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Docket: EBSA-2008-0010

Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans; Proposed Rule

Comment On: EBSA-2008-0010-0001

Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans

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Submitter Information

Address:

AK,

General Comment

My firm is a fee-only Registered Investment Advisor. We have a large book of 401k clients - ranging from a few employees up to several thousand. We favor full fee disclosure and have gone to great lengths to disclose ours. The proposed regulations fail in one incredibly important way: they are silent on the subject of disclosing revenue-arrangements between the mutual fund companies and the plan's recordkeeper/administrator. They "final" regs should require their disclosure. Why? Because the essential point of the fee disclosure can be found under (c)(2)(i) re: does the fee "affect the balance of each individual account"? In the context of revenue sharing offset fees (colloquially known as Sub-transfer asset fees) the answer is a RESOUNDING "yes." American Funds is a simple example. Their Retirement ("R") mutual funds "share" different levels of recordkeeping offsets. Now, there is nothing nefarious about that. It's pragmatic. But, to say that the "value of individual accounts" is not affected by which R share class is used is ludicrous. E.g. an R class that "shares" 25 basis points with the recordkeeper with also show an approximate like reduction in investment return than the R class that shares no revenue. Ultimately, the simple/stupid/effective solution is to require the recordkeeper to disclose a) what its "gross" recordkeeping fee is b) which funds it uses "share" revenue with it to "offset" that "gross" fee, and c) what the level of revenue it receives from each of those funds. [To highlight the need for this disclosure, assume that the "gross" revenue fee it requires is 25 basis points - but it is collecting 35 basis points. Where does the excess go? And, because 404a requires fees to be reasonable - is it "reasonable" to keep the excess?] Anyway, as currently written the proposed Reg is just a lot of busy work. E.g. until it requires the disclosure of "gross" recordkeeping fees and revenue sharing offsets it is just procedural busy-work.