CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

May 29, 2008

H.R. 3185
401(k) Fair Disclosure for Retirement Security Act of 2008

As ordered reported by the House Committee on Education and Labor on April 16, 2008

SUMMARY

H.R. 3185 would amend the Employee Retirement Income Security Act of 1974 (ERISA) to require administrators of 401(k) plans to disclose information regarding fees to beneficiaries and plan participants. The bill would require the Department of Labor (DOL) to provide sample notices, to provide support for small businesses, to enforce the new provisions, and to annually audit a sampling of individual account plans for compliance. CBO estimates that the additional costs to DOL would be insignificant in 2009 and 2010, but would amount to $3 million over the 2009-2013 period, assuming appropriation of the necessary amounts.

Enacting the bill would not affect direct spending. Under this legislation, certain civil penalties (which are recorded as revenues) would be created for failing to comply with the provisions of the bill. CBO estimates that any increase in revenues resulting from those civil penalties would not be significant over the 2009-2018 period.

H.R. 3185 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). State, local, and tribal governments would be exempt from the bill's new requirements governing defined-contribution plans under ERISA.

H.R. 3185 contains several private-sector mandates as defined in UMRA. The bill would amend ERISA to impose new requirements on parties entering into contracts for services to a defined-contribution (DC) retirement plan. Under the bill, service providers would be required to supply plan administrators with a written statement containing a description of services they will provide and an estimate of expected annual charges for those services. Also, the bill would require plan administrators to disclose additional information to participants in DC plans that permit participants to exercise control over account assets. CBO cannot determine whether the aggregate direct costs of these mandates would exceed the annual threshold defined in UMRA ($136 million in 2008, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 3185 is shown in the following table. The costs of this legislation fall within budget function 600 (income security).

	By Fiscal Year, in Millions of Dollars					
	2009	2010	2011	2012	2013	2009-2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION[a]						
Estimated Authorization Level	*	*	1	1	1	3
Estimated Outlays	*	*	1	1	1	3

Note: * = less than $500,000.

a. The bill would increase revenues by less than $500,000 over the 2009-2018 period.

BASIS OF ESTIMATE

For this estimate, CBO assumes that H.R. 3185 will be enacted by October 1, 2008, that the estimated authorizations will be appropriated by the beginning of each fiscal year, and that outlays will follow the historical spending rates for similar activities.

H.R. 3185 would require that DOL provide sample notices and support to small businesses, and perform annual audits of a representative sampling of individual account plans covered by ERISA. The audits would determine compliance with the new section 111 of H.R. 3185. Based on information provided by the Department of Labor, CBO estimates that those requirements would result in insignificant costs to DOL in fiscal years 2009 and 2010, but would cost $3 million over the 2009-2013 period.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 3185 contains no intergovernmental mandates as defined in UMRA. State, local, and tribal governments would be exempt from the bill's new requirements governing defined-contribution plans under ERISA.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 3185 would impose private-sector mandates, as defined in UMRA, on plan administrators and providers of services to DC retirement plans subject to ERISA. Because of uncertainties about existing industry practices and costs and how provisions of the bill might be implemented, CBO cannot determine whether the direct costs of those mandates would exceed the annual threshold defined in UMRA ($136 million in 2008, adjusted annually for inflation).

Requirements for Service Contracts

The bill would impose new requirements on parties entering into contracts for services to a DC retirement plan for which the charges will exceed $5,000. Before entering the contract, a service provider would be required to supply the plan's administrator with a written statement, which would have to be updated at least annually over the life of the contract, describing the services to be provided and an estimate of expected total annual charges for such services broken down into categories specified in the bill. In addition, the description would disclose financial relationships and any arrangements for free or discounted services by the service provider.

To comply with the mandate, service providers would need to break down broad service charges into the categories required by the bill, which might require them to update information systems or develop new methods of compiling the information. If a service provider bundles services from other service providers, it would need to collect the necessary information from each of those service providers and produce a custom report, including reports for each participant, that combines that information for the DC plan with which it has a contract.

The business practices involved in providing services to DC plans and methods for reporting fees vary greatly among service providers and across plans; therefore, the cost of the mandate would differ among different service providers. In addition, some service providers already disclose the required information or already have the infrastructure and data necessary for providing that information, although the extent to which they provide such information currently is unclear. Finally, the cost of this mandate would depend on how the provisions of this bill would be implemented—for example, how the Department of Labor would interpret what constitutes a reasonable allocation and estimate of charges. As a result of those uncertainties, CBO cannot estimate the direct costs of this mandate.

Required Disclosures to Plan Participants

The bill also would require plan administrators, for those DC plans that permit participants to exercise control over their account's assets, to provide participants with investment election information and to disclose additional information in the quarterly benefit statement. Such information would include descriptions of plan and individual account charges, options, services and financial records. CBO expects that most plan administrators would require, as a part of their contracts with record keepers and other service providers, that those parties provide the additional information. It is uncertain, however, how much service providers would charge, if anything, for those additional services.

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