



# Issue Brief

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## FEE DISCLOSURE AND RETIREMENT SAVINGS

In most 401(k) plans, participants are responsible for the costs associated with operating the plan. Over an employee's career, these fees add up and will ultimately affect how much will be available at retirement.

Under the Employee Retirement Income Security Act of 1974 (ERISA), the individuals responsible for overseeing their company's retirement plans (known as "fiduciaries") must ensure that expenses paid by the plan are for services the plan actually needs and in amounts that are reasonable and appropriate. Plan officials must engage a variety of service providers in order to operate their plans properly (e.g., third party administrators, investment providers, actuaries, recordkeepers, trustees, consultants, attorneys, and accountants). ERISA does not mandate that a plan hire the least expensive provider, however fiduciaries must evaluate the reasonableness of what is being paid in light of the quality and value of the services being provided.

We strongly support the Department of Labor's regulatory initiative to clarify the disclosure of fees to plan fiduciaries under Section 408(b)(2)(c) and believe fee transparency will allow plan sponsors to make informed decisions in the operation of their retirement plan, which will ultimately benefit plan participants."

--BRIAN GRAFF, CEO, ASPPA

## Disclosures to Plan Fiduciaries

Full disclosure by service providers of what they charge and how they are being paid is critical to ensuring that plan fiduciaries have the information they need to fulfill their responsibilities. Fee "transparency" has long been advocated by members of Congress, the U.S. Department of Labor, numerous commentators as well as the American Society of Pension Professionals and Actuaries (ASPPA). In July 2010, the Department of Labor published an interim final regulation that will require most retirement plan service providers to fully disclose to plan fiduciaries what they are being paid. This would include disclosure of "indirect compensation" that might be received through a revenue sharing arrangement. ASPPA previously submitted a comment letter (with its affiliated organization, the Council of Independent 401(k) Recordkeepers (CIKR)), to the Department of Labor that provides suggestions for improving the regulation. That comment letter is available at <http://www.asppa.org/document-vault/pdfs/GAC/2010/408830.aspx>. ASPPA strongly supports the Department of Labor's regulatory initiative; however we encourage the Department of Labor to consider the following recommendations to further enhance fee disclosure to fiduciaries.

## Summary Disclosure Statement

ASPPA encourages the Department of Labor to mandate that a summary of the relevant disclosure information be provided to plan fiduciaries. This would reduce the potential for obfuscation and be a more "user friendly" approach than simply providing

a stack of prospectuses and other technical materials. A summary would allow fiduciaries to more easily compare the costs of the services and investments for their plans.

### Investment Information Safe Harbor

ASPPA also strongly supports the safe harbor for the providers of certain recordkeeping or brokerage services which enables them to distribute the current disclosure materials of an unaffiliated issuer as long as the materials are regulated by a State or federal agency and the service provider has no knowledge that the materials are incomplete or inaccurate. However, ASPPA would recommend that the safe harbor be broadened to apply to the disclosure information when it is excerpted from qualifying source materials or is obtained from an independent source that aggregates the investment information and makes it available on an electronic basis.

### De Minimus Threshold

The regulations apply to certain service providers who receive from \$1,000 or more in compensation each year as a result of the services they provide to the plan. ASPPA recommends that the threshold be raised to \$2,500 to provide a more meaningful de minimus exception from the disclosure requirements. The annual limit should be applied based on a calendar year (or some other twelve month period) rather than the term of the contract. Additionally, it should be subject to cost-of-living increases so that it will remain meaningful over time.

### Compensation

The term "compensation" is defined in the regulations as "anything of monetary value..." if received in connection with a plan's contract or arrangement with a covered service provider. It is common practice for providers of investment products to sponsor educational training sessions that are attended by service providers who are covered by the regulation. Under rules administered by the Financial Industry Regulatory Authority (FINRA), payment or reimbursement of bona fide educational expenses is not considered to be compensation to the recipient.

ASPPA recommends that a similar rule should apply under the regulation. In other words, payments or reimbursements to covered service providers for educational or training expenses would not be considered compensatory as long as provided under standards similar to those currently applied by FINRA. This will help ensure that service providers remain up to date and informed on the ever changing laws and regulations that apply to retirement plans.

### Electronic Transmission

The costs of compliance are significantly reduced when the required disclosures are delivered in an electronic format. ASPPA strongly encourages the Department of Labor to clarify and affirm that electronic transmission is permitted and that the good faith standards the Department of Labor presently applies to the delivery of benefit statements would be acceptable.

### Disclosures to Participants

ASPPA also supports the disclosure of meaningful fee information to participants in retirement plans. This is particularly true for participants who have the ability to direct the investment of the amounts held in their 401(k), 403(b), or similar account.

The Department of Labor recently issued a final regulation requiring certain fee, investment and other disclosures be made to participants who are eligible to direct their own investments. ASPPA and CIKR had commented on the regulation when it was first proposed. Those comments are available at <http://www.asppa.org/document-vault/pdfs/gac/2008/090808asppacikrparticipantfeedisclosurecommentsfin.aspx> and <http://www.asppa.org/document-vault/pdfs/gac/2008/091508.quardiscl.supplemental.asppa.cikr.fin.pdf.aspx>.