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Disclosure of Fees to Plan Fiduciaries

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Submitted to the Department of Labor

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The American Society of Pension Professionals & Actuaries (ASPPA) appreciates this opportunity to provide comments to the Department of Labor regarding the disclosure of plan fees to plan fiduciaries charged in overseeing the administration and investments of pension plans.

ASPPA is a national society of retirement plan professionals. ASPPA's mission is to educate pension professionals and to preserve and enhance the private pension system. Its membership consists of approximately 5,500 actuaries, plan administrators, attorneys, CPAs and other retirement plan experts who design, implement and maintain qualified retirement plans, especially for small to mid-size employers.

Summary of Issues

ASPPA strongly supports full disclosure to plan fiduciaries of all costs payable out of plan assets. Such disclosure should provide plan fiduciaries with a simple, easy-to-understand statement of the costs as well as a description of the services to be provided by the plan provider or providers. Such disclosure should be the same regardless of whether the plan is dealing with a bundled or unbundled provider. Finally, ASPPA believes that separate disclosure of the compensation to be received by the person selling or recommending the plan or plan investments (whether a broker, investment advisor or other consultant, referred to for ease of reference as a "broker") is essential even if such a cost is included within the other cost disclosure. This separate disclosure should be required to enable the fiduciaries to assess the extent of any conflicts or self-interest that the broker may have in making recommendations to the fiduciaries.

Discussion

ASPPA supports a "total cost" approach to fee and expense disclosure. That is, we do not believe it is necessary or appropriate for each specific fee or expense item to be separately disclosed so long as the total costs payable out of plan assets are disclosed. This view is based on a desire to simplify disclosures and avoid confusion in the marketplace, especially for small plans. It is also based on a desire to provide meaningful cost disclosure and descriptions of services that can be made in a uniform fashion by a wide array of providers. Further, it is ASPPA's view that a requirement of separate disclosure creates a competitive disadvantage to unbundled providers. (By "bundled" we mean a provider that makes available to a plan all investments, recordkeeping and plan administration from a single source; "unbundled" refers to a group of providers that offer investments, recordkeeping and administrative services separately.)

ASPPA recognizes that some may argue, in the interests of "complete transparency," for disclosing the various elements of expenses and expense offsets (such as revenue sharing), even though some of those expenses are paid through charges that are being disclosed and do not add to a plan's overall costs. However, in our experience, many, if not most, fiduciaries of small plans would misinterpret these data and assume that each of the charges and expenses is in addition to the other charges, rather than offset by them.

Further, in our experience, bundled providers will not or perhaps cannot, provide information on a basis that is broken out in that fashion. A bundled provider receives compensation that it may allocate among its various departments as it deems appropriate, and it may be impossible to determine how much of its overall compensation is allocable to any particular item of service. In the

unbundled situation, each provider receives a separate fee or other compensation, and if each were required to be separately disclosed, rather than disclosed as an aggregate of total cost, the unbundled providers would face a significant competitive disadvantage.

The key issue for fiduciaries is to understand the total cost of the plan on the one hand and the investments and services being received by the plan on the other, and then to compare that to similar information from other providers. That is, the key disclosure is the total cost of all of the services and investments aggregated as a single number as compared to plan offerings of other providers. This is particularly true of the small plan marketplace (as well as the lower end of the mid-market), where there is little flexibility to assemble plan investments and services on a piece-meal basis. It is generally inefficient and impractical for those plans to work with more than two or three providers. As a result, an allocation of costs to 10, 20 or 30 different services is meaningless for 80% to 90% of the 401 (k) plan universe.

In effect, under ASPPA's proposal, there would not be a disclosure of revenue sharing, for example, from the mutual funds and mutual fund management companies to the recordkeepers. In addition, this means that subsidies for providers (such as third party administrators) would not be disclosed. In both cases, our rationale is that the cost of these items is already disclosed in the total cost figure and do not increase (nor would their elimination decrease) total plan costs.

Arguably, this would also mean that commissions and other payments to brokers, consultants and registered investment advisors would not be separately disclosed, since those would already be included in the expenses being charged by the mutual fund, the mutual fund management complex, the insurance company or the recordkeeper. However, there *is* a need for separate disclosure by those who are recommending the investments and related services. There are two reasons for this approach:

The first is that the most expensive part of any 401(k) plan is the cost of the investments. There is data that suggests that 70% to 90% of the total cost of a plan is in the investments ([see footnote](#)). Thus, understanding the commission structure is key to evaluating this portion of plan cost, since high commissions generally result in high costs.

Second, if the commission payments (or other compensation) are high enough, the broker or investment advisor could be influenced to recommend a high expense retirement plan, which could be harmful to the participants.

For these reasons, ASPPA supports a separate written disclosure of the compensation paid, directly or indirectly, by any of the investments or other parties related to the plan to anyone who is selling or recommending those investments. This is consistent with disclosures required for insurance fees and commissions required under Schedule A of the Form 5500.

Disclosure Form

In keeping with this "total cost" approach, ASPPA also recommends the following format for disclosure:

- The form would be relatively short, perhaps no more than four pages. The total cost of the plan should appear on the first page.
- Following that, there should be a list of the assumptions that are necessary to properly determine the charges for a particular plan. For example, some providers impose a per participant charge. As a result, there would need to be an assumption about the number of participants. Also, there are charges that are typically based on plan assets, such as investment expenses. Accordingly, there would need to be an assumption about the total assets in the plan, as well as how those assets will be invested (*e.g.*, by way of illustration, 10% in cash, 10% in stable value, 10% in bonds, 40% in US equities, and 20% in international equities, and within those categories, the plan assets would be spread equally over the investments in each category). There should be assumptions about the number of plan loans, number of distributions,

etc. The plan sponsor would need to complete this portion of the form, based on a template that would allow them to easily do that.

- The form should also list all of the services typically provided by a 401(k) plan. Using a check-the-box format, the providers would indicate the services they are *not* providing. Since most of the services will be offered by all providers, the plan fiduciaries should focus on the services they are not getting.
- The disclosure form would also include a provision indicating that the plan sponsor may want to ask any plan service provider about any compensation received in relation to the plan, notwithstanding the fact that it is not paid directly from plan assets.
- In addition to that basic disclosure form, there would be an additional page that would be designed to have full disclosure about the broker, consultant or RIA who is recommending (or otherwise assisting in the selection of) the provider and/or investments. It would cover all direct and indirect costs, other than checks being written by the plan sponsor and/or discreet checks being written by the fiduciaries out of the trust fund. The goal for this part of the form would be to make obvious the full amount of compensation being received by the broker, consultant or investment advisor.

Conclusion

For these reasons, ASPPA recommends full disclosure to plan fiduciaries of all costs payable out of plan assets, along with a separate disclosure of the compensation to be received by the person selling or recommending the plan or plan investments.

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The principal authors of these comments are C. Frederick Reish, Esq., APM and Bruce L. Ashton, Esq., APM. ASPPA would be pleased to work with you on designing a disclosure form along the lines outlined above.

Sincerely,

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See Study of 401(K) Plan Fees and Expenses, Apr. 13, 1998,
www.dol.gov/ebsa/pdf/401krept.pdf

[ASPPA's 401\(k\) Fee Disclosure Form](#)