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July 24, 2007

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

Re: RIN 1210-AB07; Fee and Expense Disclosures to Participants in Individual Account Plans; 29 CFR 2550; 72 Federal Register 31441; April 25, 2007

Dear Mr. Robert Doyle:

The American Bankers Association (ABA) appreciates this opportunity to provide comments to the Department of Labor (Department) regarding its Request for Information (RFI) relating to the disclosure of plan administrative and investment-related fee and expense information to participants and beneficiaries in participant-directed individual account plans.

On behalf of the more than two million men and women who work for the nation's banks, ABA brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership – which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies, savings banks, and bankers banks – makes ABA the largest banking trade association in the country. Many of these institutions provide trust or custody services for institutional clients, including employee benefit plans covered by the Employee Retirement Income Security Act (ERISA), as well as services to individuals owning individual retirement accounts (IRAs). As of year-end 2006, banks and thrifts held more than \$19 trillion in fiduciary assets for both personal and institutional customers in 19 million accounts.¹ Of those assets, \$7.8 trillion are held by banks, savings associations, and non-deposit trust companies in defined benefit and defined contribution accounts.² As such, the Department's RFI is of great importance to the banking industry.

¹ FDIC Call Report Data, December 2006

² FDIC Call Report Data, December 2006

Summary

The Department has asked for suggestions and comments as to what extent rules should be adopted or modified or other action taken to ensure that participants and beneficiaries have the fee information they need to make informed decisions about the management of their individual accounts and the investment of their retirement savings. The Department has also requested commenters to address any other matters believed to be germane to the Department's consideration of fee and expense disclosure issues.

The ABA believes that plan participants should have comparable access with comparable information standards and that the Department should issue broadly applicable guidance regarding information that should be available to plan participants. We are providing some specific recommendations regarding overarching principles that should guide the Department during this deliberative process, as well as specifics regarding the type of information that should be available to plan participants to help them make their investment selections.

First, the ABA would respectfully suggest the following overarching principles to guide the Department throughout this process:

- A. The plan sponsor is the primary decision maker regarding investment information made available to plan participants.
- B. Different parties require different information.
- C. Participants should not be overwhelmed with information unnecessary to making an informed investment decision, and
- D. Service providers should provide appropriate disclosure on all pertinent fees charged to allow plan sponsors to compare options and evaluate service providers.

Second, while fee information is important to a plan participant's investment decision, other information can be very important to that decision, too, such as:

- Participant education about plan terms and conditions;
- Return/Performance of the various investment options;
- Fund benchmarking to compare investment options;
- Investment fees and expenses of the various options, and
- Certain administration expenses of the plan.

Discussion of Principles

- A. The plan sponsor is the primary decision maker regarding investment information made available to plan participants.

Plan sponsors are in the best position to know what information would be the most helpful to their employee-plan participants. Further, plan sponsors best understand what level of information would be informative and would not overwhelm plan participants. It is very difficult to generalize about the level of information that would be appropriate for all plan participants across the board.

Service providers, on the other hand, are not in such a favorable position. Service providers do not always have access to plan participants and thus cannot be responsible for providing participants with the needed information. Even when service providers have such access, it is infrequent and does not provide the service provider with meaningful understanding of plan participants' informational needs.

Lastly, as the party responsible for hiring the service providers and monitoring the fees and services provided by these firms, the plan sponsor will be most able to recognize any potential conflicts that may exist between plan service providers. In an unbundled situation where several service providers perform different services for the plan, the plan sponsor is the only party with the requisite ability to combine provider fee and service information in order to present a consolidated report to the participants.

B. Different parties require different information.

When examining fee disclosure, the appropriate level of disclosure should be measured according to the recipient of the information. There is information that a plan sponsor needs to know, information that the Department needs to know, and information that plan participants need to know.

This RFI is focused on information for plan participants; other Department projects are focused on the information needs of plan sponsors and the Department itself. As the RFI recognizes, the information plan participants need in order to understand their plan and to make informed investment decisions is clearly different from the information needed by plan sponsors or the Department itself.

The Department requests various information to ensure that a plan is being operated in accordance with ERISA and its implementing regulations. This information is typically received through the plan sponsor's filing of, and the Department's review of, the Annual Return/Report of Employee Benefit Plans (Form 5500). We note that the Department has recently proposed changes to the Form 5500 to increase the information it receives about service provider compensation.³

Plan sponsors, on the other hand, need information to determine whether or not they are paying reasonable fees given the nature and type of services being performed by a service provider. This includes information about expenses paid

³ 71 Federal Register 41616, July 21, 2006

to various services providers, as well as information about what services the plan sponsor is receiving for those payments. Knowing only the payments made does not provide the answer to reasonableness of fees – instead, the plan sponsor needs to analyze the services being received for that compensation. The Department is currently working on guidance in this area.⁴

For the fee project at issue here, relating to information for plan participants, it is important that the Department keep in mind that only certain information is helpful and appropriate for the plan participant. While there is a lot of information currently available and, certainly, even more that can be provided, it would be best to keep in mind that different parties have different informational needs and that excessive information not only can mask relevant information but can discourage the plan participant.

- C. Participants should be provided the appropriate information, and not be overwhelmed with information unnecessary to make an informed investment decision.

As initially discussed above, to provide plan participants with information that will be of most assistance to making an investment decision, it is imperative that they not be overwhelmed with unnecessary information. Certain information is not necessary to an individual participant's decision regarding which investment options to select. For example, information of the type required by the Form 5500 contains detailed and complex data that are likely to overwhelm most participants. That type of information should not be required to be provided to a plan participant, but it can be made available to participants upon request. This would strike the proper balance between information that is necessary for investment decisions and information that is of little direct interest.

Further, investment and expense information should be provided in their context. When looking at an expense number or ratio, it is important for a plan participant to understand why these numbers vary among investment options. For example, expenses for money market or fixed income funds are generally lower than expenses for an equity fund. Not surprisingly, fund expenses for a domestic equity fund are generally lower than those for an international equity fund. Simply presenting fund expenses without the context of the type of investment may result unintentionally in driving participants to the fund with the lowest expense ratio. For a variety of reasons, including diversification and investment goals, the lowest expense ratio fund is not necessarily the best option for that plan participant.

Additionally, it should be possible to inform participants that fund fees reflect expenses of other services required by plan sponsors, including the recordkeeping that is required for a participant directed pension plan that provides omnibus fund accounting, a call center, web functionality, participant advice and other tools to assist participants' investment decisions.

⁴ The Department anticipates proposing guidance under section 408(b)(2) in the near future.

- D. Service providers should provide appropriate disclosure on pertinent fees charged to allow plan sponsors to compare options and evaluate service providers.

As service providers, we have a responsibility to provide disclosures on the fees we charge. This type of information is important for a plan sponsor to have in assessing the reasonableness of fees. All service providers, from the various industries, should provide comparable information and meet comparable standards of disclosure.

This fee information should be focused on the relevant direct and indirect fees that are charged to the fund or plan sponsor. A plan sponsor is provided a fee schedule for services that will be incurred by the plan. The sponsor determines whether to pay those fees directly or to pass the costs on to the participants through fees charged against assets invested. The only relevant information for the participant is those charges that are paid by the participant, e.g. fees charged against assets, or fees paid directly by the plan participant.

Information that comes from the service provider to the plan sponsor should allow the plan sponsor to compare options to create the plan, as well as understand all the expenses involved. Other fee information provided by the service provider should address fees paid by plan participants. Plan sponsors will then be able to pass on these materials to plan participants to allow them to compare options under the plan, as well as understand the expenses involved. Above all, consistency in the method that fee information is disclosed to plan sponsors is key to allow for meaningful comparisons.

Discussion of Plan Participant Information Needs

In addition to fee information, plan participants should receive certain information from the Department or their plan sponsor to assist them in making retirement plan decisions. This information should also aid a plan participant in having a full picture of the pension plan.

1. Participant education about plan terms and conditions is important for plan participants to understand fully the choices they will face. Many of these items are merely terms that plan participants should be made aware of in reference to their options, but others are important for maximizing their savings.

First of all, plan sponsors should provide information to plan participants to assist them in understanding risk, as well as investment allocation. This includes, but is not limited to, understanding the following terms:

- Benchmarking
- Separately managed vs. bank commingled fund vs. mutual fund.
- Load
- Expense ratio
- Wrap fee

Plan participants also need to understand terms such as “recordkeeping”, “trust services”, “investment management.” For example, recordkeeping entails maintaining accurate and current indicative data for employees, processing payroll contributions, purchasing funds per the participant’s elections, processing loan payments, processing loan requests, distribution requests, creating participant statements and plan sponsor reporting, tax reporting, and completing compliance testing.

This is important for a plan participant to understand so that they understand the services received for fees charged, regardless of whether the fees are charged to the plan, a particular investment option, or the participant.

2. Return/Performance of the investment options in the plan that include 1 year, 3 year, 5 year and 10 year information, for example, can be valuable for the participant to know in order to make a sound investment decision. This information can be best provided together with the participant’s investment options. It is important information because it is indicative of how the option has performed historically, although not necessarily indicative of future performance. Reporting of returns at regular intervals provides some standardization to enhance the ability to compare the performances for different products.

3. Fund benchmarking is important for the participant to be able to compare the various options within the plan to a common performance standard, e.g. the S&P 500. A comparable index would need to be one that has similar objectives and similar investments within the portfolio, thus allowing a plan participant to see how a particular option performs in the same environment as the comparable indexes. Benchmarking enhances the best ability of participants to determine whether an investment option is an appropriate one given their particular retirement needs. By using a standard benchmark, this information would not be difficult to provide with the participant’s investment options.

4. Information about the investment expenses associated with the various options among which the participant may choose within the plan is important for helping the participant make the individual selections that are most valuable to that plan participant. This includes the expense ratio of a fund as well as any additional fees that may be charged to the plan participant for investing in that fund. Investment expense also would include the cost of hiring a third party investment manager to invest the funds on behalf of the participants.

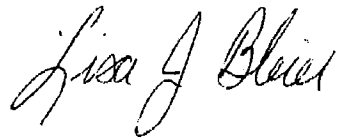
5. Information on certain administration expenses of the plan which may be charged to either a plan or plan participant should also be made available to the plan participant when relevant. There may be a recordkeeping fee, transactional fees (such as a fee for a participant loan or a fee for processing a distribution), fees for maintaining beneficiary information or providing enrollment services, and fees for completion of compliance testing or completing the Form 5500. The administrative fees that are relevant to the participant are those that the plan

sponsor has determined not to pay out itself and instead passes along to the participant.

Conclusion

The ABA appreciates the opportunity to offer comments on the Department's RFI regarding fee disclosures for plan participants. Please do not hesitate to contact the undersigned should you wish to discuss the issues raised in this letter.

Sincerely,

A handwritten signature in black ink that reads "Lisa J. Bleier". The signature is written in a cursive style with a large, prominent "L" and "B".

Lisa J. Bleier
Senior Counsel
American Bankers Association