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ATTN: REVISION OF FORM 5500 (RIN 1210-AB06)
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The Profit Sharing/401k Council of America (PSCA) supports the Department of Labor in its effort to revise the Form 5500 so that all expenses paid from plan assets are reported. Currently, expenses paid from plan assets are not fully reported on the Form 5500 and, as a result, Form 5500 fee-related information is not useful to government policymakers, plan sponsors, plan participants, and others with an interest in this information. The proposed revisions of the Form 5500 will result in clear and easily identifiable reporting of the total costs paid from plan assets and compensation attributable to a relationship with the plan.

ERISA and its accompanying regulations intend a full reporting on the Form 5500 of all fees, expenses, and commissions charged to qualified retirement plans. In general, the proposed rule will change the Form 5500 so that it will once again provide this information and become invaluable in assisting plan sponsors in meeting their duty to ensure that plan expenses are reasonable. Also, the revisions to Schedules A and C that require identification of service providers that fail to provide information needed to complete the annual report is helpful. The proposed Short Form 5500 appears to have successfully balanced the need for a streamlined form for small businesses with the need to fully report plan expenses.

At the same time there are aspects of the proposal that should be reviewed. They are:

Effective Date: The proposed changes are effective simultaneously with the new requirement for electronic filing of the Form 5500 – plan years beginning on or after January 1, 2008. This means the systems changes necessary to comply with the new requirements have to be in place on January 1, 2008. The Department should consider whether the January 2008 effective date is practicable and, if not, develop a transition strategy. For example, the use of estimation rather than exact calculation could be more liberally permitted during a transition period.

Provider Notification: PSCA believes that plan service providers will provide the necessary information for the revised Form 5500 to be properly completed. If a plan sponsor indicates on the Form 5500 that a provider has not provided the necessary information needed to file the

Form 5500, PSCA suggests that the Department notify the provider so that the problem can be quickly remedied.

Investment Float: The proposal permits the use of estimation to report revenue sharing and third party income. PSCA urges the Department to conclude that this estimation methodology will provide “disclosures sufficient to permit the fiduciary to make an informed decision regarding the proposed float arrangement” consistent with Field Assistance Bulletin 2002-3. This approach is a sensible outcome of the cost-benefit analysis related to the costly and complex calculation of plan level float income in an omnibus administrative climate.

Service Provider Compensation: PSCA urges the Department to afford the maximum flexibility consistent with the spirit of the proposed rule regarding the requirement to allocate specific types of service provider compensation, such as gift and entertainment expenses, to individual plans.

Plan Sponsor Fiduciary Review: While the new disclosures resulting from the revised Form will be beneficial, the proposed revision repeatedly mentions the link between the expenses that will be reported on the Form 5500 and the fiduciary duty to review plan expenses. Some plan sponsors will be challenged to prudently analyze some of the new information, particularly information relating to service provider compensation received from other parties as the result of their relationship to the plan. PSCA would like to partner with the Department in educating plan sponsors, particularly small plan sponsors, on meeting their fiduciary obligations regarding plan expenses.

PSCA believes that the proposed changes to the Form 5500, in conjunction with electronic filing, will result in a significant improvement in the timely reporting of comprehensive plan expense information. We expect that this will result in "data-mining" within the industry that will result in increased transparency that will benefit American workers saving for retirement.

Please feel free to contact me if you have any questions or if I can be of any assistance.

Sincerely

David L. Wray
President