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Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5669
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210
Attn: Fee Disclosure RFI

Re: ACLI Response to Fee Disclosure RFI

Dear Sir or Madam:

The American Council of Life Insurers ("ACLI") appreciates the opportunity to respond to the Request for Information ("RFI") issued by the Department of Labor (the "Department") regarding fee and expense disclosures to participants in individual account plans, published at 72 Fed. Reg. 20,457 (April 25, 2007).

The ACLI represents three hundred seventy-three (373) member companies accounting for ninety-three (93) percent of the life insurance industry's total assets in the United States. In addition to life insurance and annuities, ACLI member companies offer pensions, including 401(k)s, long-term care insurance, disability income insurance and other retirement and financial protection products, as well as reinsurance. Life insurers are among the country's leaders in providing retirement security to American workers through a variety of group annuities and other products that achieve competitive returns while retirement savings are accumulating and that provide guaranteed income during retirement. In addition to providing investment products and services to qualified retirement plans, ACLI member companies also are employer sponsors of retirement plans for their own employees.

The ACLI commends the Department for its multifaceted efforts to improve clarity in disclosure of fee and expense information to plan participants as well as plan sponsors. Educated participants are more likely to commit to retirement saving. ACLI supports efforts to ensure meaningful disclosure to participants on plan fees and expenses so that participants have access to the critical information they want and need to make appropriate decisions about their retirement savings. The ACLI has been actively involved with legislative and executive branch policy makers, including the Department, over the years to improve disclosure of plan fees to sponsors and participants and we look forward to opportunities to continue to work with the Department on this important issue.

I. General Principles Relating to Disclosure to Plan Participants

ACLI has identified several general principles on which to base disclosure to participants on plan fees and investments. These principles, which guide our specific responses to the Department's questions posed in the RFI, are as follows:

Disclosure should focus on the information that is pertinent to the participants' investment choices under their plan. Participants need to understand how their investment returns are determined and how the expenses of plan investments affect their accounts. In determining what is pertinent to individual participants, the role of the plan fiduciary in selecting the investment options available under the plan should not be overlooked. The information provided to participants should provide the information that a participant needs to compare the options that have been selected for the plan by the fiduciary.

Disclosure should enable participants to compare not only the costs of the investment options in the plan but also the other attributes of those options. Any mandated disclosure to participants must be flexible enough to incorporate the design and features of all investment options available under a plan. Cost is only one factor. Participants also need to understand the level of risk, the expected returns, and any other valuable right or feature that is associated with each option in the plan in order to make appropriate investment decisions that take into account the individual participant's retirement goals, time horizon, and risk tolerance.

Disclosure should not mislead participants into simply comparing the expenses of the available options and investing all of their account in the lowest priced fund. Disclosure that is driven solely by cost structures may obscure rather than enlighten participants' choices. For example, if a plan makes available an investment option that includes guaranteed benefit or income features, participants need to understand the value of those guarantees in order to meaningfully compare that option with the other investment alternatives available under the plan. A disclosure regime that focuses principally on the fees for each option without providing a context in which to understand the risks and potential rewards would not help participants readily compare and understand the different options available under the plan.

Disclosure needs to be provided in a manner that is accessible, is likely to be read and understood by participants, and does not increase the overall administrative costs that will be borne by the plan and the participants. Increasing the volume of information required to be provided to participants is not necessarily productive. Any additional mandated disclosures should be considered in light of all the information that participants need to receive and understand about their retirement plans. Participants need to understand not only the investment choices in their plan but other aspects of the plan design that will significantly affect their retirement savings, such as, for example, the maximum level of contributions, the opportunity for an employer match, the ability to make "catch up" contributions, and the timing and form of distributions for retirement. The volume and detail of disclosure on fees and plan investments need to be considered in the context of other information that the participants receive and the relative cost of all additional mandated disclosures.

II. Responses to Specific Questions of RFI

In considering the questions that the Department has raised in its RFI, the ACLI has sought the input from its member companies primarily in their role as service providers to retirement plans.¹ We have responded to the Department's RFI from the perspective of service providers that work closely with plan sponsors and fiduciaries in designing and administering retirement plans, evaluating investment options, and developing recordkeeping and communications programs for plans and their participants. Our member companies assist employers and fiduciaries in fulfilling their obligations under ERISA and help the plans that they sponsor meet their employees' retirement savings needs.

RFI 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.

Participants need to be able to understand and compare the investment options available to them under the terms of their plan. Participants need a description of each investment option's asset class and features, risk factors and historical performance, and the fees and expenses that impact the participant's account balance. Much of this basic information is already required to be produced under the regulation under ERISA section 404(c), 29 C.F.R. § 2550.404c-1, including:

- A description of the investment alternatives available under the plan and, with respect to each designated investment alternative, a general description of the investment objectives and risk and return characteristics of each such alternative, including information relating to the type and diversification of assets comprising the portfolio of the designated investment alternative;
- A description of any transaction fees and expenses which affect the participant's or beneficiary's account balance in connection with purchases or sales of interests in investment alternatives (e.g., commissions, sales load, deferred sales charges, redemption or exchange fees);
- A description of the annual operating expenses of each designated investment alternative (e.g., investment management fees, administrative fees, transaction costs) which reduce the rate of return to participants and beneficiaries, and the aggregate amount of such expenses expressed as a percentage of average net assets of the designated investment alternative; and
- Copies of any prospectuses, financial statements and reports, and any other materials relating to the investment alternatives available under the plan, to the extent such information is provided to the plan.

The type of information that is needed by a participant varies depending upon the type of investment alternatives made available under the plan. Certain insurance and annuity

¹ Accordingly, we have not responded specifically to questions 3, 5, and 9-12, which are directed to plan sponsors or seek information about current practices of plan sponsors.

investments may require an explanation of unique features that may be available to participants investing their accounts in these products. For example, if a participant is eligible to invest his or her account in a group annuity contract that provides for benefit guarantees (e.g., death benefits, minimum accumulation benefits, etc.) or a guaranteed rate of return, a participant needs to receive an explanation of how those guarantees operate and are calculated in order for the participant to make an informed decision.

RFI 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 type of option, or the particular fee arrangement relating to options (e.g., bundled service arrangements) please include an explanation.

Participants need to understand how the investment and administrative costs of the plan affect their investment returns and their overall retirement savings. Transparency is critical so that participants maintain confidence in the retirement system and understand what services are being provided under the plan and at what costs. Without appropriate transparency, there is a risk that participants could lose confidence and choose not to save in the retirement system at all.

As we have noted above, however, simply providing more information does not necessarily help participants make better decisions about retirement savings. Mandated disclosures to participants should be focused on informing participants of the extent to which fees will be charged to their accounts under the plan's investment options, how those fees are calculated (e.g., basis point charge, flat dollar amount) and the extent to which other administrative fees will be charged to their accounts for any other transactions in the plan.

Participants need an explanation of the fees related to plan investment options that reduce the net return to the account (e.g., a basis point charge to the account) as well as a description of those options, such as guaranteed income investments, in which the expenses related to the investment have already been assumed in the stated rate of return and, therefore, do not generate any reduction of the account. With respect to each investment option, participants should have enough information to determine what fees will be deducted from their accounts.

Participants also need information on fees for other plan administrative expenses that may be charged to their accounts. Those fees may be charged for general administrative costs on a plan-wide basis (e.g., a flat dollar fee per account) or to offset costs for a specific participant transaction. For example, a flat dollar fee typically is charged to the account in order to process a participant loan request or to process a qualified domestic relations order with respect to an account. A flat dollar adjustment also may be made to accounts with respect to certain investment reallocations. For example, a participant may invest all or part of the account in a contract or an investment account that is geared to a long-term investment strategy. If a participant reallocates the account and moves funds out of the contract or investment account prior to the investment maturity date, then a market value adjustment may be made to the participant's account to reflect the early withdrawal. The information provided to participants should allow them to readily ascertain such fees with respect to each investment option or transaction prior to the participant's incurring the charge or making the investment.

In contrast, a participant's decision about how to allocate his or her account among the plan's investment options should not be affected by the division of fees among the investment managers and service providers to the plan; therefore, the ACLI believes that the Department should not impose new mandatory disclosure requirements with respect to 12b-1 payments, fee sharing, or the manner in which bundled fees are calculated. The plan fiduciary may need information about mutual fund 12b-1 payments or service provider fee sharing arrangements in analyzing what investment options to make available and which service providers to engage on behalf of the plan. Such arrangements, however, should not be relevant to a participant's decision as to how to allocate his or her account among investment options. Similarly, detailed information as to which services are being provided to the plan in a bundled service arrangement should not affect the participant's allocation of the account. Mandating further disclosure of these arrangements would not provide participants with information that is pertinent to their plan investment decision - which is how to best allocate their funds among the available investment options to achieve their retirement goals.

RFI 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. 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?

The ACLI believes that it is appropriate and helpful for the Department to consider the type of data that should be required to be disclosed in order to provide participants with the meaningful information they need to make their retirement investment decisions. The ACLI strongly encourages the Department not to mandate the particular format of such disclosure, however. Given the diversity in plan design, employee populations, and the types of investment options provided in plans, we do not believe that a "one size fits all" disclosure document would be appropriate or helpful to participants.

Disclosure of the basic information described in response to RFI Questions 1 and 2 above - e.g., an explanation of the investment options' features, history, and method of allocating expenses - needs to be provided by the plan fiduciary in a manner that allows participants to readily compare options prior to making investment decisions or prior to making changes to their investment allocations. "Fund sheets" that are based upon the profile prospectus used by registered investment companies may serve as a helpful template, but the Department should recognize that the terminology and format prescribed by the Securities and Exchange Commission does not necessarily apply to non-mutual fund investment options. For that reason, the ACLI opposes any mandate of a single disclosure document requiring an "expense ratio" for each investment option. Such a mandate would not accommodate the diversity of investment options that are made available in retirement plans, such as guaranteed income funds in which the expenses related to the plan are already assumed and do not reduce the contractually promised return.

The ACLI believes that providing plan fiduciaries with flexibility in determining the format for explaining investment options and fee structures also could help minimize the increased costs that would be associated with any new disclosure requirements. If a format is mandated, plan sponsors and service providers will incur costs to conform their data to that format and those costs inevitably will be borne by the plan. Allowing flexibility will give plan sponsors and service providers the ability to conform to any new standards but provide the data in a manner that they determine is most efficient and best serves their employees.

RFI 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?

Use of electronic media, including the internet, is critical to meaningful disclosure to plan participants. Use of the internet allows the broadest dissemination of up-to-date information at the lowest cost. For this reason, plan sponsors and participants largely prefer and demand internet and other electronic communication. There are numerous benefits to distributing information via electronic media. Layered information may be made available in a manner that allows participants to delve into a topic in more or less detail depending upon their particular interests and needs. A participant can, with a few “mouse clicks,” obtain the desired information and may be less likely to be overwhelmed by other data. Because electronic media may be more easily updated in “real time,” use of electronic resources via the internet or dedicated intranet also helps alleviate the possibility of stale data.

Current Department guidance limits a plan administrator’s ability to provide required disclosure electronically only to participants who regularly have at work the ability to access the documents electronically, or who have electronically consented (within the meaning of the regulation) to electronic receipt. 29 C.F.R. § 2520.104b-1. (A participant may always request a paper copy). Our observation is that the widespread usage of internet resources for both business and personal information in the five years since promulgation of this regulation suggests that a shift in the presumption may be warranted. We urge the Department to consider allowing electronic disclosure unless a participant requests paper delivery.

RFI 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?

The ACLI recommends that any new guidance that the Department may issue with respect to fee and expense disclosure be applicable to all individual account plans in which participants are provided the opportunity to direct the investment of their accounts. We do not believe that participants would be well served by limiting any disclosure requirements only to those plans that affirmatively seek to utilize the exception under section 404(c). As a practical matter, separate disclosure regimes for 404(c) and non-404(c) plans would lead to further regulatory complexity and could increase costs. In addition, the Department should take into consideration that investments may be made through “brokerage windows,” which allow investment options to be chosen by the participant rather than pre-selected by the plan fiduciary. The ACLI would

want to fully consider and comment if any new disclosure requirements are proposed for plan “brokerage windows.”

RFI 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.dol.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.

The ACLI encourages investment education for all participants with the recognition that the level of existing knowledge and understanding of investment and financial concepts may vary widely among the population of employees who participate in their employers' retirement plans. As discussed in our responses above, all participants need to understand the fundamentals of investment diversification and they need to assess their personal risk tolerance and their retirement horizon in order to make meaningful choices about how much to save and how to invest those savings in participant-directed plans. Because of the diversity of knowledge and understanding in the workforce, employers and plan administrators need flexibility to determine what information and educational efforts are appropriate for their participant populations. Because participants' education, language, and financial literacy will vary from employer to employer, a “one size fits all” requirement would be counter-productive.

The Department may provide plan sponsors and participants with significant assistance, however, by providing fundamental resources and educational materials that may be incorporated into educational programs. The Department's efforts thus far have been helpful and we encourage the Department to continue on this course. The ACLI would be pleased to work with the Department further in developing and commenting on other topics, publications, and websites that may provide useful financial and investment information to plan participants.

RFI 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.

As indicated in our responses to the questions above, the ACLI believes that disclosures to participants should explain how the investment and administrative costs of the plan affect their investment returns and their overall retirement savings. Such information needs to be provided in context so that participants understand that fees are an important (but not the single) factor in making decisions about retirement savings. The member companies of the ACLI work closely with plan sponsors and fiduciaries on these issues and we believe that the marketplace continues to drive innovation and improvements, including broader usage and access to internet and electronic media and other educational efforts, on retirement savings. The plan fiduciary's

role in selecting and monitoring plan investments is the bulwark in the current system and the ACLI member companies assist fiduciaries in those efforts.

If the Department determines that additional regulation is appropriate, we urge that any regulatory mandate be carefully calibrated not merely to increase the volume or detail of data provided. The potential increased costs of any new regulatory mandate for retirement plans must be seriously considered in this regard since those costs would inevitably be borne by the plan participants. The touchstone should continue to be disclosure of the information that participants need to make choices among the investment options that are available in their plans.

RFI Question 14.

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

As discussed above, the ACLI encourages the use of already-existing documents to reduce the cost of disclosure to participants. If additional regulatory requirements are imposed, we strongly encourage the Department to give plan sponsors the flexibility to combine any new disclosures with the Section 105 periodic benefit statement, should they so choose.

RFI 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)?

As discussed above in response to RFI Question 7, the ACLI believes that any disclosure requirements should be applicable to all participant-directed eligible individual account plans and not limited to those plans that seek to utilize the exception in section 404(c). Separate disclosure regimes would increase the cost and complexity of disclosure to participants.

RFI 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?

The ACLI does not have data on the typicality of plan sponsors' payment of fees related to retirement plans. The member companies of the ACLI have observed, however, that the trend has been and continues to move towards the plan participants bearing most or all of the expenses that are allocable to the operation of the plan.

RFI 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.

Fiduciaries to the plan must take into account a range of factors, one of which is fees, in determining what investment options are reasonable and in the best interests of the plan participants as a whole. We do not believe that additional disclosure to participants on fees should generally affect the choices or conduct of plan sponsors and administrators other than to ensure that any new regulatory standards are satisfied. Given the highly competitive marketplace for retirement plan services, vendors of investment products and other service providers would change or expand their services as appropriate to assist administrators and fiduciaries in those efforts.

Increased disclosure to plan participants could, however, affect the conduct and decisions of fiduciaries if such disclosure requirements inherently favor some forms of investment. Those investments would inherently be viewed more favorably by some administrators and the result would be to tip the scales against others. Form disclosures that do not account for the variety in investment options or require certain investments to meet more onerous standards would be anticompetitive. For example, we believe that wholesale adoption of SEC disclosure requirements (such as the profile prospectus) would not reasonably accommodate non-mutual fund providers. Any increased disclosure mandates should be carefully crafted to take into account all retirement investments in the marketplace and should result in a level playing field for all service providers.

RFI 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.

Participants need meaningful information to assist them in making investment decisions in their plans, as we have described in the responses above. With appropriate information, participants may compare the features of their investment options, including the fees associated with each option, and make informed decisions about their retirement savings. Simply increasing the amount of data provided to participants may not be helpful in achieving that goal. Disclosures that are not pertinent to the decisions that participants must make within the plan – how much to save and how to allocate those savings among investment options – would increase the costs to the plan participants without providing any material benefit.

RFI 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 ACLI does not have specific data on the dollar cost of current disclosures. Any additional mandated disclosure inevitably will increase costs. Those costs may be minimized to the greatest extent if plan fiduciaries have flexibility to provide information in a format that they determine is efficient, including the utilization of documents (e.g., summary plan descriptions and benefit statements) that are already required under current law. Electronic communication is particularly cost effective and efficient. Electronic communication, including the internet, should be allowed to the greatest degree possible to disseminate information to participants.

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Thank you for the opportunity to provide our comments. We note that the questions in the RFI are broad in scope and, while we have attempted to provide responses that are as specific and detailed as possible, we would welcome an opportunity to comment further on particular issues or specific proposals that you may consider. The ACLI believes that educated plan participants are more likely to participate in employer plans and make better decisions about their retirement savings. We look forward to continuing to work with the Department on these important issues.

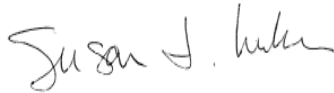
Please do not hesitate to contact us if you would like to discuss any of our comments in more detail.

Respectfully submitted,

Ann B. Cammack

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Susan J. Luken

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