

# Bear Market Puts 401(k) Under Microscope

**THIS YEAR'S MARKET** downturn has put 401(k)s under the microscope, prompting proposals to alter or even eliminate the company-sponsored retirement plans.

With stocks falling, Americans fretting over their dwindling savings and Democrats winning Washington, criticism of the current 401(k) system is sure to get more airtime in the coming months. House leaders have already started holding *hearings*<sup>1</sup>, and Rep. George Miller (D., Calif.), chairman of the Education and Labor Committee, which oversees retirement issues, has *called*<sup>2</sup> 401(k)s "a big failure in terms of providing an adequate retirement for middle class Americans."

What does this mean for the future of 401(k)s?

One proposal that's gotten a lot of recent attention is pretty drastic. Proposed by a professor who *testified*<sup>3</sup> before the House in October, the idea is to create universal Guaranteed Retirement Accounts in which Uncle Sam would require workers to lock away a chunk of their pay into accounts in exchange for a "guaranteed" 3% inflation-indexed return.

If it sounds far-fetched, consider that some \$2 trillion was lost from 401(k)s and IRAs in the past year, according to the *Center on Retirement Research*<sup>4</sup>, as well as \$2 trillion lost from pensions. And Congress and regulators don't want to look complacent.

"There's been a tremendous amount of movement toward change in the 401(k) space, building for several years now," says Jerry Bramlett, president of BenefitStreet, a large 401(k) record-keeping firm.

Bramlett sees three forces coming to a head now: regulatory, legislative and the plaintiff's bar. **Boeing** (BA<sup>5</sup>) employees recently won class-action status for their lawsuit in which they claim Boeing breached its fiduciary duties under the Employee Retirement Income Security Act (ERISA) because of excessive fees charged to 401(k)s. "There's a lot less trust in financial institutions than there was six months ago. We're moving toward a tipping point to where all this comes together," Bramlett says.

But Washington is still a slow-moving beast. It likes to grandstand and thump its chest, but unless the latest election has made it feel particularly bold -- which isn't wholly out of the realm -- totally upending the 401(k) system is politically tough without a viable alternative out there.

"I think we're going to see incremental change. I do think we're going to see some drastic regulation of Wall Street, but I don't think we're going to see a move to drastically change the structure of retirement accounts," says Niels Holch, executive director for the *Coalition of Mutual Fund Investors*<sup>6</sup>.

Jack VanDerhei, research director of the *Employee Benefit Research Institute*<sup>7</sup>, seconds that sentiment. "I'd be very hard-pressed to see something that would be realistic enough to have a chance of passing and something employers would still be interested in sponsoring," VanDerhei says.

However, do expect to hear about more legislation over 401(k) fees and transparency. The Labor Department has already

been working on this issue, which we covered<sup>8</sup> awhile back. But there will also be some pushback from the industry and corporations, which could in turn hold up even incremental change. In the meantime, if the market bounces back the immediate impetus for trying to "fix" 401(k)s could fade.

<sup>1</sup><http://edlabor.house.gov/hearings/fc-2008-10-22.shtml>

<sup>2</sup><http://www.politickerca.com/jeffmitchell/2629/miller-says-government-must-next-turn-its-attention-propping-sagging-401k-and-pens>

<sup>3</sup><http://edlabor.house.gov/testimony/2008-10-07-TeresaGhilarducci.pdf>

<sup>4</sup>[http://crr.bc.edu/preview/the\\_financial\\_crisis\\_and\\_private\\_defined\\_benefit\\_plans.html](http://crr.bc.edu/preview/the_financial_crisis_and_private_defined_benefit_plans.html)

<sup>5</sup><http://www.smartmoney.com/quote/BA/>

<sup>6</sup><http://www.investorscoalition.com/index.html>


<sup>7</sup><http://www.ebri.org/>

<sup>8</sup><http://www.smartmoney.com/investing/economy/New-401k-Fee-Rules-Slow-to-Materialize-23613/>

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