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401(k) plan rules draw scrutiny; lawmakers prepared to take action

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Matt Romeo, Everhart Financial Group's lead education consultant, has been talking to employees of a local United McGill operation about the nuances of their 401(k) plan.
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It's not just the struggling economy that has employees yelling "fix it" that prompted lawmakers to examine the landscape of retirement plans.

• It's the Pension Protection Act of 2006, which took effect in 2008, just as the full effects of the economic downturn hit. It closed loopholes that previously allowed some companies to under-fund their plans. The sour economy turned that law into a hardship for businesses.
• It's leakage from 401(k)s, requiring sponsors and participants to examine their plans' fee structures and find the language rather hidden – perhaps by design.
• It's the potential for conflicts of interest between those who are compensated by a fund they then recommend to plan sponsors without disclosing this relationship.
• It's the debate over the penalties associated with early withdrawal, whether for a loan or hardship.

While the health-care debate dwarfs 401(k)-related legislation this year, it won't be long, observers say, until the tide turns. "401(k)s will be subject to new rules within the next two years," said Bridget Hagan, associate vice president of government relations for **Nationwide Mutual Insurance Co.**
U.S. Rep. Pat Tiberi, R-Ohio, is a co-sponsor of the Preserve Benefits and Jobs Act of 2009 which was introduced on Oct. 27. It would allow time for pensions to fund benefit obligations in light of economic circumstances. "With a little more time to meet government mandates, employers will be able to keep employees working while giving them the security of knowing their pensions will be there when they need them," Tiberi said in a written statement. Supporters of a temporary relief proposal realize the legislation is in response to changing economic conditions, Hagan said. "Right when the funding requirements increased, the economy took a severe hit," she said. "It was like a double whammy."
If the other big issues – fee disclosure and conflict of interest regulations – get tied in with the funding issue, the measure could stall. "The big question is, will (funding relief) drag the other two elements in? I don't think so because there's little interest in those two," said Ed Ferrigno, vice president of legislative affairs at the **Profit Sharing / 401(k) Council of America**. With the host of legislative pipe dreams before lawmakers, some tunes carry a familiar melody, Ferrigno said. "You see somebody want to provide penalty-free withdrawals every year," he said. "Very rare that it occurs."

Grace Schmitt is one human resource manager who doesn't support the new legislation. The vice president of human resources for **Glimcher Realty Trust** doesn't want the penalties to be eased. "It seems paternalistic, but we want to try to convince our associates to participate in the (401(k)) plan," she said, adding that the company's plan provides for both loan and hardship withdrawals. "The amount of requests I am receiving for hardship and loan has tripled." What's also keeping HR managers alert to the political climate is the pace at which regulations cannot only change but be enforced. Parts of the stimulus package, like COBRA, not only took effect immediately, but were retroactive. That's enough to encourage staffers to not only follow legislation, but to plan ahead. "Before it was 'I don't want to know about it until it's real.' We'd then have time to figure out the requirements and develop a plan to meet those requirements," Schmitt said. "Now we think, 'Well, if this passes…' " With 1,000 employees in 13 states, Glimcher, like many companies, hired a consultant to scrutinize its 401(k) plan. Working with Dublin-based **Everhart Financial Group** and its President Scott Everhart revealed several costs that could be avoided with a change in platforms, Schmitt said.

Everhart said The Preserve Benefits and Jobs Act is "probably prudent right now" because it will give (companies) more time to work through a difficult economic environment.
"Prudent businesses will always do better with more flexibility, but it also gives them more rope to hang themselves," he said. "For the right management teams – those who handle their defined benefit plan prudently – the flexibility is a good thing. But if the team is not managing their plan wisely, it's more leeway which can allow them to get further off track."

Like Glimcher, the local operations of manufacturer **United McGill Corp.** also hired Everhart as a consultant and the results called for action. "We are in the midst of switching platforms because of fees – because they are taking a big cut out of our accounts," said Kathy Cauley, McGill's director of personnel services. "Now we're able to get a share class that doesn't have as many expenses." What Hagan anticipates seeing Congress focus on is developing more options, such as an annuity option, a rare feature of 401(k) plans, which allows a person to receive a fixed payment from an investment. "Congress is thinking about how to encourage people to take a 401(k) annuity distribution option and how to make sure it is available," she said. "It's a step in recognizing that we need a 401(k) system with options that people have in defined benefit plans."

Carol Terracina-Hartman is a freelance writer.