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September 8, 2008

FILED ELECTRONICALLY

Office of Regulations and Interpretations  
Employee Benefits Security Administration, Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, D.C. 20210  
Attn: Participant Fee Disclosure Project

RE: Proposed Participant Fee Disclosure Regulation

Dear Sir or Madam:

Vanguard appreciates the opportunity to submit these comments on the Department's proposed regulation regarding the fiduciary requirements for disclosure of fees to plan participants. Our experience with providing full and candid disclosure of plan and investment fees to our 401(k) plan-sponsor clients positions us well to comment on this very important issue.

**1. Vanguard supports the Department's proposal to provide fee and expense information in a comparative format.**

Vanguard applauds the Department for its focus on fee disclosure to both plan sponsors and participants. Vanguard has been committed to the principle of straightforward and helpful disclosure of plan fees and expenses to participants for many years, and we have demonstrated this commitment through the provision of such information in varying contexts. We also believe that fees should not be considered in isolation, but rather they should be integrated into a broader decision regarding risk, return and cost.

In particular, Vanguard strongly supports the Department's proposal to require fiduciaries to disclose fee, return and other relevant information in a chart or similar format that enables participants to easily compare fee and expense information. Vanguard has provided comparative investment information in a chart-like format on participant quarterly benefit statements for several years. Participants have told us that this format makes it much easier to make "apples-to-apples" comparisons when they make their plan asset allocation decisions. Our experience with participant communications has taught us that summary information simply presented is more appealing visually to the average participant and more likely to be read as a result.

**2. Vanguard supports the Department's proposal to disclose in a manner consistent with the Investment Company Act of 1940.**

Vanguard also strongly supports the Department's proposal to have both annual total return and operating expense disclosures subject to the same standards that apply to mutual funds under the Investment Company Act of 1940 (the "1940 Act"). These standards have a proven track record of providing prospective and current investors and their advisors with an accurate and consistent method to compare how a fund is performing – and at what expense level – in order to make informed investment decisions.

We note that the Department specifically requested comment as to how the proposed rules may apply for investment funds and products that are not subject to the 1940 Act. In the past, we have effectively applied the guidelines set forth by the Securities and Exchange Commission in Form N-1A in our disclosures related to non-1940 Act investment funds and products such as collective trusts, unitized stock funds and separate stable value investment accounts, particularly when it comes to determining an annual operating expense ratio for these investments. In those cases, the annual operating expenses, which generally include investment advisory and other management expenses, administrative expenses (audit, legal, accounting, etc) and distribution expenses, are divided by average net assets to determine the annual operating expense ratio. We are confident that the SEC's guidance in Form N-1A and elsewhere provides enough of a roadmap to enable non-1940 Act funds and products to follow this process.

**3. Required disclosures should be permitted to be delivered electronically unless requested to be received in paper format.**

Vanguard is pleased to see the Department's continued support of electronic disclosures to plan participants. Vanguard strongly supports the utilization of electronic delivery methods for disclosures wherever possible. Our data shows that plan participants prefer to access information on the web; in fact, the number of registered users who transact on Vanguard's website has steadily and dramatically increased over the years and we fully expect that trend to continue.

In addition, electronic delivery is more effective and efficient than paper-based options and permits immediate access and delivery of information. Increasingly, electronic communication is the main channel plan sponsors utilize not just for plan-related communications, but for all employee communications.

We encourage the Department to reconsider the application of its existing rules on electronic delivery to the proposed regulation, and instead permit the information required to be delivered in electronic format where possible. Under the Department's current rule regarding the use of electronic delivery, a participant must affirmatively consent to receive notices in electronic form *and* reasonably demonstrate their ability to access the information electronically. Consent is not required if a participant has the ability to access electronic documents in a location where they are expected to perform their duties as an employee and that the access is an "integral" part of their duty as an employee. Because plan service providers are unable to completely assess these criteria at the participant level, it is difficult for service providers to comply with the Department of Labor's current rule regarding electronic delivery.

We feel that the approach of looking to Treasury Department rules relating to the use of an electronic medium to provide notices is a workable alternative here. Under the Treasury Department rules, a service provider would be able to provide notices electronically if (in addition to meeting other conditions): (i) the service provider's electronic medium is a medium that the participant has the effective ability to access, and (ii) a free paper copy of the notice is made available to the participant.

Vanguard and other service providers appreciated the flexibility that the Department gave in the recent regulations under ERISA section 404(c) implementing Qualified Default Investment Alternative rules, which allowed plans the choice of following either guidance issued by the Department of Treasury or the Department of Labor when providing disclosures electronically. We would encourage the Department to do the same in this context.

**4. Disclosures provided on or before plan enrollment are more effective than on or before eligibility.**

As a general policy matter, the proper disclosure of fees is of great importance at the time a participant enrolls in the plan and is making investment decisions, rather than at or before the time an individual becomes eligible to participate in the plan as is contemplated under the proposed regulation. Plan sponsors are already tasked with the duty to carefully evaluate all plan investment-related fees and to determine that they are reasonable. The primary purpose of the required disclosures to plan participants is to inform the participant as to the fees and expenses associated with their accounts and to allow them to consider these as they make decisions with respect to the allocation of their plan assets. If there is a large gap of time between eligibility and enrollment, fee disclosures may be forgotten or become stale.

As a practical matter, the use of enrollment instead of eligibility eliminates the challenge the proposed regulation would create for plans with immediate eligibility. Under the proposed regulation, immediate-eligibility plans would be required to provide investment and expense information prior to hire or on the first day of employment. By providing the information prior to enrollment, these important disclosures are provided at the time the participant is making decisions with respect to the plan, and, in our view, will be much more effective.

**5. Plan service providers should be permitted one year of good faith compliance to permit appropriate transition time to prepare the new disclosures.**

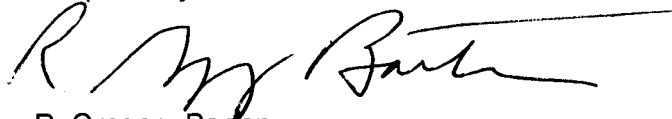
Recognizing the Department's desire to continue to improve fee and expense disclosure for participants, Vanguard supports the Department's efforts to require participants to receive the information they need and to avoid any unnecessary delay in implementing the required disclosures. Balancing these important considerations with the system and technology enhancements that are necessary to implement the changes suggested in the proposed regulation, Vanguard recommends that the Department offer plan fiduciaries one year of good faith compliance with the final regulation to permit appropriate transition time. Additional guidance would also be helpful to clarify that the annual notice requirement under the proposed regulation would begin at the end of the plan year of the year in which the regulation becomes effective.

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Vanguard appreciates the opportunity to provide these comments to the Department and we reiterate our support of the Department's efforts, which clearly will have a positive impact for plan participants. Please let us know if we can be of any additional assistance on this important initiative.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Gregory Barton". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

R. Gregory Barton  
Managing Director  
Institutional Investor Group