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## Congress Is Split on 401(k) Advisers

### Lawmakers May Loosen Restrictions but Worry Over Conflicts of Interest

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Congress wants to make it easier for financial professionals to advise employees on their investment choices in 401(k) plans -- but can't yet agree on how.

With employers moving away from fixed-benefit pensions that give employees no investment choices toward fixed-contribution 401(k)s that sometimes give them dozens of choices -- usually mutual funds -- the fund industry has long argued that employees need help to make sound decisions.

But federal labor laws designed to protect workers ban firms whose funds are among the employees' investment choices from also telling plan members which funds to choose -- on the theory that they naturally would favor their own funds, even if a competitor offered a better choice.

Now the primary source of retirement savings for 42 million Americans, 401(k) plans hold more than \$2 trillion in assets.


Under the Pension Protection Act, which was passed by the House of Representatives in December, the conflict law would be overridden, permitting funds to give advice. Supporters include Fidelity Investments, Vanguard Group and T. Rowe Price Group Inc. Opponents -- including AARP, the retirees' advocacy group -- say the provision is a lousy idea, akin to a fox guarding the henhouse.

The Senate, meanwhile, has approved a measure that would continue the ban on direct advice from fund firms, but would encourage companies to hire neutral third-party advisers to tell employees where they should put their money. It would do this by making it harder for workers to sue their employers when they hire these types of advisers.

The thinking is that some companies have been reluctant to offer 401(k) guidance due to fears of liability. This plan has been pushed by Sen. Jeff Bingaman, a New Mexico Democrat.

The House and Senate soon will meet in a conference to reconcile the two pension bills.

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AARP "strongly opposes" the House measure and says it is pointless, since people already can get neutral advice from third-party firms such as **Morningstar** Inc., says David Certner, director of the group's federal affairs. He says one need only look at recent corporate scandals to see the dangers. "At the heart of every scandal was conflict of interest," he says. The House measure was sponsored by Rep. John Boehner, an Ohio Republican who has championed the idea for years.

Sherwin Kaplan, a former employee-benefits lawyer at the U.S. Department of Labor, is also skeptical. "It's a given that Fidelity is not going to advise people to buy Vanguard funds, and that Vanguard is not going to advise people to buy Fidelity funds," says Mr. Kaplan, who now advises sponsors of benefit plans.

Rep. Boehner's bill passed the House four times in the past six years, but each time was thwarted by opposition in the Senate. But this year, the notion of offering employees retirement advice seems to finally have found traction. "We're optimistic," says James Doyle, spokesman for the Investment Company Institute, the trade group for mutual funds.

As it stands, the Employment Retirement Income Security Act mandates that companies, as sponsors of employee retirement plans "must avoid conflicts of interest" and can't engage in "transactions on behalf of the plan that benefit parties related to the plan." Mutual-fund firms are allowed to provide general guidance about retirement, but they must stop at making suggestions about which funds to buy.

Fund companies say the ban isn't practical. Fidelity, the mutual-fund giant based in Boston with \$591 billion in 401(k) assets under administration, says it has seen a growing demand from corporate clients who want to provide employees with assistance in allocating assets and making other investment decisions. Fidelity says Rep. Boehner's provision would "grant relief" to workers.

As for the fears about the integrity of that advice, Charlie Vieth, president of retirement-plan services at T. Rowe Price, based in Baltimore, acknowledges "it's a legitimate concern." But Mr. Vieth believes the market would take care of mutual-fund firms that offered bad advice. If advice "is viewed as being biased, the product won't be successful," he says.

Steve Forde, Rep. Boehner's spokesman, says the bill includes "fiduciary safeguards" that would, for instance, require firms offering advice to first disclose any fees or conflicts to employees who would be receiving it.

Fund companies, as administrators of the plans, also would have a competitive advantage in being hired to provide advice, says Matthew Gnabasik, managing director of Blue Prairie Group, an investment firm in Chicago that advises some 401(k) plans. "It's untrammelled power and access and will further fatten their profit margins."

Morningstar, which is big in providing third-party advice, says it already has been hired by 30 financial-service companies that administer 401(k) plans.

Rep. Bingaman's proposal bill is based on the premise that more employers would provide investment advice if they didn't have to worry about being sued if the advice led to losses. The measure says that if companies hire advisers who are independent and qualified, and who are properly monitored, sponsors can't be held liable for the quality of the investment advice.

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