

## COMMENT LETTER

May 26, 2005

# ICI Comment Letter on Model Disclosure Schedule for Plan Sponsors to DOL (pdf)

By Electronic Delivery and Regular Mail May 26, 2005 Mr. Robert Doyle Director, Office of Regulations and Interpretations Employee Benefits Security Administration U.S. Department of Labor 200 Constitution Avenue, NW, Suite N-5669 Washington, DC 20210 Re: Model Disclosure Schedule For Plan Sponsors Dear Bob: As discussed during our last meeting, we are submitting for your consideration the enclosed model schedule that is designed to provide plan sponsors with information about "revenue sharing" arrangements that may present conflicts of interest. Our proposal builds on the model 401(k) fee disclosure form that the Institute, along with the American Bankers Association and the American Council of Life Insurers, developed a number of years ago under the Department's leadership. That form is a valuable tool because it provides plan sponsors with detailed information about the total cost of maintaining a plan. The current form does not directly address revenue sharing, however, because the form does not focus on how the total fee for plan services is allocated among various service providers. The enclosed schedule, which addresses these payments, is designed to be part of the current model fee disclosure form. Proposed Schedule The disclosure schedule we have developed, consistent with our testimony before the ERISA Advisory Council last fall, provides information about a service provider's receipt of compensation, including revenue sharing, in connection with its services to a 401(k) plan. The disclosure schedule is intended to address all service providers that are compensated by unaffiliated parties in connection with a plan. The schedule, for example, indicates whether a plan consultant that recommends a service provider or an investment option to a plan is being compensated by those parties. Firms that provide recordkeeping and administrative services also are covered. In addition, the schedule reports receipts (as opposed to payments) because the recipient of plan-related compensation is the only party with direct knowledge about all of its compensation sources. Letter to Mr. Robert Doyle May 26, 2005 Page 2 Payments among affiliated service providers are not covered by the model schedule because this information is of limited additional benefit to plan sponsors and providing the information entails practical difficulties. This information is not necessary because the sponsor already knows that the entities are affiliated and that their interests are aligned toward ensuring an ongoing relationship with the plan. The plan sponsor knows the critical fee information with respect to the affiliated arrangement: the aggregate compensation actually paid to the affiliates. We are also mindful that providing payment data for affiliates presents practical difficulties. Our members tell us that cost allocations between affiliates (for services such as recordkeeping) are typically bookkeeping estimates of costs. These estimates are based more on accounting methodologies than market rates, and thus may not be particularly useful to plan sponsors. Preliminary Feedback from Other Trade Groups The preliminary feedback we have received from other retirement-focused

trade associations with which we have shared the draft generally has been positive. We will continue to work with these and other groups to build broad support for a form that enhances disclosure to plan sponsors. Two comments concerning the schedule's scope were raised during our discussions with these other groups. One comment was that the schedule should address only receipts by pension consultants and other investment professionals that recommend or sell investment products to plans. The second comment was that the schedule should disclose receipts by both affiliated and unaffiliated providers. We believe that our proposal strikes the appropriate balance. \* \* \* As we previously discussed, we believe that it would be helpful for the Institute and other interested trade associations to meet with you and your colleagues to discuss the model schedule. In the meantime, if you have any questions or would like additional information, please do not hesitate to contact me at (202) 326-5815, Keith Lawson at (202) 326-5832, or Thomas Kim at (202) 326-5837. Sincerely, /s/ Elizabeth R. Krentzman Elizabeth R. Krentzman General Counsel

Enclosure cc: Ann L. Combs Alan D. Lebowitz Bradford P. Campbell Louis Campagna John J. Canary Enclosure to May 26, 2005 Letter PROPOSED SCHEDULE TO THE MODEL 401(k) FEE DISCLOSURE TOOL OVERVIEW The attached model Schedule1 is designed to help plan sponsors determine whether and to what extent each service provider, in connection with its services to the plan, receives compensation, such as "revenue sharing," from unrelated service providers or investment products ("third parties"). This information is intended to help plan sponsors understand a plan's indirect payment of compensation, if any, to third parties and determine whether a third party's services or recommendations may involve a conflict of interest. For example, the Schedule would address whether a plan consultant that recommends a service provider or an investment option receives compensation from those parties. Plan sponsors could use the Schedule during the selection process, as well as after service providers have been engaged.

DESCRIPTION OF SCHEDULE Plan sponsors or service providers may fill out the Schedule. The Schedule contains three sections. Section I. Section I identifies the service provider ("XYZ Company") that receives the compensation from third parties. XYZ Company might be, for example, a third-party recordkeeping firm, a plan consultant, a broker-dealer, a financial adviser, or a directed trustee. Section II. Section II provides categories of plan services that service providers might offer. Specific boxes would be checked that correspond to XYZ Company's services to the plan. Five of these categories track the administrative services included in the current Schedule B – Plan Administration Expenses. The Schedule also provides several other categories; where one or more of these additional types of services apply, information about the services will be provided on a separate sheet attached to the Schedule. Section III. Section III provides a chart that includes each third-party source of compensation to XYZ Company and an estimate (in basis points or dollar amounts) of these receipts from each source (i.e., third-party service providers or nonproprietary investment products). These estimates may be of actual receipts for a specified period or anticipated receipts for a specified prospective period. In addition, these receipts are attributable to (and already reflected in) fees/services that are disclosed elsewhere in the model disclosure tool (e.g., in Schedules A through D). A separate sheet should describe the type(s) of fees/services to which the receipts are attributable.

1 The Schedule would be used as part of the Department of Labor's model 401(k) fee disclosure tool. The current model form is available at the Department's website: <http://www.dol.gov/ebsa/pdf/401kfefm.pdf>. ABC PLAN 401(k) PLAN DISCLOSURE FORM Schedule [F] SERVICE PROVIDER RECEIPTS FROM THIRD PARTIES

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I. NAME OF SERVICE PROVIDER: XYZ COMPANY II. XYZ COMPANY'S SERVICES TO ABC PLAN Admin/ Record- keeping\* (9) Participant Education/ Advice\* (9) Trustee/ Custodial Services\* (9) Compliance/ Plan Amendments\* (9) Loan Adminis- tration\* (9) Brokerage Services

(Specify)+ (9) Investment- Related Consulting (Specify)+ (9) Other Consulting (Specify)+ (9) Other (Specify)+ (9) III. XYZ COMPANY'S RECEIPTS FROM THIRD PARTIES (For the period of \_\_/\_\_/\_\_\_\_ through \_\_/\_\_/\_\_\_\_ )1 Source of Receipts Estimate of Receipts2 (In Basis Points or Dollars) Investment Product Sources: Other Sources: \* Schedule B of this form sets forth these plan administrative services and the related expenses. + These services should be described on an attached sheet. 1 These estimates may be of actual receipts for the specified period or anticipated receipts for a specified prospective period. 2 These receipts are attributable to fees disclosed elsewhere in the model disclosure tool (e.g., in Schedules A through D). A separate sheet should describe the type(s) of fees/services to which the receipts are attributable.

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