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KLINE FIDUCIARY AMENDMENT IS CRITICAL TO SUCCESS OF FEE DISCLOSURE LEGISLATION

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The 401(k) Fair Disclosure and Pension Security Act of 2009 fundamentally alters how plan fiduciaries will obtain information about plan fees. While many plan service providers voluntarily provide extensive fee disclosure, the Act requires all plan service providers to disclose their fees to plan fiduciaries prior to entering into an arrangement with a plan. This is a marked improvement over current law where plan fiduciaries bear the responsibility to obtain plan fee information. The Profit Sharing / 401k Council of America (PSCA) strongly supports this change. It will dramatically improve the ability of plan fiduciaries to meet their fiduciary duty to ensure that fees paid with plan assets are reasonable.

While the Act defines what fees will be disclosed, it also, directly and indirectly, provides that other fees are not required to be disclosed. For example, the Act provides that service providers do not have to disclose fees of less than \$5,000. The majority of plan fiduciaries will be unaware of these amounts and erroneously presume that service provider disclosures under the Act cover all plan fees. This creates a precarious situation for plan fiduciaries – they remain responsible as ERISA fiduciaries for certain fees that a service provider is not required to disclose.

The Kline fiduciary amendment reconciles the scope of the fees that a plan fiduciary must ensure are reasonable to the scope of fees that are required to be disclosed under the Act. The amendment does not relieve a plan fiduciary from the requirement to ensure that those fees are reasonable. It also clarifies that the unbundling provisions in the Act will not be construed to change current law regarding the ability of a plan fiduciary to ensure that plan fees are reasonable by considering the aggregate cost of the services.

PSCA believes that this amendment will provide much-needed certainty to plan sponsors as they strive to meet their fiduciary obligations. We urge all members of the committee to support it.

The Profit Sharing / 401k Council of America (PSCA) is a sixty-year-old non-profit association representing companies that sponsor profit sharing and 401(k) plans. PSCA speaks for over 1,200 companies who employ approximately five million plan participants throughout the United States. PSCA's members range in size from very small firms to conglomerates with hundreds of thousands of employees. All regard their profit sharing or 401(k) plans as vital factors in their business success.