STATE STREET.

Stefan M. Gavell
Executive Vice President and Head of
Regulatory and Industry Affairs

State Street Corporation
State Street Financial Center
One Lincoln Street,
Boston, MA 02111-2900

Telephone: 617.664.8673
Facsimile: 617.664.4270
smgavell@statestreet.com

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Via e-mail: e-ORI@dol.gov

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Re: Participant Fee Disclosure Project

Dear Sir or Madam:

State Street Corporation ("State Street") appreciates the opportunity to comment on the Department of Labor's ("the Department's") proposed "Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans," published in the Federal Register on July 23, 2008 ("the Proposed Rule").

State Street specializes in providing institutional investors with investment servicing, investment management and investment research and trading. With $15.3 trillion in assets under custody and $1.9 trillion in assets under management as of June 30, 2008, State Street operates in 27 countries and more than 100 markets worldwide. State Street is a significant provider of asset management and custody services for defined contribution plans.

State Street supports the Department's efforts to increase transparency for participant directed pension plans. We agree that the level of fees and other costs is one of several key factors that can have a significant impact on investment returns, and, ultimately, on plan participants' retirement security. We support the Department's efforts to ensure that plan participants have access to the information they need to make informed decisions regarding their pension plan investments.

We generally agree with the types of disclosures that would be required under the Proposed Rule, and believe that plan participants would benefit from increased, more consistent information regarding plan costs and comparative data regarding the historical performance and expense ratios of the various investment options.

While we support the Department's goal of transparency for defined contribution plans, and understand the Department's goal of creating consistency across asset classes and investment types, we believe the Proposed Rule could be improved in several respects, primarily in relation to its treatment of bank collective funds. Our concerns with bank collective funds, and several other issues, are described below.

Bank Collective Funds

We are concerned by the Proposed Rule's general adoption of a regulatory regime created by another Federal agency (the Securities and Exchange Commission, or "SEC") to protect retail mutual fund investors as the disclosure regime for all types of defined contribution pension plan investments.

While many of the disclosures required under the SEC's mutual fund rules could be beneficial to defined contribution pension plan participants, wholesale adoption of the mutual fund regulatory regime for all defined contribution plan investment options ignores the differences between pension plans and retail investments, and risks eliminating the substantial benefits offered pension plan participants by bank collective funds.

Bank collective funds, organized by banks under Federal and state trust laws and regulations, provide efficient and cost-effective investment choices in many defined contribution pension plans. As investment products created solely for institutional investors, collective funds have been exempted by Congress from U.S. securities laws designed to protect retails investors, and instead rely on the fiduciary duties imposed by trust law and ERISA to protect pension plan participants. While plan participants retain the ability to choose among the investment options chosen by the plan sponsor, the fiduciary duties assumed by the plan sponsor and the investment manager in negotiating the menu of available investment options obviates the need for collective funds to produce full prospectuses or other disclosures intended to protect retail investors in registered mutual funds. While the Proposed Rule applies to participant level disclosures, several other disclosure requirements apply to relationships between plan sponsors and service providers, including the Department's new Form 5500 and proposed new 408(b)(2) rules.

Bank collective funds offer significant advantages for many plan sponsors and plan participants. As institutional rather than retail investments, collective funds often offer lower costs than registered mutual funds, and their status as trusts, governed by fiduciary rules, rather than registered securities, provides greater flexibility for negotiation over fees and other aspects of the investment choices to the benefit of plan participants. Collective funds have proven a very attractive choice for plan sponsors. According to Financial Research Corporation, collective funds are expected to account for 20% of all defined contribution assets by 2011, up from 10% currently. Additionally, research by AST Capital Trust found that 41% of defined contribution plans include collective investment trusts as an option. The success of collective funds in the defined contribution marketplace is due, in large part, to their very favorable cost structure.

As noted above, State Street supports the core principles of the Proposed Rule, and believes greater transparency of plan and investment costs is appropriate and useful to plan participants. The cost of these disclosures, however, will come at the expense of plan participants, so we urge the Department to minimize costs, and leverage existing disclosures whenever possible. When mutual funds are used in defined contribution plans, for example, we agree that the existing SEC mutual fund disclosure rules can be applied appropriately.

For bank collective funds, however, the Department's proposed reliance on the SEC mutual fund regulatory regime raises significant concerns. Collective funds are not securities, or retail investments, and are exempt from U.S. securities laws. They operate differently in many respects than registered mutual funds, raising interpretative questions not addressed by SEC rulemaking. For example, plan sponsors and investment managers have considerably more flexibility in negotiating fee structures for collective funds than with mutual funds, creating circumstances that the SEC mutual funds rules do not address. Similarly, it is unclear how the Department's apparent reliance on SEC rules related to disclosure of benchmarks would be applied to collective funds, which are not subject to SEC regulation. As another example, SEC rules for mutual fund historical performance data require an assumption that the mutual fund shares are held in a taxable account; applying this rule to investments offered solely to non-taxable investments in pension plans, such as collective funds, would appear inappropriate and require further interpretation.

By proposing to rely almost exclusively on SEC mutual fund rules for all defined contribution pension investment options, the Department risks inadvertently imposing the full U.S. securities registration regime, and its attendant costs, on bank collective funds. Such an outcome could compromise decades of regulation of collective funds by Federal and state banking authorities, and contravenes the repeated actions by Congress to exempt collective funds from securities registration. As an alternative to effective SEC regulation of collective funds, we suggest the Department conduct additional review and consultation with the banking industry, banking regulators, and the SEC, and develop a disclosure regime for collective funds independent of SEC retail mutual fund rules.

In addition to the substantive issues for collective funds, the Department's proposed reliance on SEC rules raises practical concerns as well. For example, the Department bases much of its proposal on the SEC's recent summary prospectus rule, which is not yet final, and which has recently been reopened for additional public comment. It will be difficult for plan sponsors and their investment managers to implement the Department's Proposed Rule, particularly for investments not currently subject to existing SEC rules, when the SEC rulemaking is still pending. Going forward, the SEC may well respond to developments in retail investment markets with additional disclosure or other requirements, which may be irrelevant to pension plan participants. In such cases, it is unclear under the Proposed Rule which agency will provide additional guidance to plan sponsors. All of these types of issues could be resolved through independent rulemaking by the Department under ERISA for pension plan disclosures.

Effective Date

We strongly urge the Department to reconsider the January 1, 2009 effective date included in the Proposed Rule. Regardless of how quickly the Department can issue a final rule, the time remaining before January, 2009 is simply too short to create and implement the significant new systems required to comply with the substantial new disclosures the Department may require. We suggest an alternative effective date of at least 18 months from issue of a final rule.

Frequency of Disclosures

Most of the disclosures under the Proposed Rule would be required annually, with the exception of individual expense data, which would be required to be disclosed at least quarterly. We are

concerned that requiring such quarterly disclosures would be expensive and cumbersome, and of limited value to plan participants. In addition, quarterly disclosures raise interpretive questions regarding expenses which may be collected annually, or otherwise result in misleading "spikes" in certain quarters.

As an alternative, we suggest the Department align the individual expense disclosure with the other requirements of the Proposed Rule, and require only annual disclosures.

Employer Stock

We note that one common investment option for plan participants, employer stock, is not addressed in either the Proposed Rule or the model form in the Appendix. Many of the proposed investment-related disclosures (*e.g.* benchmark, expense ratio, etc.) would be inappropriate for an employer stock option, and difficult or impossible to provide.

We suggest the Department clarify that employer stock is exempt from the proposed disclosures of investment-related information.

Flexibility of Disclosure of Asset-Based Fees and Expenses

In certain cases, administrative and recordkeeping charges are charged through an asset-based fee at the plan or fund level. While not investment-related fees, and, therefore, presumably required to be disclosed under Section (a)(c)(2)(ii) of the Proposed Rule, these fees effectively become embedded in the plan or investment funds. Requiring these fees to be disclosed as a dollar amount, on a participant by participant basis, will require the establishment of significant new systems and procedures, at considerable expense to plan participants.

As an alternative, we suggest the Department allow increased flexibility for the required disclosure of administrative expenses under Section (a)(c)(2)(ii) by allowing by allowing disclosure of either dollar amounts charged to participants accounts, or a percentage or basis point asset-based charge.

Flexibility for Providing Supplemental Information

We generally support the Department's efforts to minimize cost and simplify information for plan participants by allowing "supplemental information" to be available upon request, through web sites. In some cases, however, and in respect to certain investment options, some information may not be available on the Internet. In other cases, the information described as "supplemental information" in the Proposed Rule may not exist at all.

We suggest the Department provide flexibility in its requirement for "supplemental information" by clarifying that 1) a plan sponsor can provide "supplemental information" not available on the Internet through a contact name and phone number or in writing, and 2) that not all the "supplemental information" described in the Proposed Rule is required, and that the plan sponsor or fiduciary only be obligated to provide information that is made available by the investment manager or issuer.

Target Date Funds

We suggest the Department consult further with plan sponsors and investment managers on issues related to automated allocation vehicles, such as target date funds.

Target date funds have become an increasingly attractive investment option for self-directed plans. Such investment options allow plan participants to choose an option based on their expected retirement date, and rely on the plan sponsor or investment manager to design a shifting asset allocation based on that date. Target date funds provide plan participants a simple, efficient method of choosing an appropriate asset allocation, and rebalancing this allocation over time.

It is unclear how target date funds should be treated under the Department's Proposed Rule, particularly in regard to benchmarking. Target date funds are not designed to be measured against any specific benchmark; instead, they are intended to provide asset allocations appropriate for a plan participant's expected retirement date. While such investment options are typically comprised of a mixture of investments that are measured against specific benchmarks (*e.g.* and equity or bond index), a simple proportionate combination of these components may not accurately reflect the goals and performance of the target date fund. In addition, in many large plans, target date funds are assembled from component investment options by the plan sponsor itself, rather than an asset manager, creating a need for specific guidance from the Department on how such arrangements can meet the new disclosure requirements.

Conclusion

Once again, thank you for providing the opportunity for State Street to comment on the Proposed Rule. As noted above, we support the Department's efforts in this area, and believe the general format proposed for disclosures is appropriate, and will provide useful information to plan participants. We urge the Department to consider revising its proposal, however, particularly to ensure that any new disclosures not unnecessarily increase costs for effective, well-regulated investment options such as bank collective funds.

Sincerely,

Stefan M. Gavell
Executive Vice President
Head of Regulatory and Industry Affairs