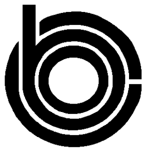

CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

July 31, 2009

H.R. 2989

401(k) Fair Disclosure and Pension Security Act of 2009

As ordered reported by the House Committee on Education and Labor on June 24, 2009

SUMMARY

H.R. 2989 would amend the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code. Specifically, the bill would give plans more flexibility in how they calculate pension liabilities in 2009 and temporarily extend the time plans have to make up funding shortfalls. In addition, it would require administrators of 401(k) plans to disclose additional information to beneficiaries and plan participants, and require that firms that provide investment advice to employees give advice that is independent and free of any conflict of interest.

CBO and the Joint Committee on Taxation (JCT) estimate that enacting H.R. 2989 would increase federal revenues by $7.2 billion over the 2009-2019 period. CBO estimates the bill would reduce direct spending by $2.8 billion over the same period. On balance, those changes would reduce deficits by $10.0 billion through 2019. In addition, CBO estimates that implementing the bill would require additional discretionary funding with a total cost of $55 million over the 2010-2019 period, assuming appropriation of the necessary amounts.

JCT and CBO have determined that H.R. 2989 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). JCT and CBO have determined that the bill contains private-sector mandates. CBO has determined that the nontax provisions would impose private-sector mandates on plan sponsors of defined contribution and defined benefit retirement plans subject to ERISA and providers of services to defined contribution retirement plans subject to ERISA. Because detailed information about existing industry practices is not available, and because it is uncertain how some provisions of the bill would be implemented, CBO cannot determine whether the costs of those mandates would exceed the annual threshold defined in UMRA for

private-sector mandates ($139 million in 2009, adjusted annually for inflation). JCT has not determined whether the costs of the mandates in the tax provisions would exceed the private-sector threshold established in UMRA.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 2989 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	2014	2015	2016	2017	2018	2019	2009-2014	2009-2019
CHANGES IN REVENUES													
On-Budget	301	3,263	3,411	2,676	1,563	1,135	984	-5	-2,028	-2,746	-1,363	12,349	7,191
Off-Budget	0	190	337	325	215	172	159	-36	-475	-606	-280	1,239	1
Total	301	3,453	3,748	3,001	1,778	1,307	1,143	-41	-2,503	-3,352	-1,643	13,588	7,192
CHANGES IN DIRECT SPENDING													
PBGC Premiums													
Estimated Budget Authority	0	-125	-375	-525	-525	-475	-400	-250	-150	0	0	-2,025	-2,825
Estimated Outlays	0	-125	-375	-525	-525	-475	-400	-250	-150	0	0	-2,025	-2,825
NET IMPACT ON THE DEFICIT FROM REENUES AND DIRECT SPENDING [a]													
On-Budget	-301	-3,388	-3,786	-3,201	-2,088	-1,610	-1,384	-245	1,878	2,746	1,363	14,374	-10,016
Off-Budget	0	-190	-337	-325	-215	-172	-159	36	475	606	280	-1,239	-1
Total	-301	-3,578	-4,123	-3,526	-2,303	-1,782	-1,543	-209	2,353	3,352	1,643	-15,613	-10,017
CHANGES IN SPENDING SUBJECT TO APPROPRIATION													
Estimated Authorization Level	0	2	6	6	6	6	6	6	6	6	6	26	56
Estimated Outlays	0	*	7	6	6	6	6	6	6	6	6	25	55

Note: PBGC = Pension Benefit Guaranty Corporation; * = less than $500,000.

a. Positive numbers indicate increases in the deficit, and negative numbers indicate reductions in the deficit.

BASIS OF ESTIMATE

For this estimate, CBO assumes that H.R. 2989 will be enacted by October 1, 2009, that the estimated authorization amounts will be appropriated by the beginning of each fiscal year, and that outlays will follow the historical spending rates for similar activities.

Direct Spending and Revenues

The bill would relax the funding requirements in the Pension Protection Act of 2006 for defined benefit pension plans operated by single employer. Under current law, plan sponsors are required to make minimum contributions to their plans for years in which the value of the plan's assets falls short of the present value of the plan's accrued benefits. Those minimum contributions include annual payments needed to amortize any such shortfalls over the next seven years. The bill would permit plan sponsors with funding shortfalls in 2009 and 2010 to delay for two years the seven-year amortization period and contribute only the interest on such shortfall during the two-year delay. Additionally, the bill would allow plan sponsors who had elected to use certain interest rates when calculating their minimum required contributions for the 2009 plan year to revoke that election for subsequent plan years. Under current law, that revocation would require the consent of the Secretary of the Treasury.

Revenues. The bill would allow plan sponsors to forgo some contributions to their plans, though some of those contributions would be made in later years. This would reduce the amount of tax-deductible contributions firms make to their pension plans. Thus, JCT estimates that the bill would increase revenues by $13.6 billion over the 2009-2014 period and $7.2 billion over the 2009-2019 period. (Off-budget revenues would increase by $1.2 billion over the 2010-2014 period and $1 million over the 2010-2019 period, with no impact in 2009.)

H.R. 2989 would impose new penalties on plan administrators who fail to meet the reporting requirements of the bill in a timely manner. Enacting the legislation could increase the collections of civil penalties. (Civil fines are recorded as revenues.) CBO estimates that any new collections would not be significant because of the relatively small number of cases likely to be affected.

Direct Spending. The bill also would allow sponsors to make smaller contributions to their pension plans, reducing the level of funding of the plans. Sponsors must pay a variable-rate premium to the Pension Benefit Guaranty Corporation (PBGC) of $9 for every $1,000 of underfunding in the plan. Based on information provided by PBGC, CBO estimates that H.R. 2989 would increase premium receipts by about $2.8 billion

over the 2010-2019 period. Such premium receipts are a credit against direct spending; thus, the increase in collections would decrease net direct spending.

The provisions of H.R. 2989 could have other effects on PBGC's costs, but the direction and magnitude of those effects is uncertain. On the one hand, the bill would reduce sponsors' contributions, improve their financial position, and make it less likely that they would become bankrupt in the near term. Thus, the bill might reduce the number of plans that the PBGC takes over, which would decrease future costs. On the other hand, the lower contributions could mean that the underfunding for plans that do become the responsibility of PBGC would be greater, thus adding to agency costs.

Spending Subject to Appropriation

H.R. 2989 would give the Department of Labor (DOL) new responsibilities to implement and enforce the provisions of the bill. It would require that DOL establish a program to promote financial literacy and provide support for small businesses in selecting service providers and finding affordable investment options. In addition, the bill would require DOL to annually audit a sampling of individual account plans for compliance and maintain a list of service providers who do not meet the requirements of the bill. CBO estimates that those requirements would result in insignificant costs to the department in fiscal year 2010, but would cost $6 million annually over the 2011-2019 period.

The legislation also would require the Secretary of Labor to conduct studies within 18 months on the effectiveness of several provisions of the bill. Specifically, the department would study the effectiveness of government efforts to promote financial literacy and the requirements to include benchmarks in information reported to plan beneficiaries. Also, the Secretary would review the reporting and disclosure requirements of ERISA and the Pension Protection Act of 2006 and make recommendations to the Congress to simplify and clarify disclosures to plan participants. Based on information provided by DOL, CBO estimates that conducting the studies and preparing the reports would cost about $2 million over the 2010-2011 period.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

Intergovernmental Mandates

JCT and CBO have determined that H.R. 2989 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act. State, local, and tribal governments

would be exempt from the bill's new requirements governing defined contribution plans under ERISA.

Private-Sector Mandates

JCT and CBO have determined that the bill contains private-sector mandates as defined in UMRA.

Tax Provisions. JCT has determined that a tax provision of the bill contains a private-sector mandate by extending the period for single-employer defined benefits plans to amortize the shortfall amortization base for 2009 and 2010. JCT has not determined whether the costs of that mandate would exceed the private-sector threshold established in UMRA ($139 million in 2009, adjusted annually for inflation).

Nontax Provisions. CBO has determined that the nontax provisions would impose private-sector mandates on plan sponsors of defined contribution and defined benefit retirement plans subject to ERISA and providers of services to defined contribution retirement plans subject to ERISA. Because detailed information about existing industry practices is not available, and because it is uncertain how some provisions of the bill would be implemented, CBO cannot determine whether the costs of those mandates would exceed the annual threshold defined in UMRA for private-sector mandates ($139 million in 2009, adjusted annually for inflation).

*Required Disclosure to Plan Administrators***.** The bill would impose new requirements on service providers and administrators of defined contribution retirement plans if annual charges for services to the plan are expected to equal or exceed $5,000. Before entering into a contract for services, a service provider would be required to supply the plan's administrator with a written statement, to be updated at least annually over the life of the contract, describing the services to be provided and the expected annual charges for such services. 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 defined contribution plan with which it has a contract.

The business practices involved in providing services to defined contribution plans and methods for reporting fees vary greatly among service providers and across plans; therefore, the cost of the mandate would vary 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 costs of this mandate.

Required Disclosures to Plan Participants. The bill also would require plan administrators, for those defined contribution plans that permit participants to exercise control over their account's assets, to provide participants with additional information about their investment options before they make their elections and to provide additional information in their quarterly benefits statements about account balances and fees deducted from their accounts. CBO has determined that this mandate would fall on the sponsor of the defined contribution plan, because plan administrators perform services on behalf of the plan sponsor. CBO is unable to estimate the cost of this mandate because it does not have information on the cost to produce and distribute the additional disclosures and it does not have information on how that cost might be shared between the plan sponsor, the plan participants, and the service providers. The direct cost of the mandate would be the part borne by the plan sponsor.

Limitations on the Provision of Investment Advice. The bill would prohibit providers of investment services to defined contribution plans from supplying investment advice to those plans and would impose new requirements on other service providers that supply investment advice to plans. Some of the business transactions that would be prohibited under the bill would be permitted under the Department of Labor's final rules pertaining to investment advice, which are scheduled to become effective on November 18, 2009. CBO has determined that there would be a cost, which would be equal to the profit lost as a result of not engaging in those transactions, to service providers who potentially would provide such investment advice. Due to uncertainty about what new business would develop for providers of investment advice under the new rules, CBO cannot estimate the costs of this mandate to those service providers.

Required Reporting to the Pension Benefit Guarantee Corporations. The bill would require contributing plan sponsors of defined benefit retirement plans to provide the PBGC with any records, documents and financial statements relevant to determining the liabilities and assets of the plan if the aggregate benefits of the plan that are vested but unfunded exceed $50 million. CBO estimates that the cost of this mandate would not exceed the annual threshold defined in UMRA.

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