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

Attention: Fee Disclosure RFI

We are writing to respond to the Department of Labor's request for information regarding fee disclosure in participant-directed 401(k) plans. The Pension Rights Center is a nonprofit consumer organization that has been working since 1976 to promote and protect the retirement security of American workers and their families.

The RFI's stated purpose is "to ensure that participants and beneficiaries have the information they need to make informed decisions about the management of their individual accounts and the investment of their retirement savings." The RFI recognizes that because fees can have a large impact on an individual account balance over time, disclosure of fees is vitally important to participants who increasingly must rely on their own investment decisions for retirement security. As investors, participants need to know the impact of the fees and expenses associated with each type of investment offered so they can make realistic comparisons. As consumers, then need to know the aggregate amount of fees and expenses they are charged each year.

Required Information

The most helpful communications between plans and participants are those that are simple, short, and meaningful. For this reason we recommend a stand-alone fee disclosure statement that includes three types of information:

First, fee disclosure statements should provide figures on the rate of investment return, net of fees, of all investments offered by the plan during the preceding year. This will enable participants to compare investments far more effectively than adding up "expense ratios" in prospectuses that most people do not have the time or expertise to read. The percentages provided should be net of all of the expenses that are assessed on all investors in each fund, insurance product, or other investment, including all investment management and administrative fees, regardless of who assesses the fees (i.e. the plan, a third party administrator, or the investment service provider). The format can be similar to the "Rates of Return" chart published by the Federal Thrift Savings Plan in its quarterly *Highlights* newsletter.¹ In addition, consideration should be given to disclosing investment management and administrative fees

¹ "Thrift Savings Plan Highlights", July 2007, found at: <http://www.tsp.gov/forms/highlights/high07c.pdf>

charged to participants (for each investment offered by the plan) as a percentage of assets,² and to highlighting special charges relating to the purchase or surrender of investments.

Second, fee disclosure statements should provide participants with individualized information on the **total dollars** they paid in fees during a year. This amount should include all fees and expenses, including the basic operating and administrative fees charged to all participants plus those resulting from actions by a specific individual, (i.e. requests for investment advice, loan fees, load fees, commissions, and surrender fees.) There should also be a breakdown showing which types of fees apply to all participants and which result from individual actions. Since these fees are charged to participants and paid out to investment, recordkeeping and other service providers throughout the year, they can readily be tracked by computer programs. This type of total dollar disclosure has been recently implemented in Australia.³

Finally, fee disclosure statements should clearly state that certain additional information on fees is available from the plan administrator upon written request. Such information should include each fee charged to a participant reflected in both dollar amounts and percentages. Fee disclosure statements should also include a reference to the Labor Department's booklet *A Look at 401(k) Plan Fees*.⁴

Form of disclosure

The Pension Rights Center recommends that the Department of Labor develop a model fee disclosure statement for plan administrators to use. The statement should be in writing and delivered with individual benefit statements at least once a year. Delivery by voice mail should not be acceptable for this important information. Electronic delivery of a fee disclosure statement should only occur if the recipient has given permission for electronic delivery and a paper copy is available on request.

Fee disclosures should be provided by the plan administrator. Plan administrators are fiduciaries with the sole responsibility of communicating information regarding benefits to the participants. They should be responsible for collecting all the information required for a fee disclosure statement from the plan's service providers and presenting it in a single document.

In almost all instances increased plan operating costs are borne by plan participants. Therefore, our recommendations seek to balance the benefits of disclosure with the burdens of costs. Although the initial disclosure will not contain all the information that some participants may want, it will offer information on how they can obtain more detailed information. This balance will ensure that the initial disclosure will reach the largest possible audience of participants at the lowest possible cost. Testimony by the U.S. Government Accountability Office, in 2004 noted

² This approach was followed by the Thrift Savings Plan in the past. For example, in addition to showing rate of investment return net of fees for each fund, the May 1996 issue of "Highlights for Thrift Savings Plan Participants" also showed the investment management and administrative fees charged to the funds as a percentage of assets. <http://www.tsp.gov/forms/highlights/archive/high96aw.pdf>

³ Corporations Amendment Regulations 2005 (No. 1), Mar. 10, 2005 (Australia), Amendment under Corporations Act of 2001, Schedule 1, Part 3, Division 2(302), at p. 25, found at [http://www.frli.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/5148FBFAB97F8829CA256FC00022EC72/\\$file/0304600I-050307EV.pdf](http://www.frli.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/5148FBFAB97F8829CA256FC00022EC72/$file/0304600I-050307EV.pdf)

⁴ "A Look at 401(k) Plan Fees", U.S. Department of Labor, Employee Benefits Security Administration, found at http://www.dol.gov/ebsa/publications/401k_employee.html

that providing information on mutual fund fees would add roughly \$1.07 per individual per year if passed on to investors.⁵

In conclusion, we applaud the Department of Labor for maintaining helpful information about fees on its website⁶, and suggest the addition of information on investment risk and return and a glossary. We also commend the Department for recognizing the importance of fees to participants. We appreciate the opportunity to comment on this important issue.

Sincerely,



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⁵ See “Mutual Funds: Additional Disclosures Could Increase Transparency of Fees and Other Practices”, Testimony by Richard J. Hillman, Before Subcommittee on Financial Management , the Budget and International Security, Committee on Governmental Affairs, U.S. Senate, GAO-4-317T, January 27, 2004, p. 7, found at: <http://www.gao.gov/new.items/d04317t.pdf>; See Also “Greater Transparency Needed in Disclosures to Investors,” Report to Congress, GAO-03-763, June 2003, p. 13

⁶ “Study of 401(k) Plan Fees and Expenses”, U.S. Department of Labor, Pension and Welfare Benefits Administration, April 13, 1998 found at : <http://www.dol.gov/ebsa/pdf/401kRept.pdf>