Honorable Robert Andrews (D-NJ)
Chairman, Health, Employment, Labor, and Pensions Subcommittee
House Education and Labor Committee
Markup of "H.R. 1984, the 401(k) Fair Disclosure for Retirement Security Act of 2009 and H.R. 1988, the Conflicted Investment Advice Prohibition Act of 2009"
Wednesday, June 17, 2009

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Good morning and welcome. This morning we are here to mark up two bills, the Conflicted Investment Advice Prohibition Act of 2009 (H.R. 1988) and the 401(k) Fair Disclosure for Retirement Security Act of 2009 (H.R. 1984).

The first bill we will markup this morning is the Conflicted Investment Advice Prohibition Act of 2009 (CIAPA) which would restore the Employee Retirement Income Security Act's, ERISA, prohibition on self-interested investment advisers providing advice to employer-sponsored retirement accounts; thereby, safeguarding the retirement savings of millions of hardworking Americans.

On the eve of the Inauguration of President Barack Obama, the Bush Administration attempted to finalize a regulation concerning the Employee Retirement Income Security Act, ERISA, which raised substantial questions of law and policy. Essentially, the final rule issued would have allowed conflicted financial advice to workers with regard to their 401(k) and other types of defined contribution plans.

Fortunately, thanks to letters of opposition from Chairman Miller and me, several other Members of Congress, consumer advocacy groups, and several financial industry insiders who serve in the interest of investors, the Obama Administration has delayed the effective date of the regulation for further examination of its intent.

I believe in the value of providing American workers with access to investment advice, so long as the advice is independent and free from conflict--serving in the interest of the worker, rather than the interest of the financial advisor. During a time where American workers have already lost $2 trillion in assets due to last year's market downturn, exposing their hard-earned retirement savings to greater risk by allowing advisers to offer them conflicted advice is irresponsible and imprudent. During consideration of the Pension Protection Act of 2006, many of my colleagues were well intended with respect to ensuring that if workers were to receive investment advice with respect to their retirement savings, it would be independent. Despite their good intentions, the process of the bill's consideration created a statutory loophole; at the end of the regulatory process, conflicted advice could be offered to workers.

In lieu of exposing workers to conflicted investment advice, CIAPA would permit independent investment advisers to provide advice to workers regarding their retirement goals. Furthermore, it would maintain the allowance of the computer model arrangement so long as an independent expert or agency certifies the model.

I strongly encourage my colleagues to vote yes and support the Conflicted Investment Advice Prohibition Act of 2009.

Our second bill that we will markup this morning is the 401(k) Fair Disclosure for Retirement Security Act of 2009 which is authored by my good friend and chairman of the full committee, Congressman George Miller. Thanks to his leadership, American workers across the country will become more aware and better informed about what they should be getting out of their 401(k). I am honored to be an original co-sponsor of the bill as well as to working closely with the Chairman to craft what he and I strongly believe to be one of the most important measures before us today that will help restore worker trust and confidence in our retirement system.

American workers across the nation have suffered tremendously due to last year’s economic downturn; particularly, Americans who were laid off lost a significant amount of their retirement savings or both. At the end of 2008, a total of 2.8 million American jobs were lost and retirement accounts were reduced by $2 trillion dollars overall, shattering the financial goals of many hard-working Americans. Those most devastated by the market downturn were those workers nearing retirement who lost close to 30 or more percent of their 401(k) account.

Disturbed over the market's unexpected effect over their retirement savings, workers who were impacted the most, as well as many others are further troubled by the lack of transparency of their 401(k) system. When a worker spends most of their lifetime investing their hard-earned dollars into an account for their retirement and later learn that they were being charged fees that contributed to a significant loss of their nest egg, they understandably lose trust and confidence the system. The lack of transparency in the 401(k) system is unacceptable and must end now.

The members of the HELP Subcommittee have before them today a bill that improves the 401(k) system and protects the worker by requiring transparency and disclosure of fees to the employers and employees. Under our current 401(k) system, there are a numerous instances where employers are not informed, prior to entering into an agreement with financial service provider, about the true cost of certain fees and services included in their "bundled service arrangement" plan.

Equally important, HR 1984 requires disclosure of fees to workers that is both clear and understandable. When Jack Bogle, founder of Vanguard, testified before the full committee in February of this year, he made a compelling argument in favor of providing every worker with the option to invest his or her retirement savings in an index fund. Under HR 1984, we provide a strong incentive to employers to ensure an index fund option is offered to their employers.

I strongly believe the 401(k) Fair Disclosure for Retirement Security Act of 2009 moves us in the right direction to improve the 401(k) system. At our hearing in April several of the witnesses, who work on a day-to-day basis in the 401(k) world, echoed our position. This bill is another important solution, which will address restoring the conflicted investment advice prohibition under ERISA, while allowing workers to receive investment advice that is independent and in the interest of their retirement goals.

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