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U.S. Department of Labor  
Employee Benefits Security Administration  
Office of Regulations and Interpretations  
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Paper copy will not be mailed

RE: Response to Participant Fee and Expense Disclosure Request for Information of April 25, 2007  
Response to Fee and Expense Disclosures to Participants in Individual Account Plans

Dear Sir or Madam:

**Introduction.** I am an Executive Vice President of Wells Fargo Bank, N.A. I manage the delivery of investment services for Wells Fargo Institutional Trust Services, a division of Wells Fargo Bank, N.A. ("Wells Fargo"). Speaking on behalf of Wells Fargo, we appreciate the opportunity to respond to your Request for Information referenced above.

Wells Fargo is the trustee and recordkeeper of approximately 1,756 plans with assets of \$50.8 billion and 1.4 million participants. These plans typically offer participants an average of 15 mutual fund options among which participants may direct the investment of their accounts. Virtually all of these plans intend to comply with section 404(c) of ERISA and the regulations thereunder. In addition, Wells Fargo's affiliate, Wells Fargo Funds Management, LLC advises Wells Fargo Advantage Funds<sup>®</sup>, a family of mutual funds, which are frequently among the fund options offered in the plans.

Wells Fargo is well-informed on this topic because, in connection with the services described above, it provides a centralized nationwide call center dedicated to participant retirement education and communication. The call center fielded 825,518 calls in 2006. In addition, Wells Fargo conducts employee meetings to educate employees who are eligible to participate in the plan – 1,416 in 2006. In both contexts, specialists deal with a broad range of questions from participants regarding all aspects of their retirement plan accounts. As a result, based on a wealth of incremental acquired experience, Wells Fargo has developed considerable acumen and perspective on participants' needs in this area.

Our view is that while many participants are knowledgeable or at least curious about investment principles and the workings of financial markets, many lack the context or appetite to read and digest the fundamentals, not to mention prospectuses. Unlike the typical brokerage customer, a participant is frequently given the responsibility to make investment decisions for his or her account without prior preparation or consent. Consequently, we believe that participants need to receive investment-related materials that are clear, concise, and self-explanatory. In addition, the materials should allow easy comparison across all available funds at one time.

We have explored the possibility of providing profile prospectuses, as described in section 10(b) of the Securities Act and ERISA Opinion Letter 2003-11A, with our mutual fund partners, including our Wells Fargo affiliate, Wells Fargo Funds Management, LLC. We believe that the mutual fund industry as a whole is reluctant to produce profiles over concerns regarding potential liability for failing to disclose all "material" information. More extensive use of the profile prospectus would likely require a "safe harbor" for mutual fund companies and distributors from liability for failure to disclose all material information. As a result, as reflected in our answers, we advocate a disclosure that is tailored, even more than a profile, to the specific needs of participants.

**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.**

We believe that the criteria necessary for participants to evaluate investment fund options should include, at a minimum: (a) investment objectives of available funds, (b) long-term historical performance compared to their peer groups and to benchmark indexes, and (c) the expense ratio of the funds. Any distinctions as to the structure of the investment option such as lifecycle fund, annuity contract, collective fund, and the like should be described as part of the investment objective description of the fund. We believe that simplicity and clarity are critical.

**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.**

In order to evaluate fund fees and expenses, the essential factor is the expense ratio of the fund, accompanied by an explanation of the term and an illustrative example. This is the best common denominator in the industry at this time. Sub-components of the expense ratio that are taken into account in the calculation of the expense ratio, such as 12b-1 fees, surrender charges, sub-transfer agency fees and shareholder servicing fees, do not add material value to the evaluation of the expenses of one fund versus another. Because they have already been taken into account in the expense ratio, disclosing them separately is redundant and confusing to the participant. In addition, if "wrap fees" or other charges are applied to participant accounts, those should be disclosed separately and distinctly from any investment-related expenses. This allows participants to make informed investment decisions with respect to comparative investment options without the confusion of other fees that may be applied to their accounts for other purposes.

**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?**

Fees and expenses related to investment options within retirement plans are currently disclosed to participants via the individual fund prospectus. However, for most participants the prospectus is an extremely daunting document to interpret and understand. In addition, fees are only one consideration that an investor needs to make a considered investment decision. A more standardized, synoptic fund fact sheet or investment summary would be easier for participants to review and absorb, and more valuable than a prospectus for participants who are not accustomed to investing.

It should be the responsibility of the plan sponsor or plan administrator to provide this information to participants. However, plan sponsors should also have the ability to contractually allocate some responsibility to providers of their choice, who can add value and provide industry expertise in the preparation.

**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?**

There should, in fact, be a requirement that information relating to investment options under a plan be provided to participants in a summary and uniform fashion. A standard format would allow a participant to easily compare the options available in the plan. At a minimum, it should include the following elements:

- Fund name
- Ticker symbol and CUSIP
- Share class
- Investment objective statement including fund style and approach to its objective
- Fund characteristics as to size, inception, general asset allocation and risk/return indicator
- Historical performance over 1, 3, 5 & 10 year timeframes along with a corresponding benchmark (S&P, Russell 2000, etc)
- Expense ratio
- Fund manager tenure
- Glossary of key terms and instructions on how to get all other information available to any other investor, electronically or otherwise

The guidelines should specify the minimum elements so as to reduce uncertainty by fiduciaries and encourage standardization across the industry. Alternatively, the Department could provide a model format to use. The summary should also be available upon request and through a website specific to the plan.

With respect to fees that are not inherent in the expense ratio, such as trustees fees, recordkeeping fees, loan initiation fees and the like, our recommendation is that participants receive a summary of these fees, to the extent that they are paid out of plan assets, as an informational component of the participant statements, which may be delivered electronically or on paper at the participant's choice. See also Q&A-13 below.

The plan administrator ultimately has responsibility to review and approve participant communications, including materials discussing investment options and fees. Again, however, plan sponsors and plan administrators should and will likely expect to be able to contract with their service providers to prepare the communications.

**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?**

Currently at Wells Fargo, information concerning mutual fund options, including information related to investment fees and expenses, is communicated to plan participants via the fund prospectus. These are provided at the time a participant first elects to invest in a fund and at the time of a transfer from one fund into a new mutual fund. In addition to prospectus information, fund fact sheets are provided to all newly eligible participants. Fund fact sheets and the most recent prospectuses are available upon request through the call center and on our website. This information is provided to all participants, irrespective of the plan's intention to comply with section 404(c).

**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?**

While access to investment information via the internet is important, it is limited to participants who actively access their account information in this manner. Although the trend toward electronic communication is increasing, we know from extensive monitoring over the past decade that the majority of participants in the plans we service still do not actively manage their retirement accounts electronically. Internet access remains unattainable by many

participants. Participant statements continue to be the most reliable means of getting benefit plan information to participants.

**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 current 404(c) regulation is structured as a laundry list of documents, disclosures and disparate items of information that must be provided to a participant, either automatically or upon request. As such, in the words of the GAO, "These disclosures are provided to participants in a piecemeal fashion and do not provide a simple way for participants to compare plan investment options and their fees." The prospectus delivery requirement is a good example – it must be furnished either immediately before or immediately after the participant makes an initial investment in a fund. Presumably, the prospectus is the document the participant needs to inform himself or herself of the relevant facts, including fund fees, in order to compare the plan investment options and decide which fund to invest in. Providing it *after* the investment is made does not serve that end. Our empirical evidence tells us that the average participant does not read the prospectus nor can he or she understand it. In addition, because prospectuses for various funds may be combined in one booklet, it is not readily apparent to the participant which prospectus to read. This process is costly and burdensome to the service provider – in 2006, Wells Fargo mailed out 479,000 prospectuses at a cost of \$ 414,000, including mailing costs.

We believe that the 404(c) regulations should be revised as follows. They should require that participants receive a summary of the critical relevant investment information about each available fund option. One can differ about what items are relevant – in our opinion, they are the items listed in Q&A-4 above. Investment-related fees should be disclosed simultaneously from other information that should be considered. The summary should be written in a format that is easy to read and understand. The summary should be provided (a) at the time the participant first becomes eligible to invest in the funds, (b) when the available fund options change (e.g., when a new fund is added or replaced) and (c) at any time upon request.

All information that is available to any other investor should be readily available to the participant. Participant statements, which must be provided at least quarterly, should describe easy methods for the participant to get updated investment information at any time by paper or electronically, at the participant's choice.

The costs of providing the disclosures proposed above would be minimal and would presumably be offset by the current costs of providing prospectuses.

Profile prospectuses as described in Adv. Op. 2003-11A are not available for many funds. Even if they were, they contain information that may not be accurate as applied to a participant investor, such as a minimum investment amount. Other information, such as whether Canadian retirement savings plans or other types of accounts can invest in the fund, is not relevant to a participant's situation. Because we advocate investment summaries that are tailored and consistent from fund to fund, we do not advocate profile prospectuses.

**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](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.**

We support a rule requiring the incorporation of a glossary of terms used in the investment-related materials within those materials, together with examples or illustrations. However, with respect to the proposed regulation of broader investment education initiatives, we do not believe it is necessary. From our perspective, industry standards currently demand that providers to corporate-sponsored retirement plans promote and educate participants with respect to plan features, investment options, and the importance of long-term retirement security. We believe the marketplace has done a good job of taking the lead in delivering this education and do not believe that the Department should feel required to impose mandatory education in some form, particularly if it might stymie flexibility. While the plans Wells Fargo services generally do not utilize any investment fund options which have embedded sales loads or deferred sales charges, we do regularly and routinely provide education on such investment terminology and investment options, including the distinctions of investing in fixed income securities, equity securities and cash (or short-term securities) as well as redemption fees and other expenses related to the plan benefits and investment options. Our educational pieces further provide participants with information relevant to the risks and returns related to various investment styles and strategies ranging from principal preservation to fixed income securities to large and small capitalized companies, as well as international investing. This information is available through in-person educational meetings as requested by the plan sponsor or in written form on our website which can be accessed 24 hours a day seven days a week.

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

With respect to administrative fees actually incurred, the level of detail provided by Wells Fargo varies greatly based on plan sponsor or plan administrator direction. The range of disclosure runs from summary aggregate-level transactions which are posted against plan earnings to full transaction details per participant. However, in nearly all cases, specific participant-driven transaction costs, such as loan fees, QDRO expenses and redemption fees, are disclosed to the participant at the time of the transaction. If any of these administrative expenses are offset by revenue-sharing income from a mutual fund arrangement, these fees are incorporated within the expense ratio disclosure. Fees may be disclosed via the website, participant statements and/or the advice section of a check, depending upon the transaction and the plan arrangements.

In addition, certain prospective administrative fees may be disclosed in the summary plan description or in other timely contexts. For example, distribution and loan fees are generally published in the summary plan description, and loan fees are disclosed during the loan modeling process prior to the initiation of a loan.

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

Only those expenses which are directly charged to participant accounts, apart from any offset by revenue share, should be disclosed to participants. To further delineate administrative expenses that have already been accounted for within the investment fund expense ratio would only confuse most participants and may well lead them to a misunderstanding as to what expense their accounts actually bear.

**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?**

Our current practice is to communicate any actual charges against a participant's account, apart from any costs embedded in the daily expense ratio of the fund, immediately upon posting of the transactions through our website and voice response systems. These transactions are further disclosed to participants in summary or detailed fashion on participant statements.

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

Please refer to the response to Q&A-11 above.

**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.**

Administrative expenses should be disclosed separately from investment-related expenses. Basic summary administrative expenses that are paid by the plan should be provided on participant statements with instructions or links describing how to request more detail either through the website or the call center representatives for the plan. Participants should be able to choose their preferred statement delivery method. If they choose electronic delivery, they should be notified by e-mail when their statements are ready, with a direct link to the statement.

As for the impact to Wells Fargo, implementation of such a requirement would result in minor system modifications. In addition, each plan would have to be set up individually, based on the types of fees applicable to the plan. We are unable to provide a dollar cost estimate at this time. However, we believe that considerable time would be necessary to bring all the plans we service into compliance with such a requirement.

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

Yes, to the extent that they have not been incorporated as an expense in the calculation of the expense ratio, as discussed above.

**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)?**

No distinction should be made based on the plan's expressed intention if the participants direct their own investments. It is in their best interests to receive the tools they need to consider in order to make appropriate investment decisions.

**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 most typical expenses paid directly by plan sponsors include trustee, recordkeeping or other expenses related to the administration of the plan. Generally, at Wells Fargo, to the extent that expenses that are paid directly by the plan sponsor, the plan sponsor's expectation is that the amount of expenses paid will not be disclosed to participants other than as required by law, for example, through the summary annual report.

**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.**

We believe that requiring expenses to be disclosed to participants will have the effect of bringing them into the open and will level the playing field. We believe that expenses should be required to be disclosed publicly, possibly through the Form 5500. This would have several highly constructive outcomes. Readily available expense disclosure would reduce the current number of consulting engagements that are generated for the sole purpose of

benchmarking competitive fees and generally do not lead to a full and complete evaluation of the services provided, nor necessarily to any change in provider. The expenses of responding to benchmarking RFPs add administration expense to providers with little real benefit to participants. Further, the lack of standardized expense disclosures has been a major catalyst to the recent flurry of class-action lawsuits against plan sponsors and their providers, with the plaintiffs' bar enjoying the primary benefit. Standardized disclosed expenses such as on Form 5500 would allow plan sponsors to readily and easily compare their expenses to industry averages and allow them to effectively monitor appropriate plan administrative expense without the requirement of RFP searches, and it would allow them to better able defend themselves against frivolous lawsuits.

**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.**

Providing additional fee and expense information to participants creates the risk that some participants will be disproportionately influenced to select investments based on expense without considering such equally important factors as investment objective and historical performance net of those fees. Nonetheless, if the pertinent information is properly communicated and understood, it could potentially ease some of the current misunderstanding and reticence by participants to participate and effectively invest for their retirement. In our experience, many participants who are confused and frustrated simply avoid taking action – even on something as important as their long term financial security.

**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.**

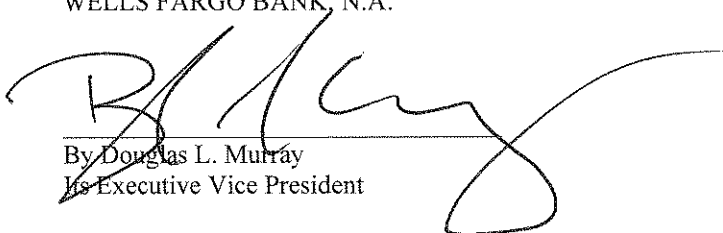
The most cost efficient method for disclosing expenses and fees to participants would be through internet access on the plan sponsor or plan provider website. For plan sponsors and participants alike, it is available when and where they choose to access it.

The least efficient and most costly solution for disclosure of fee and expense information is via a printed, mailed prospectus. These documents are lengthy, leading to expensive production costs, and expensive distribution costs. Given their size and complexity they are the least understood disclosures, and therefore the least useful, to participants as they make their decisions as to how to invest their retirement funds.

**Conclusion.** Again, we appreciate the opportunity to provide this response and thank you for your consideration of this information.

Respectfully,

WELLS FARGO BANK, N.A.

  
By Douglas L. Murray  
Es Executive Vice President

cc: Catherine A. Rudenick, Senior Counsel, Wells Fargo & Company