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March 6, 2007

Re: Congressional Committee Reviews 401(k) Fees

Dear Clients and Other Friends:

The Committee Agrees: Enhanced 401(k) Fee Disclosure is Needed:

Today the U.S. House of Representatives *Committee on Education and Labor* held a hearing titled, "Are Hidden 401(k) Fees Undermining Retirement Security?" Witnesses at the hearing were:

Barbara Bovbjerg
Director for Education, Workforce
and Income Security Issues
U.S. Government Accountability
Office
Washington, DC

Matthew Hutcheson
Independent Pension Fiduciary
Tigard, Oregon

Stephen Butler
President and Founder, Pension
Dynamics Corporation
Contra Costa County, CA

Robert Chambers, Esq.
Partner, Helms, Mulliss & Wicker,
PLLC and Chairman, American
Benefits Council
Charlotte, NC

These witnesses were in agreement that further disclosure of 401(k) fees by providers to plan sponsors, plan participants and to the government (via Form 5500) is needed.

To summarize the testimony,* Mr. Hutcheson and Mr. Butler stated their views that 401(k) fees are generally too high (impacting investment returns over the years) and not well understood by plan sponsors or plan participants mainly due to poor disclosure practices. Mr. Chambers testified that 401(k) fees can vary along a range of reasonable fees. He noted that smaller plans and plans with a greater level of services generally pay higher fees relative to larger plans or plans with less "bells and whistles." He agreed that fee disclosure practices could be enhanced, though he cautioned that fees are not the exclusive consideration for fiduciaries in selecting or monitoring service providers. Ms. Bovbjerg provided the U.S. GAO's view that greater 401(k) fee disclosure is needed. While she asserted that the Department of Labor is expected to further address disclosure requirements, she also suggested that clarifying legislation may be necessary.

Members of the committee expressed agreement with the witnesses that greater disclosure of 401(k) fees is needed. The committee noted, however, that they do not yet have a suggested legislative response to this need. The committee hearing comes at a time when several

* Testimony from the hearing is available on the Web at <http://edlabor.house.gov/hearings/fc030607.shtml>

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highly publicized class action lawsuits have been initiated against plan sponsors and service providers attacking 401(k) plan fees.

Clear and Full 401(k) Fee Disclosure:

Plan sponsors should continue to review fee arrangements with their 401(k) plan service providers to assure that fees are understood and reasonable for the services provided. Plan sponsors are also well-advised to assure that plan participants receive fee disclosures, especially as required by ERISA §404(c) for participant-directed accounts.

Plan service providers should seek to provide clear and full disclosure of 401(k) fee arrangements. Though Congress could well require additional disclosures in the future, service providers that are providing full disclosure of fees will be better positioned to adopt new approaches and their plan sponsor clients should not be surprised by the type or level of fees identified in any future disclosures.

Sample 401(k) Fee Disclosures are Available:

Industry groups and the Department of Labor have made sample 401(k) plan fee disclosures available. These sample disclosures or disclosures based on them could be used by service providers currently while further Department of Labor and Congressional deliberations on the matter are taking place. These samples can be accessed at the following Web sites:

DOL Sample 401(k) Fee Disclosure to a Plan Sponsors (circa 1999):

<http://www.dol.gov/ebsa/pdf/401kfefm.pdf#search=%22dol%20fee%20disclosure%20%22>

Investment Company Institute (“ICI”) Proposed Disclosure (2005) – click on “enclosure” at the end of this comment letter from the ICI to the Department of Labor.

http://ici.org/statements/cmltr/05_dol_disclos_sched_com.html#P9_1261

ICI and other industry groups’ Suggested “Data Elements” for 401(k) Fee Disclosures (2006):

http://ici.org/statements/cmltr/06_dol_fee_tool.pdf

American Society of Pension Professionals and Actuaries (“ASPPA”) Suggested Plan Participant 401(k) Fee Disclosure (2005) – click on “sample form” at the end of this comment letter from the ASPPA:

<http://www.aspa.org/archive/gac/2005/2005-11-30-fees.htm>

Plan sponsors and service providers need to continue to monitor 401(k) fee disclosure requirements. Please contact us with any questions.

Sincerely,

Theodore K. Rice

TKR/ram