, a plan fiduciary that enters into a contract for services must act solely in the interests of	Would require that the plan administrator (or any other plan official with contracting authority under the terms of the plan) receive a "service disclosure statement" prior to entering into (or materially modifying) any contract for services for the plan. *Scope*. The service provider disclosure requirement would apply to 401(k) plans subject to	The new service provider disclosure requirement would apply in addition to the existing fiduciary responsibility and prohibited transaction rules of ERISA. It appears that the service disclosure statement would be required even if the plan enters into a service agreement but the employer pays for the services out of its general (rather than	

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	participants and must act prudently. ERISA prohibits certain transactions between plans and "parties in interest," such as persons providing services to the plan. Section 408(b)(2) of ERISA provides an exception for "reasonable arrangements with a party in interest for office space, or legal, accounting, or other services necessary for establishment or operation of the plan, if no more than reasonable compensation is paid therefor."	ERISA. *De Minimis Exception*. Very small contracts of less than $1,000 in total cost for all services under the contract are exempt from the disclosure statement requirement.	plan) assets. It appears that the new requirement would not apply to ERISA plans that do not offer participants the opportunity to make voluntary pre-tax salary deferrals. In addition, it appears that the new requirement would not apply to ERISA-covered 403(b) plans. DOL is actively working on proposed regulations that are expected to impose disclosure requirements between service providers and plans in connection with service contracts. Unlike the Miller bill, the DOL guidance is expected to impose new disclosure requirements as a condition of the prohibited transaction exemption for reasonable service arrangements in section 408(b)(2) of ERISA. The de minimis exception is extremely narrow on its face. An open question is whether separate contracts involving an entity (and possibly affiliates) would need to be aggregated for this purpose.	
CONTENTS OF SERVICE	Not applicable	In general, the service disclosure statement would,	The bill would require disclosure of all parties	

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DISCLOSURE STATEMENT		among other requirements, have to: • identify the parties that will be performing services under the contract; • describe the services and specify the total cost under the contract; • itemize and separately price services to be provided under the contract; • disclose any conflicts of interest; and • state, with respect to mutual fund investment options, whether institutional share classes are available.	performing services under the contract. As a result, for example, services provided through a revenue sharing arrangement would generally have to be disclosed. It may be difficult in some circumstances to determine whether an entity is performing services for the plan (in which case the entity must be identified) or for the plan service provider (in which case the entity would not need to be identified). It appears that affiliated entities (including different members of a controlled group of corporations) that perform services under a contract would have to be separately identified.	
ITEMIZATION OF SERVICES AND EXPENSES	There are no specific rules requiring itemization. However, ERISA's fiduciary rules and prohibited transaction requirements generally impose a standard of prudence and reasonableness on plan fiduciaries that enter into service arrangements.	Would establish rules that require itemization and pricing of different plan expenses by service providers. The expenses that must be itemized include: • Sales commissions; • Start-up fees; • Investment management expenses; • Expenses for investment advice;	The Miller bill requires separate pricing for 12 categories of services. Today, many service providers offer a bundle of services for a particular price and the Miller bill would mandate "unbundling the bundle." This could be very costly and difficult for service providers, particularly because many providers do not separately price services currently and may not even	

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		• Estimated trading expenses; • Administration and recordkeeping expenses; • Legal fees; • Trustee fees; • Possible termination and surrender fees; • Total asset-based fees; • 12b-1 fees; and • Soft dollar commissions. Authorizes DOL to determine other categories of expenses subject to required itemization.	offer such services separately. It is likely that some of the cost for this pricing will be passed on to plans and participants. In many instances, it will be far from clear whether and to what extent a particular fee is for a particular service. Consider, for example, a plan that has a single bundled service provider and is invested solely in mutual funds that do not have 12b-1 fees. In effect, the plan pays for all services through asset-based fees on the underlying investments. It appears, however, that the Miller bill would require that the service provider allocate the asset-based fees between the different services that it provides. Many expenses, such as 12b-1 fees, estimated trading expenses and soft dollar commissions, are embedded in the plan's investment options. ERISA generally does not treat the underlying assets of certain investment options, such as mutual funds, as plan assets subject to ERISA. Nonetheless, the bill appears to require looking through to the underlying assets of such investments and disclosing the	

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			fees that are embedded therein.	
CONFLICTS OF INTEREST	ERISA imposes strict prohibited transaction rules that categorically bar transactions involving service providers and plans, unless an exemption (such as the exemption for reasonable service arrangements) applies.	Would require disclosure of any potential conflicts of interest for any service provider under the contract due to a relationship with another person providing services to the plan (or the plan sponsor) and for which the service provider receives compensation. Specifically mentions disclosure of the extent to which a service provider offers proprietary investments under the plan or receives payments in connection with including certain investment options in the plan's menu.	It is not clear what conflicts of interest would be disclosed here since transactions involving conflicts of interest are generally considered prohibited transactions under ERISA. The bill specifically mentions disclosure of the extent to which a provider makes proprietary investments available under the plan or is paid by another for making investments available. To the extent the provider has any discretionary fiduciary control or provides fiduciary advice regarding the investment options that are available, this would generally be considered a prohibited transaction. This strongly suggests that the bill is intended to go beyond conflicts of interest and instead require the disclosure of relationships and affiliations between different providers, regardless of whether these relationships involve a conflict of interest. One possible category that would be covered by the bill would be transactions that are specifically exempted from	

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			ERISA's prohibited transaction rules. However, it seems odd to disclose those transactions since Congress or DOL has determined that there is no material risk of misconduct with respect to the transaction (otherwise, the transaction would not be exempt).	
SHARE CLASSES	Mutual funds are sometimes sold in different share classes that carry different fees or fee structures. For example, a mutual fund may be available in a retail share class (available to individual investors) and one or more institutional share classes (available only to large investors, *e.g.*, plans over a certain size).	Requires a statement disclosing the availability of share classes other than retail classes.	This requirement appears to be intended to encourage plans to consider using institutional share classes, rather than retail share classes, to the extent practicable. Some institutional share classes may not include fees that provide for all necessary plan services. As a result, use of an institutional share class may result in the addition of a separate plan-level fee, *e.g.*, for administration and recordkeeping. In this respect, the bill appears to suggest a bias towards separate pricing for administration and recordkeeping services versus investment management. The term "retail share class" is not a term of art and there could be confusion regarding what share classes need to be covered by the statement. In	

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			this regard, for example, some mutual funds are available in a number of different share classes, each of which reflects a different pricing structure. It may not be clear whether these share classes are retail or non-retail.	
"FREE" OR OTHER DISCOUNTED SERVICES	Not applicable	Requires a special disclosure where services are provided on a free or discounted basis or where fees are subject to rebate. The special disclosure mandates a description of the extent to which, and the amount by which, fees are otherwise obtained for such services by means of charges against participant accounts.	One of the fundamental premises of the Miller bill is separate pricing for separate services. As mentioned above, this would often require allocating fees to specific services. The "free" or discounted service rule appears to be intended to discourage providers from characterizing one service as free or discounted and to force providers to allocate a cost to each plan service.	
MANNER OF DISCLOSURE AND ESTIMATES	Not applicable	Permits the use of reasonable and representative estimates to the extent the cost of a service is not known, provided that a correction is provided as soon as practicable if the estimate later proves to be materially incorrect.	The Miller bill does not expressly address whether fees may be disclosed in the manner in which they are charged, *e.g.*, as asset-based fees or as a dollar fees. It appears, however, that the bill will require disclosure on a dollar basis. Service providers may not currently capture this information on a plan-by-plan basis and systems	

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			changes to capture this information could be costly. The bill permits the use of reasonable estimates and, in fact, estimates would be necessary in many cases, *e.g.*, where the charge is a percentage of assets. The bill, however, requires correction as soon as practicable if the estimate proves to be materially incorrect. The "as soon as practicable" requirement suggests that estimate corrections may be needed on a periodic basis. For example, if something changes mid-year that casts significant doubt on an estimate, a service provider could be required to correct the estimate mid-year. As a result, it is conceivable that numerous corrections would be required, for example, in a particularly volatile market.	
TIMING	Not applicable	The statement would be required (i) reasonably in advance of any service contract, (ii) annually thereafter, and (iii) within 30 days of any material change in the information provided by the statement.	For some providers, the annual disclosure requirement would be a departure from prevailing practices. For most providers, mid-year disclosure corrections would be an entirely new practice.	

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PARTICIPANT DISCLOSURE: SERVICE PROVIDER INFORMATION				
AVAILABILITY	Not applicable	Plans would have to post a copy of the service provider disclosures on any Intranet website maintained by the plan sponsor (or an administrator on behalf of the plan). Would require that the plan make available a copy of the service provider disclosures, discussed above, to participants and beneficiaries within 30 days after receipt of a written request.	It is not clear whether the posting requirement would be satisfied by posting on a secure website maintained by the plan's service provider (rather than the plan sponsor) even if plan information, *e.g.*, account balances, investment changes, are processed in large part through the service provider's website. The availability requirement (and the posting requirement) could indirectly require the disclosure of proprietary business information, *i.e.*, the prices and pricing structure that providers utilize.	
PARTICIPANT DISCLOSURE: NOTICE OF INVESTMENT OPTIONS				
IN GENERAL	ERISA requires that plans provide participants with summary plan descriptions that describe the plan's investment options. In addition, plans that are intended to satisfy section 404(c) of ERISA, which provides a limited safe harbor from fiduciary responsibility for participant investment decisions, must provide extensive disclosures of	Would require that participant-directed defined contribution plans provide an annual notice regarding the investment options available under the plan. Very generally, the notice would provide: • 8 pieces of information about each of the investment options;	In July, 2007, DOL closed the comment period in response to its Request for Information ("RFI") on reforms to participant fee disclosure standards. DOL has indicated that it intends to issue guidance on new participant fee disclosure standards early in 2008. It should be noted that the SEC is currently working on a simplified mutual fund	

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	investment option information.	• A statement explaining that options should be selected not only on the basis of fees but also upon consideration of other key facts, including the level of risk and historical returns; and • A fee menu relating to the options under the plan. The notice would have to be written in a manner which is easily understood by participants.	disclosure that would take the place of the prospectus in certain circumstances. SEC and DOL officials have suggested that this simplified prospectus may be an appropriate template for disclosure of all 401(k) investment options. The notice of investment options is not a condition of fiduciary relief under section 404(c) of ERISA but rather is a free-standing disclosure requirement. The bill states, however, that the provision does not create an inference regarding whether general standards of fiduciary responsibility require additional disclosures (or whether a failure would also be a breach of fiduciary duty). This suggests that a failure to provide the notice of investment options could also be a breach of fiduciary responsibility. Given the extensive detail associated with the bill, discussed below, it could be very difficult for this information to be written in a manner that is easily understood by participants.	

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INVESTMENT OPTION INFORMATION	DOL regulations require extensive disclosures for plans that are intended to be ERISA section 404(c) plans. These disclosures include a description of the investment alternatives under the plan, a general description of the investment objectives and risk and return characteristics of each alternative, a description of any transaction fees and expenses which affect account balances as well as the provision of prospectuses for mutual fund offerings in the plan.	Would require disclosure of a range of information about each of the plan's available investment options, including, with respect to each investment option: • the name of the option; • the investment objectives of the option; • the level of risk associated with the option; • whether the option is a comprehensive investment designed to achieve long-term retirement security; • historical return and percentage fee assessed; • an explanation of the differences between any asset-based fees and any annual fees in conjunction with the option; • a comparison to a nationally recognized market-based index that is recommended in the retirement industry as a benchmark retirement investment option; and • where additional plan-specific and generally available investment information may be obtained.	It may be difficult for plans to assess and disclose the level of risk associated with each investment option. While many service providers have expertise with this type of disclosure, some investment options (*e.g.*, non-mutual fund options) may not be well-suited to easy classification and it may be a challenge for plans to determine the level of risk associated with every option. The disclosure required with respect to whether an option is comprehensive is not clear. Some have suggested that it only encompasses life cycle, target retirement date and other similar "single fund" retirement solutions that rebalance with the passage of time. If so limited, some have questioned whether it is appropriate to structure legislation around current investment products. Others have suggested that balanced funds would be considered comprehensive investments designed to achieve long-term retirement security. Apart from the types of funds that may fall within the classification, for particular funds, it may be unclear whether the solutions are	

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			"comprehensive" and designed to achieve long-term retirement security. There are numerous questions about the comparison to a "benchmark retirement investment option." First, the bill appears to require the selection of a nationally recognized index for each investment option and, although there are some common benchmark indices, *e.g.*, S&P 500 Index, there are no nationally recognized benchmarks for many common types of investment options. Second, it is not certain how this requirement would apply to managed account options or life cycle options that are comprised of more than one underlying investment option. Third, it is possible that the selection by a plan administrator of a benchmark could be considered investment advice that gives rise to fiduciary responsibility, which would be inconsistent with one of ERISA's core principles against mandatory investment advice. Fourth, it is unclear how this requirement would apply in the context of a	

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			brokerage window.	
FEE MENU	None	Would require disclosure of a fee menu, relating to all investment options under the plan. The fee menu would disclose all potential service fees that could be assessed against a participant's or beneficiary's account. In general, fees would have to be organized based on whether the fees: • vary depending on the investment options selected by the participant (*e.g.*, expense ratios, redemption fees, surrender charges); • are assessed as a percentage of total assets regardless of investment selection; or • are administration and transaction-based fees that are automatically deducted or deducted based on transactions. The fee menu for each plan would include a disclosure of the purpose for each fee, *e.g.*, for investment management expense, commissions, administration, recordkeeping. The fee menu would have to include information DOL	In effect, the bill would force plans to utilize a single method of communicating with their participants regarding fees and would prevent plans from tailoring the format of fee disclosure to their unique participant populations. Although the bill would also require a statement that fees are not the sole basis for making investment decisions, it is reasonably clear that the presence of a fee menu would have the effect of elevating the significance of fees above other considerations. Within each of the three categories, it appears that separate and component fee disclosures would be required. As a result, for example, it appears that expense ratios, redemption fees and surrender charges would all have to be separately disclosed on the fee chart. As discussed above, it is not clear whether there are any conflicts of interest that would be disclosed given ERISA's extremely restrictive prohibited	

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		determines is necessary to describe any potential conflicts of interest.	transaction rules.	
MANNER OF DISCLOSURE AND ESTIMATES	Not applicable	Permits the use of reasonable and representative estimates to the extent the cost of a service is not known, provided that a correction is provided as soon as practicable if the estimate later proves to be materially incorrect.	One of the most basic questions about the fee menu is whether disclosure would be based on the method in which fees are assessed, *e.g.*, a percentage of assets if assessed as a percentage of assets, or as a dollar amount. The service provider disclosure statement appears to be based on dollars; however, it would be difficult to construct a fee menu that discloses fees to participants based on dollars. This suggests that disclosure would be based on the method in which fees are assessed. On the other hand, some have noted that the rule permitting the use of estimates could suggest dollar-based fees (although the estimate rule could instead be designed for plans that have variable fees that depend, for example, on the assets of the plan or the assets invested in a particular fund). Many of the same concerns regarding estimates, discussed above for the service provider disclosure, also arise here. In	

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			this regard, even if disclosure is based on the method of assessment, this fee level in some cases may change, for example, based on total assets in the plan or investment option. These estimate correction issues are somewhat exacerbated since the disclosure is to participants.	
TIMING	Not applicable	Disclosure would be required at least 15 days prior to the beginning of each plan year or the effective date of any material change in investment options. *Newly Eligible Employees*. Notice would also be required on the date a participant commences participation.	The timing rules do not include any exceptions for unforeseeable events, *e.g.*, for a blackout period. The Miller bill does not provide any latitude in terms of the timing of the notice to newly eligible employees, which could be problematic in some contexts, *e.g.*, automatic enrollment.	
PARTICIPANT DISCLOSURE: ANNUAL BENEFIT STATEMENTS				
IN GENERAL	Participants in defined contribution plans subject to ERISA (other than a "one-participant retirement plan") who have the right to direct their investments must be given quarterly benefit statements.	Would create a new annual benefit statement requirement. The statement would require disclosure of 23 different pieces of information.	The bill is not coordinated in any respect with current law benefit statement requirements. This is anomalous since many of the required disclosures proposed under the bill are identical to the disclosures required under current law.	

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CONTENTS	Current law requires disclosure of assets held in each investment, including the value of assets held in the form of employer securities and information about vesting. Participants must also be provided with an explanation of the benefits of diversification and the risks of excessive investment concentration.	The statement would have to disclose, for the preceding year: • the starting account balance; • the participant's vesting status; • contributions made during the year, itemizing employer and employee contributions; • earnings; • fees assessed during the year; • ending balance; • the participant's asset allocation, categorized by investment option; • current asset value of each option; • changes in the asset value of each option during the year; • net return for the year for each option; • service fees charged against the account; • underlying investment fees; • load fees; • total asset-based fees (including variable annuity fees); • mortality and expense charges; • guaranteed investment contract fees; • employer stock fees; • directed brokerage fees; • plan administration fees;	The bill would require disclosure of a number of subcategories of fees charged. The particular subcategories are arguably overly granular in nature. A number of the categories identified in the bill are not terms of art and it is not clear how some fees should be classified. The bill requires the disclosure of fees in guaranteed investment contracts ("GICs"), which generally do not have separately stated fees. There will inevitably be questions about how these disclosure requirements should apply to particular investments. For example, enhanced benefits under annuity contracts (*e.g.*, guaranteed minimum income benefits) may be payable only in certain circumstances and it may be difficult to determine the net return on such a benefit for the year and the fees assessed during the year. The bill specifically states that plans may include additional information regarding historical rates of return and risk levels for each investment option as well as information about the amounts needed to save for	

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		• participant transaction fees; • total fees; • total fees as a percentage of assets; and • performance of the investment options selected by the participant as compared to a nationally recognized market-based index.	retirement. This suggests that other sorts of information may not be included in the statement and must be provided separately. This disclosure is with respect to charges, rates of return and other aspects of the investment options for the preceding year. It is unclear that this type of complex and detailed information provided with respect to the past will provide meaningful or useful information to plan participants. The bill requires disclosure of vesting status and it is not clear whether it would be permissible to refer the participant to the plan's summary plan description.	
MANNER OF DISCLOSURE AND ESTIMATES	None	Permits the use of reasonable and representative estimates to the extent the cost of a service is not known, provided that a correction is provided as soon as practicable if the estimate later proves to be materially incorrect.	The bill would require disclosure of the total fees assessed with respect to each participant for the prior year as well as the fees associated with a number of subcategories – all apparently on a dollar basis. This type of particularized disclosure on a dollar basis would require major new systems investments and could materially increase the cost of	

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			plan administration. In this regard, it appears that the disclosure would need to take into account a participant's investment changes during the year and the timing of contributions and distributions for the participant. The bill limits the use of estimates to situations in which the cost of a service is not known. This suggests that the disclosures must be exact in the ordinary course of events, which could be a very costly and difficult standard to satisfy.	
TIMING	Quarterly benefit statements are due within 45 days of the end of each calendar quarter.	Not later than 90 days after the end of the plan year.		
SERVICE PROVIDER AND PARTICIPANT DISCLOSURE: ENFORCEMENT				
IN GENERAL	Current law imposes a variety of dollar penalties for a failure to provide requisite plan information. ERISA provides extensive remedies for breaches of fiduciary duty. In addition, the penalties for a prohibited transaction, including entering into an unreasonable service arrangement with a party-in-	DOL would be responsible for enforcing the disclosure requirements. DOL would have authority to assess a penalty against the plan administrator of up to $100 per day for a failure. A failure with respect to any participant or beneficiary is a separate failure for penalty purposes.	The bill creates a single penalty structure for each of the three different disclosures: the service provider disclosure statement, the participant investment election disclosure and the participant annual benefit statement. The penalty structure is based on the existing ERISA penalty regime for failures to provide blackout	

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	interest, are onerous. Very generally, ERISA and the Internal Revenue Code impose penalties which may be as much as 100% of the amount involved in the transaction. In addition, DOL takes the position that a failure to provide the investment option information required under section 404(c) of ERISA causes the plan to fail to be a 404(c) plan, which could expose the plan fiduciaries to enhanced liability for participant investment decisions.		notices to participants. There is no cap on the total size of the penalty with respect to a failure. The penalty does not fit the service provider disclosure very well since it is targeted to disclosures that are made to participants and beneficiaries, not plans. It is possible that a failure by a plan to receive the service provider disclosure would also give rise to prohibited transaction penalties and expose the plan administrator to liability for breach of fiduciary duty. Thus, the cumulative penalties associated with noncompliance with the service provider disclosure regime could be very significant.	
PUBLIC DISCLOSURE PENALTY	None	Provides that DOL may publicly identify and disseminate information regarding any service provider that has been engaged in a pattern or practice that precludes compliance with the new disclosure requirements by plan administrators.	DOL's power to publicly identify a service provider as noncompliant appears to be unprecedented and could have a devastating effect on any provider so identified.	

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DIRECTIVES	Not applicable	Directs DOL to coordinate enforcement activity with other agencies if DOL determines that a service provider is engaged in a pattern or practice that precludes compliance by plans with the requirements of the Miller bill. Directs DOL to annually audit a representative sampling of plans to determine compliance with the bill and to report the results of such audits to the Congressional committees of jurisdiction.	The bill specifically mentions coordination with the SEC and the Comptroller of the Currency, but is silent on other government bodies. Although not clear, some have questioned whether the bill would give DOL authority to commence enforcement actions directly against providers over which they would not otherwise have jurisdiction.	
INVESTMENT MENU REGULATION				
	ERISA generally does not impose substantive requirements on the investment options that are offered under a plan, but rather leaves that to the exercise of the plan fiduciary's prudent judgment. For a plan that is intended to comply with the limited safe harbor from fiduciary responsibility for participants' investment direction, section 404(c) of ERISA provides that the menu must provide a participant or beneficiary an opportunity to choose from a broad range of investment	Requires that a plan investment menu include at least one investment option which is a nationally recognized market-based index fund and which offers a combination of historical returns, risk, and fees that is likely to meet retirement income needs at adequate levels of contribution.	The bill reflects a judgment that passive index fund-based investing is preferable to actively managed investing. In effect, it reflects a judgment about the "right" way to invest. It is not clear what type of index fund is contemplated by the bill. Some have suggested, however, that the index fund would have to be a life cycle fund, target retirement date fund or managed account option, comprised of index fund elements. The bill includes a number of	

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	options. In general, this means a choice from among at least 3 investment alternatives, each of which is diversified and has materially different risk and return characteristics.		challenging value judgments that plans would have to make, including whether a particular investment option is likely to meet retirement income needs based on historical rates of return. The provision would be a substantive requirement under ERISA and a failure to so provide would be a breach of fiduciary conduct. Presumably the index fund would have to be part of the plan's core menu and not merely an option available through a brokerage window.	
MISCELLANEOUS				
ELECTRONIC DELIVERY	DOL has established an extremely stringent standard that makes electronic delivery of plan information very difficult. Under DOL's regulations, electronic delivery of information required under section 404(c) of ERISA is permitted only if use of the employer's electronic system is an integral part of the employee's duties or the participant has affirmatively consented to electronic delivery	Same as current law.	DOL's standard has proven to be a material barrier to 404(c) compliance because, in the vast majority of situations, it requires consent and proof that electronic delivery is effective to establish actual receipt. The IRS has a different standard with respect to notices and disclosures required under the Internal Revenue Code with respect to employee benefit plans. The IRS standard depends on whether the	

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	in a manner that reasonably demonstrates the participant's ability to access information in the electronic form.		participant has the effective ability to access the electronic information, *e.g.*, e-mail.	
MODEL STATEMENTS	Not applicable	For each of the new disclosure requirements, the bill would direct DOL to develop a model statement.		
ADVISORY COUNCIL	ERISA provides for the establishment of an Advisory Council with members appointed by DOL. The duties of the Council are to advise the Secretary and submit recommendations regarding the Secretary's functions under ERISA.	Would create a new Advisory Council on Improving Employer-Employee Retirement Practices, with members appointed by the President and Congressional committees of jurisdiction. The Council would have authority to issue best practices guidelines and to conduct hearings. The Council would also issue an annual report on retirement trends and issues and recommendations for reform.	It is not clear why a new Advisory Council would be created in addition to the existing Advisory Council. One reason might be the extent to which the Congressional committees of jurisdiction, rather than DOL, have oversight over the Council's composition and activities.	
SIMPLIFICATION STUDY	Not applicable	Directs DOL to make recommendations within 18 months of enactment regarding simplification of ERISA's reporting and disclosure requirements.		
COMPLIANCE	Not applicable	Directs DOL to assist employers		

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ASSISTANCE		and participants with questions regarding compliance with the bill's requirements. Directs DOL to make educational and compliance materials available to small employers to assist in selecting and monitoring service providers and investment options.		
EFFECTIVE DATE				
IN GENERAL	Not applicable	Would be effective for plan years beginning after the date of enactment.	The bill would be effective very shortly after enactment and it is highly doubtful that plans and service providers would be able to come into compliance so quickly.	