

Institute Submits Testimony to Congress on ERISA Reform, March 2000

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Washington, DC, March 17, 2000 - The House Committee on Education and the Workforce Subcommittee on Employer-Employee Relations held a hearing on March 9 and 10 entitled "A More Secure Retirement for Workers: Proposals for ERISA Reform." The Institute recently submitted [written testimony](#) to the subcommittee on the topic.

On March 9, witnesses testified on issues related to the provision of investment advice to plan participants. On March 10, witnesses testified regarding ERISA prohibited transaction reform.

In testimony on behalf of the Institute, Margaret Raymond, Assistant General Counsel at Fidelity, made the following points:

- the corporate defined-contribution system is healthy;
- investment education and advice are important because of the prevalence of defined-contribution plans allowing participants control over investment decisions;
- under ERISA, plan participants generally cannot obtain investment advice from their plan service providers, including mutual funds; and
- Congress can help participants obtain the investment advice they want.

In proposing that Congress provide legislative relief, Ms. Raymond noted that current fiduciary standards under ERISA and the Investment Advisers Act of 1940 provide adequate protections under federal law to enable mutual funds, and other financial institutions, to provide plan participants with investment advice.

The Institute's testimony included the following points:

- the growth of defined-contribution plans, especially participant-directed 401(k) plans, represents a significant change in the employer-sponsored pension plan environment;
- the mutual fund industry has a long history of encouraging people to save for retirement and has contributed to the success of defined-contribution plans;
- ERISA should require that plan participants be fully and automatically informed of all relevant fees and expenses associated with the activity in their accounts;
- although participant education is effective for many plan participants, participants increasingly seek investment advice in addition to education;
- current law should be amended to permit financial institutions currently prohibited from providing investment advice to participants to do so; and
- the current Department of Labor prohibited transaction exemption ("PTE") process does not work efficiently and should be revised.

Specifically, the Institute proposed that Congress provide a statutory exemption from the prohibited transaction rules for the provision of investment advice if the advice provider meets the following conditions:

- the advice provider assumes fiduciary status under ERISA and is subject to the strict fiduciary standards under ERISA Section 404;
- only regulated financial institutions are eligible to provide advice under the exemption;

- the advice provider is required to make certain disclosures, including disclosure of all relevant fees and a description of its advisory services;
- the advice is implemented only at the direction of the individual plan participant (i.e., the exemption should not be available to participant accounts over which the advice provider exercises investment discretion); and
- the advice provider is required to maintain records necessary to determine whether the conditions of the exemption are met.

With respect to the PTE process, the Institute recommended that current statutory standards be revised to require the Department of Labor to:

- consider relevant, existing federal laws and regulations, such as the securities laws, already applicable to the activity for which the exemption is sought;
- seek to minimize any inconsistencies between the conditions or requirements in any exemptive relief and other such laws, consistent with the protection of plan participants;
- make a finding that conditions or requirements set forth in an exemption are necessary additions to the existing federal laws, regulations and the protections they afford to address concerns unique to retirement plans;
- expedite the exemption process; and
- clearly identify the prohibited transaction addressed in the exemption.