

# A PRIMER ON PLAN FEES

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AMERICAN BANKERS ASSOCIATION  
COMMITTEE ON INVESTMENT OF EMPLOYEE BENEFIT ASSETS  
THE ERISA INDUSTRY COMMITTEE  
THE FINANCIAL SERVICES ROUNDTABLE  
INVESTMENT ADVISER ASSOCIATION  
INVESTMENT COMPANY INSTITUTE  
NATIONAL ASSOCIATION OF MANUFACTURERS  
PROFIT SHARING/401k COUNCIL OF AMERICA  
SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION  
SOCIETY FOR HUMAN RESOURCE MANAGEMENT  
UNITED STATES CHAMBER OF COMMERCE

## ***INTRODUCTION***

ERISA provides many safeguards for the protection of workers' retirement assets. Plan assets must be held in a trust that is separate from the employer's assets. The fiduciary of the trust (normally the employer or committee within the employer) must operate the trust for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan. In other words, the fiduciary has a duty under ERISA to ensure that any expenses of operating the plan, to the extent they are paid with plan assets, are reasonable.

## ***PLAN FEES***

As Congress examines retirement plan fees, it is critically important that policymakers have accurate information regarding such fees. The vast majority of participants in ERISA plans have access to capital markets at lower cost through their plans than the participants could obtain in the retail markets because of economies of scale and the fiduciary's role in selecting investments and monitoring fees. The level of fees paid among all ERISA plan participants will vary considerably, however, based on variables that include plan size (in dollars and/or number of participants), participant account balances, asset mix, and the types of investments and the level of services being provided. Below is data from surveys conducted by various organizations that monitor and analyze plan fees. The studies reflect, in particular, the impact of plan size and average account balances on fees:

**CEM Benchmarking Inc.** — CEM is a benchmarking company that serves 300 of the world's largest public and corporate pension plans in the US, Canada, Europe and Australia. A study of 88 US defined contribution plans with total assets of \$512 billion (ranging from \$4 million to over \$10 billion per plan) and 8.3 million participants (ranging from fewer than

1,000 to over 100,000 per plan) found that **total costs ranged from 6 to 154 basis points<sup>1</sup> (bps)** of plan assets in 2005. Total costs varied with overall plan size. Plans with assets in excess of \$10 billion averaged 28 bps while plans between \$0.5 billion and \$2.0 billion averaged 52 bps. Further, costs depended on the average account balance. Plans with an average account balance less than \$55,000 paid four bps more in administrative compliance costs than plans with an average account balance exceeding \$55,000. Total costs were also affected significantly by asset mix. Costs rose as the proportion of plan assets invested in domestic small cap stock and alternative investments (i.e., real estate) increased. In a separate analysis conducted for the Profit Sharing / 401k Council of America, **CEM reported that, in 2005, its private sector corporate plans had total average costs of 33.4 bps and median costs of 29.8 bps.**

**HR Investment Consultants** — HR Investment Consultants is a consulting firm providing a wide range of services to employers offering participant-directed retirement plans. It publishes the **401(k) Averages Book** that contains plan fee benchmarking data. The 2007 edition of the book reveals that **average total plan costs ranged from 159 bps for plans with 25 participants to 107 bps for plans with 5,000 participants.**

**Committee on Investment of Employee Benefit Assets (CIEBA)** - CIEBA is the voice of the Association of Financial Professionals (AFP) on employee benefit plan asset management and investment issues. CIEBA represents more than 115 of the country's largest pension/retirement funds. Its members manage \$1.4 trillion in defined benefit and defined contribution plan assets, on behalf of 16 million (defined benefit and defined contribution) plan participants and beneficiaries. **A 2005 survey of 109 CIEBA members revealed that plan costs paid by defined contribution plan participants averaged 22 bps.**

### ***DEPARTMENT OF LABOR FEE TRANSPARENCY INITIATIVES***

Fee disclosure and transparency present complex issues. Amending ERISA through legislation to prescribe specific fee disclosure will lock in disclosure standards built around today's practices and could discourage product and service innovation. The Department of Labor (DOL) has announced a series of regulatory initiatives that will make significant improvements to fee disclosure and transparency. **The undersigned support the DOL's efforts. We believe that this is the best approach to enhance fee transparency in a measured and balanced manner and we urge Congress to delay taking legislative action until the Department of Labor has completed its work.** The DOL's initiatives are as follows:

**Annual Reporting Requirements** Among the new impending fee disclosure obligations are revised annual reporting requirements for plan sponsors. DOL is about to finalize modifications to the Form 5500 and the accompanying Schedule C, on which sponsors report compensation paid to plan service providers. The modifications will expand the number of service providers that must be listed and impose new requirements to report service provider revenue-sharing. The final regulations implementing the new Form 5500 are expected in the very near future and are expected to first be applicable to the 2009 plan year.

**Service Provider Disclosure Obligations** DOL also intends later this year to issue a revised regulation under ERISA Section 408(b)(2), which is a statutory rule dictating that a plan may pay no more than reasonable compensation to plan service providers. The expected proposal

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<sup>1</sup> One basis point is one-hundredth of one percent — 100 basis points equals one percent.

is designed to ensure that plan fiduciaries have access to information about all forms and sources of compensation that service providers receive (including revenue-sharing). Both sponsors and providers will be subject to new legal requirements under these proposed rules, including an anticipated requirement that all third party compensation be disclosed in contracts or other service provider agreements with the plan sponsor.

**Participant Disclosure Rules** The DOL's remaining initiative focuses on revamping participant-level disclosure of defined contribution plan fees. DOL issued a Request for Information ("RFI") in April 2007 seeking comment on the current state of fee disclosure, the existing legal requirements and possible new disclosure rules. Comments were filed by July 24, 2007. DOL has indicated that it intends to propose new participant disclosure rules early in 2008 that will likely apply to all participant-directed individual account retirement plans.

### ***PRINCIPLES FOR REFORM***

We support regulatory reforms that reflect the following principles:

- **Sponsors and Participants' Information Needs Are Markedly Different.** Any new disclosure regime must recognize that plan sponsors (employers) and plan participants (employees) have markedly different disclosure needs.
- **Overloading Participants with Unduly Detailed Information Can Be Counterproductive.** Overly detailed and voluminous information may impair rather than enhance a participant's decision-making.
- **New Disclosure Requirements Will Carry Costs for Participants and So Must Be Fully Justified.** Participants will likely bear the costs of any new disclosure requirements so such new requirements must be justified in terms of providing a material benefit to plan participants' participation and investment decisions.
- **Information About Fees Must Be Provided Along with Other Information Participants Need to Make Sound Investment Decisions.** Participants need to know about fees and other costs associated with investing in the plan, but not in isolation. Fee information should appear in context with other key facts that participants should consider in making sound investment decisions. These facts include each plan investment option's historical performance, relative risks, investment objectives, and the identity of its adviser or manager.
- **Disclosure Should Facilitate Comparison But Sponsors Need Flexibility Regarding Format.** Disclosure should facilitate comparison among investment options, although employers should retain flexibility as to the appropriate format for workers.
- **Participants Should Receive Information at Enrollment and Have Ongoing Access Annually.** Participants should receive fee and other key investment option information at enrollment and be notified annually where they can find or how they can request updated information.