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**From:** Louis S. Harvey [mailto:LHarvey@DALBAR.com]  
**Sent:** Monday, July 23, 2007 3:02 PM  
**To:** EBSA, E-ORI - EBSA  
**Subject:** Fee Disclosure RFI

Attached is our comment letter in response to the request for information on fee disclosures. These comments primarily address the following six topics:

Do no harm... Clear disclosure of fees without the context of investment returns will not be in the best interest of participants. Low fees with attract participants to low cost money market funds.

Show dollars... Percentages and basis points are ineffective disclosures for the majority of participants. Informing participants requires dollars and cents disclosures.

Four figures... Require disclosure of four dollar amounts: contributions, value before fees & expenses, cost of fees and expenses and value after fees & expenses.

Plan level disclosure... Interested participants and plan sponsors should receive dollars and cents disclosures of who is being paid for what service.

Use consumer language... Translate industry terms into consumer language for participants to make consumer decisions. It is pointless to waste participant assets on teaching investment jargon.

Online default... Require plans to justify the expense of mailing to participants that have e-mail access.

The proposed format of participant disclosure is:

**From inception to date:**

Total amount you contributed	43,210.12
Value before fees expenses	87,654.32
Fees and expenses paid	4,321.01
Current value in your account	83,333.31

Note: Past returns and expenses are not indicative of the future.

Thank you for considering our response.

**LOUIS S HARVEY**  
DALBAR, Inc.  
*The Measurement of Success*  
617-723-6400



July 23, 2007

Mr. Bradford P. Campbell

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

Attn: Fee Disclosure RFI

E-mail to [e-ORI@dol.gov](mailto:e-ORI@dol.gov)

Dear Mr. Campbell:

DALBAR appreciates the opportunity to submit comments in response to the request for information relating to the disclosure of plan administrative and investment-related fee and expense information (Fees) to participants and beneficiaries in participant-directed individual account plans (Participants) to determine to what extent rules should be adopted or modified, or other actions should be taken, 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.

### ABOUT DALBAR

DALBAR was founded in 1976 and has served as the independent expert to financial firms in several areas of business. Financial firms use DALBAR for its unbiased ratings and evaluations and consultation in their pursuit of excellence. DALBAR measures and evaluates how well investors are served, consistent with various financial regulatory requirements in the areas of:

- Written Communications (Required disclosures, sales materials, education materials)
- Personal Financial Advice (Due diligence and certification of advisers)
- Technology (Web based, Automated phones, e-business)
- Phone Centers (Service and sales)

During the course of its business, DALBAR has collected, evaluated and published reports on written and electronic communication from most financial services firms. Fee disclosures have always been a key element in these evaluations.

Recognizing DALBAR's capabilities in this area, the GAO (Government Accountability Office) contracted with DALBAR in 2005 to evaluate the Social Security Administration statement to participants. Results were published to the United States Congress.

[DALBAR.COM](http://DALBAR.COM)



Comments to EBSA on Fee Disclosure

DALBAR is in a unique position to assist in the determination of the extent to which rules should be adopted or modified, or other actions should be taken, 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.

Additionally, DALBAR has recently developed and tested a model disclosure that is intended for plan sponsors (See Appendix B for a sample). This model includes the disclosures required for plan fiduciaries to evaluate plan expenses and should be made available to Participants who are interested.

### ASSESSMENT OF CURRENT SITUATION

Considering the entire population of Participants very few pay careful attention to their plan communications. The level of attention is increased when either of two conditions occur:

- Balances become significant (estimated at over \$100,000) or
- The prospect of retirement approaches (within 10 years).

These are considered “high interest” groups and can be expected to pay more attention to communications about their plan. These high interest groups represent less than 10% of all Participants today.

It would be detrimental to dilute the low level of attention that the average Participant pays to their plan by diverting this limited attention to understanding and acting on complex fee disclosures. Furthermore, Participants who are outside of the high interest groups will pay no attention to such disclosures. The effect will be an increase in costs to make the disclosures without deriving a benefit.

Additionally, the possible actions of Participants who do pay attention are very limited. Such Participants can make the decision to invest or not to invest in funds selected by the plan. They are not in a position to find lower cost investments outside of the plan.

The ability and responsibility to control costs therefore belongs with the plan sponsor. But the plan sponsor is handicapped because of the statutory inability to negotiate mutual fund fees<sup>1</sup>. As a result the plan sponsor is forced to choose between the most suitable investment that has a high cost and a less suitable one because of a lower cost. (See Appendix B for sample of proposed plan sponsor disclosure).

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<sup>1</sup> Section 22(d) of the Investment Company Act prohibits price negotiations with respect to distribution of registered investment company shares by requiring that all shares are sold at the same price.



## Comments to EBSA on Fee Disclosure

The more practical solution to fee and expense transparency is to petition the Congress to resolve the conflict between ERISA that assigns fiduciary responsibility to the plan sponsor and section 22(d) of the Investment Company Act of 1940, which prevents the plan sponsor from carrying out this duty.

### SUMMARY OF COMMENTS

- Do No Harm: Current fee disclosures are meaningless to most Participants but making them understandable could do more harm than good. The ambiguity of fees protects many Participants from imprudently selecting investments on the basis of potential fees instead of potential for returns. A clear disclosure of past fees should be accompanied by a contemporaneous, prominent and clear disclosure of past returns for comparable periods. Additionally, future fees should be treated with the same level of caution as future returns. (See Appendix A for an example).
- Make It Understandable: It is far more important for Participants to understand the effect of fees on returns than to understand how each is computed. Each Participant should be presented with four simple dollar figures that show their own contributions, value before fees and expenses, total fees and the value after fees and expenses.
- Online Default: Billions of dollars of Participant's assets are spent on printing and mailing paper disclosures and other documents that could be delivered electronically. Much of this expenditure could be saved if electronic delivery of required disclosures was made the default, so that plan fiduciaries would be required to prove that these expenditures were justified.
- Access to Additional Information: Participants are grouped into four behavior segments (Self Supported, Computer Centric, Personal Adviser and Uninvolved) but only one of these segments (Self Supported) have interest in detailed fee disclosures. Detailed fee disclosures are a costly burden to the other segments. Plan level fee information should not be a required deliverable to all Participants but instead be made available to interested Participants in an easily understood dollars and cents format. (See Appendix B for an example).
- Cost of Educating Participants Exceeds Cost of Personalization: The cost of materials, meetings and phone centers required to explain disclosures far exceeds the cost of providing personalized summaries on periodic statements. Fee disclosures should be made in dollars and cents on Participant's periodic statements together with contributions, gross and net values.
- Summary of Earlier Comments: Comments made with respect to ERISA section 408(g)(8)(B) are applicable to this examination and are attached hereto.
- Specific Answers: Response to 19 specific requests for information.
- APPENDIX -Sample Disclosures for Participants (A) and plan sponsors (B)



## DO NO HARM

Most importantly, we would like to offer a word of caution.

Presenting costs without showing the relation to benefits is deleterious to retirement income. Unlike tangible products where the value is evident in the product itself, the value of investment options is only evident in communications. It is therefore necessary to communicate value when costs are communicated or compared.

While presenting participants with fee disclosures in a way that can easily be understood and compared is a noble goal, such a presentation is likely to have deleterious effects on the Participant's retirement income. Investor behavior has shown that presenting costs without an equal emphasis and clarity on the overall benefits derived will lead a flight to the lowest costs which is seldom in the best interest of Participants.

The fact presented by the GAO<sup>2</sup> that a 1% difference in fees will amount to a 17% difference in retirement assets is also true for investment returns. A 1% difference in returns produces a 17% difference at retirement. Giving more weight to the 1% in fees distorts the fact that participants are more likely to realize a 1% difference in returns than a 1% difference in fees.

The only known way to cause a rational response to costs is to present total benefits, costs and net benefits at the same time and in the same terms. Both costs and benefits should be presented in dollars and in similar terms: past compared to past and forecasts compared to forecasts. In the case of forecasts, both costs and benefits suffer the same lack of predictive reliability. Both rely on estimates that could change and are therefore comparable as such.

## MAKE IT UNDERSTANDABLE

At the core of the past failures in Participant decision-making is the fact that the process and language used is alien to most Participants. The decision-making process that is familiar to consumers requires an understanding of the relationship of benefits, costs and reliability.

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<sup>2</sup> Per GAO report 07-21: "For example, a 1-percentage point difference in fees can significantly reduce the amount of money saved for retirement. Assume an employee of 45 years of age with 20 years until retirement changes employers and leaves \$20,000 in a 401(k) account until retirement. If the average annual net return is 6.5 percent—a 7 percent investment return minus a 0.5 percent charge for fees—the \$20,000 will grow to about \$70,500 at retirement. However, if fees are instead 1.5 percent annually, the average net return is reduced to 5.5 percent, and the \$20,000 will grow to only about \$58,400. The additional 1 percent annual charge for fees would reduce the account balance at retirement by about 17 percent".



## Comments to EBSA on Fee Disclosure

Efforts to support decision-making in participant directed plans have failed. Instead of converting the investment language into familiar consumer terms the approach has been to teach these “consumers” an alien method and language.

Success in prudent decision-making will only be achieved by changing the current approach to disclosures. Instead of attempting to “educate” Participants about investment language and practices, it is far more productive to “consumerize” the language of investment products/services. Consumerization consists of a simple description of the value of the product/service, the cost in dollars and cents and the ability to assess reliability.

Consumerizing investment options for purposes of making investment choices requires that the Participant be provided with the historical performance of each option, in dollar and cents terms. The history presented in dollars and cents includes a hypothetical model for each investment option covering various time periods that shows:

- Dollars contributed by participant
- Value before any fees or expenses
- Total fees and expenses, including trading costs
- Value after all fees and expenses

Disclosing fees in any way other than dollars and cents is meaningless to all but a very small proportion of plan sponsors and Participants. It is utterly unrealistic to expect that the buying decision and behavior that is used every day in every other aspect of contemporary life can be meaningfully altered for purposes of a retirement plan. Additionally, the cost of attempting to educate plan sponsors and Participants to interpret basis point fees far exceeds the cost of providing the information in dollars and cents.

Consumerizing actual results in Participant statements involves presenting actual results expressed in the same terms as the hypothetical model used for investment selection. Participants should be informed of:

- Dollars contributed
- Current value, before any fees or expenses
- Total fees and expenses paid (including trading costs)
- Current value, after all fees and expenses



## ONLINE DEFAULT

The majority of Participants have access to the Internet and virtually all providers can deliver plan information electronically, but only a small proportion of Participants receive plan information through this medium. This imbalance represents a significant cost that increases administrative expenses Participants ultimately pay in the form of lower retirement benefits. Estimates are that savings could exceed \$50 per year per Participant.

Our studies of investor behavior has shown that like plan participation, automatically enrolling participants in electronic delivery will significantly increase the use of the low cost medium and reduce the use of high cost paper documents.

A significant reduction in paper usage can be accomplished by defaulting to electronic delivery to Participants, except in cases where the Participant has no access to the Internet. In this way, plan fiduciaries will be required to document the cases where paper delivery is used, thus creating an incentive to reduce costs.

## ACCESS TO ADDITIONAL INFORMATION (DIFFERENT PARTICIPANTS SEGMENTS HAVE DIFFERENT NEEDS)

The information required to make informed decisions varies based on the Participant's behavior segment. Disclosures must be made that are appropriate for the behavior segment.

Participants can be grouped into four behavior segments, each having very different information needs. The behavior segments and associated support are:

- Self Supported: This may be the smallest segment and includes participants that conduct their own research and analysis.

Support: This group makes investment decisions independently and does not rely on the plan sponsor or provider to aid decision making. Detailed information is required concerning the plan, financial results and expenses.

- Computer Centric: This is a larger segment than Self Supported and is likely to grow as computer solutions become more widely adopted in the future. This segment is willing and able to enter highly sensitive personal information into a computer and then act on the advice that the computer provides.

Support: A fiduciary adviser that qualifies under ERISA section 408(g)(3), using a computer model serves this segment of participants. Disclosures appropriate for a computer model is required. (See attachment).

- Personal Adviser: This is the next to the largest segment and requires personal interaction with an investment professional. This segment includes a high concentration of pre-retirees and participants with complex financial situations.



Comments to EBSA on Fee Disclosure

Support: A fiduciary adviser that qualifies under ERISA section 408(g)(2)(i) serves this segment of participants. Disclosures appropriate for advisers with non-varying compensation is required.

- Uninvolved: This is the largest segment of participants and consists of a high concentration of participants that are more than a decade from retirement.

Support: The Qualified Default Investment Arrangement under ERISA section 404(c)(5) serves this segment. Required notices for QDIA are required.

Regulations should reflect the varying needs of each segment and limit disclosures to what is appropriate for each:

- Self Supported Participants must be provided convenient access to detailed information about the plan and each investment option available.
- Computer-Centric Participants must be provided with disclosures regarding the certification and audits of computer models and disclosures of all conflicts of interest that may exist with respect to parties involved in offering the model.

### DISAGREEMENT WITH WORKING GROUP CONCLUSIONS

The working group report states “The working group recognizes that providing actual fee information for a particular participant’s account over a stated period of time is not justified at this time by the cost of providing that information. Given the current state of technology and recordkeeping practices, it is a complex and costly procedure to sum the total costs to a particular participant’s account because of investment changes over time.”

This conclusion fails to recognize the cost associated with educating employees to understand the confusing and tedious disclosures and the ongoing phone center cost to explain information reported. These costs far exceed the cost of presenting expenses in simple dollar terms personalized on each participant’s periodic statement.

### SUMMARY OF EARLIER COMMENTS

The following is a summary of comments provided in our letter of January 22, 2007 to EBSA (attached) relating to computer modeled advice fee disclosures that are applicable here:

- Failures of Current Disclosure Methods: Current disclosures are ineffective and often ignored due to the burden placed on investors to use them.
- Participant Behavior Segments: Participants in a given plan fall into four segments each requiring different support and comparable fee disclosures: Self Supported, Computer Centric, Personal Adviser and Uninvolved.
- Assessment of Materiality: Disclosures need to be limited to those that have a material effect and influence the decisions participants can make.





Comments to EBSA on Fee Disclosure

- Dual Purpose of Disclosure: Fee and compensation disclosures are used by plan sponsors in prudent selection of service providers and by participants in making investment decisions.
- Costs and Benefits: Direct and indirect impacts of fee and compensation disclosures are reviewed.
- Standards for Presentation [ERISA section 408(g)(8)(A)]: Suggestions for achieving effective disclosures.
- Specific Answers: Response to five specific requests for information.



SPECIFIC ANSWERS

Disclosure of Information Relating to Plan Investment Options

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.

Question 1 -Information Participants Need to Evaluate Investment Options

The most important consideration in assessing what information participants need is the recognition that the needs of each behavioral segment is different. These segments are:

- Self Supported: These participants are active investors and have greatest need for investment information. These Participants actively seek out the information they need and do not require that it be delivered to them but that it is available when it is needed.
- Computer Centric: Computer centric participants rely on investment tools to select and monitor investments. These Participants need access to online tools that produce and monitor investment selections.
- Personal Adviser: Participants who use a personal adviser need to receive disclosures about the adviser, but also have investment information available to evaluate the adviser’s recommendations.
- Uninvolved: Uninvolved participants will rely on the available default and discard investment information provided. These Participants should be provided with very brief information about the past returns and costs of the applicable default investment.

All of these segments should receive basic information needed to evaluate potential return. The history of a model investment, presented in dollars and cents for various standard time periods (1, 5, 10 years<sup>3</sup> and since inception) is most appropriate. This history consists of:

- Total dollars paid by Participant (Contributions)
- Gross value (current value less contributions before any fees or expenses)
- Total fees and expenses, including portfolio trading costs
- Net value after fees and expenses

<sup>3</sup> Note that all periods should be displayed in every case. If investment history is not available for any given period this fact should be explicitly stated.



Question 1 -Information Participants Need to Evaluate Investment Options

Such hypotheticals have proven to be the most effective communication tool to investors.

The basic information provided should not vary with the nature or type of investment. Such variance would require the Participant to understand the differences between various investment types, which would defeat the purpose of a simple disclosure. Investment options such as the ones listed are accommodated within the four historical measures proposed above:

- Group Annuity Contracts and Stable Value Products have very high levels of historical consistency, to the extent that they include guarantees.

Life Cycle Funds provide the four historical data points for each portfolio.



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.

Question 2 -Information Participants Need to Evaluate Fees & Expenses

The four historical measures proposed in Question 1 (Total dollars paid by Participant, Gross Value dollars, Total Fees and Expenses and Net Value after fees and expenses) should be applied to the Participant’s actual account and provided as the basis for evaluating fees and expenses. (See Appendix A for an example).

Fees and expenses are meaningless until presented in the context of all four measures. To illustrate this point, contrast two accounts. One in which there is \$100,000 in contributions that is currently worth \$250,000 with fees and expenses of \$50,000. The other has the same contributions (\$100,000) but is currently worth \$150,000 with fees and expenses of \$10,000. Depending on the level of consistency over various time periods, the prudent investor with this information would be comfortable with the investment with the higher expense.

On the other hand, if the fees and expenses are presented without the context, the Participant is very likely to be upset by an expense that is five times greater.

Details that comprise the fees and expenses (such as investment management and 12b-1 fees, surrender charges, market value adjustments, etc.) is highly confusing and of interest only to the Self Supported segment of the Participant population. These breakdowns should not be presented unless specifically requested by a Participant.

This basic information provided to Participants should not vary based on the nature or type of arrangement. Such variance would require the Participant to understand the differences between various arrangements, which would defeat the purpose of the simple disclosure.

The fees in bundled service arrangements should be disaggregated to permit uniform presentations and comparisons in cases where Participants have an interest in these details.



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?

Question 3 -Investment Information Not Currently Available

"...fees and expenses not currently being furnished..."

Current practices fail to provide fees and expenses to Participants in any meaningful way. All Participants should be informed of the four measures described in Question 1 (Total dollars paid by Participant, Gross Value dollars, Total Fees and Expenses and Net Value after fees and expenses). The failures in current practices to inform all Participants are:

- Context: Information is provided without context, at different times and in forms that makes understanding difficult if not impossible.
- Dollars & Cents: It is well recognized that most investors (and Participants) are unable to reliably convert percentages into dollars and cents. Estimates of errors vary from 60% to 75% of cases. In fact, the most frequent error is made in the order of magnitude, which is particularly acute for small percentages (basis points). Disclosures in percentages are simply not useful to the average Participant.
- Missing Information: In current practice, three of the four measures required for evaluation are lacking:
  - Total dollars paid by Participant: Is not provided for standard time periods to permit comparison and is often only shown in aggregate and not for each investment option.
  - Gross Value dollars: Typically not provided and trading costs are not presented in a form that permits determining gross value.
  - Total Fees and Expenses: Only presented as percentages and usually excludes trading costs.

For Participants interested in the details of fees and expenses, typical failures in current practices are:

- Definition of the services provided in a form that permits an assessment of whether fees paid are reasonable for the services rendered.
- Disclosure of who is paid for the service provided
- How much (in dollars and cents) is paid to the party providing the service



Question 3 -Investment Information Not Currently Available

"Should such information be required..."

Yes, desirable disclosures will not be made unless there is a specific requirement.

Proposed disclosures hold no economic incentive (cost savings or revenue enhancement) that would be cause a plan provider to comply voluntarily. In fact such disclosures could increase provider costs when Participants call into phone centers to challenge fees. These disclosures could also result in a loss of revenue, if Participants choose to exit the plan because of high expenses.

Neither is there any competitive advantage in complying.

The only method of achieving compliance is a mandate, which could come in the form of a regulatory change.

"Who should be responsible for furnishing..."

The duty to provide Participant disclosures properly belongs to the plan sponsor. The plan sponsor may engage a third party to prepare the disclosure or rely on an existing provider.

"What, if any, additional burdens and/or costs would be imposed"

Implementing the disclosures proposed here would require expenditures to develop and maintain systems to provide the dollar and cents reporting at a Participant level.

While this cost is significant, the long-term effect will be to reduce the volume of ineffective disclosures currently produced. Long-term savings are realized by replacing current costly disclosures with simply adding information to existing periodic statements and enrollment materials.



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<sup>4</sup>. 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?

<p>Question 4 -Uniform Summary Requirement</p> <p>Yes. There should be a requirement for a uniform disclosure regarding each investment option, without regard to the type of option (whether registered investment company (RIC) or not). This uniform disclosure should consist of a model containing the measures described in our answer to Question 1 (Total dollars paid by Participant, Gross Value dollars, Total Fees and Expenses and Net Value after fees and expenses for 1, 3, 5 and 10 years<sup>5</sup> and from inception).</p> <p>A) Extending the requirement beyond such a very brief disclosure fails to serve the participant. Firstly, <u>a disclosure similar to a profile prospectus will confuse more than it informs most segments of participants</u>. In practice, the prospectus is rarely used in the investment decision process. Secondly, the regulatory duplication for non-RICs to produce a profile prospectus is an unnecessary cost that will ultimately be borne by the participant in the form of higher fees.</p> <p>B) Disclosure of fees in the form of expense ratios is a waste, since the great majority of Participants are unable to convert expense ratios into terms they understand, dollars and cents. Additionally, disclosing fees without the surrounding context of the benefit derived, disables prudent decision-making. Participants will not be able to make meaningful use of fee disclosures if the benefits generated are not also presented in comparable terms and at the same time and place.</p> <p>The duty to provide Participant disclosures properly belongs to the plan sponsor. The plan sponsor may engage a third party to prepare the disclosure or rely on an existing provider. The costs of making the disclosures are part of</p>
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<sup>4</sup> See recommendations of the GAO as set forth Report GAO-07-21 (November, 2006), <http://www.gao.gov/htext/d0721.html>.

<sup>5</sup> Note that all periods should be displayed in every case. If investment history is not available for any given period this fact should be explicitly stated.



Question 4 -Uniform Summary Requirement

the usual expenses of the investment. As with other investment expenses, these costs are borne by the investors, who are the Participants.

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?

Question 5 -How Information Is Communicated to Participants

Whether in a section 404(c) plan or not, Participants have the right to basic information about their retirement investments. There are two categories of information:

- Hypothetical historical data based on a typical scenario. This is used to select investments.
- Actual history for the Participant. This is used to monitor investments.

In both cases, the information provided should be the items described in the answer to Question 1 (Total dollars paid by Participant, Gross Value dollars, Total Fees and Expenses and Net Value after fees and expenses for 1, 3, 5 and 10 years<sup>6</sup> and from inception).

The hypothetical information about investment options should be continuously available to Participants, and should reflect the total experience of the Participant up to the most recent reporting period (month end, quarter end, year end or anniversary as applicable).

The Participants actual history should be included on periodic statements each quarter. (See example in Appendix A)

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?

Question 6 -Use of Internet for Disclosures

Given that a majority of Participants today have access to the Internet, regulations should require that disclosures are made electronically, except when Participants request it on paper or if it can be shown that the Participant has no electronic access.

<sup>6</sup> Note that all periods should be displayed in every case. If investment history is not available for any given period this fact should be explicitly stated.





Question 6 -Use of Internet for Disclosures
This approach will materially reduce the cost to each Participant by as much at \$50 per year.

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?

Question 7 -Changes to 404(c)
ERISA section 404(c) should be changed to specify the information required for each investment alternative:  The results, expressed in dollars and cents, of a hypothetical model that uses the same assumptions for each alternative. Results consist of Total dollars paid by Participant, Gross Value dollars, Total Fees and Expenses and Net Value after fees and expenses for 1, 3, 5 and 10 years <sup>7</sup> and from inception.  These changes would relieve the burden of producing extensive disclosure documents that are delivered multiple times to each Participant and seldom put to actual use.

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.

Question 8 -Requirement to Promote Education
No. There should be no such requirement. It is an entirely false premise that educating millions of workers about the arcane investment language will lead to improved retirement income security.

<sup>7</sup> Note that all periods should be displayed in every case. If investment history is not available for any given period this fact should be explicitly stated.



Question 8 -Requirement to Promote Education

Investment education has had limited success in relation to its cost. It has typically been used as a pretext for surreptitiously providing investment advice. Further promotion of this approach will increase cost to participants and may produce undesirable results.

Instead of attempting to educate millions of Participants about the language used by the investment community, Participants would be better served by requiring the investment community to translate its language to a form that is calculated to be understood by average Participants.

Terminology should be translated to familiar language for use in communication to Participants; such as:

- Basis Point - Replace with an actual dollar amount.
- Expense Ratio -Replace with an actual dollar amount based on a hypothetical or an actual account.
- Benchmark -Replace with "Comparable"
- Redemption Fee -Replace with "Fee for withdrawing funds"
- Deferred Sales Charge -Replace with "Declining fee for withdrawing funds"
- etc.

Participants should not be required to understand and use investment terminology in order to have a secure retirement, however, for those Participants who are interested in the internals of investments, it is entirely reasonable to make explanations of investment terms such as "risk and return characteristics" available.



Disclosure of Information Relating to Plan and Individual Account  
Administrative Fees and Expenses

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.

Question 9 -Current Disclosures to Participants

There are three primary sources of plan information for participants:

- Enrollment kit
- Periodic statement
- Performance updates

These documents are written to comply with applicable securities, banking and insurance regulations.

For the most part financial data is expressed in percentages and is of little use to most Participants.

There is no consistency in the information presented. Certain of the expenses listed are detailed in certain cases and aggregated into various totals in other cases.



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

Question 10 -Undisclosed Information

Current practices fail to provide information to Participants in a way that is easily understood. All Participants should be informed of the four measures described in Question 1 (Total dollars paid by Participant, Gross Value dollars, Total Fees and Expenses and Net Value after fees and expenses). The failures of current practices to inform all Participants are:

- Context: Information that is provided is separate, presented at different times and in a form that makes comparison difficult or impossible.
- Dollars & Cents: It is well recognized that most investors (and Participants) are unable to reliably convert percentages into dollars and cents. Estimates errors vary from 60% to 75% of cases. In fact, the most frequent error is made in the order of magnitude, which is particularly acute for small percentages (basis points). Disclosures in percentages or basis points are simply not useful to Participants.
- Missing Information: In current practice, three of the four measures required for evaluation are lacking:
  - Total dollars paid by Participant: Is not provided for standard time periods to permit comparison and is often only shown in aggregate and not for each investment option.
  - Gross Value dollars: Typically not provided and trading costs are not presented in a form that permits determining gross value.
  - Total Fees and Expenses: Only presented as percentages and usually excludes trading costs.

For Participants interested in the details of fees and expenses, typical failures in current practices are:

- Failure to define the services provided in a form that permits an assessment of whether fees paid are reasonable for the services rendered.
- Failure to disclosure who receives payment for the services provided
- How much (in dollars and cents) is paid to the party providing the service



Comments to EBSA on Fee Disclosure

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?

Question 11 -Current Method of Communication

Charges for administrative expenses against an individual account are typically communicated by a reduced valuation of the Participant’s holdings. Since the expenses are typically deducted form an investment pool, the impact on any one Participant is not generally reported.

The valuation of the Participant’s account, reflecting the effect of administrative expenses, is reported on a periodic statement.

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

Question 12 -Frequency of Expense Disclosure

Most are communicated quarterly through a periodic statement. The statement shows a lower valuation reflected in a change in daily prices. Other expenses such as loan expenses, self directed brokerage, etc. are confirmed separately as they occur.

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.

Question 13 -Requirements for Expense Disclosure

The Department should require that each periodic account statement include for each investment held:

The actual dollars and cents of Total paid by a Participant, Gross Value, Total Fees and Expenses, Net Value after fees and expenses.

These changes would reduce the cost of producing other extensive disclosure documents that are produced multiple times for each Participant and seldom put to actual use.



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

Question 14 -Expenses on Participant Statements

Yes. The periodic benefit statement is the single most important component of the plan. It is read and retained more than any other document. It is therefore the most effective communication tool so its use should be carefully considered.

Reporting administrative expenses on the periodic statement will elevate the importance of these expenses and lead Participants to take action. Participants are therefore most likely to seek the lowest expense, unless there is an obvious benefit of a higher expense.

Without an appropriate context, the response that Participants are likely to have will not be in their best interest since low expenses are not correlated to high returns. Historically, high returns with high expenses have produced better net returns than low returns with low expenses. The expenses are relevant only to the extent that they lower investment returns.

The presentation of administrative expenses should be placed on periodic statements only if accompanied with the total benefit that the Participant receives. As suggested in answer to Question 1, there are four measures that should be presented concurrently to enable Participants to make informed decisions. These are Total dollars paid by Participant, Gross Value dollars, Total Fees and Expenses and Net Value after fees and expenses.

Additionally, the presentation on the statement will not be useful unless expressed in dollars and cents, using language that is familiar to participants and applied to the individual Participant's account.

Presenting plan level figures is ineffective.

Presenting figures in terms of percentages is ineffective.

Describing these figures using investment terminology is ineffective.



General Questions

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)?

Question 15 -Different Requirements for 404(c) Plans

None. The goal of providing a secure retirement for Participants is independent of the protection afforded by section 404(c). Secondly, Participants can be expected to change jobs and in so doing move from one type of plan to another. For these reasons, there should be consistent disclosures across all types of plans.

It is our view that Participants in all plans should have access to a comparable set of summary data about their plan and their account.

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?

Question 16 -Source of Funding for Fees & Expenses

The portion of the expenses paid by plan sponsors (as opposed to being paid by participants) is in reality, insignificant. Participants effectively pay expenses either directly or indirectly (through lower compensation or lower benefits or lower investment returns).

Employers consider total employment compensation so retirement plan fees and expenses fees paid by Participants translate to higher employee compensation in other ways. Conversely, fees and expenses paid by employers translate to lower employee compensation.

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.

Question 17 -Effect of Disclosure on Plan Sponsors, Vendors

If additional fee and expense information is provided to Participants in the form of percentages (or basis points), the effects on the choices or conduct of plan sponsors, administrators and vendors will be undesirable. Principal effects are:

- To select the lowest cost investment options, regardless of the potential for capital appreciation or preservation or services available because expenses ratio will be the measure most visible to participants. This will ultimately lead to an increase in the use of money market funds.



Question 17 -Effect of Disclosure on Plan Sponsors, Vendors

- To limit services to Participants in the pursuit of lower costs. Vendors will create new low cost share classes, which exclude the funding for participant services, advice and education.

If additional fee and expense information is provided in the context of the benefits to Participants as recommended in Question 1, the effect on the choices or conduct of plan sponsors, administrators and vendors will be desirable. Principal effects will be:

- To select investment options based on a combination of past net investment returns after fees and expenses, and the consistency of those returns over various time periods. The effect will be a shift towards higher performing investments.
- To replace high cost plans that do not have high returns. The effect will be that investments that fail to perform will be eliminated.

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.

Question 18 -Effect of Disclosure on Participants

If additional fee and expense information is provided to Participants in the form of percentages (or basis points), the effect on the choices or conduct of Participants will be:

- To switch from high cost investments to low cost ones. Participants would select the lowest cost investment options, regardless of the potential for capital appreciation or preservation or services available because expenses ratio will be the most visible comparable measure. This will ultimately lead to a major shift to money market funds.
- To demand investment options with lower costs. This will lead to a reduction of services to Participants in the pursuit of lower costs. Vendors will create new low cost share classes, which exclude the funding for participant services, advice and education.

If additional fee and expense information is provided in the context of the benefits to Participants as recommended in Question 1, the effect on the choices or conduct of Participants will be:

- To switch from investment options with poor returns to options with a past record of consistent high net returns after fees and expenses. The effect will be a shift towards higher performing investments.





Question 18 -Effect of Disclosure on Participants

- To demand investments with better performance records. Participants will demand that sponsors replace high cost plans that do not have high returns. The effect will be that investments that fail to perform will be eliminated.

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.

Question 19 -Cost Efficient and Cost Inefficient Disclosures

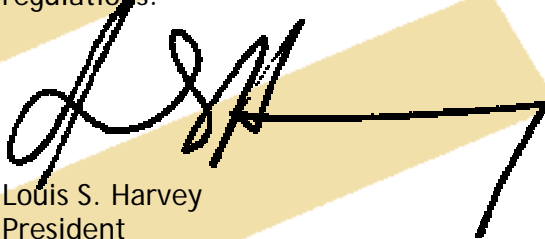
...efficient fee and expense disclosures

The most cost efficient disclosure is the dollar and cents reporting of fees and expenses for each Participant. This disclosure would require a simple multiplication of two available numbers (expense ratio and Participant balance) and displaying the result on the existing Participant statement.

...inefficient fee and expense disclosures

By far, the most inefficient and ineffective disclosures are reporting details of investment costs such as management fees, transfer agent fees, 12b-1 fees, revenue sharing, etc.). Such disclosures would require extensive explanations that cost time and large volumes of paper. The cost of such disclosures will reduce the Participant's retirement income with no corresponding benefit.

Thank you for your consideration of these comments in developing the disclosure regulations.



Louis S. Harvey  
President



APPENDIX A -EXAMPLE OF PROPOSED PARTICIPANT DISCLOSURE

From inception to date:

Total amount you contributed	43,210.12
Value before fees expenses	87,654.32
Fees and expenses paid	4,321.01
Current value in your account	83,333.31

Note: Past returns and expenses are not indicative of the future.



## APPENDIX B -EXAMPLE OF PROPOSED PLAN DISCLOSURE

### PURPOSE

The attached model disclosure statement is intended to inform plan sponsors of the services and costs of operating a defined contribution plan and the sources of the funds used to pay those costs. In this way the fog and mystery that obscures a fair understanding of the fees associated with defined contribution plans can be lifted.

The intent is for all types of plans to provide the costs of services on a comparable basis, regardless of whether the plan is bundled or unbundled, proprietary or open architecture. Providers are expected to calculate the cost of the services on a consistent basis and indicate the source of the compensation for each service, whether internal or external.

The disclosure statement may be an estimate or actual and is prepared by an adviser or other service provider. Estimates are used for proposals or in circumstances when complete and verified data is unavailable.

This model disclosure statement takes a new approach, in which the language of the defined contribution market is translated into common terms instead of attempting to explain the language and jargon of the DC world.

The approach also differs in that the services and deliverables are presented as the central issue. The costs of these services are then expressed in easily understood terms of dollars and cents.

In addition this new approach is holistic in nature so that all aspects of services and costs are presented in a single context.

Ultimately, the goal of this model disclosure statement is to address the shortfalls in current disclosures that were described in DALBAR's January 22, 2007 letter to the U. S. Department of Labor.

The model disclosure statement is careful to present all parties in a factual light by disclosing the role played by each in making a plan successful.

The model disclosure statement consists of five sections:

- GRAPHIC SUMMARY OF PLAN COSTS: An at-a-glance view of services & costs.
- DETAILS OF PLAN COSTS: List of services and their respective costs.
- DESCRIPTION OF SERVICES & DELIVERABLES: The services required to operate the plan.
- EXPLANATION OF SOURCES: Terms used to identify funding sources.
- HOW EACH COST IS COMPUTED: How fund fees and expenses are determined and used to pay for services used by the plan.



This consolidated disclosure statement of costs for the Acme Retirement Plan has been prepared by:

The statement is provided to enable the fiduciaries of the plan to exercise the duties of loyalty to plan participants and beneficiaries and of prudence in selection and monitoring all service providers to the plan as required by law.

The information in this disclosure is drawn from various sources represents a reasonable effort to be complete and accurate. This disclosure is not a guarantee of accuracy or an obligation to charge the fees shown.



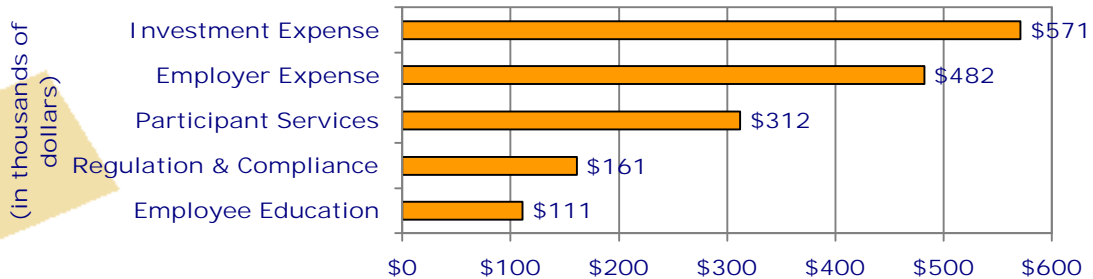
# MODEL STATEMENT OF 401(K) TOTAL COST DISCLOSURE

Annual Estimate

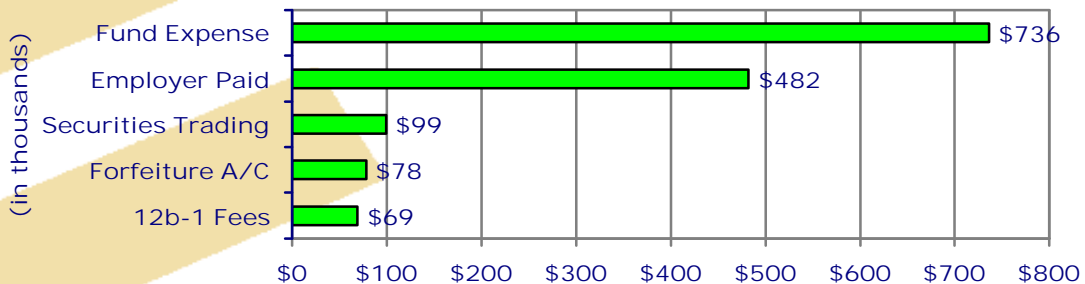
Actual for 2007 (year)

## GRAPHIC SUMMARY OF PLAN COSTS

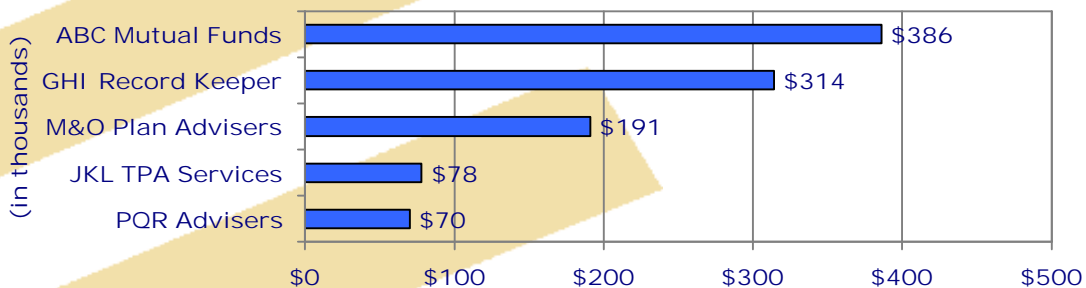
Summary of Service Costs



Top Five Funding Sources



Five Highest Paid Providers



DETAILS OF PLAN COSTS

Service or Deliverable <sup>(1)</sup>	Provided By	Cost <sup>(3)</sup>	Funding Source <sup>(2)</sup>
<b>Investment Expenses</b>			
Manage Investments	ABC Mutual Funds	320,900	Fund expense
	DEF Mutual Funds	34,712	Fund expense
Securities Trading	Various brokers	98,732	Bid-ask after discount
Research reports	Various brokers	25,971	Discount on trading
IPS preparation	M&O Plan Advisers	67,126	Front load
Investment selection & monitoring	M&O Plan Advisers	23,781	12b-1 fees
<b>Participant Services</b>			
Record keeping	GHI Record Keeper	124,987	Fund expense
Phone center service	GHI Record Keeper	187,321	Fund expense
Fiduciary adviser services to participants	PQR Advisers	70,000	Participant accounts
<b>Regulatory &amp; Compliance Costs</b>			
Plan administration	JKL TPA Services	78,000	Forfeiture account
Provider search	M&O Plan Advisers	55,000	Employer paid
Adviser due diligence, monitoring and audit	DALBAR	3,495	Employer paid
Legal counsel	Jones, Jones and Jones	25,000	Employer paid
<b>Employee Education Costs</b>			
Enrollment kit and other participant materials	ABC Mutual Funds	65,347	Fund expense
Enrollment meetings and associated travel	M&O Plan Advisers	45,390	12b-1 fees
All other services	Various	2,700	Fund expense
Subtotal -External		9,999,999	
Employer match	N/A	390,046	Employer paid
HR Admin Cost	N/A	65,098	Employer paid
Lost employee time	N/A	27,000	Employer paid
<b>Total Plan Cost</b>		<b>9,999,999</b>	

(1), (2), (3) Explanations of Services and costs are provided in the following pages.

Approximate cost and benefit per participant in accounts with:

Participants balance of a	\$1,000	\$10,000	\$100,000	\$1 million
Participant cost	\$10.35	\$103.50	\$1,035.00	\$10,350.00
Employer contribution	\$500.00	\$5,000.00	\$15,000.00	\$15,000.00
Net participant	\$489.65	\$4,896.50	\$13,196.00	\$4,650.00



benefit				
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(1) DESCRIPTION OF SERVICES & DELIVERABLES

SERVICE OR DELIVERABLE	WHAT IS INCLUDED	EXPLANATION
Manage Investments	Research, investment selection and disposition in accordance with funds prospectuses, custody of assets and other activities required by law.	This service is used to produce the funds' investment returns.
Securities Trading	Buying and selling of securities for the funds' portfolios.	External brokers are used to execute trades required by the funds' managers.
Research reports	Independent ratings of securities being considered for purchase or sale.	Reports are among the factors considered in deciding what securities to buy or sell.
Record keeping	Creating and maintaining records of all participant accounts and the transactions and changes affecting them and issuing periodic reports.	Necessary to keep track of the value for each participant.
Phone center service	Provide answers to participants with respect to the plan, participant accounts and investment options available in the plan.	For the convenience of participants to have questions answered and needs met.
Plan administration	Performing the duties necessary for the plan to comply with legal, regulatory and the plan's own requirements.	
Provider search	Evaluating qualified providers on the basis of the investments available, services provided, the quality of those services, value to participants and costs; and making appropriate recommendations.	This process resulted in the selection of GHI Record Keeper
Investment Policy Statement preparation	Preparation of the investment policies and restrictions that investment managers must meet in order to qualify as an option in the plan.	
Investment selection & monitoring	Quarterly review of the performance and material changes in the investment options available in the plan; and making appropriate recommendations.	Investment options that no longer meet the requirements of the investment policy statement are replaced.



Comments to EBSA on Fee Disclosure

SERVICE OR DELIVERABLE	WHAT IS INCLUDED	EXPLANATION
Enrollment kit and other participant materials	All plan related materials provided to participants and prospective participants.	These include documents mandated by law or regulation as well as materials thought to be useful.
Enrollment meetings and associated travel	All meetings attended by participants and prospective participants for purposes of explaining the plan, enrolling employees and providing additional information.	
Fiduciary adviser services	Provides personalized advice regarding the participants own account to those who elect to use the adviser's services.	
Adviser due diligence, monitoring and audit	Required examination of the qualifications and past performance of advisers engaged to advise the plan and participants.	Required to establish that advisers engaged by the plan are qualified experts.
Legal counsel	Advises the plan on matters of law.	
All other services	Services whose annual cost is less than \$1,000 each.	





(2) EXPLANATION OF SOURCES

SOURCE	EXPLANATION
Fund expense	Expenses are deducted from plan assets in the mutual fund that results in a lower price per share. The lower price per share reduces that value for all shareholders of the fund in proportion to their holdings. These funds collected are used to operate various aspects of each fund. All funds deducted from fund assets are included in the fund's expense ratio.
Bid-ask after discount	These costs apply when the stocks, bonds and other securities that make up the mutual fund's investments are purchased and sold. Increase in purchase price and reduction in selling price of these investments compensates brokers for executing the buy and sell orders. "Discount on trading" (see below) is deducted to reflect the true cost.
Discount on trading	Brokers that execute buy and sell orders for the mutual fund provide certain services in recognition of the high volume of transactions executed. The value of these services represents a volume discount from the cost of executing the transactions. These discounts are known as "soft dollars".
Participant accounts	Certain expenses can be deducted from individual participants for services provided to that individual participant. These include the cost or processing a loan or the use of a personal adviser.
Forfeiture account	Certain plan expenses are paid from balances forfeited by employees that terminate before being fully vested. This reduces the costs for the remaining participants.
Employer paid	Expenses paid directly by employer. They include employer contributions and any other expenses that the employer chooses to pay.
Front load	Deduction made from each investment made in the fund.
12b-1 fees	Expense deducted from assets of the fund to pay for costs associated with distribution of fund shares. These expenses are included in the fund's expense ratio.
Sub-TA fees	The sub-TA fee compensates a record keeper for the record keeping and administration of investment options when the record keeper is not compensated by their own proprietary funds. The sub-TA fee is paid by investment managers whose funds are available to participants but are outside of the record keeper's organization.



(3) HOW EACH COST IS COMPUTED

è Manage Investments: ABC Mutual Funds

The cost of managing investments is the sum of fees charged to each fund that is computed as a percentage of assets in that fund reduced by fees paid for record keeping, phone center service and enrollment kit and other materials.

The following are the funds and respective fees charged:

Fund Name	Assets	Percentage	Annual Cost
ABC Treasury Securities	321,750	.35%	99,999,999
ABC Long Term Bond	597,091	.87%	99,999,999
ABC Large Cap	12,479,300	.95%	99,999,999
ABC Growth	31,710,895	.95%	99,999,999
ABC Emerging Markets	4,729,823	1.15%	<u>99,999,999</u>
Total Fund Expense			99,999,999

Costs of other activities are deducted from fund fees:

Record keeping (Sub TA Fees)	99,999,999
Phone center service	99,999,999
Enrollment kit and other materials	<u>99,999,999</u>
Cost of Managing ABC Mutual Funds	99,999,999

è Manage Investments: DEF Mutual Funds

The cost of managing investments is the sum of fees charged to each fund that is computed as a percentage of assets in that fund.

The following are the funds and respective fees charged:

Fund Name	Assets	Percentage	Annual Cost
DEF Group High Yield	1,597,091	.65%	99,999,999
DEF Group Value	3,479,300	.80%	<u>99,999,999</u>
Total Fund Expense			99,999,999

Costs of other activities are deducted from fund fees:

Sub TA Fees	<u>99,999,999</u>
Cost of Managing DEF Investments	99,999,999



è Securities Trading: Various brokers

The cost to purchase and sell securities excluding the value of additional services provided is:

DEF Group Value	99,999,999
DEF Group Value	<u>99,999,999</u>
Total	99,999,999

è Research reports: Various brokers

The value of research reports provided in recognition of the large volume of securities transactions performed is estimated, based on the expected costs if these securities transactions were not performed (soft dollar services).

Value of Research Reports	99,999,999
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è Record keeping: GHI Record Keeper

Record keeping services are paid by an arrangement between ABC Mutual Funds and GHI Record Keeper, in which ABC pay GHI 25% of fund fees for performing record keeping.

Record keeping costs	99,999,999
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è Loan processing: GHI Record Keeper

GHI Record Keeper charges participants fees for applying for and servicing loans.

Loan applications	99,999,999
Loan servicing	<u>99,999,999</u>
Total	99,999,999

è Phone center service: GHI Record Keeper

Phone center services are paid by an arrangement between ABC Mutual Funds and GHI Record Keeper, in which ABC pay GHI 15% of fund fees for providing a phone center.

Phone center costs	99,999,999
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è Plan administration: JKL TPA Services

The fees for administration are based on contracted services from JKL TPA Services. These fees are deducted from the plan's forfeiture account to the extent that there are sufficient balances.

TPA service costs	99,999,999
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Provider search: M&O Plan Advisers

M&O Plan Advisers was engaged to evaluate available providers to provide services to the plan. M&O Plan Advisers was paid a fee for performing this service.

Provider search costs 99,999,999

IPS preparation: M&O Plan Advisers

M&O Plan Advisers was engaged to write the investment policies for the plan trustees to adopt. M&O Plan Advisers was paid a fee for performing this service.

IPS preparation costs 99,999,999

Investment selection & monitoring: M&O Plan Advisers

M&O Plan Advisers was engaged to select and monitor investment options available in the plan in accordance with the investment policy statement adopted by the plan trustees. M&O Plan Advisers is paid an annual 12b-1 fee by ABC Mutual Funds for performing this service. This amount of the fee is varies with the value of assets in specific funds:

Fund Name	Assets	Percentage	Annual Cost
ABC Treasury Securities	321,750	.05%	99,999,999
ABC Long Term Bond	597,091	.08%	99,999,999
ABC Large Cap	12,479,300	.10%	99,999,999
ABC Growth	31,710,895	.10%	99,999,999
ABC Emerging Markets	4,729,823	.10%	99,999,999

Investment monitoring costs 99,999,999

Enrollment kit and other participant materials: ABC Mutual Funds

ABC Mutual Funds is paid a fee of 10% of fund fees to prepare and update materials.

Enrollment kit and materials costs 99,999,999

Enrollment meetings and associated travel: M&O Plan Advisers

M&O Plan Advisers was engaged to host quarterly meetings of employees in five locations for the purpose of encouraging participation in the plan and to assist in decisions to select investments. M&O Plan Advisers is paid an annual 12b-1 fee by ABC Mutual Funds for performing this service. This amount of the fee is varies with the value of assets in specific funds:

Fund Name	Assets	Percentage	Annual Cost
ABC Treasury Securities	321,750	.05%	99,999,999
ABC Long Term Bond	597,091	.08%	99,999,999
ABC Large Cap	12,479,300	.10%	99,999,999



Comments to EBSA on Fee Disclosure

ABC Growth	31,710,895	.10%	<u>99,999,999</u>
ABC Emerging Markets	4,729,823	.10%	<u>99,999,999</u>
Enrollment meeting costs			99,999,999

è Fiduciary adviser services: PQR Advisers

ABC Advisers was engaged to provide personal advice to participants who elect to use this service. The cost of the service is deducted from the accounts of participants who use the service.

140 participants @ \$500 each for a total of	70,000		
Fiduciary adviser costs			99,999,999

è Adviser due diligence, monitoring and audit: DALBAR

DALBAR was engaged to conduct the objective process required by the Department of Labor in selecting and monitoring advisers. The fees for these services are:

Plan Adviser process for M&O Plan Advisers @ \$1500	99,999,999		
Fiduciary Adviser process for ABC Advisers @ \$1,995			<u>99,999,999</u>
Adviser due diligence costs			99,999,999

è Legal counsel: Jones, Jones and Jones

Jones, Jones and Jones was retained to advise the plan trustees and administrators.

Legal counsel costs	99,999,999		
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è Employer match

The employer contributes an amount equal to 100% each plan participant's contributions up to 5% of compensation for the participant.

Employer match costs			99,999,999
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è HR Admin Cost

Two staff positions in the HR department are dedicated to supporting employees with their use of the plan. Support includes answering questions, assistance in completing forms, organizing and scheduling employee meetings and interfacing with various firms used by the plan.

HR Admin costs			99,999,999
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è Lost employee time

Employee estimate is based on attendance of 25 employees at 12 meetings requiring approximately two hours for preparation, travel and follow-up.

600 hours @ an average cost of \$45 per hour	99,999,999
Lost employee time costs	99,999,999



## ATTACHMENT

January 22, 2007

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

Attn: 401(k) Plan Investment Advice RFI (Disclosures)

E-mail to [e-ORI@dol.gov](mailto:e-ORI@dol.gov)

Ladies and Gentlemen:

This letter addresses the disclosure aspects of the request for information relating to 401(k) Plan Investment Advice (RFI). There is a separate comment letter addressing the computer model certification aspects of the RFI.

DALBAR appreciates the opportunity to submit comments in response to the request for information relating to the requirement that fees and compensation be disclosed to participants and beneficiaries.

Regardless of whether an arrangement provides for non-varying fees [section 408(g)(2)(A)(i)] or uses a computer model under an investment advice program [section 408(g)(2)(A)(ii)], the arrangement also must satisfy section 408(g)(4) through (9) in order to qualify as an "eligible investment advice arrangement."

These comments are intended to assist in the development of regulatory guidance and in the assessment of economic costs and benefits relating to ERISA section 408(g)(8)(B) that directs the Secretary to:

- Issue a model form for the disclosure of fees and other compensation required by section 408(g)(6)(A)(iii) that meets the standards for presentation of information prescribed in section 408(g)(8)(A).

## SUMMARY OF COMMENTS

The following is a summary of comments provided here:

- Failures of Current Disclosure Methods: Current disclosures are ineffective and often ignored due to the burden placed on investors to use them.
- Participant Behavior Segments: Participants in a given plan fall into four segments each requiring different support and comparable fee disclosures: Self Supported, Computer Centric, Personal Adviser and Uninvolved.

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## Comments to EBSA on Fee Disclosure

- Assessment of Materiality: Disclosures need to be limited to those that have a material effect and influence the decisions participants can make.
- Definition of "Affiliate": Fees and compensation to affiliates must be disclosed but this requires a definition of what constitutes an affiliate.
- Dual Purpose of Disclosure: Fee and compensation disclosures are used by plan sponsors in prudent selection of fiduciary advisers and by participants in deciding whether to use the designated adviser.
- Costs and Benefits: Direct and indirect impacts of fee and compensation disclosures are reviewed.
- Standards for Presentation [ERISA section 408(g)(8)(A)]: Suggestions for achieving effective disclosures.
- Specific Answers: Response to five specific requests for information.
- APPENDIX -Sample Model Disclosure Document

## ABOUT DALBAR

DALBAR was founded in 1976 and has served as the independent expert to financial firms in several areas of business. Financial firms use DALBAR for its unbiased ratings and evaluations and consultation in their pursuit of excellence. DALBAR measures and evaluates how well investors are served, consistent with various financial regulatory requirements in the areas of:

- Written Communications (Required disclosures, sales materials, education materials)
- Personal Financial Advice (Due diligence and certification of advisers)
- Technology (Web based, Automated phones, e-business)
- Phone Centers (Service and sales)

During the course of its business, DALBAR has collected, evaluated and published reports on written and electronic communication from most financial services firms. Fee disclosures have always been a key element in these evaluations.

Recognizing DALBAR's capabilities in this area, the GAO (Government Accountability Office) contracted with DALBAR in 2005 to evaluate the Social Security Administration statement to participants. Results were published to Congress.

DALBAR is in a unique position to assist in the creation of regulations to comply with section 408(g)(6)(A)(iii). DALBAR has samples available of past and present practices as well as standards that reflect investor preferences and understanding and will make this information available to EBSA.





Additionally, DALBAR has recently developed and tested a model disclosure that is intended for use by fiduciary advisers (See Appendix for a sample). This model includes all disclosures required for fiduciary advisers under PPA, including the fee and other compensation disclosure required under section 408(g)(6)(A)(iii).

## FAILURES OF CURRENT DISCLOSURE METHODS

The weaknesses in current disclosure practices have been highlighted by DALBAR and are anecdotally understood by most to be ineffective. These disclosures have not prevented inappropriate decisions or increased competition. Among the weaknesses of current practices are:

- Investors seldom read the disclosures and therefore do not consider the information contained in making decisions. An example is the clustering together of required disclosures and making it obvious that these are “routine” requirements.
- In those limited cases when disclosures are considered, the investors who do consider them seldom have an appropriate context to weigh them appropriately. An example is a fee disclosure by one institution when competitors don’t make comparable disclosures. Investors balk at the fee simply because it is disclosed.
- Disclosures serve to protect those making the disclosure from litigation by investors and not to introduce competitive forces. Examples are the history of cases in which litigant’s excessive claims were denied.
- Fee disclosures seldom describe the services that are paid for, skills, work quality or track record of the provider, leading to a comparison of costs without a comparison of the benefits. Examples include the disassociation of fees from the services (services/benefits are not shown) provided as well as associating the fee with a benefit that is not associated with the fee (using market appreciation to justify high fees).
- Disclosures often reflect only negatively on the adviser, who is unenthusiastic about presenting or explaining the contents. The enthusiasm of the adviser has a material effect on whether the participant or beneficiary pays attention to the disclosure. Content that reflects positively or benefits the adviser should be included to have an enthusiastic and therefore an effective presentation.
- An excessive number of disclosures that are not material or relevant to the participant often cause participants to disregard all disclosures. Disclosures should be limited to those that are directly relevant to the participant. Additionally, the number and length of disclosures presented on any one page should be limited.



It is our view that simply adding a disclosure, even if the average participant understands it, would serve little purpose without both a presentation that attracts participants to read it and provides a context for making decisions. In fact, a disclosure will lead to inappropriate decisions without the proper context.

Succeeding sections offer suggestions that overcome these problems and make disclosures more effective:

- Participant Behavior Segments
- Assessment of Materiality
- Definition of "Affiliate"

DALBAR has developed a model disclosure that addresses these failures and conforms to ERISA section 408(g)(6)(A)(iii). See Appendix for example of DALBAR's model disclosure for fiduciary advisers, which includes ERISA section 408(g)(6)(A)(iii) disclosures.

## PARTICIPANT BEHAVIOR SEGMENTS

Methods of financial decision-making vary greatly in any large group, such as participants in a retirement plan. These decision-making methods can be grouped into four distinct segments described below. The Pension Protection Act includes the support required for each of these segments.

Effective fee disclosures will enable participants to assess and compare the costs associated with using the support provided to each segment of investment decision-making. Consequently, standards for fee and compensation disclosure should be consistent for all four segments.

The primary behavior segments and associated support are:

- **Self Supported:** This may be the smallest segment and includes participants that conduct their own research and analysis.  
Support: This group makes investment decisions independently and does not rely on the plan sponsor or provider.
- **Computer Centric:** This is a larger segment than Self Supported and is likely to grow as computer solutions become more widely adopted in years to come. This segment is willing and able to enter highly sensitive personal information into a computer and then act on the advice that the computer provides.  
Support: A fiduciary adviser that qualifies under ERISA section 408(g)(3), using a computer model serves this segment of participants. Disclosures appropriate for a computer model is provided.
- **Personal Adviser:** This is the next to the largest segment and requires personal interaction with an investment professional. This segment includes a high concentration of pre-retirees and participants with complex financial situations.



Support: A fiduciary adviser that qualifies under ERISA section 408(g)(2)(i) serves this segment of participants. Disclosures appropriate for advisers with non-varying compensation is provided.

- Uninvolved: This is the largest segment of participants and consists of a high concentration of participants that are more than a decade from retirement.

Support: The Qualified Default Investment Arrangement under ERISA section 404(c)(5) serves this segment. Required notices for QDIA are provided.

### ASSESSMENT OF MATERIALITY

Disclosure of an excessive number of fees is counterproductive in informing participants. This is counterproductive based on the average participant's response to a list of fees and the accompanying explanations. The burden of reading and understanding of these explanations lead most participants to ignore the disclosure. For the disclosure to be useful there should be no more than three types of fees and each must be material enough for participants to consider them relevant.

Fees that require disclosure are those that have a material effect on the participant or the adviser's income. Suggested guidelines for fees that must be disclosed are:

- When the annual cost for a participant exceeds \$5.
- When the adviser receives compensation of more than \$1,000 in one year.

In the event that there are more than two such fees or compensation, disclosures should aggregate multiple fees and present them as "annual costs" and "one time costs", as appropriate.

### DEFINITION OF "AFFILIATE"

ERISA section 408(g)(6) requires that a fiduciary adviser include disclosure of fees and other compensation to all affiliates of a fiduciary adviser. It is therefore necessary to determine of what entities and relationships constitute such an affiliate.

The suggested solution is to define what an affiliate of a fiduciary adviser is, as an entity in which the adviser has a material interest (more than 5%).



## DUAL PURPOSE OF DISCLOSURE

The disclosures to plan participants required under ERISA section 408(g)(6) must also be made to the plan sponsors under section 408(10)(A)(i) which states that “the terms of the eligible investment advice arrangement require compliance by the fiduciary adviser with the requirements of this subsection [408(g)]. The requirement that the eligible investment advice arrangement complies with all of 408(g) requires plan sponsors to also consider these disclosures during prudent selection of a fiduciary adviser, required under section 408(g)(10)(B). These 408(g)(6) disclosures therefore serve two purposes:

- Prudent selection of fiduciary adviser for eligible investment advice arrangement.
- Participant election to use a fiduciary adviser.

Both of these purposes were considered in the development of the sample provided in the Appendix and the comments offered here.

## COSTS AND BENEFITS

The costs associated with the fee and compensation disclosures required by ERISA section 408(g)(6) are borne by the fiduciary adviser and the plan sponsor.

### Fiduciary Adviser Costs

- Obtain and update information
- Provide validation through independent audit
- Distribute disclosure to participants
- Answer questions from plan sponsors and participants concerning disclosures

### Plan Sponsor Costs

- Review fees and compensation to make determination that they are reasonable.
- Answer questions from participants concerning disclosures

The 408(g)(6) disclosures are beneficial to participants, plan sponsors and fiduciary advisers.

### Participant Benefits

- The participant is able to select the method of assistance that is both suitable and cost effective.
- The participant is able to assess the conflicts of interest that could prejudice recommendations from a fiduciary adviser.

### Plan Sponsor Benefits



## Comments to EBSA on Fee Disclosure

- Fee and compensation disclosures enable the plan sponsor to prudently select the fiduciary adviser that is made available to participants.
- Plan sponsors enjoy the protection from liability that is offered by an eligible investment advice arrangement.

### Fiduciary Adviser Benefits

- Fiduciary advisers are insulated from certain litigation in the event of loss by participants.

## STANDARDS FOR PRESENTATION [SECTION 408(G)(8)(A)]

Section 408(g)(8)(A) requires that the fee and compensation disclosure shall be written in a manner calculated to be understood by the average plan participant.

Since the education, language and comprehension skills vary widely among participants it is necessary to use different disclosures for different participant groups, based on the average in each group. Can the disclosure “calculated to be understood” by employees of an investment firm also be used for academic institutions and for employees at a manufacturing plant?

Effective presentation will also require an understanding of the use to which the disclosures will be put. The primary uses of the fee and compensation disclosures are:

- Plan sponsors’ prudent selection of fiduciary advisers.
- Participants’ selection of the most suitable type of investment support.

Both plan sponsors and participants require comparison of dissimilar methods of providing advice. It is therefore essential that disclosures are made in such a way that direct cost comparisons can be done between:

- Qualified default investment alternatives (section 404(c)(5)) that are used by participants that choose to be uninvolved in investment decisions.
- Fiduciary advisers that qualify under ERISA section 408(g)(2)(i) that are used by participants who choose to use a personal adviser.
- Fiduciary advisers that qualify under ERISA section 408(g)(3), using a computer model that are used by participants that choose to use the computer.

We suggest a single model, applicable to all methods that complies with the requirements:

The disclosure must be tested for understanding by average participants and tests documented to provide evidence of understanding by typical participants in a plan(s) or others that can reasonably be expected to have similar reading and comprehension skills.



## SPECIFIC ANSWERS

1. In general, what types of information relating to fees received by fiduciary advisers and their affiliates would be helpful to participants and beneficiaries in making their investment decisions?

The most important determinant of what fees require disclosure should be the effect on the adviser and/or on participant assets. There are several advantages to making materiality the standard:

- The number of disclosures is reduced so that material fees are not obfuscated in a long list of unimportant ones.
- The cost of acquiring the information is reduced.
- The participant is more likely to make an informed decision.

It is suggested that materiality standards be deemed to exist if either of the following are true for any one adviser or adviser representative:

- More than \$1,000 income or change in net worth in one year is derived from the source.
- Fee of over \$5 annually is paid directly by or on behalf of a participant in the plan.

The following information is contained in the model disclosure sample (Appendix) with respect to fees and other compensation. It should be noted that the context in which these fees and compensation are presented is as important as the specific information presented. Fee and compensation disclosure consists of:

- Employment compensation (salary, bonus, incentive, etc.) and context of compensation earned by others in a similar occupation.
- Amount of annual fiduciary adviser fee expressed in dollars (not basis points).
- Frequency of payment and dollar amount of periodic payment (quarterly in the sample).
- When invoiced (at the end of the calendar quarter in the sample).
- Context (showing the range of fees typically charged for similar services).
- Nature of other compensation received by fiduciary adviser or affiliates from investment firms.
  - Rates used in computing such compensation.



Comments to EBSA on Fee Disclosure

- Percentage of total revenue earned from these firms.
  - Proportion of such compensation derived from each firm.
2. What types of fees and compensation (including those provided by third parties) would be encompassed by ERISA section 408(g)(6)(A)(iii)? In relevant part, this provision refers to “all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property.”

Subject to a test of materiality, fees and compensation encompassed by ERISA section 408(g)(6)(A)(iii) should include compensation from all sources to the fiduciary adviser as well as compensation to any affiliated firm. These include:

- Compensation received for services provided as a fiduciary adviser,
- Compensation that can be affected by the advice given,
- Compensation that could influence the fiduciary adviser or be perceived as a conflict of interest.

These would include but not be limited to:

- Fees paid by plan sponsor
- Fees paid by participant
- Fees withdrawn from plan assets
- 12b-1 fees
- Transfer agent fees
- Commissions
- Sales charges
- Compensation advances
- Non-cash compensation
- Salary and bonuses
- Other incentive compensation

When more than three of these compensation types are determined to be material, the disclosures should be made in aggregated as “annual costs” and “one time costs”.



3. What challenges might be encountered in assembling and/or presenting the information on fees and compensation described in section 408(g)(6)(A)(iii) in a manner that is clear and understandable by the average plan participant? Are there any suggestions as to how these challenges can be addressed by the Department?

Four types of challenges can be reasonably anticipated:

- 1) Willingness to Make Disclosures. Private compensation arrangements in firms that are affiliated with prospective fiduciary advisers will not be willing to disclose these arrangements.

The Department can address this challenge by defining what must be disclosed to include only those items that have a material effect on the fiduciary adviser that influences the participant's investment selection. Material effect can be defined as over 1% of fiduciary adviser's income or net worth. Investment selection includes the choices participants make as well as the investment options available in the plan.

- 2) Comparability of Disclosures. Current practice is to make disclosures that are most easily obtained from the regulatory environment and computer systems in effect. Considering that fiduciary advisers may include RIAs, Banks, Insurance companies and Broker/Dealers there is likely to be variation in disclosures. The issue of comparability is of greatest importance for plan sponsors to make prudent selection of fiduciary advisers.

The Department can address this challenge by defining two methods for computing fee disclosures; one for fiduciary advisers with non-varying fees [section 408(g)(2)(A)(i)] and another for those using a computer model [section 408(g)(2)(A)(ii)].

- 3) Access to Information. Prospective fiduciary advisers may not have access to complete information from affiliated companies. For example, independent practices may not be privy to information from their broker/dealer firms.

The Department can address this problem by permitting a fiduciary adviser to disclose that the information is not available and declare that unavailable information is not believed to be relevant.





Comments to EBSA on Fee Disclosure

- 4) Making Presentation Understandable. The primary challenge is that there could be an unlimited number of versions for different unique groups of participants.

The Department can address this defining what constitutes a unique group and a level of understanding expected for each group. Groups could be defined as one or more plans with the same prevailing level of academic accomplishment. So that plans where most employees are high school graduates would constitute one group and another might be for plans where high school undergraduates are dominant and a third for plans where college graduates are the norm.

4. Is there a form or format for presenting information on fees and compensation described in section 408(g)(6)(A)(iii) (e.g., narrative, chart, combination of both) that might be particularly suitable in giving participants a clear and understandable description of the fees and compensation received by a fiduciary adviser or its affiliates? Is there an optimal time frame, relative to when the advice is provided, for providing this information to participants and beneficiaries? What impact, if any, will the receipt of a model form have on investment decisions made by participants and beneficiaries?

The Appendix contains a sample of a presentation that puts fees and compensation in a form that is likely to be read, understood and used appropriately by both plan sponsors making prudent selection of a fiduciary adviser and a participant seeking advice.

This presentation is best made to plan sponsors before the selection of the fiduciary adviser. This disclosure is an essential part of the required prudent selection.

This presentation should be made to participants (or beneficiaries) before he/she decides to enroll for the fiduciary adviser's services. This enrollment should acknowledge the receipt of the presentation (electronically or on paper).

Participants should also receive an annual statement of fees concurrent with the annual renewal of the eligible investment advice arrangement.

As discussed earlier, the impact of the receipt of a model form will depend greatly on its presentation and context. This will vary from having no effect on investment decisions, on one hand, to being the primary deciding factor in whether to use the fiduciary adviser at all.

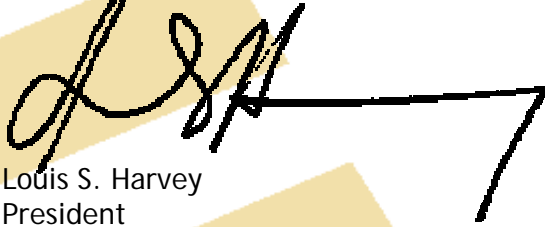


Comments to EBSA on Fee Disclosure

5. Persons that may qualify as "fiduciary advisers" are invited to provide forms that they currently use, or might use, to provide the kinds of fee and compensation information described above. As described in ERISA section 408(g)(11)(A), "fiduciary advisers" may include investment advisers registered under the Investment Advisers Act of 1940, certain banks and similar financial institutions, insurance companies qualified to do business under the laws of a State, and brokers or dealers registered under the Securities Exchange Act of 1934. Commenters are reminded that submissions are made solely for the purpose of assisting the Department. Accordingly, no inferences should be drawn as to whether the forms submitted meet the standards for presentation described in ERISA section 408(g)(8)(A).

DALBAR is not a prospective fiduciary adviser but maintains an extensive inventory of written and online communication that contain disclosures. This material can be made available to the Department, if requested.

Thank you for your consideration of these comments in developing the final regulations.



Louis S. Harvey  
President