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Sent: Friday, July 20, 2007 10:40 AM
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Subject: FW: ASPPA and CIKR's Submission to DOL on Participant Fee RFI

Bob and Kathy:

ASPPA and CIKR are pleased to submit our comments to the Department of Labor's RFI on Fee and Expense Information to Participants in Individual Account Plans, recommending that participants be given a concise summary (a "fee menu") of all of the direct expenses that could be potentially charged against a participant's account, versus participant specific fee information. For the Department's consideration, ASPPA and CIKR are also submitting a sample fee disclosure form (a "fee menu") listing potential 401(k) fees and expense that could be provided to participants on an annual basis. We note that the exemplary fee menu should include sufficient flexibility to enable various types of fees to be disclosed within in the context of uniform disclosure rules and will vary based on the services and fee arrangement authorized by the plan fiduciary.

ASPPA and CIKR also recommend that any new disclosure obligations be permitted to be disclosed electronically, as mailing costs can often triple the costs of any required disclosure. To the extent participants would want to see this information on paper, it would be provided only upon request. ASPPA and CIKR recommend that any guidance the Department develops with respect to 401(k) participant fee disclosure not be contingent on ERISA §404(c) compliance.

We welcome the opportunity to work with you as you develop your guidance on this important fee initiative. Please do not hesitate to call us if we can be of assistance.

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Request for Information Regarding Fee and Expense Disclosures to Participants in Individual Account Plans

July 20, 2007

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) request for information (RFI) regarding fee and expense disclosures to participants in individual account plans and the contemplated revisions to the regulation to ERISA §404(c).

Furthermore, ASPPA and CIKR strongly recommend that any additional disclosure requirements imposed on service providers be uniform for both bundled and unbundled providers. The failure to require all members of the financial services industry to disclose the compensation received for various plan services and their potential conflicts of interest diminishes the effectiveness of competitive pricing in the marketplace, ultimately leading to increased costs to participants and consequently reduced retirement benefits.

Participants' roles with respect to a plan, however, are more limited. That is, participants with the right to direct investments generally need fee information in order to evaluate the investments offered by the plan, to determine whether they want to engage in certain transactions, and to determine whether the employer-sponsored retirement plan is the best savings vehicle. Additionally, many participants are relatively unsophisticated with respect to the fee arrangements attendant to retirement plans. As a result, they need information that will assist them in making decisions without overwhelming them.

Consequently, ASPPA and CIKR recommend that participants be given a concise summary (a "fee menu") of all of the direct expenses that could be charged to their accounts. These would include: (a) investment expenses (*e.g.*, expense ratio and other expenses particular to a specific investment option); (b) fees on total plan assets (*e.g.*, wrap fees); and (c) administrative charges (*e.g.*, administrative fees and transaction-based fees). ASPPA and CIKR have prepared for the Department's consideration a sample participant fee disclosure form that reports these fees in a concise manner. (*See* Exhibit A.) We want to emphasize that the sample fee disclosure form is exemplary and will vary to the extent plan services and fee arrangements are determined appropriate by the plan fiduciary. Accordingly, the exact selection of fee information as set forth in our sample fee disclosure will vary depending on each particular plan's service provider arrangement.

Due to the significant costs involved with providing participant-specific information (as discussed in more detail below), ASPPA and CIKR strongly suggest that the Department recommend a "fee menu" that provides an annual snapshot of fees that could potentially be charged against a participant's account rather than fees charged specifically to each participant. For example, the plan fiduciary could provide a sample fee disclosure to plan participants that would disclose the potential expense ratios and other investment-related fees for each of the investment options offered by the plan rather than the specific investment fees charged to each participant's account.

Participants with the right to direct investments need fee information when deciding whether to participate in the plan, when selecting investments, and regularly thereafter. Thus, ASPPA and CIKR recommend that the Department recommend uniform rules of disclosure that would encourage plan administrators[1] to make fee disclosures available to participants concurrent with an employee becoming a participant in the plan and then annually thereafter.

Responses to Questions

Question 1: What basic information do participants need to evaluate investment options under their plans? If that information varies depending on the nature or type of investment option (options offered by a registered investment company, options offered under a group annuity contract, life cycle fund, stable value product, etc.), please include an explanation.

[1] For purposes of this comment, plan administrators means ERISA plan administrator.

In order to evaluate plan expenses that may affect participant investment return, participants need to understand three categories of fees and expenses: (1) investment expenses; (2) fees on total plan assets; and (3) administrative and transaction fees.

The disclosure of investment expenses is particularly important because they can have a significant impact on the adequacy of the participant's retirement savings. In general, investment management fees (which can include investment-level wrap fees) constitute the majority of fees charged to 401(k) participants' accounts.[2] Those fees have a significant impact on their retirement benefits. For example, over a 25-year period, a participant paying only 0.5% per year in plan expenses will net an additional 28% in retirement plan income over a participant in a similar plan bearing 1.5% in participant plan expenses per year.

Accordingly, it is critical that the information made available to participants be structured in an easy-to-understand manner. Participants in 401(k) plans are often overwhelmed by the number of investment options and the information they receive explaining their investment choices. There is a lack of uniformity, quality and quantity in the disclosures currently being provided by service providers to 401(k) plans. The investment information provided to participants also can vary depending on whether the plan is in compliance with the disclosure requirements under the ERISA §404(c) regulation, which requires that participants be provided "sufficient information to make informed decisions with regard to investment alternatives under the plan."

In addition, the information given to participants must be disclosed in a consistent manner, regardless of the types of services used by a plan. Currently, plans provide inconsistent fee disclosure due, in large part, to the variety of service provider arrangements in the market and the manner in which fees under such arrangements are determined. In general, these service arrangements can be broken down into two types: (1) a "bundled" model, where one affiliated provider primarily offers proprietary investments along with recordkeeping, trustee and investment management services; and (2) an "unbundled" or "open architecture model," which generally consists of independent service providers offering recordkeeping, trustee and investment management services, along with multiple mutual fund families and other investment options offered by affiliated financial services companies.[3]

Given the complexity of the various arrangements, it is not surprising that there is a lack of uniformity and adequacy of investment information currently provided to 401(k) participants.

In order to address these issues, ASPPA and CIKR have developed the attached sample fee disclosure, which would provide a simple, uniform breakdown of the direct expenses associated with each investment option. We recommend that this plan-level disclosure of potential expenses (as opposed to those that are participant-specific) include all of the direct expenses charged by each investment option, along with any wrap fees or administrative and transactional expenses, to enable participants to make a comprehensive evaluation of the different investment options provided to them. In particular, ASPPA and CIKR's sample fee disclosure will consolidate into one document all the fees and expenses charged for the management of an investment option that could directly affect participants' accounts.

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[2] GAO Report 07-21 cited a 2005 industry survey estimating that investment fees made up about 80 to 99 percent of plan fees, depending on the number of participants in the plan.

[3] The bundled arrangement generally uses its investment management fees (such as revenue sharing and other expenses) to subsidize recordkeeping and administrative fees, and thus it is often presented as having "no cost." On the other hand, the unbundled arrangements generally disclose all their fees and expenses to service providers on a service-by-service basis, including any revenue sharing and other expenses.

The sample fee disclosure would make consistent information available to 401(k) participants for all the various types of investments available in a plan, regardless of the type of investment option (*e.g.*, mutual fund, group annuity, stable value, collective trust, etc.) or the structure of a service provider's fee arrangements. This disclosure would allow participants to make more informed decisions regarding their 401(k) accounts by comparing the various fees and expenses charged for each investment option.[4] The breakdown of the specific investment expenses ASPPA and CIKR recommend be disclosed in our exemplary sample fee disclosure is listed in detail in Question 2 below.

ASPPA and CIKR understand that participants should consider the relevant investment return information along with the sample fee disclosure in order to make an informed decision. Accordingly, ASPPA and CIKR's sample fee disclosure is designed to be used in conjunction with any investment performance information made available to participants with respect to each investment alternative.

Question 2: What specific information do participants need to evaluate the fees and expenses (such as investment management and 12b-1 fees, surrender charges, market value adjustments, etc.) attendant to investment options under their plans? If that information varies depending on the nature or type of option, or the particular fee arrangement relating to options (e.g., bundled service arrangements), please include an explanation.

Participants need to understand the direct expenses that could be charged to their accounts and the services they would receive for those expenses. ASPPA and CIKR have identified some of the types of fee and expense information that should be made available to all 401(k) participants in the attached sample fee disclosure. Pursuant to uniform rules, this information can and should be disclosed for all the various types of investment options in a plan (whether offered by a registered investment company, offered under a group annuity contract, life cycle fund, stable value, collective trust, etc.), as well as for the various types of service provider arrangements (bundled versus unbundled) for the plan. We suggest that a disclosure such as our sample fee disclosure be made available annually in a one-page format that would allow for an easy comparison among investment options.[5]

Specifically, ASPPA and CIKR recommend that the following investment-related fee and expense information be made available to participants in a manner similar to our sample participant fee disclosure (Exhibit A) (certain transactional and administrative expenses are described in separate questions below):

- Investment Expenses – There is a variety of investment expenses charged to individual investment options, some of which are seldom disclosed. As demonstrated in our sample fee disclosure (Exhibit A), we recommend disclosing the following four separate categories of investment expenses under "I. Investment Expenses."
    - *Expense Ratio* – An expense ratio generally is defined as a percentage of assets in any given investment used to pay annual expenses. Expense ratios often include several types of expenses. ASPPA recommends that the expense ratio be separately identified under the category of "Investment Expenses." We recommend that the expense ratio include

[4] This recommendation is consistent with the recommendation in GAO Report 07-21 that Congress consider amending ERISA to require plan sponsors to disclose fee information of 401(k) investment options to participants in a way that facilitates comparison among the options.

[5] Administrative expenses paid by the employer (rather than the plan) need not be disclosed as they do not have any direct impact on a participant's account balance.

the percentage of fund assets that are used for administrative, management, advertising and promotion (12b-1 fees), and all other fund expenses, other than sales loads or brokerage commissions.

- *Fees Related to Funds of Funds* – Funds of funds are investment options that are comprised of a selection of mutual funds that might otherwise be sold separately rather than as individual equities or debt instruments. These include many of the commonly called lifecycle or lifestyle funds. Other names include target-date funds, target-maturity funds and risk-based funds. Some of these funds may report the weighted average of the underlying administrative and transactional fees and management fees of each of the individual funds that comprise the fund of funds, while others just report underlying management fees. Generally, these funds do not provide an explanation as to what fees are included in their expense ratios. For example, some funds of funds report expense ratios of 0% in their prospectuses, even though the underlying funds charge expenses. ASPPA and CIKR suggest that the Department require plans to report the expenses for the fund of funds as an average of the total expenses charged by the underlying funds. This would be reported as the "expense ratio" for this type of plan investment option.

- *Investment-Specific Wrap Fee* – Wrap fees can be assessed against specific investment options and/or at the plan level based on total plan assets. For example, a wrap fee may be assessed against a "low fee" investment option because the investment provider does not contribute toward the cost of plan recordkeeping and administration. ASPPA and CIKR suggest that the investment-specific wrap fees be separately disclosed.

- *Redemption Fee* –- A redemption fee may be charged by mutual funds to their shareholders when shareholders redeem their shares. A redemption fee is typically used to defray fund costs associated with a shareholder's redemption and is paid directly to the fund. The SEC limits redemption fees to no more than 2 percent. ASPPA and CIKR believe that possible redemption fees should be separately identified.

- *Surrender Charges* – Many financial service companies impose surrender charges on both a participant-level and plan-level basis. Participants may see no cost up front, but then are later assessed a surrender charge for undisclosed reasons,[6] such as when a plan decides to switch service providers or if a participant chooses to liquidate a particular investment. Many times this surrender charge is hidden in the documentation provided to the plan and never explicitly disclosed prior to assessment.

- Fees on Total Plan Assets – Fees on total plan assets are generally charged in addition to any other investment expenses and would be disclosed on our sample fee disclosure under a separate category of "II. Total Fees on Plan Assets." Accordingly, ASPPA and CIKR suggest in our sample fee disclosure that the following fees be listed separately and then netted out to provide participants with a uniform and transparent view of all the fees charged against a plan's total assets.

  - Plan-level wrap fees charged are not investment specific, and therefore should be disclosed separately. Plan-level wrap fees should be consolidated, and include all

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expenses incorporated into the wrap fee, including sales commissions, administrative expenses, and/or recordkeeping fees.

- Registered Investment Advisory Fees are charged for the provision of investment advice to fiduciaries or participants. We recommend that any investment advisory fees be listed as one of the categories under "Total Fees on Plan Assets."

- Many service providers offset a number of the fees on total assets with respect to a particular plan through plan expense reimbursements. Accordingly, we recommend that the disclosure form reflect that these offsets reduce other plan specific fees.

Question 3: To what extent is the information participants need to evaluate investment options and the attendant fees and expenses not currently being furnished or made available to them? Should such information be required to be furnished or made available by regulation or otherwise? Who should be responsible for furnishing or making available such information? What, if any, additional burdens and/or costs would be imposed on plan sponsors or plans (plan participants) for such disclosures?

Currently, 401(k) participants—as lay investors—do not have easy access to fee and expense information about their 401(k) investment options outside of the information that is provided by their plan sponsor and service provider. Even if a participant knows where to look for this information, it is difficult to find and more difficult to understand. Further, while most mutual fund companies disclose their funds' expense ratios, other types of investments currently being offered in 401(k) plans may not disclose anything at all.

Accordingly, ASPPA and CIKR recommend that an annual, global disclosure be made available to provide participants with a snapshot of investment fees that could potentially be charged against a participant's account. We believe that providing a single form that contains the most relevant fee information will assist participants in their investment decisions. The recommended disclosure should be made available prior to a participant's entry into a 401(k) plan and then annually thereafter. If the investment options offered by the plan are changed during the year, only information about the new investments need be made available to participants.

The plan fiduciary is responsible for understanding the fees paid by the plan and, therefore, should be responsible for providing the suggested fee disclosures to participants.

We recommend that, in developing any comprehensive and detailed disclosure, the Department consider the greater individual costs for participants in small plans, as there will be fewer accounts among which the costs of providing the information will be spread. In general, participants in larger plans, which have a broader base against which to allocate fixed fees, pay proportionately lower fees and expenses as 401(k) plan asset size and number of participants increase. Accordingly, it is critical that the Department consider meeting participants' information needs in as simple and cost-effective a manner as possible to avoid discouraging plan sponsors from offering plans and participants from participating in the plans.

The costs involved with these types of disclosures will depend on whether the Department recommends disclosure of possible fees that could be charged against a participant's account (*e.g.*, a "fee menu) versus participant-specific disclosures, which would require the fiduciary to disclose the specific fees charged to each participant's account. As noted, plan level disclosure would be significantly less expensive to produce.

Question 4: Should there be a requirement that information relating to investment options under a plan (including the attendant fees and expenses) be provided to participants in a summary and/or uniform fashion? Such a requirement might provide that: A) all investment options available under a participant-directed individual account plan must disclose information to participants in a form similar to the profile prospectus utilized by registered investment companies; or B) plan fiduciaries must prepare a summary of all fees paid out of plan assets directly or indirectly by participants and/or prepare annually a single document setting forth the expense ratios of all investment options under the plan.\3\ Who should be responsible for preparing such documents? Who should bear the cost of preparing such documents? What are the burden/cost implications for plans of making any recommended changes? \3\ See recommendations of the GAO as set forth Report GAO-07-21 (November, 2006), http://www.gao.gov/htext/d0721.html.

ASPPA and CIKR recommend that the direct fees and expenses related to investment options under a plan be made available to participants in a format that includes sufficient flexibility to enable various types of fees to be disclosed within the context of uniform rules. Exhibit A is an example of such a disclosure. Investment management fees and expenses constitute the majority of fees charged to a 401(k) plan participant and therefore have a significant impact on a participant's retirement security. There are currently no uniform rules on how this information is disclosed to plan participants by the various service providers. As stated in GAO Report 07-21, this is in large part due to the fact that ERISA requires limited disclosure by plan sponsors and does not require disclosure in a uniform way, which does not foster an easy comparison of investment options. Furthermore, the various types of investments offered in a 401(k) plan (*e.g.*, mutual funds, annuities, brokerage windows, pooled separate accounts, collective trusts, etc.) are directly regulated by separate Federal and State agencies and thus are not likely to have uniform disclosure rules anytime soon.

Accordingly, plan participants often do not have access to uniform fee disclosure in connection with various investment options that would allow them to make an informed investment decision. In addition, a requirement that all types of investment options disclose information in a form similar to the profile prospectus utilized by registered investment companies would, in our view, be unlikely to highlight potential fees in a sufficient manner.

ASPPA and CIKR strongly recommend that the Department develop guidance establishing uniform disclosure rules that would allow plan fiduciaries to provide all 401(k) participants with fee information on an annual basis (*See* Exhibit A as an example). We believe uniform rules for the disclosure of fees would ultimately be less confusing for participants, especially when a plan changes service providers or participants change jobs. The fee disclosure form should be made available to participants along with appropriate investment return information so that participants can consider all the relevant information relating to the plan's investment options before making their investment decisions.

The plan fiduciary would be responsible for ensuring that the fee disclosure document is made available to the participants, but generally would obtain the necessary fee data (and in most cases, the disclosure form itself) from the plan's service providers. We also recommend that most of the disclosures be made in the form of percentages rather than actual dollar amounts. Alternatively, a hypothetical illustration of costs (*e.g.*, per $1,000 of investment) could be made available.

Fee disclosure forms should only be required to be updated once a year. New employees should receive the annual fee disclosure statement before or concurrent with becoming participants in the plan and all participants should receive the information annually thereafter. Information would be made available only once a year (so a new employee would receive information already made available to the other participants shortly before the beginning of the plan year).

If a plan changes investment options during a year, then ASPPA and CIKR recommend that the plan fiduciaries only need to make available the fee information on the new investments. This information would then be incorporated into the form for the following year's disclosures.

More frequent disclosures of changes would be unduly burdensome on plan fiduciaries and would increase costs that would be passed on to participants. Currently, mutual fund complexes do not inform plan sponsors when they change the fee structure for a given mutual fund. This information commonly is buried in a prospectus, where it is effectively unavailable to all but the sophisticated investor. Furthermore, the changes in fees are generally not significant. If the Department wants plans to disclose material changes in a more prominent way, we strongly recommend that the Department work with the SEC to have mutual funds and other investment vehicles affirmatively disclose material changes to fees in a more prominent manner.

Question 5: How is information concerning investment options, including information relating to investment fees and expenses, communicated to plan participants, and how often? Does the information or the frequency with which the information is furnished depend on whether the plan is intended to be a section 404(c) plan?

There is no consistent method of fee and expense communication to participants. Some providers communicate annually, some quarterly and some daily. Generally, while expense ratios are provided in a mutual fund prospectus, not all of the other relevant investment fees are disclosed. Some investment service providers disclose wrap fees with expense ratios, others do not. Mutual fund prospectuses may display applicable expense ratios prominently, while other disclosures either do not include this information or hide the information in layers of complex technical text. Some providers disclose this information as part of their investment election procedures, while others merely include it as a footnote at the bottom of benefit statements and other materials. Furthermore, there are providers that will not disclose the amounts at all. If contacted, their representatives state that they do not have access to this information. In other words, this information is frequently very difficult to obtain and the system is designed for non-disclosure.

Compliance with ERISA §404(c) requires that specific disclosures be provided automatically and upon request to enable a participant to make an informed investment decision. While 404(c) participants generally receive more information on their SEC-registered investment options than participants in non-404(c) plans, in actuality, most participants do not read the prospectuses and other information they are provided. This is due, in part, to the voluminous amount of documentation they receive and the complexity of the language used in prospectuses. The average participant is concerned primarily with the amount of his or her account balance and seeing its growth over time—in particular, whether the participant's account is making or losing money. In general, even where participants are provided with information about the different investment options, many do not analyze investment expenses or are unable to understand the data to determine the cumulative impact of one investment's fees versus another.

While the existence of disclosure materials is a significant issue, accessibility and clarity of disclosure are equally compelling concerns. If the information is buried within page upon page of technical language, it is effectively unavailable to participants. If it is provided in an obvious manner, but the structure of the information is such that a participant cannot understand it or compare it to similar information for an alternate investment, it is effectively unavailable. Therefore, ASPPA and CIKR strongly recommend that the fee disclosures be readily available, understandable to the average participant, and be made pursuant to uniform rules

Fee information is needed regardless of whether a plan complies with ERISA §404(c). Accordingly, ASPPA and CIKR recommend that any guidance the Department develops with respect to 401(k) participant fee disclosure not be contingent on ERISA §404(c) compliance.

Question 6: How does the availability of information on the internet pertaining to specific plan investment options, including information relating to investment fees and expenses, affect the need to furnish information to participants in paper form or electronically?

Where participants have access to the Internet, information should be furnished in paper form only upon request. The availability of the Internet should enable plans to make fee disclosures available for a significantly lower cost. For example, CIKR members estimate that mailing costs can often triple the costs of any required disclosure. As a result, we strongly suggest that plans be able to post a fee disclosure form, similar to our sample fee disclosure, via a web site. Participants can be notified of the existence of the fee disclosure form on benefit statements. The benefit statements would include notification to participants of the availability of the information and how it can be accessed. For example, it could state: "For information regarding the fees that could be charged against your plan account, please visit our web site at http://www.planadministrator.com/feedisclosure. For a paper copy of this disclosure, please contact your plan administrator."

Question 7: What changes, if any, should be made to the section 404(c) regulation, to improve the information required to be furnished or made available to plan participants and beneficiaries, and/or to improve likelihood of compliance with the disclosure or other requirements of the section 404(c) regulation? What are the burden/cost implications for plans of making any recommended changes?

Since the ERISA §404(c) regulation was issued in October 1992, there have been significant changes in the investment industry. As a result, ASPPA and CIKR feel that the Department should consider the following issues as it revises the 404(c) regulation.

The current ERISA §404(c) regulation requires that "a participant or beneficiary is provided or has the opportunity to obtain sufficient information to make informed decisions with regard to investment alternatives." However, "sufficient information" implies that the disclosure requirements specifically listed in the regulation may not be sufficient for all investment options. Fiduciaries need definitive guidelines to follow with respect to the plan's specific investment vehicles. Accordingly, when amending the ERISA §404(c) regulation, the Department should clarify what information is required to be available or provided for variable annuity products, collective investment trusts, separate accounts and brokerage accounts. In addition, the Department should revise the regulation to list specifically the information that must be disclosed to participants and beneficiaries with respect to each of the various investment vehicles.

The 404(c) regulation currently requires the delivery of a prospectus "immediately [preceding or] following the participant's or beneficiary's initial investment…" Plan fiduciaries are generally not in a position to know when a participant or beneficiary invests in a particular investment alternative for the first time. This is particularly true where plan investments are traded on an omnibus basis at a plan level. Additionally, mailing prospectuses is very expensive and most participants do not read them.

As a result, ASPPA and CIKR support making available, through a website or other electronic means, a "Profile" prospectus (as referenced in AO 2003-11), but recommends that the actual delivery of any prospectus be required only upon request. ASPPA and CIKR recommend that the Department permit plan sponsors to satisfy the "prospectus" requirement by providing the required information in a format that participants will find more accessible, understandable, and useful.

Question 8: To what extent should participant-directed individual account plans be required to provide or promote investment education for participants? For example, should plans be required or encouraged to provide a primer or glossary of investment-related terms relevant to a plan's investment options (e.g., basis point, expense ratio, benchmark, redemption fee, deferred sales charge); a copy of the Department's booklet entitled "A Look at 401(k) Fees" (http://www.Department.gov/ebsa/publications/401k_employee.html) or similar publication; or investment research services? Should such a publication include an explanation of other investment concepts such as risk and return characteristics of available investment options? Please explain views, addressing costs and other issues relevant to adopting such a requirement.

PPA §508(a) directs the Department to maintain an Internet website providing sources of information on individual investment and diversification. Accordingly, in Field Assistance Bulletin 2006-03, the Department provided a link to the following website on investing: www.dol.gov/ebsa/investing.html. As this information will need to be provided in every benefit statement supplied to participants and beneficiaries in defined contribution plans (quarterly for participant-directed plans), ASPPA and CIKR strongly suggest that the Department provide investment education on its website, rather than impose an additional burden on plan fiduciaries. In particular, it would be especially burdensome and cost prohibitive to impose investment education requirements with respect to plans maintained by small businesses.

Question 9: What information is currently furnished to participants about the plan and/or individual administrative expenses charged to their individual accounts? Such expenses may include, for example: audit fees, legal fees, trustee fees, recordkeeping expenses, individual participant transaction fees, participant loan fees or expenses.

Information about administrative expenses is typically only disclosed, if at all, to the plan fiduciaries.[7] It is unusual for administrative expenses not currently charged against a participant's account to be disclosed to participants. To the extent fees are assessed against participants' accounts, the disclosures to participants vary considerably. Certain fees, such as transaction fees charged against a participant's account, are routinely disclosed. For example, participants are usually notified of the costs associated with taking a loan, having a brokerage account, receiving a distribution and qualifying a domestic relations order. This information is typically provided at the time the service is requested, although the Summary Plan Description (SPD) may generally indicate that there may be fees associated with these types of transactions.

We also note that it is atypical to have audit and legal fees paid from plan assets other than in the largest of plans.

Question 10: What information about administrative expenses would help plan participants, but is not currently disclosed? Please explain the nature and usefulness of such information.

Participants should be advised of all of the administrative expenses that may be directly charged to their accounts. As discussed in our response to Question 9, only transactional expenses to date are typically disclosed. Interested participants should be able to understand the fees that they are directly paying in order to determine if the plan is the most effective method of saving for retirement, as well as be able to discuss the value of the services received relative to their cost with plan fiduciaries. For example, recordkeeping administration fees that are based on a percentage of assets may not be the most cost-effective option for certain large plans.

[7] As noted earlier, bundled providers typically do not provide specific, detailed information regarding recordkeeping and administrative expenses.

ASPPA and CIKR do not believe that it is either appropriate or necessary to disclose to participants administrative fees paid directly by the plan sponsor and not from plan assets as they do not have any direct impact on a participant's account balance.

Question 11: How are charges against an individual account for administrative expenses typically communicated to participants? Is such information included as part of a participant's individual account statement or furnished separately? If separately, is the information communicated via paper statements, electronically, or via website access?

The administrative fees that are communicated to participants are typically disclosed via a web site. Transaction-based fees are frequently communicated to participants in the materials generated by service providers to inform them about the services available to them. SPDs may also contain a general statement that administrative expenses may be charged, but typically do not include specific details. Information about administrative expenses is usually not included on benefit statements. As discussed earlier in Question 6, we do not believe benefit statements are a cost-effective mechanism for providing such information.

Question 12: How frequently is information concerning administrative expenses charged to a participant's account communicated?

Transactional expenses are typically disclosed at the time the transaction (*e.g.*, participant loan) is requested. SPDs also frequently include very general disclosures relating to the types of fees that may be charged. Otherwise, there is generally no affirmative communication of the menu of administrative expenses that could be assessed.

Question 13: What, if any, requirements should the Department impose to improve the disclosure of administrative expenses to plan participants? Please be specific as to any recommendation and include estimates of any new compliance costs that may be imposed on plans or plan sponsors.

Detailed fee information is critical for plan fiduciaries who need to evaluate which services are appropriate for the plan. However, participants do not need the same level of detail given the nature of the decisions they make regarding the plan. Participants need information to assist them in making decisions without overwhelming them. Consequently, ASPPA and CIKR recommend that the Department require plans to make available to participants a concise summary of all of the direct expenses that could be charged to their accounts as discussed above. (*See* Exhibit A as an example.) This disclosure would reflect annual expenses to the plan, including any annual administrative and recordkeeping charges.

The Department should recommend disclosure of a menu of potential fees that could be charged directly against a participant's account rather than participant-specific disclosures. Participant-specific disclosures will not help a participant make future decisions. Participants need sufficient information to be able to decide if they want to engage in certain activities. For example, participants need to have information about the expenses related to brokerage accounts in order to decide if they want to use this service. As a result, ASPPA and CIKR suggest that potential transactional fees be disclosed, including, but not limited to: brokerage account fees, participant loan origination fees, annual loan charges, distribution fees, and charges associated with domestic relations orders.

Furthermore, many participants are not focused on the plan or the fees associated with it. The costs of providing participant-specific information are exorbitant when compared to the value that the plan and participants as a whole would receive. We believe it would be unfortunately ironic if rules to require greater fee disclosure would significantly and unnecessarily increase participant costs.

Question 14: Should charges for administrative expenses be disclosed as part of the periodic benefit statement required under ERISA section 105?

No. Participants need fee information when deciding whether to participate in the plan, when selecting investments and regularly thereafter. Thus, ASPPA and CIKR recommend that the Department require disclosures to be made available before or concurrent with an employee becoming a participant in the plan and then annually thereafter.

However, as discussed in our response to Question 6, ASPPA and CIKR strongly recommend that the Department require participants to be notified of the existence of the fee disclosure form on benefit statements. The benefit statements would include notification to participants of the availability of the information and how it can be accessed.

Question 15: What, if any, distinctions should be considered in assessing the informational needs of participants in plans that intend to meet the requirements of section 404(c) as contrasted with those of participants in plans that do not intend to meet the requirements of section 404(c)?

Participants in ERISA §404(c) plans are entitled to receive information on the fees charged to the plan. The regulation to ERISA §404(c) requires that an identified fiduciary provide participants with "sufficient information to make informed decisions with regard to investment alternatives under the plan," including a description of the transaction fees and expenses affecting the participant's balance in connection with purchases or sales of investment alternatives.[8] Examples of these fees include commissions, sales loads, deferred sales charges, redemption fees and exchange fees.

Regardless of whether a participant-directed individual account plan elects to comply with ERISA §404(c), each participant in the plan is responsible for evaluating the investment options available under the plan. Thus, all plans that give investment responsibility to participants should be required to make available enough information to allow the participants to exercise that responsibility effectively. To make an informed, reasoned decision about investments, each participant should have access to certain basic information about each plan investment option, including at a minimum the investment's return, relative risk, and the expenses that are charged to the participant on investment in that option. Participants may then assess which options in the plan most closely and cost-effectively match their risk tolerance, investment horizon and retirement income expectations.

In the event the Department believes participants in 404(c) plans should receive different disclosures than other 401(k) participants, ASPPA and CIKR strongly suggest that the Department provide guidance that would encourage the disclosure of fees in a uniform manner, such as represented in our sample fee disclosure. While ERISA §404(c) requires specific disclosure of investment expenses, it does not require disclosure in any particular format. As a result, participants in plans designed to comply with ERISA §404(c) are often provided the required information through many different, voluminous sources. Fee information may be provided in the plan's SPD, in a prospectus, on a mutual fund fact sheet, through a provider's enrollment kit or in a completely different format. Prospectuses alone are often over 30 pages long. For a plan offering numerous investment options, participants may have to wade through hundreds of pages of investment information to find specific data on expenses. To ensure effective communication of expense data, a summary of plan expenses should be made available to participants through a single source.

[8] *See* 29 C.F.R. §2550.404c-1(b)(2)(i)(B)(1)(v).

Question 16: What (and what portion of) plan administrative and investment-related fees and expenses typically are paid by sponsors of participant-directed individual account plans? How and when is such information typically communicated to participants?

Plan fee arrangements vary greatly, depending upon the product the plan sponsor chooses to offer, the structure of the plan's investments, and the overall philosophy of the plan sponsor. Whether a plan expense is paid from plan assets often varies depending on the type of expense. Plan sponsors typically pay legal or auditing fees from business assets. In the unusual case that the plan sponsor pays those expenses from plan assets, those expenses are usually allocated against forfeitures, and are not generally charged to a participant's account. At the other end of the spectrum, plan sponsors typically do not pay investment expenses, such as mutual fund expense ratios, contingent deferred sales charges or surrender fees.

When plan sponsors choose to pay plan expenses from business assets, participants are typically not informed of the amount or type of these expenses.

Question 17: How would providing additional fee and expense information to participants affect the choices or conduct of plan sponsors and administrators, and/or that of vendors of plan products and services? Please explain any such effects.

Providing additional fee and expense information to participants will have two main effects. First, plan fiduciaries will be more cognizant of overall fees if clear, concise information on fees is made available to participants. Plan fiduciaries will need to be more familiar with the types and amounts of fees charged, and their rationale for incurring them, if participants are enabled to ask questions about those fees on a specific, informed basis.

Second, where plan sponsors are asked more questions by participants, they will in turn ask more questions of plan service providers. Plan service providers will then need to give plan sponsors information sufficient to answer participant questions. Those service providers who are unwilling or unable to provide enough information to plan fiduciaries will be more likely to be replaced by those who are able to provide such information.

With regard to plan service providers, an important element affecting behavior is the lack of a defined uniform set of disclosure rules. Without such rules, there is a tremendous incentive not to disclose fees in order to keep up with the competition. In other words, given unsophisticated plan sponsors, there is perceived disadvantage to disclosing too much information, particularly where many vendors present their plans as "no cost," despite the reality otherwise. This behavior will only cease to the extent fee disclosure rules are specifically and consistently applied to all service providers, regardless of how services are delivered. Then the retirement plan marketplace will truly operate efficiently, leading to reduced costs to the benefit of plan sponsors and participants.

Question 18: How would providing additional fee and expense information to participants affect their plan investment choices, plan savings conduct or other plan related behavior? Please explain any such effects and provide specific examples, if available.

For the majority of participants, additional fee and expense information is not likely to affect plan investment choices, savings conduct or other plan-related behavior. Most employees who are eligible to participate in participant-directed individual account plans are paralyzed by the number of plan investment choices and the volume of information explaining those choices. This paralysis results in delayed or permanently deferred enrollment, inertia within investments, and irrational allocations (for example, separating investment allocations evenly among all investments offered.) Provisions in the

PPA designed to encourage automatic enrollment, more appropriate default investment alternatives and investment advice reflect the recognition of Congress that many participants are apathetic when it comes to participation in a plan and in directing the investment of their accounts. For these participants, additional investment fee information, regardless of format, will simply be another piece of paper.

The active minority of participants, however, will be able to better prepare for retirement if plan sponsors make meaningful and understandable information available about investment expenses. Those participants may take advantage of a simpler format to focus more closely on investment fees, and will be more likely to factor fees into their overall investment allocations, along with risk characteristics, return and investment horizon. These participants may also compare plan fees to retail fees charged by IRAs or other non-employer options in determining whether retirement savings in an employer-sponsored plan is the best choice for them. Participants who have been interested but reluctant to participate in the plan may become more comfortable with participation, to the extent media coverage of hidden plan fees discouraged participants from investing in plans at all. Where a participant believes service providers and fiduciaries are being forthright about fees, the participant will be more likely to invest in the employer-sponsored plan.

A small minority of participants who are particularly active may use clear and concise fee disclosure to pressure plan fiduciaries and service providers to justify costs and services received in exchange for fees paid. This activist minority may even use investment expense disclosure to push fiduciaries to better benchmark against other service providers and, perhaps, generate a new round of bidding for plan services. This additional activism by a small group of participants can result in better services, at better prices, for all participants, because plan service providers will need to demonstrate clear value to fiduciaries and activist participants.

Fee disclosure requirements, like many changes in plan requirements, will cause additional expenses for plan administration. To the extent participant-specific disclosure is required, rather than plan-level disclosure, plan costs will be much higher. It is important to balance participants' need for clear and concise fee information with the cost of providing that information in a particular format. ASPPA and CIKR believe that an annual summary of potential fees (a fee menu), strikes the right balance.

Question 19: Please identify any particularly cost-efficient (high-value but inexpensive) fee and expense disclosures to participants, and to the contrary any particularly cost-inefficient ones. Please provide any available estimates of the dollar costs or benefits of such disclosures.

The cost of compliance with new disclosure obligations will be greatly affected by both the required format of disclosure and the required delivery method. Electronic disclosure, through a secure employer or plan service provider website, is significantly less expensive to make available to participants than paper disclosure that must be distributed by mail. Costs can greatly differ even within electronic formats. For example, internet-based disclosure provided through a "pull" method, where participants are sent an e-mail with a link to a secure website, is much less expensive than disclosure through a "push" method, where secure e-mail delivery systems must be used to provide confidential information.

To the extent participants want information on paper, access to that information should be combined with disclosures that are already made available. As discussed in our response to Question 6, benefit statements could provide plan participants with contact information to use if seeking paper disclosure. The addition of a universal message for each plan, with identical contact information

across the plan population, will be much less expensive to produce than a separate, individualized notice of available information for each participant.

As noted in more detail previously in this letter, participant-specific, dollar-based disclosure is much more expensive to produce, at every level of production, than a fee menu type of disclosure made available at enrollment and annually updated.

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We understand that the Department is separately pursuing a regulatory fee disclosure initiative to plan sponsors and fiduciaries under ERISA §408(b)(2). ASPPA and CIKR commend the Department's efforts as they focus on improving the transparency of fee and expense information at both the plan participant and plan sponsor level and welcome the opportunity to volunteer our services as the Department develops their guidance on these two important fee initiatives. Please do not hesitate to contact us if we can be of assistance

These comments were prepared by ASPPA/CIKR Fee Disclosure Task Force and were primarily authored by Teresa T. Bloom, Esq., APM, Debra A. Davis, Esq., APM, and Stephanie Napier, Esq., APM. Please contact us if you have any comments or questions regarding the matters discussed above. Thank you for your consideration of these comments.

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 Gov't Affairs Committee

/s/
Debra A. Davis, Esq., APM, Chair
ASPPA/CIKR Fee Disclosure Task Force

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 Assets[3] - 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.