



Comments to Proposed Regulation Regarding Disclosure to Participants

September 8, 2008

Department of Labor

The American Society of Pension Professionals & Actuaries (ASPPA) and the Council of Independent 401(k) Recordkeepers (CIKR) appreciate the opportunity to comment on the Department of Labor's (Department) proposed regulation (the Proposed Regulation) for disclosure of plan and investment-related information to participants in participant-directed plans (29 CFR § 2550.404a-5).

ASPPA is a national organization of more than 6,000 retirement plan professionals who provide consulting and administrative services for qualified retirement plans covering millions of American workers. ASPPA members are retirement professionals of all disciplines, including consultants, administrators, actuaries, accountants and attorneys. Our large and broad-based membership gives ASPPA unique insight into current practical applications of ERISA and qualified retirement plans, with a particular focus on the issues faced by small- to medium-sized employers. ASPPA's membership is diverse but united by a common dedication to the employer-sponsored retirement plan system.

The Council of Independent 401(k) Recordkeepers (CIKR) is a national organization of 401(k) plan service providers. CIKR members are unique in that they are primarily in the business of providing retirement plan services as compared to financial services companies who primarily are in the business of selling investments. As a consequence, the independent members of CIKR offer plan sponsors and participants a wide variety of investment options from various financial services companies without an inherent conflict of interest. By focusing their businesses on efficient retirement plan operations and innovative plan sponsor and participant services, CIKR members are a significant and important segment of the retirement plan service provider marketplace. Collectively, the members of CIKR provide services to approximately 68,000 plans covering 2.8 million participants and holding in excess of \$120 billion in assets.

Overview and General Comments

ASPPA and CIKR commend the Department's regulatory initiative to provide meaningful information to assist participants in making informed decisions regarding the management of

their individual accounts through the adoption of a proposed new fiduciary standard, as well as conforming changes to the existing 404(c) regulation. ASPPA and CIKR have serious concerns regarding the timing, cost and burden of the proposed disclosures, and we strongly urge the Department to delay adoption of a final regulation to enable the service provider community to create the systems that will assist fiduciaries in complying with the new requirements.

Notwithstanding the fact that the Proposed Regulation imposes obligations on plan fiduciaries, it is clear that the practical impact of this initiative will fall on the service provider community generally and plan recordkeepers in particular. Thus, many of our general and specific comments address the practical implementation of the new disclosure requirements from the service provider and especially recordkeeper perspective.

We have provided detailed comments on the sections of the Proposed Regulation, but also have a number of additional comments that are unrelated to a specific section:

- 1. Effective Date.** ASPPA and CIKR urge the Department to delay implementation of the Proposed Regulation until the later of January 1, 2010 or 12 months from the date of adoption of the final regulation. As a practical matter, we believe that the earliest date on which the regulation could become final is November 3, 2008, and realistically, we believe this date is optimistic. Assuming adoption of the final regulation by November 3, recordkeepers and other service providers will have approximately 58 days (counting the Thanksgiving and Christmas holidays) in which to modify systems and procedures to implement the disclosure requirements of the Proposed Regulation. This is based on the assumption that the first set of annual disclosures would need to be made on or before the beginning of the 2009 plan year, which for most participant-directed plans is the calendar year.

The cost of compliance within such a short timeframe will impose unreasonably high costs on the service provider community – in particular, third party administrators (TPAs) and independent recordkeepers not associated with financial services providers. (In these comments, we use the term “bundled provider” to refer to entities that offer proprietary investments as well as administrative services. We refer to entities that do not offer proprietary investments as unbundled service providers or, in the appropriate context, as independent recordkeepers.) Attached as Appendix A is an analysis prepared by Judy Xanthopoulos, Ph.D.¹, which estimates that the increased costs of compliance within a condensed 58-day timeframe for individual TPAs and independent recordkeepers would be approximately **30 to 40 percent higher than allowing implementation over a one-year period**. These costs would result solely from the additional burden imposed from a compressed compliance timeline.

In particular, there are several practical considerations that will pose the most serious problems. First, there are the costs associated with developing and creating the systems for capturing data that is not currently being obtained and re-programming computer systems to be able to deliver the information in the required format. Second, after collecting the raw data, TPAs and recordkeepers must then undertake a data cleaning

¹ Ms. Xanthopoulos' biography is attached to her analysis.

process, which involves a careful review and verification of the information collected from each financial service provider. This data “scrubbing” will be especially critical (and difficult) in the case of non-mutual fund investments. The process must be done on a case-by-case basis and will entail considerable man hours, as will preparing the computer codes necessary to generate reports for distribution. In addition, managing paper delivery in this condensed time period will impose additional costs as the current electronic delivery/electronic disclosure rules require affirmative consent from plan participants to receive electronic disclosures. Smaller and mid-sized TPAs and recordkeeping firms will face the greatest burden of the higher costs as they have narrower operating margins, a smaller base of clients over which to spread costs and fewer resources to divert to the new system development.

As explained in our economic analysis in Appendix A, the additional 30 to 40 percent cost of attempting compliance within a two-month or shorter timeframe is excessively high, as compared to the cost that would likely be incurred if the process could proceed at a more realistic pace over the course of 2009. While ASPPA and CIKR have concerns regarding the appropriateness of certain of the required disclosures, discussed in later comments, regardless of the information that must be disclosed, the cost to the service provider to be able to make the disclosures within a roughly two-month period is unreasonable.

Even this estimate of an additional 30 to 40 percent cost of compliance assumes that all of the required information actually can be obtained in order to comply with the information requirements. In particular, the investment-related information required to be compiled and disclosed for non-mutual fund investment products presents an insurmountable obstacle to compliance with a January 1, 2009 effective date. Many participant-directed plans make use of insurance contracts and other vehicles that do not provide the types of data that regulated investment companies (mutual funds) are required to provide under the federal securities laws. This would include, for example, expense ratios, annual return information and the like. Nevertheless, the Proposed Regulation would impose the same information gathering and disclosure requirements on this segment of the investment community.

Clearly, if the information is not readily available, neither the fiduciaries who will have the obligation to make the disclosures under the Proposed Regulation nor their service providers will be able to include the data in notices to participants. Again, a delay in the implementation of the Proposed Regulation would give the investment community the time to begin preparing the required data and to work with the service provider community to be able to deliver it in the required formats. We urge the Department to consult with these investment providers, in particular, to determine whether the delay in effective date suggested above would be sufficient to accomplish this task.²

² For purposes of comparison, consider SEC Rule 22c-2, which requires most open-end investment companies to enter into agreements with intermediaries, such as recordkeepers, that hold shares in “omnibus accounts” to enable the mutual funds to enforce restrictions on market timing and similar abusive transactions. The rule was originally adopted in March 2005 with a compliance effective date in October 2006, later extended to December 2006. Mutual funds and intermediaries, including retirement plan service providers, were given 20 months to comply with a

2. **Quarterly Disclosure of Administrative Expenses.** The Proposed Regulation requires an initial and annual explanation of fees and expenses for plan administrative services, including the basis on which such charges will be allocated to or affect participant account balances. The latter information is only required to be disclosed “to the extent not otherwise included in investment-related fees and expenses.”

The Proposed Regulation further requires that administrative costs be separately disclosed in a dollar amount to participants through a quarterly statement, again subject to the requirement “to the extent not otherwise included in investment-related fees and expenses.”

ASPPA and CIKR have significant concerns regarding the requirement for a quarterly statement of administrative costs³:

- In many cases, the information provided quarterly will not reflect the “true” annual cost and will prove confusing or even misleading for participants;
- We question whether the information to be provided is sufficiently relevant to warrant the effort it will require to comply; and
- Because the Proposed Regulation is being adopted as a fiduciary standard, to the extent the information is not accurate, fiduciaries (and service providers) will be caught in a conflict – either provide bad information or fail to comply with the information requirement on the grounds that the data being provided is incorrect. This is the epitome of a “Hobson’s Choice” because either way, the fiduciaries could be exposed to liability for a fiduciary breach.

Recommendation: As a result, ASPPA and CIKR urge the Department to consider eliminating the quarterly disclosure requirement and adopting instead a requirement for annual reporting of *all* the actual costs affecting a participant’s account balance, reflecting both investment-related and administrative expenses.⁴

Accuracy of Information

For independent recordkeepers that receive revenue sharing from the various investments

regulation that was far less sweeping and complex in its impact than the Proposed Regulation. Further, the Proposed Regulation is being promulgated at the same time as other significant changes that impact the service provider community, especially recordkeepers, with the same proposed effective date, January 1, 2009. These include new requirements for reporting and disclosure on Schedule C (which requires changes to systems and procedures), disclosure and documentation with respect to compensation under Section 408(b)(2) (which will require additional changes to systems and procedures as well as the preparation of new service agreements), and, for certain providers, compliance with sweeping changes under the Treasury Regulations under Internal Revenue Code sections 403(b) and 409A.

³ In this regard, we are only referring to the disclosure of general administrative expenses as opposed to administrative expenses that are specific to a participant or beneficiary (e.g., plan loan origination fees and the like).

⁴ We note that the “401(k) Fair Disclosure for Retirement Security Act of 2007” (H.R. 3185) (the “Miller Bill”), which in various respects requires more stringent disclosure to participants, would only require annual disclosure of administrative cost information.

offered on their platforms, it will be difficult to determine accurately the proper amount of administrative expenses to disclose. A large percentage of the administrative cost in most plans is covered through revenue-sharing received from the plan investments, which is used to explicitly offset some or all of a stated administrative fee charged by a recordkeeper.

However, it can sometimes take as long as 180 days to determine the amount of the revenue sharing, the plans to which it applies and the amount that applies to each account. This is true because different investment providers (*e.g.*, mutual fund complexes) pay revenue sharing at different intervals. Further, some recordkeepers anticipate future payments and offset currently; others offset only when the money is actually received. The impact on administrative costs may, therefore, vary considerably:

- The former group (that offset currently) will adjust in future months when their actual receipts are known; this will cause the amounts reported on the quarterly statements to fluctuate, causing confusion for participants and making it almost impossible for participants to interpret and respond.
- In the second situation, participants will likely see large charges in some quarters and small charges in others, resulting in participant confusion and frustration.

As a result, a quarterly statement to participants will either not reflect the true cost (and thus be misleading) because it will disclose the administrative fee but will not be able to properly reflect the offset amount, or the offset amount will be roughly a quarter (or possibly longer) behind. Because of the lag in being able to determine the proper offset amount, there may need to be adjustments in future quarters, which could prove even more confusing to participants. In other words, if required, general administrative costs disclosed on a quarterly basis will in many cases either be understated or overstated as compared to the “true” annualized cost, merely as a consequence of the accounting method utilized by the recordkeeper. In this sense, a quarterly statement of administrative amounts charged to a participant account reported as a dollar amount will likely prove more confusing than helpful.

In addition, more plans are recapturing expenses through the use of so-called “ERISA budget accounts.” Those are typically used to pay certain plan expenses (such as accounting fees) incurred during the course of the year but are generally allocated to participants only at the end of the year (if there is any excess remaining in the account). That raises the question of how those “negative expenses” should be treated. We suggest that the gross amount of recaptured expenses be offset against the administrative expense. Thus, only the net cost would be disclosed to participants, as shown on the proposed model disclosure form submitted to the Department in connection with the comments by ASPPA and CIKR on the proposed regulation under Section 408(b)(2) (attached as Appendix B) and on the proposed exemplary fee disclosure form submitted in connection with the response by ASPPA and CIKR to the Department’s Request for Information regarding fee and expense disclosures to participants (attached as Appendix C). Any other expenses paid from the recaptured amounts would be treated as separate expenses and disclosed accordingly.

Relevance of Information

Administrative costs represent less than ten percent of the costs borne by participant accounts. By requiring a quarterly disclosure of administrative expenses, but only an annual disclosure of investment-related fees and expenses, participants are more likely to focus on the actual dollars charged to their accounts for unbundled administrative services, while disregarding the main source of plan fees – the costs associated with investment options offered under the plan. In this regard, studies have shown that costs related to the investments account for between roughly 87 percent and 99 percent of the total costs borne by participant accounts, depending on the number of participants and amount of assets in a plan.⁵

In light of this, we question the utility to participants of a quarterly statement of the dollar amount charged to their accounts for administrative costs, especially since there is no similar requirement with respect to investment costs. We recognize that participants should be informed of the amount of administrative charges borne by their accounts, but we submit that an annual statement of costs would be more appropriate in that (i) it will be more accurate than a quarterly breakdown (for the reasons explained above) and thus less confusing, (ii) it will meet the needs of informing participants of the costs they are bearing and (iii) it would present administrative fee information on the same annualized basis as investment costs are presented, providing participants a more complete picture of the total cost of the plan at a single time, regardless of the business model of a service provider.

We also note that if a participant is concerned about the investment-related expenses borne by his or her account, he or she can take immediate action to make a change by reallocating his or her account to other, less costly alternatives. And yet, the investment-related expenses (which have a much more significant impact on the participant's account) are required to be reported on only an annual basis rather than quarterly. The

⁵ 2007 edition of the *401(k) Averages Book*, published by HR Investment Consultants, reports the following:

25 participants and \$1,250,000 in assets:	Investment expense accounts for 87.48% of total plan costs
50 participants and \$2,500,000 in assets:	Investment expense accounts for 91.80% of total plan costs
100 participants and \$5,000,000 in assets:	Investment expense accounts for 94.69% of total plan costs
200 participants and \$10,000,000 in assets:	Investment expense accounts for 96.24% of total plan costs
500 participants and \$25,000,000 in assets:	Investment expense accounts for 97.63% of total plan costs
1,000 participants and \$50,000,000 in assets:	Investment expense accounts for 98.35% of total plan costs
2,000 participants and \$100,000,000 in assets:	Investment expense accounts for 98.90% of total plan costs
5,000 participants and \$250,000,000 in assets:	Investment expense accounts for 99.14% of total plan costs

Proposed Regulation seems to place the emphasis (and compliance burden) in the wrong place.

Given the cost of developing the processes to capture and report the data, which will be significant for recordkeepers and other service providers regardless of whether the requirements are effective January 1, 2009 or January 1, 2010 (or later), we are concerned that the value of quarterly statements to the participants does not justify the cost of providing the data.⁶

We question the usefulness to participants of having detailed dollar amount information regarding administrative costs on a quarterly (vs. annual) basis. Participants will have to be told how the costs will be determined beforehand, so they will have at or near the beginning of each year the information they need in order to decide whether or not to participate in the plan or whether to complain to the plan fiduciaries in an effort to force them to take steps to reduce the costs. (Presumably, these are the only two actions that a participant can elect to take based on having the administrative cost information, as opposed to the actions they can take once they understand the investment-related costs.)

As an additional suggestion, we urge that plans be permitted to disclose information regarding administrative costs on a percentage rather than actual dollar basis. To prove more helpful to participants, we suggest that they be given an example of the impact of the administrative costs on a typical account or on each \$1,000 of account balance. We submit that providing this information at the same time and in the same format as investment fees are disclosed would give participants as much useful information as a quarterly dollar impact statement with less chance for confusion.

Fiduciary Exposure

As noted, because of timing issues related to the application of revenue sharing offsets, it is likely that the information required to be provided under the Proposed Regulation on a quarterly basis will be arguably inaccurate at the time it is given. This creates a clear fiduciary conflict.

As a requirement being imposed under ERISA Section 404, the obligation to provide the data to participants is a fiduciary one; and the failure to provide the data would (presumably) be a fiduciary breach. Thus, under the Proposed Regulation, fiduciaries will be required to provide data that they know is inaccurate to avoid breaching this duty.

At the same time, when participants understand that the information they are being given is not correct, they will make a claim against the fiduciaries for breach of duty for providing inaccurate information. While it is theoretically possible that disclaimers can be used to offset this exposure, the use of such disclaimers would seriously impact the usefulness of providing the information on a quarterly basis.

⁶ According to many recordkeepers, adding this information to quarterly statements will likely require an additional page for written statements. Spread over thousands of plans and millions of participants, this factor alone represents a significant additional cost.

To encourage retirement savings, it is important that participants and beneficiaries have confidence in their retirement plans. To force information with little practical utility that will, by definition, be misleading will unnecessarily diminish that confidence. We submit, therefore, that the most effective means for dealing with this conflict is to eliminate the quarterly information requirement and replace it with an annual requirement.

3. **Uniform Disclosure.** ASPPA and CIKR encourage the Department to require uniform disclosure without regard to whether the service providers to a plan are bundled or not. Under the Proposed Regulation, administrative costs must be separately disclosed, in a specific dollar amount, but only “to the extent not otherwise included in investment-related fees and expenses.” The effect of this exception will be to require disclosure of administrative costs as such for unbundled providers but not by bundled providers.

In most plans, the administrative costs of recordkeeping, reporting, disclosure and compliance are borne, at least to some extent, by the investments. For an unbundled provider (which provides independent recordkeeping and other services) those costs are often paid through revenue sharing received from unrelated investments. However, in many instances, the revenue sharing is not sufficient to offset the entire cost, so that a direct administrative charge is assessed against participant accounts, albeit in a lesser amount than the actual cost.

In contrast, for most (if not all) bundled providers (those providers that offer proprietary investments as well as administrative services), the entire administrative cost is covered by investment-related fees charged on proprietary investments.

In effect, the requirement to disclose administrative expenses except to the extent included in investment-related expenses would impose an additional and burdensome disclosure requirement on unbundled service providers, whereas there would be no such disclosure in the case of a bundled service provider, even though the actual cost of providing the administrative services may be exactly the same.

We submit that this would be misleading to most plan participants. In only the unbundled case would the participant see any administrative cost on a quarterly basis, in actual dollars, charged against his or her account. In contrast, bundled providers who are able to recover the full cost of providing administrative services to a plan through the revenue generated by affiliated investments would be required to disclose only the cost of the investment, on an annual basis as part of a chart, as a percentage of assets invested in each investment.

We simply do not agree with the Department’s apparent belief that highlighting administrative expenses is important under one business model for providing services (*i.e.*, the unbundled model), while simply irrelevant under another business model for providing services (*i.e.*, bundled). Even prominent statements that administrative costs are imbedded in the investment-related fees and expenses would not, in our view, mitigate the disparity in treatment and the accompanying confusion.

ASPPA and CIKR recommend that the disclosure of administrative costs should be on the same basis as disclosure of investment costs, and required only on an annual basis, as a percentage of plan assets.

4. Fiduciary Issues. ASPPA and CIKR note that in footnote 7 in the preamble to the Proposed Regulation, the Department observes that fiduciaries who rely in good faith on service providers would not be liable for a failure to provide the required disclosures. Since, as noted earlier, the compliance obligation under the regulation will effectively fall on the service provider community, and especially recordkeepers, we urge the Department to expand this observation in several respects.

- a. First, we suggest that the Department's observation be stated more emphatically and prominently in the regulation itself and that it explicitly be both prospective and retroactive.
- b. Second, we suggest that the final regulation indicate that no inference should be drawn that a service provider that makes a good faith effort to assist fiduciaries with compliance will have any liability in the event of an immaterial failure to comply.
- c. Third, we request clarification that the disclosure requirements of the Proposed Regulation fall on the named fiduciaries [or the responsible plan fiduciary to use the terminology from the proposed regulation under Section 408(b)(2)] and not on other fiduciaries. It would be impracticable for a fiduciary investment adviser to a plan, for example, to comply with the Proposed Regulation, but this distinction is not stated in the Proposed Regulation or the preamble.
- d. Finally, we suggest that the preamble to the final regulation indicate that the disclosure requirement of the regulation is prospective only and that no inference should be drawn that a failure to make the disclosures in the past constitutes a fiduciary breach. We believe this is especially important in light of pending class action lawsuits related to the failure to make disclosures of the type mandated by the Proposed Regulation. In making this suggestion, we acknowledge the Department's comments that, as a general matter, plans that satisfied the conditions of §404(c) of ERISA would be considered to have complied with the regulation. This is very helpful. We also acknowledge that the Department did not express any view with regard to whether fiduciaries of plans that did not comply with the 404(c) conditions in the past would be considered to have fulfilled their legal responsibilities under the Department's new interpretative position. Unfortunately, that leaves many plan sponsors, fiduciaries and plans in a precarious position. That is because, among other reasons, many plans have not complied with all of the provisions of 404(c) (for example, the prospectus requirement, because of the expense) and some of the conditions of the proposal are different than current practices, at least in some cases (for example, the dollar amount reporting of administrative expenses on quarterly statements). At the least, we request that the Department's position be modified to limit its interpretation to be prospective as of the effective date of the regulation.

5. **Brokerage Account Plans.** The Proposed Regulation requires investment-related disclosures with respect to designated investment alternatives. As defined, this specifically excludes individual brokerage accounts and open brokerage windows. Thus, it would be possible in a participant-directed plan that provides no designated alternatives but only provides for individual brokerage accounts or brokerage (or mutual fund) windows, to avoid the investment related disclosures altogether.

ASPPA and CIKR recognize that imposing the investment related disclosures in such a plan would be next to impossible. Nevertheless, we are concerned that this type of plan is inappropriate for all but the most sophisticated participants and that the absence of any required disclosures might encourage wide spread adoption of this investment approach. As a result, we encourage the Department to consider whether some additional disclosures should be required for these plans.

Specifically, we recommend that the Department include the following requirements in the final regulation for plans that offer brokerage accounts (or other vehicles that offer investment choices) that are not individually selected and monitored as designated investment alternatives:

- A written statement to all participants and beneficiaries, delivered both initially and annually, that the investments offered through those vehicles have not been affirmatively selected by the plan fiduciaries and will not be monitored; and
- Since before-the-fact disclosure of investment related expenses is not feasible in such a plan, we recommend that the Department require after-the-fact disclosure of the actual investment related expenses incurred by a participant's individual brokerage account. In this way, participants and beneficiaries will at least be in a position to assess the investment fees associated with their chosen investments. Further, plans with brokerage accounts will not be perceived in the marketplace as having a "disclosure advantage."

6. **Coordination with Summary Annual Report.** If the Department agrees that annual reporting is an acceptable approach to disclosing plan-level administrative expenses, ASPPA and CIKR urge the Department to modify the proposal to permit, as an alternative, disclosure of plan-level expense information in the Summary Annual Report (SAR).

The Summary Annual Report regulations currently require disclosure of plan-level administrative expenses. This information includes the same types of expenses required under the proposal. We submit that the method for reporting plan-level expenses should be the same for the SAR as under section 2550.404a-5. Thus, for example, if the approach reflected in the Proposed Regulation is adopted, we ask the Department to further clarify that, as an alternative, only costs not included in investment expenses be reportable in the SAR.

It would appear that the only additions to the SAR that would be required to comply with the proposal would be a description of each expense (record keeping, audit,

administration, etc.) and the method for allocating the expenses among participant accounts. An individual account's share of plan expenses could be reported as a dollar cost per \$1,000 of account balance, as previously noted.

Incorporating the proposal's disclosures into the SAR achieves several desirable objectives, including (i) minimizing the number of reports participants receive from the plan, (ii) consistency in reporting the amount of expenses as well as the reporting period in which the expenses were incurred, and (iii) providing sufficient time after the close of the plan year for the third party administrator to apply the appropriate revenue sharing offsets (discussed above).

We recognize that the deadline for filing the SAR (nine months after the close of the plan year) may be too long in light of the proposal's objectives of providing timely information to participants. CIKR and ASPPA suggest that this deadline be shortened to 90 days for sponsors who wish to include the section 2550.404a-5 information in the SAR.

7. **Web Site Disclosure.** ASPPA and CIKR welcome the Department's recognition that much information regarding investments can be disclosed by reference to a Web site maintained by the investment provider or another service provider. Being able to reference the Web site for details will significantly reduce the cost of providing information to participants and, at the same time, allow each participant to tailor the information he or she receives to that participant's level of interest. The burden on both the service providers and the participants will be reduced.

Unfortunately, while the proposal may be read (or interpreted) to mean that the Web site disclosure of supplemental information may be done exclusively by referring the participant to the Web site (that is, the supplemental information would not be subject to the Department's rules on the use of electronic media), the proposal may also be interpreted to mean that the Web site information is subject to those rules. We understand that the Department's view is that the supplemental information may be offered only via the Web site, without any other requirements, conditions or restrictions. We request that the Department clarify that issue in the final regulation or its preamble.

8. **Electronic Media.** In response to the Department's request for comments on the use of electronic media, we generally support flexible rules for the universal use of electronic communications and Web sites to satisfy ERISA's disclosure requirements. Specifically, for this guidance and other purposes, we recommend:
 - An opt-out approach for disclosures that are required to be made (as opposed to the current opt-in procedure); and
 - Allow the unlimited use of electronic communications and Web sites for supplemental, ancillary and incidental information subject to an initial paper notice to participants and beneficiaries of their right to request copies.

- Encourage more plan sponsors to adopt and use electronic means of delivery by allowing companies that might not otherwise have a workforce that regularly uses computers as part of their job function, but who can be given effective, private computer access, such as through a benefits kiosk, to meet the “reasonably accessible” standard for electronic delivery.

We recognize that it may be beyond the scope of the current regulatory project for the Department to undertake a broad-based revamping of its electronic media regulation. While such an approach would be preferable, given the significant cost savings that would be gained by both plan sponsors and ultimately plan participants, we urge the Department to at least adopt our recommendations for purposes of the participant disclosure requirements under this Proposed Regulation.

Specific Comments

A. Disclosure to Participants and Beneficiaries

Proposed Regulation: The Proposed Regulation requires that the fiduciaries of an individual account plan comply with the disclosure requirements set forth in paragraphs (c) and (d) with respect to “each participant or beneficiary that, pursuant to the terms of the plan, has the right to direct the investment of assets held in, or contributed to, his or her individual account.”

Comments: We presume that the reference to participants and beneficiaries who have “the right to direct the investment of assets” in their accounts refers only to those individuals who currently have an account in the plan and not to eligible employees or to a person designated by a participant who may, in the future, become entitled to benefits under the plan. Indeed, the disclosure of actual cost information would clearly not be possible except with respect to those participants or beneficiaries who currently have an account.

Nevertheless, given the broad definition of participant under ERISA Section 3(7) and of beneficiary under ERISA Section 3(8), we suggest that the individuals to whom disclosure is required to be made be clarified.

B. Disclosure of Plan-related Information

Proposed Regulation: The Proposed Regulation requires that each participant be provided with specified plan-related information on or before the date of eligibility and at least annually thereafter. The information includes explanations related to (i) giving investment instructions; (ii) limitations on such instructions and restrictions on transfer from or to designated investment alternatives; (iii) the exercise of voting, tender and similar rights; (iv) identification of designated investment alternatives; and (v) identification of any designated investment managers. The Proposed Regulation also requires that participants be notified of any material change within 30 days of the date of adoption of the change.

Comments:

1. Many 401(k) plans now provide for immediate eligibility. The Proposed Regulation does not address how the notice is to be given to participants in such plans. We presume that using a procedure similar to that for giving notice in such plans with respect to automatic enrollment and QDIAs would be acceptable, but it would be helpful for the Department to make this explicit. This same concern applies to all requirements in the Proposed Regulation regarding the giving of notice prior to plan eligibility.
2. It is not always clear when a beneficiary becomes eligible. ERISA §3(8) defines a beneficiary as a person designated by a participant or the terms of the plan that is or may become entitled to benefits thereunder. A common occurrence which results in beneficiary “ownership” of an account would be the death of the participant. If the beneficiary’s date of plan eligibility is the date of the participant’s death, or the following day, it would be impossible to provide the disclosures to the beneficiary on or before the date of the beneficiary’s date of plan eligibility. In some cases, the fiduciaries may not be aware of the participant’s death for a matter of weeks or even months.

We recommend that the final regulation only require the annual disclosure be provided to participants enrolled in the plan. Alternatively, we suggest that the Department allow a period of time (*e.g.*, 90 days) after the fiduciaries have actual knowledge of the event creating the beneficiary status to provide the required disclosures.

3. Much of the general information will not change from year to year, other than the list of designated investment alternatives and possibly designated investment managers. Since the Department indicates that information may be provided in the summary plan description, which we believe is appropriate for certain of the general information that will remain relatively constant, we suggest that the Department dispense with the annual notice requirement with respect to most of the general information.

We submit that there would be little utility in reminding participants of most of the general information items on an annual basis and that it will simply require participants to review what may be a relatively large amount of information needlessly. This “information overload” could, in fact, cause participants not to review the information at all. Further, we submit that the annual notice requirement imposes an unnecessary burden on the fiduciaries and their service providers.

We do recognize, however, the appropriateness of periodic reminders to participants regarding the designated investment alternatives and investment managers. Thus, if an annual notice requirement is retained, we suggest that it be limited to these two items, plus possibly a reminder of the mechanism that participants may use for making investment changes (*i.e.*, the Web site address, voice response system or availability of paper forms).

4. We request that the Department clarify what is intended to be covered by the requirement for an explanation of restrictions on transfer to or from designated investment alternatives. For example, is this intended to address both plan restrictions, such as provisions of the plan document or administrative policies that restrict the ability of participants to engage in market timing, and restrictions imposed by the investments

themselves, such as redemption fees? A variety of charges imposed by the designated investment alternatives themselves must be disclosed under subsection (d)(1)(iv)(A) in connection with investment-related information, such as redemption fees, sales charges, surrender charges and the like. We presume, therefore, that this information does not also need to be disclosed in the context of “restrictions on transfer,” but clarification of this would be helpful.

5. We request that the Department eliminate the requirement to affirmatively notify participants within 30 days of a material change. For certain information, such as mutual fund redemption fees, fund complexes do not affirmatively inform the plan sponsor when they change the fee structure for a given mutual fund. This information is typically buried in a prospectus, and is not highlighted in the event of any change. Moreover, the changes in fees are often not significant, but recordkeepers and other plan service providers whom plan fiduciaries rely upon to assist in complying with this participant fee disclosure proposal will be required to monitor multiple fund families and other investment providers for all changes in funds, to determine whether they are “material” enough to require a supplemental disclosure. This will be unduly burdensome and will increase costs of compliance.

Alternatively, if the Department retains this requirement, ASPPA and CIKR request that for mutual fund investments regulated by the Securities and Exchange Commission (SEC), the Department rely on existing SEC regulations regarding what constitutes a “material change.” For non-regulated investments, we recommend the Department provide clearer guidance regarding what a “material” change would be and how disclosure of such change may be provided. In this regard, we note that posting of an updated fee disclosure on the Web site referenced in the model comparative chart would be much easier to administer than provision of an updated model comparative chart to each participant and beneficiary.

C. Disclosure of Administrative Expenses

Proposed Regulation: The Proposed Regulation requires an initial and annual explanation of fees and expenses for plan administrative services, including the basis on which such charges will be allocated to or affect participant account balances. The latter information is only required to be disclosed “to the extent not otherwise included in investment-related fees and expenses.”

The Proposed Regulation also requires a quarterly statement of the dollar amount actually charged to the participant’s account during the prior quarter.

Comments:

1. As stated in our general comments, ASPPA and CIKR urge the Department to consider eliminating this requirement and adopting instead a requirement for annual reporting of the actual costs.
2. We presume that the exception for expenses otherwise included in investment-related fees and expenses referred to in subsection (c)(2)(i) also applies to the administrative

costs to be reported under subsection (c)(2)(ii). To the extent the requirement for a periodic statement of actual dollar impact of administrative costs is retained (whether on a quarterly or annual basis), we request that this be clarified.

3. We call your attention here to our general comments regarding parity regarding the disclosure of administrative costs for all types of plan service models.

D. Disclosure of Individual Expenses

Proposed Regulation: The Proposed Regulation requires disclosure of certain costs that will be borne by a participant account only to the extent the participant uses a particular service or feature of the plan.

Comments:

1. One of the expense items noted by the Department is fees for investment advice. In some plans, the cost of participant level investment advice is borne by the plan (and thus by all participant accounts) regardless of whether a participant uses the service or not. This is sometimes done because the plan is able to obtain a lower cost per participant using this approach. It is unclear where this type of expense would be reported under the Proposed Regulation. Inasmuch as this expense relates to the investments, we recommend that in the situation where all participant accounts are bearing the cost of participant level advice, the final regulation be clarified to indicate that this must be disclosed in the category of investment related expenses rather than administrative expenses. We believe to characterize it otherwise would be inappropriately misleading to participants and beneficiaries.
2. The Proposed Regulation does not address where the costs associated with individual brokerage accounts or broker windows would be disclosed to participants. There are often significant additional costs imposed on participant accounts, including both an additional administrative cost plus brokerage commissions borne by the individual account in connection with trades and the like. Arguably, some of these costs may be viewed as investment-related costs, though they would only apply to participants who make use of such an account. Nevertheless, given the structure of the Proposed Regulation, we presume that all of these types of costs would be reported under this item, but this is not clear; and we request that it be clarified.

E. Disclosure of Investment-related Information

Proposed Regulation: The Proposed Regulation requires the automatic disclosure of identifying information, performance data, benchmarks and fee and expense information in a chart format plus additional information upon request.

Comments:

1. We call your attention to our general comments regarding the difficulty of compliance with these disclosure requirements for non-mutual fund investments (and thus the

attendant difficulty of fiduciaries and their service providers in making the required disclosures) and the use of electronic media for making the disclosures.

2. In connection with the disclosure of shareholder-type fees, we presume that market value adjustments on fixed income investments would be included, but we suggest that this be clarified. Further, the meaning of “sale charges” is not clear. For example, would that include 12b-1 fees, which are included in the next item of the Proposed Regulation requiring disclosure of an investment alternative’s expense ratio? If so, such disclosure could be misleading, in that the amount could be counted twice. We suggest that this be clarified.
3. An investment’s expense ratio could include a number of items. Typically, for mutual funds, the major components of the expense ratio are separately identified in the fund prospectus. This type of breakdown does not appear to be contemplated by the Proposed Regulation. We presume that this was intentional on the part of the Department and that such a breakdown is not required. We suggest that this be clarified.
4. Subsection (d)(4)(i) requires that the fiduciaries “provide” to participants (either directly or upon request) a copy of a prospectus or other similar document. As we have expressed to the Department in comments on the regulation under ERISA §404(c), we are concerned with the requirement to “provide” a prospectus. We request clarification of this requirement. For example, would this requirement be satisfied if the Web site to which participants are directed to obtain information contains a link to the prospectus (or other disclosure document) for a given designated investment alternative? If that is not sufficient, would it be sufficient to give participants who request such a document an e-mail that contains a link to the document? (Our comments in this regard assume that the Department confirms that electronic delivery is the only means by which this information must be provided or, alternatively, that a participant has consented to the electronic delivery of information.) Or is there some other form of delivery that the Department has in mind in using the term “provide?”

Alternatively, we suggest that the prospectus requirement be removed from this section and transferred to the category of supplemental information to be posted on the plan’s Web site.

In addition to those comments on the “delivery” requirement, we request that the Department insert the language from the 404(c) regulation limiting the prospectus delivery to “a copy of the most recent prospectus provided to the plan.” In addition to the obvious reasons for that request, some plan providers are not required by the securities laws to provide prospectuses to their client plans. Those providers often opt instead to give participants “fact sheets” which contain similar information. In those cases – often plans of smaller companies – the plan sponsors, fiduciaries and plans would not have prospectuses to deliver.

F. Model Comparative Chart

Proposed Regulation: The Proposed Regulation contains a model comparative chart that

reflects the disclosure of performance and fee and expense information.

Comments:

1. In the proposed model disclosure form submitted to the Department in connection with the comments by ASPPA and CIKR on the proposed regulation under 408(b)(2) (*see* Appendix B), we proposed that the form contain the following example of the impact of a percentage charge:

EXAMPLE: If the Expense Ratio is 0.5% and you placed \$1,000 in that investment for one year, you would pay \$5 for these types of expenses for that investment. Additional expenses, such as a wrap fee, redemption fee and/or surrender charge may also apply.

The Department’s proposed model does not contain a requirement for a similar type of example. We submit that this would be a very helpful disclosure to participants to enable them to put the percentage cost into perspective.

2. We note that only one bond fund is listed under “Bond Funds” in the model. There are, of course, many different types of bond funds. We presume that the identification of only a single fund in the chart was intended to be illustrative only; but for clarification, we suggest that the model reflect more than one bond fund (as it does for equity funds).

G. Proposed Amendments to DOL Regulation §2550.404c-1

Proposed Regulation: The Proposed Regulation conforms the disclosure requirements to participants in order for fiduciaries to obtain the protection of ERISA §404(c).

Comments: We welcome two changes to the 404(c) regulation embodied in the Proposed Regulation: (1) the change in subsection (b)(2)(i)(B) indicating that participants will be considered to have sufficient information if they are provided with the information specified in the regulation (as opposed to the existing regulation which implies that additional information other than that specified may be required); and (2) the elimination of the automatic requirement to deliver a prospectus to the participants immediately before or immediately after they direct an investment in a security subject to the prospectus delivery requirements of the Securities Act of 1933.

We suggest that the Department give retroactive effect to these changes or, at the least, indicate that these changes reflect the Department’s long-held views respecting 404(c) compliance.



These comments were prepared by ASPPA and CIKR and were primarily authored by the Reish Luftman Reicher & Cohen law firm. Please contact us if you have any comments or questions regarding the matters discussed above. Thank you for your consideration.

Sincerely,

/s/

Brian H. Graff, Esq., APM
ASPPA Executive Director/CEO

/s/

Tommy Thomasson, Chair
Council of Independent 401(k) Recordkeepers

/s/

Teresa T. Bloom, Esq., APM
ASPPA Chief of Government Affairs

/s/

Robert M. Richter, Esq., APM , Co-Chair
ASPPA Government Affairs Committee

/s/

Stephanie L. Napier, Esq. APM, Chair
ASPPA/CIKR Fee Disclosure Task Force

APPENDIX A

MEMORANDUM

TO: ASPPA/CIKR

FROM: Judy Xanthopoulos

RE: Costs of Implementing Fee Disclosure Regulations under Short Timeline

DATE: September 4, 2008

The following analysis identifies and estimates the costs of implementing the proposed fee disclosure regulations in the (approximately) 58 days following promulgation. For the purposes of this analysis, the Department of Labor (DOL) is assumed to finalize the regulations on November 3, 2008. If this timeline develops, recordkeepers and service providers would be required to begin disseminating information on or before the beginning of the 2009 plan year.

This cost analysis differs from the DOL analysis by focusing exclusively *on the additional costs imposed by the short timeline* that recordkeepers and service providers will face following the finalized regulations. The DOL estimates provide a cost analysis of the implementation costs and ongoing expenses of the proposed regulations. However, the DOL does not recognize explicitly the additional burden imposed by the compressed time period that would occur should the regulations become final on or after November 3, 2008.

Background – The DOL estimates that there are approximately 437,000 participant-directed individual account plans. These plans cover about 65 million participants and have approximately \$2.3 trillion in assets.⁷ Industry estimates indicate that nearly half of these accounts use third-party administrators (TPA) or independent recordkeepers.⁸

These private entities perform an important service, acting as the link between the retirement plans and the financial services providers. The TPAs are independent from the financial services providers and do not promote investment services, but rather work in conjunction with the investment services to assist the plan administrators. The TPAs are responsible, to varying degrees, for all the administrative functions of the pension plans.⁹

⁷ See the DOL report available at www.dol.gov/ebsa/publications/AC_111704_report.html.

⁸ Industry reports suggest that, while larger financial services providers may have a majority of assets, TPAs and independent recordkeepers provide services to a significant proportion of accounts.

⁹ For certain plans, the TPA may coordinate financial services with multiple investment houses, requiring more complex relationships and information gathering.

Impact on Costs of the Short Timeline – While the pension community views positively the move to disclose additional information to participants, the short timeline imposes serious constraints on many of the independent recordkeepers and those that provide the software that allows the flow of information.

There are two practical considerations that are likely to pose the most serious problems in the shortened timeline. The first problem is one of developing the necessary computer code that would allow the service provider to collect, clean, and prepare the reports.

Data Collection – Many of the plan recordkeepers maintain relationships with a large number of financial services providers. Each financial services provider maintains a variety of investment products. Each investment product covers its costs through a variety of means (e.g., fees charged directly to the plan or fees charged as basis point charges). The process of collecting the relevant information may bring with it separate programming requirements for each financial services provider (to accommodate each system). Further, within each service provider the recordkeepers may have separate programming requirements for each fund held with that particular financial services provider.

Data Cleaning – After cleaning the raw data collected from the various financial services providers for each investment product, the recordkeepers will undertake a data cleaning process. This process involves a careful review and verification of the information collected from each financial services provider. The data cleaning process can require a considerable number of man-hours to complete. This is particularly true for the initial data releases. As a means of comparison, it is important to note that release by the Department of Labor of the public use Form 5500 data takes approximately two years from the time the reports are filed until the time that the department can make available this information.¹⁰

The complexity of the data cleaning will depend upon the various fee classifications and the detail level in which the recordkeepers maintains currently the various fees. There is further complexity for those plans that allocate revenue sharing to participant accounts, as these amounts may change depending upon the when the recordkeepers receive and then allocate the fees.¹¹ Further, most of the fees associated with revenue sharing depend upon asset performance. Consequently, these amounts could fluctuate considerably with changing market conditions and participant account balances.

Report Preparation – Following the data cleaning process, the plan recordkeepers must prepare the computer code to generate the reports for distribution to plan participants. While this step becomes part of the overall operations after the computer programs

¹⁰ The Internal Revenue Service requires two years to release public use individual income tax files and between three and four years to release public use corporate income tax files.

¹¹ Revenue sharing arrangements mean that financial services providers will share some portion of the fees collected (often through basis points) to the recordkeeper. In most cases, the recordkeeper must allocate a portion of those fees to each participant, rather than to the plan itself.

become available, the initial process of designing and preparing the computer code for the forms – for each plan – may involve considerable time and resources.

After the recordkeepers finalize the computer programming services, each financial services provider will be responsible for the accuracy and validity of this information. Many financial services providers believe that performing the validation process in the shortened timeline will pose additional costs.

The second problem associated with the shortened timeline relates to the form of the disclosure. The regulations assume that some portion of the participant population will elect to receive electronic statements.¹² However, applying the current electronic delivery/electronic disclosure rules would require written acknowledgement that the participant waives paper reporting.

Managing paper is costly. Managing paper in this condensed time period may introduce additional cost considerations. The recordkeepers and TPAs would have to contact the plans and participants to notify them of the electronic delivery option. Written responses from the plans and participants would have to be on record in order to proceed with the electronic delivery of the fee disclosure information.

Electronic delivery will, over time, lower the costs to the recordkeepers. However, in the short run, the recordkeepers will incur unusually high costs as the vast majority of plans and participants will most likely, by default, require paper reporting.

Assessing the Short-Run Costs – The costs, in a compressed implementation timeline, increase primarily because of the limited programming resources available to the recordkeepers and software developers. Most plan recordkeeping businesses employ an information technology (IT) staff that is responsible for (1) maintaining the current level of operations; (2) developing software for new services; and (3) addressing software updates and programming problems.

In the approximately 58 days anticipated for implementation, businesses have several options to comply with the fee disclosure regulations:

- Divert in-house programming resources to develop the software for fee disclosure reporting;
- Hire a contractor to develop the necessary software; or
- Purchase software from an independent business.

Divert In-house Programming Resources – The costs associated with diverting in-house IT personnel may largely be incurred over time. Generally, there will be significant costs to delaying the day-to-day programming operations. These costs will be correlated negatively with the size of the firm. As the firm size decreases, these costs will increase. It is possible that, in some cases, the smaller firms operating on a slim profit margin may

¹² DOL estimates that 34 percent of all fee disclosure reporting will be electronic in the early periods following the finalized regulations.

find the compressed timeline too costly to their day-to-day operations. Clearly, larger firms might have larger IT staffs and thus might find diverting their personnel to this additional programming less burdensome. However, even the larger firms will face costs if they are required to reallocate intensively certain personnel for a concentrated period of time.

Outside Contractors – Hiring outside contractors to create the necessary software may become the only alternative for many firms, if diverting resources of in-house personnel is not feasible. The nature of the task – detailed and comprehensive programming under a short timeline – is likely to have a cost that carries a premium. Typically, programming contractors charge fees far greater than the salaries paid to full-time employees.

Purchase Software – Many firms may feel that they are unable to undertake this software development in the short run.¹³ Consequently, they may be dependent upon the market to accept available commercial software.

This option carries two significant costs. The first cost is the ***pricing cost*** of having inelastic demand. Inelastic demand means that the purchaser will accept the software at any price. Generally, inelastic demand is the result of the consumer being required to implement the product (in this case, the business is required to comply with the fee disclosure regulations within a short timeline), but the consumer has few, if any, alternative products available. In the short run, this will create excessively high prices.

The second cost is the ***cost of making the commercial software compatible*** with the already existing in-house information system. Even if the recordkeepers purchase commercial software, it is unlikely that their data sources will be flow seamlessly into the new software.

Estimated Cost of the Compressed Timeline – The first-year cost to individual TPAs and recordkeeping businesses (not associated with financial services providers) of implementing the fee disclosure regulations in the (anticipated) 58 days is likely to be approximately **30 to 40 percent higher than allowing implementation over a longer time period**.¹⁴ This percentage is the amount that the recordkeepers' baseline expenditures for fee disclosure reporting would increase by having to comply in the shortened implementation period.

Smaller and mid-sized TPA and recordkeeping firms (not associated with financial services) are likely to face the greatest burden of higher costs. Smaller recordkeeping businesses may face narrower operating margins and have fewer available resources to divert to developing the new system in the short timeline. As a result, their options for system development will be constrained.

¹³ However, if given additional time, they may be more inclined to do so. The opportunity cost of diverting in-house resources or hiring a contractor and failing to meet the deadline may be too great for many firms to undertake.

¹⁴ For purposes of this comparison, it was assumed that the longer period allowed for implementation would be one year.

In addition, the compressed timeline imposes a greater cost to those businesses that diverts resources from current operations. Diverting resources imposes a direct cost on the business, but it also imposes an indirect cost for delays in general operating activities for those services and products currently under development.

This analysis relies on several sources – a private survey and several government reports – including the DOL’s cost analysis.¹⁵ The details of DOL’s analysis indicate that, on average, first-year costs of implementation will be 20 to 30 percent higher than subsequent years.¹⁶ However, their cost analysis does not fully address the additional costs associated with the short implementation time.

Independent sources confirm the high cost of programming changes.¹⁷ Further, there are concerns about the labor market for programmers, should businesses need to rely on outside programming support. The final quarter of the calendar year typically finds labor market supply somewhat lower than other quarters. The potential lack of available programmers is likely to further add to the cost in the short-run.

In addition, the cost estimates for distributing disclosure statements may understate the true cost facing most recordkeepers in the shortened timeline. As mentioned previously, using electronic delivery of statements would greatly reduce costs. However, in the short run, the recordkeepers will incur unusually high costs as the vast majority of plans and participants will most likely, by default, require paper reporting.

While it is recognized that implementation of the fee disclosure regulations will impose some costs, a considerable portion of the first-year costs could be avoided if the DOL were to allow ample time for implementation. Extending the implementation timeline would allow recordkeepers to use their programming and product development resources more efficiently.

¹⁵ Private surveys include the National Federation of Independent Businesses surveys of business operating costs and regulation compliance costs. Government reports include the Office of Management and Budget’s annual analysis of the cost to businesses of complying with Federal regulations, the Small Business Administration’s analysis of the costs of increased regulation, and several State government reports detailing the programming cost of changes in both public program policies and reporting policies.

¹⁶ Refer to data presented in Tables 1 and 5 through 12 of the proposed regulations in the Federal Register, released on Wednesday, July 23, 2008, 29 CFR Part 2550.

¹⁷ In particular, the Maryland State government reported that in-house costs of computer system changes were about \$3 per line of computer coding in 1999. This amount would likely be considerably higher in 2008 dollars.

Judy Xanthopoulos is an economist providing independent consulting and research. She is a principal in Quantria Strategies, LLC and Optimal Benefit Strategies, LLC, where she works developing micro simulation models for tax and pension policy analysis. Prior to founding her own businesses, she spent nearly ten years with the Joint Committee on Taxation of the U.S. Congress as an economist analyzing tax policy and legislative proposals, with particular emphasis on health care and employer pension plan issues. In addition, she has approximately five years combined experience working for the National Center for Health Services Research and the Medicare Payment Advisory Commission.

She earned a PhD in economics from the University of Maryland, College Park, with an emphasis in corporate taxation and depreciation policy. She has a MS in Mathematical Economics from Tulane University and a BA in Economics and Accounting from Lafayette College.

ABC Company 401(k) Plan
XYZ Service Provider Disclosure -- Expected Plan Expenses
For Plan Year Beginning January 1, 2008

The following expenses may be charged to the plan. Some of these expenses may reduce the value of participant accounts. Some plan expenses may be paid by the plan sponsor.

I. Investment Expenses - The investments offered by the plan have related expenses. The amounts listed below are the annual percentage that will be charged based on the amount the participant placed in the particular investment.

EXAMPLE: If the fee is 0.50% and a participant placed \$1,000 in that investment for one year, the participant's account would pay \$5 for that type of expenses for that investment.

Investment Option	Investment Management Fees ¹	Administrative & Recordkeeping Fees ²	Selling Costs & Advisory Fees ³	Total
AAA Investment	0.50%	0.20%	0.25%	0.95%
BBB Investment	0.42%	0.20%	0.25%	0.87%
CCC Investment	0.20%	0.20%	0.25%	0.65%
DDD Investment	0.60%	0.20%	0.25%	1.05%
EEE Investment	0.35%	0.20%	0.25%	0.80%

II. Other Asset Based Fees - These fees are assessed on the total assets in the plan and are not investment specific.

Type of Fee	Investment Management Fees	Administrative & Recordkeeping Fees	Selling Costs & Advisory Fees	Total
Plan Level Fee		0.20%		0.20%
Investment Advisory Fees			0.40%	0.40%
- Plan Expense Reimbursement		-0.20%	-0.25%	-0.45%
Net Fees on Total Plan Assets		0.00%	0.15%	0.15%

III Fees Paid Directly by Plan Sponsor - These fees are paid by the plan sponsor and are not paid out of plan assets.

Type of Fee	Investment Management Fees	Administrative & Recordkeeping Fees	Selling Costs & Advisory Fees	Total
Plan Sponsor Paid Fees		\$1,000		\$1,000

IV. Total Fees - These are the total fees based on estimated assets of \$1 million and 20 participants. The fees assessed on investments are based on the allocation of investments by the 20 participants in the plan as of 90 days prior to the date of this notice. These amounts do not include transactional expenses (see below).

Type of Fee	Investment Management Fees	Administrative & Recordkeeping Fees	Selling Costs & Advisory Fees	Total
Total Expenses on Investments	\$4,140	\$2,000	\$2,500	\$8,640
Total Asset Based Fees			\$1,500	\$1,500
Total Fees Paid by Plan Sponsor		\$1,000		\$1,000
Total	\$4,140	\$3,000	\$4,000	\$11,140

V. Transactional Expenses - These fees are only charged when participants request the services described below.

Service	Fee
Brokerage Account	\$60 per year
Participant Loan Origination Fee	\$50 per loan
Distribution	\$35 per distribution (including rollovers)

VI. Conflict Statement

All of the investments are provided by unaffiliated parties. XYZ Service Provider receives revenue sharing from all investments for recordkeeping and administrative services, and for advisory services, which is used to offset fees otherwise charged for such services as disclosed in Section II. above.

¹ Investment management fees are the portion of the expense ratio allocated to investment management expenses.

² Administrative and recordkeeping is the portion of the expense ratio attributable to administration and recordkeeping plus any additional administrative and recordkeeping charges attached to the investments.

³ These include 12b-1 fees and other related selling costs and advisory fees attached to the investments.

ABC Company 401(k) Plan

Direct Participant Expenses

As of January 1, 2007

The following estimated expenses may be charged to your account, depending on the investments you select, the types of services received by the plan and the types of transactions you request. Fees are just one issue to consider when selecting an investment option, and you should consult other information provided by the plan sponsor regarding plan investment options before making a decision.

I. Investment Expenses - The investments offered by the plan have related expenses. The amounts listed below are the annual percentage that will be charged based on the amount you placed in the particular investment. A portion of the fee will be charged if you change your investments during the year. The expense ratio reflects the percentage of fund assets that are used for administrative, management, advertising and promotion (12b-1 fees), and all other expenses and directly affect the returns of your investment options. It does not include sales loads or brokerage commissions.

EXAMPLE: If the Expense Ratio is 0.5% and you placed \$1,000 in that investment for one year, you would pay \$5 for these types of expenses for that investment. Additional expenses, such as a wrap fee, redemption fee and/or surrender charge may also apply.

Investment Option	Expense Ratio (as a percentage)	Investment-Specific Wrap Fee	Redemption Fee ¹	Surrender Charge ²
AAA Investment	0.30%	0.00%	0.00%	0.00%
BBB Investment	0.50%	0.10%	0.00%	6.00%
CCC Investment	0.40%	0.20%	2.00%	0.00%
DDD Investment	0.25%	0.00%	1.50%	0.00%
EEE Investment	0.35%	0.00%	0.00%	3.00%
FFF Investment	0.40%	0.10%	0.00%	4.00%
GGG Investment	0.50%	0.00%	1.00%	0.00%
HHH Investment	0.55%	0.25%	1.25%	0.00%

II. Fees on Total Plan Assets³ - These fees are assessed on the total assets in your account and are not investment specific. Wrap fees are for various expenses, such as sales commissions, administrative expenses, and/or recordkeeping fees.

Type of Fee	Amount of Fee
Wrap Fee	0.35%
Registered Investment Advisory Fees	0.50%
- Estimated Plan Expense Reimbursement Offset	-0.30%
Net Fees on Plan Assets	0.55%

III. Administrative and Transactional Expenses - The Annual Administrative and Recordkeeping Charge is paid by all participants. However, the remaining fees (*i.e.*, transactional expenses) are only charged when you request the service.

Service	Amount of Fee
Annual Administrative and Recordkeeping Charge	\$50 per year
Brokerage Account	\$60 per year
Participant Loan Origination Fee	\$50 per loan
Annual Loan Charge	\$25 per year
Distribution	\$35 per distribution (including rollovers)
Domestic Relations Orders	\$100 per order

¹ May be imposed by provider as a result of changing your investments multiple times in a given period. See the investment provider's redemption fee policy for additional information.

² May be imposed if you sell or withdraw money from the investment within a given number of years after you invest. This fee may be reduced based on the length of time your money has been invested. You should consult your plan sponsor for more information before engaging in any transactions with respect to this investment.

³ Wrap fees and investment advisory fees are charged at the plan level. Some plans use expense reimbursements, such as revenue sharing, to offset these costs.