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To: EBSA, E-ORI - EBSA
Subject: Public Comments on ERISA rules for 401K reporting

The principal dilemma in the 401K plan

1. Liability matching - there is no attempt to match assets and pre-tax, tax deferred contributions to future liabilities

- Participants in plans do not have the skills, nor can they make correct asset allocation decisions to mutual fund products to match their future liabilities with the level of information and skills provided to them by current disclosure requirements. This dilemma is a fundamental injustice of the current system, and will result in significant public policy dilemma in coming years and a real 'entitlement risk' to the Treasury in future election cycles as 401K plans prove inadequate to provide minimum living standards for participants, tax payers, and voters.
- Fund managers are regularly paid automatic fees with no obligation of liability matching, nor relationship to performance. This fundamental flaw in the integrity of the system results in an undisciplined marketplace in which fund managers can invest in assets of poor quality without any serious retribution to their businesses. They are now suffering the results of this indiscipline with the subprime assets recently bought from Wall Street. This situation arises with every cycle on Wall Street in a different or new asset class (i.e. high technology growth stocks, telecommunications, real estate investment trusts, subprime mortgages).
- This flaw in the system disadvantages 401K plan participants compared to other investors in insurance companies, defined benefit pension plans, and other liability matched investors who receive matched returns for the the same or similar management fees. There is a principle of common law here, I cannot name, which basically says that two customers cannot pay the same price but receive disparate levels of service. This common law violation is exactly what is happening with the 401K plan program due to the wide range of total and hidden fees charged to participants in 401K plans and the competitive disciplined pricing enjoyed by professional investors of liability matched funds.
- Individual participant risk tolerance profiles have no bearing on investment decisions taken by managers of liability matched, defined benefit plans. These managers make asset allocation decisions purely on actuarial expectations based on age and final payout liability. Yet, these individual participant risk profiles come into bear for 401K plan participants overtly or covertly based on decisions made by participants with limited knowledge of actuarial principles and very real emotions about their ability to lose value of their assets. These disparities particularly affect the young who have small portfolios and the most to lose by improper allocation at the beginning of their saving years.
- Defined benefit plan managers would allocate 15%-20% equivalent of pre-tax earnings per year during a 20-30 year working period in order to approximate

final income requirements. These levels of investment are not achieved by the current program, nor do participants adequately understand the significance and implications of these shortfalls.No disclosed information helps them understand this dilemma, nor the actions they should take to rectify poor prior choices.

- Defined benefit plan managers also have the advantage of complex actuarial and other consulting services which allow them to regularly assess the outlook for various asset classes and the performance of managers. No 401K plan participant has access to this quality of regular information and insight with which to make asset allocation and manager selection decisions. Defined Benefit managers, because of the discipline and scale of their business receive these services intrinsic to their paid management fees which are very competitive. 401K plan participants do not have those advantages, nor would have the skills necessary to put them to optimal use. High-net-worth investors who have access to Funds of Funds programs receive these services for total fees that may approximate the total and hidden fees paid by 401K plan participants.
- Average 401K plan participants do not have the skills required to approximate liability matching.
- Real wages for working Americans have been falling since the 1980s when ERISA pension reforms effectively eliminated the hidden cost of doing business represented by the Defined Benefit Pension Plan. Working Americans have limited understanding of the 15%-20% levels normally invested every year by Defined Benefit Plan managers on their behalf, nor were these funds replaced in the form of higher real wages at the time of those reforms to enable participants to reach those investment levels. Working Americans today do not have adequate incomes to achieve those levels of investment commensurate with achieving final fund values equivalent to defined benefit plans who may pay lower fees to similar managers.

2. Tax revenue foregone by the Treasury in support of this program does not result in optimized, consistent or sufficient benefit for mass retirement security commensurate with the public investment represented by lost current tax dollars.

3. All expert evidence demonstrates that actively managed funds do not out-perform balanced indexed funds over the long-term which require significantly lower fees, yet 401K plans are loaded with actively managed fund choices as well as company stock purchase, which no low-net-worth investor should be buying and actively managing.

- This injustice in the system resulted in significant loses to life-long Enron and other firms' employees who were failed by the SEC, Dept of Labor, IRS, and all of their elected officials in their responsibility to provide public securities market integrity and programs for self-provision of retirement security in accordance with ERISA reforms undertaken during the Reagan administration.
- These failures will continue into the future under current plan structures and result in significant liability to the Treasury as well as in shattered hopes of millions of Americans who will vote for new entitlements or be given them by their legislators in order to appease aggrieved voters and guarantee social order.

4. 401K plan participants cannot choose providers of recordkeeping, custody, servicing, legal, administration and other related services implicit in these plans based on any reported information in prospectuses, nor is there a structure in these plans for real consumer choice or un-bundling of these services.

- All decisions about these services and the menu of fund options are made by plan sponsors and trustees, not participants.
- These decisions are not revised regularly in response to market outlook and manager performance as would be the case in Fund of Funds programs available to high-net-worth investors paying similar fees.

5. The 401K plan makes no provision to educate high school and college students about their responsibilities for self-provision of retirement security

- Information and published materials are of disparate quality and access
- Published educational materials provided as part of plans are developed by the fund families or administration providers themselves which is a conflict of interest
- Most financial literacy program are funded by charitable arms of financial institutions as part of Community Reinvestment Act obligations
- There is no assessment of understanding of basic principles and demonstrated skills at the time plan participants enroll in these programs, nor ongoing refresher or continuing training throughout the lifetime of the participant
- An increasingly diverse workforce, working at lower real wages, necessitates more wide ranging public information programs and training about investment principles and the current obligations of the 401K program
- No NFP or NGO organization represents the interests of 401K plan participants in Washington and State Capitols and garners their engagement throughout their saving years. AARP represents the interests of individuals closer to retirement, and in retirement, but not during the crucial saving years of early-, mid- and late-adulthood.
- Advocacy is needed for this group of unorganized investors to address public policy decisions in tax code, public debt, inflation, GDP and growth metrics and reporting, currency exchange rates, trade deficit, etc.all of which have a bearing on the future value of the USD in world commodities markets and the concomitant value of 401K assets to provide a living income into the future. 401K plan participants need specialized advocates in Washington and State Capitols independent of their elected officials and appointees in administrative and justice positions throughout their saving years. Until these issues are rectified, we have a significant 'entitlement risk' to an already underfunded Federal Treasury, and significant risk of social cohesion and other public policy issues well into the future.