Frank Keating
President & Chief Executive Officer

July 7, 2009

The Honorable George Miller
Chairman
Committee on Education and Labor
2181 Rayburn HOB
Washington, DC 20515

The Honorable John Kline
Ranking Republican
Committee on Education and Labor
2101 Rayburn HOB
Washington, DC 20515

Re: H.R. 2989, the "401(k) Fair Disclosure for Retirement Security Act of 2009."

Dear Sirs:

I am writing to provide the views of the American Council of Life Insurers (ACLI) with regard to H.R. 2989, the "401(k) Fair Disclosure for Retirement Security Act of 2009," which was approved by the Committee on June 24, 2009. The ACLI is a national trade association of 340 member companies that account for 93 percent of the life insurance industry's total assets in the United States, 94 percent of life insurance premiums, and 94 percent of annuity considerations. In addition to life insurance and annuities, ACLI member companies offer pensions, including 401(k)s, long-term care insurance, disability income insurance and other retirement and financial protection products, as well as reinsurance.

ACLI shares your commitment to meaningful 401(k) plan fee disclosure that provides plan sponsors with the necessary information to evaluate and compare plan service arrangements and disclosure that provides plan participants with the information needed to prudently manage their accounts. Similarly, we too believe that plan participants would benefit from investment advice that might allow them to more successfully acquire assets for a comfortable retirement.

While we applaud your efforts in these areas, and appreciate the time your staff has given us to listen to our concerns, the ACLI continues to have serious concerns with H.R. 2989 as approved by the Committee. In regards to 401(k) fee disclosure, the reasons for this concern are principally the continued inclusion of three main provisions: the mandated "unbundling" of fee arrangements, the requirement of an index fund as a condition of 404(c) fiduciary protection, and the requirement that fees be listed in dollar terms.

With regards to the investment advice portion of the bill, the ACLI's major concerns focus on two key points: that the legislation would eliminate the Pension Protection Acts (PPA) investment advice provisions that allows for "non-biased" advice and would eliminate the long standing Department of Labor (DOL) advisory opinions and individual exemptions that allow employers and service providers to provide advice based on a third party financial expert's advice model. Below, we describe in more detail why these provisions might make for harmful public policy.

Mandated unbundling of fee arrangements:
It is the position of the ACLI that the mandatory unbundling of fee arrangements will not decrease fees. Instead, a requirement to deconstruct fee arrangements into separate prescribed categories and allocate hypothetical, non-marked based fees to service which the provider does not make available separately will only serve to increase the cost of services. Such a requirement would demand an expenditure of time and effort to create and maintain numbers that currently do not exist. We believe

this mandate will lead to meaningless and confusing approximations and the costs of this exercise will ultimately be passed on to plan participants through higher administrative fees. As long as plan fiduciaries can compare the services and total costs for different options that are available to the plan, they have fulfilled their ERISA responsibility to enter into reasonable service arrangements.

Mandated investment option as a condition of 404(c) protection:
ACLI is concerned that by Congress mandating an investment option as a condition of 404(c) protection, it will create a dangerous precedent. Requiring that plans offer an index fund would substitute the judgment of Congress for that of the plan fiduciary responsible for selecting plan investment options. Additionally, such a requirement may send a signal to plan participants that such an investment option is "government approved;" despite the fact another option might be a better fit for their particular needs and circumstances.

Fees listed in dollar terms:
We believe that fee disclosure should be expressed in the same manner in which the fee is charged. Thus, fees should be disclosed as a dollar or percentage as the case may be, without a requirement to convert a percentage to a dollar amount of vise versa.

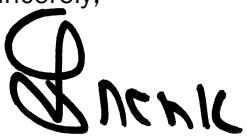
Elimination of the PPA's investment advice provisions:
The ACLI continues to support the investment advice provisions enacted as part of the PPA. These provisions will expand access to investment advice at the work place by allowing for more "non-biased" advice arrangements. H.R. 2989, as passed by the Committee, would only provide for "independent" investment advice at the workplace. The ACLI is concerned that this step would significantly limit the amount of advice available to workers, due to the limited number of available "independent" advisors and higher fees. Employers already have the option to provide workers access to "independent" advisors. However, the cost of obtaining "independent" investment advice is prohibitive to many small employers and most non-highly compensated employees. While we agree that conflicted investment advice should be prohibited, the "non-biased" advice permitted by PPA will provide workers with an important source of useful investment information in these difficult economic times.

Elimination of DOL advisory opinions and individual exemptions:
We believe that the provisions of H.R. 2989, as currently written, would lead to fewer advice programs in the workplace. Employers and plan sponsors have relied upon long-standing DOL Advisory Opinions (such as SunAmerica and Frost Bank) as well as individual DOL exemptions to provide their employees with "non-biased" investment advice based on models developed and controlled by independent third parties. If this outlet for advice is closed through H.R. 2989, countless workers will loose access to this source of useful advice.

While we acknowledge and appreciate the improvements in H.R. 2989 as compared to previous iterations of this legislation, we continue to have serious concerns about the issues described above. We look forward to working with you and your staffs as the bill continues through the legislative process to address these issues.

Thank you for your time and consideration in this matter, and again, we share your interest in providing meaningful fee disclosure and in providing workers with increased access to investment advice

Sincerely,



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