

July 24, 2007

Via Electronic Filing

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

Attn: Fee Disclosure RFI

Ladies and Gentlemen:

The Investment Adviser Association¹ appreciates the opportunity to provide comments concerning the investment-related and plan administrative fee and expense information that should be provided to participants² in participant-directed individual account plans.³ Our comments support meaningful disclosure of expense and other information relevant to participants' investment decisions under their plans.⁴

Background

The IAA strongly supports efforts to ensure that plan participants are provided meaningful information about the fees and costs associated with the investment options under their defined contribution plans. Such information is critical to retirement security because of the increasing percentage of participants that are covered by defined contribution, rather than defined benefit, retirement plans. Under defined contribution plans, the amount of the retirement benefits payable to a participant depends upon the level

¹ The Investment Adviser Association (formerly the Investment Counsel Association of America) is a not-for-profit association that represents the interests of SEC-registered investment advisers. Founded in 1937, the Association's membership today consists of more than 500 firms that collectively manage in excess of \$8 trillion for a wide variety of individual and institutional clients. For more information, please visit our website: www.investmentadviser.org.

² For ease of reference, the use of the term "participant" includes both participants and beneficiaries.

³ Fee and Expense Disclosures to Participants in Individual Account Plans, 72 Fed. Reg. 20457 (2007) ("RFI").

⁴ We also concur generally with the principles outlined in the Joint Submission to the Department of Labor: Recommendations for Participant-Level Disclosure of Defined Contribution Plan Fee Information submitted today by 12 trade associations.

of contributions and the return on the underlying investments of his or her individual plan account. In many such plans, the participants, rather than the plan fiduciaries, determine the specific investments in which their accounts are invested.

Plan fiduciaries still play important roles in participant-directed plans, however, in that they are responsible for selecting the “menu” of options available to participants, as well as administering the plan. Under the fiduciary responsibility provisions of ERISA, plan fiduciaries must perform these duties in a prudent fashion, and solely in the interests of participants. In addition, plan fiduciaries retain the responsibility to administer the plan, and often engage various service providers to assist in such administration. For example, a third party recordkeeper may maintain participant accounts and process participant requests, such as investment changes and distributions. Plan fiduciaries may enter into a variety of arrangements to compensate these third parties.

In developing guidance in this area, the DOL should distinguish between the disclosures necessary for a participant to choose among a fixed set of investment options and the disclosures appropriate to plan fiduciary functions. Plan participants are not parties to the recordkeeping and other administrative arrangements established by the plan fiduciaries, and do not require detailed information concerning such agreements in order to direct the investment of their accounts. Similarly, their investment decisions are limited to choosing among those investment options that the fiduciaries have selected for the plan, and therefore do not require information concerning a broader universe of investments.

Disclosure of Information Relating to Plan Investment Options

Content

In response to the first set of questions posed by the RFI, we recommend that plan participants receive the following information concerning the investment options available under their plans:

1. The overall expense ratio applicable to the option;
2. The effects of such fees on a \$10,000 investment in the option;
3. The option’s historical investment performance;
4. Identification of the investment objective and risk/return characteristics of the option; and
5. “Benchmark” expense ratios and performance data for other investments with similar investment objectives and risk/return characteristics.

The first four categories would provide information specific to the particular investment, and the fifth category would provide context to the information in the first four categories by providing average expense ratios and performance for similar types of investments.⁵

The information detailed above should be accompanied by a short explanation that the consideration of fees should constitute only one component of the participant's decision-making process. In this respect, undue attention to fees to the exclusion of other factors might lead participants to invest their entire accounts in money-market and other stable value investments in order to incur the lowest fees. Such short-term investments generally are not considered suitable as the exclusive investments for participants saving for long-term retirement needs.

In addition to this expense information, plan participants should receive details concerning any charges that may be assessed directly against their accounts in connection with plan investment transactions. For example, any charges that might be triggered upon purchase or sale of a particular option (such as a commission, a contingent deferred sales charge, a surrender charge, or a market value adjustment) are relevant to a participant's assessment of the consequences of choosing a particular investment, and may affect his or her ultimate return.

Furthermore, this information (or its reasonable equivalent) should be available to participants with respect to all of the investment options available to them under the plan, in order that participants may compare directly the applicable fees.⁶ Failure to do so might lead participants to believe mistakenly that certain investment options do not involve any expenses.

Delivery and Format

We believe that DOL regulations should require that the information described above be furnished to plan participants by plan fiduciaries. Such regulations, however, should allow plan fiduciaries to tailor the information in a manner that is responsive to the circumstances of their workforce, plan, and plan options. We also urge the DOL to allow and encourage the use of electronic media, such as e-mail, internet and intranet communications, including relevant links to providers' websites. Such an approach would serve to reduce the substantial preparation and printing costs inherent in new disclosure rules, while also providing the most up-to-date information concerning investment options.

Summary information would be preferable to lengthy descriptions in conveying these important disclosures to plan participants. In addition, although a completely uniform format may not be feasible for a given menu of investments, to the extent possible,

⁵ Information concerning the impact of fees and expenses on a specific individual participant's account would be difficult and costly to calculate. We therefore would not support requiring disclosure of participant-level information in this regard.

⁶ We note, however, that this information would not be readily available in usable form with respect to options available under a brokerage window program allowing participants to invest in a wide number and variety of investments, such as individual stocks.

the information should be provided in a consistent format that facilitates comparisons among the options. The disclosure should avoid excessive detail, and yet provide key information to participants deciding among plan investments, in a format that is clean, simple, and presented in plain English. Such a format would be well-suited to the average plan participant and cost-effective for the plan.

Investment Education

The IAA supports investment education for participants in participant-directed plans, and commends the Department's work in developing the booklet entitled, "A Look at 401(k) Fees," in this regard. Although plan fiduciaries may determine to provide additional materials, such as glossaries of plan and investment terms, any DOL guidance in this area should allow and encourage flexibility by plan fiduciaries in determining the type and extent of investment education appropriate for the specific workforce, plan and plan options, as well as the plan participants' access to internet resources.

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

This portion of the RFI addresses administrative fees (at both the plan and individual account levels), as opposed to investment-related fees. To the extent such administrative fees are paid for by participants as a set individual charge (e.g., loan or QDRO fee) or as a pro rata or per capita share of aggregate plan costs, we believe that participants should have an understanding of the actual amounts charged to their individual account either through descriptions in the plan's Summary Plan Description or through separate disclosure documents. Pro rata or per capita charges should be disclosed upon enrollment and annually thereafter, while set individual charges should be disclosed at the time that the participant initiates the transaction that triggers the charge, such as a QDRO, loan or similar request. In addition, the assessment of any such fees against an individual account should be reflected in the participant's quarterly account statement.

On the other hand, we do not believe that the actual aggregate amounts paid for plan administrative expenses (i.e., audit fees, legal fees, trustee fees, etc.) would be helpful to plan participants in that these fees are determined under arrangements negotiated between the plan fiduciaries and service providers. Given that the participants play no role in establishing audit, legal, trustee, or recordkeeping arrangements, and, therefore, have no context in which to assess their reasonableness, disclosure of the financial details of such arrangements would not be helpful or relevant to the average participant. Of course, to the extent that a participant wished to access such information, he or she could consult the plan's Form 5500 for plan-level expense details.

Distinctions Between Participants in 404(c) Plans and Participants in Non-404(c) Plans

The RFI also requests comment concerning the distinctions (if any) between the informational needs of participants in 404(c) plans and participants in non-404(c) plans.

We note that plan fiduciaries of non-404(c) plans retain fiduciary responsibility under ERISA for participants' investment choices. The participants' need for information (and the consequences of not obtaining such information) might not be considered as critical under such circumstances. On the other hand, as a matter of public policy, equivalent disclosure under both 404(c) and non-404(c) plans may be preferable in order to encourage appropriate investment choices in all participant-directed plans.

In light of these factors, the IAA recommends that any DOL rules on investment disclosures to participants responsible for directing their plan investments not distinguish between 404(c) and non-404(c) plan participants.

Conclusion

We truly appreciate the opportunity to provide our views on these important issues. Please do not hesitate to contact me if you have any questions or would like any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Karen L. Barr".

Karen L. Barr
General Counsel