
From: Eric E. Haas [mailto:ehaas@altruistfa.com]
Sent: Tuesday, May 29, 2007 3:01 PM
To: EBSA, E-ORI - EBSA
Subject: Comments on fee disclosure Rules under ERISA

Hello,

I write to respond to your request for comments regarding fee disclosure issues under ERISA.

Executive Summary
The biggest problem with defined contribution plans, in my opinion, is not inadequate disclosure. The biggest problem is that the plan fiduciaries set up plans with unacceptably high fees in the first place. It would be quite useful if the Department of Labor started enforcing the fiduciary duty that plan sponsors have towards beneficiaries by taking them to task for sponsoring plans with unnecessarily high fees. Alternatively, it would be nice if individuals were allowed to choose their own plan (i.e., not from a limited selection of vendors approved by the sponsor, but from ANY vendor). This would allow well-informed participants to bypass the problem entirely. Current proposals of increased disclosure merely allow the well-informed participant to understand how bad the plan is, and perhaps to identify the least-bad (i.e., least costly) offered investment therein.

A) The federal Thrift Savings Plan is among the best (i.e., lowest cost) 401(k)s available anywhere. One solution would be to expand it to be the one-and-only 401(k)-type retirement savings plan for everybody. This would eliminate the root problem of poor high-cost plans and investments.

B) Allow individual participants to select any investment provider, kind of like they currently are allowed to choose where to put their IRA. This option has the benefit of better choice for the participant, but at the cost of increased administrative burden for the plan sponsor (i.e., they'd have to mail out many checks to many different financial institutions each pay period).

C) Somehow set up some incentive to have low cost plans (or, perhaps a disincentive to having high cost plans). Perhaps you could prohibit the plan sponsor from passing on any costs to its participants in excess of some very low threshold (e.g., those that would be associated with the Thrift Savings Plan if option (A) above were approved). This would either force the plans to become more cost conscious or force them to pay for their poor choices, rather than forcing the innocent plan participants to pay dearly for the plan fiduciaries' poor decisions.

We will now address the questions specifically asked

1) What basic information do participants need to evaluate investment options under their plans?

a) How the investment is managed.
b) What are the costs associated with the investment.
c) NOT recent performance. This has been demonstrated to be largely irrelevant (see studies of mutual fund persistence, most notably Mark Carhart's "On Mutual Fund Persistence" in the 1997 *Journal of Finance)*.
d) The degree of diversification of the investment, like perhaps the number of holdings, or perhaps the percent of the fund's total assets represented by the ten largest holdings.
e) For stock investments, the current weighted average market cap and book to price ratio of each investment option. The Fama/French studies demonstrated that these two statistics alone determine 90 to 93 percent of the variation of stocks over time.
f) For bond investments, the current weighted average duration and credit quality of the portfolio. The Fama/French research likewise indicated that these two statistics describe the overwhelming majority of bond performance variation.

2) What specific information do participants need to evaluate the fees and expenses?

a) Knowing what the fees are, in a manner that allows for easy comparison with other investments, like in a table. Part of the problem these days is that the fees are either too hard to find (i.e., stuck in Prospectuses and/or Statements of Additional Information; or Form 5500 filings) or impossible to find for plan participants.
b) It might be nice to have some sort of idea of where the fees are relative to the very lowest fee and highest fee alternatives -- kind of like the "Energy Star" rating stickers put on appliances like refrigerators, etc. Thus, you could easily tell just by looking that a particular investment is either quite low or quite high in cost relative to similar investments.

3)
To what extent is the information participants need to evaluate investment options and the attendant fees and expenses not currently being furnished or made available to them? Should such information be required to be furnished or made available by regulation or otherwise? Who should be responsible for furnishing or making available such information? What, if any, additional burdens and/or costs would be imposed on plan sponsors or plans (plan participants) for such disclosures?

a) Currently, even if a participant knows what they should be looking for (e.g., expense information), it is either unavailable or hard to find. Participants are usually given detailed information about past performance, with the presumption that this is relevant (when it has been demonstrated not to be, see the persistence studies discussed above).

b) It seems unlikely that the fee/expense information will be provided unless it is required to be furnished for the following reason: the plan administrator/vendor typically has a conflict of interest associated with the fees of the fund in that they typically get "kickbacks" either in the form of 12b-1 fees or various other forms of compensation. Thus, while they have an interest in promoting high-fee alternatives, the participant wants (or should want) the low fee alternatives. Why would a vendor help a participant make a decision that will lessen the wealth of the vendor (i.e., by allowing the participant to choose a low-fee option)? They need to be required to do so. Either that or they need to be required to have no conflict of interest such as I am describing.

4)
Should there be a requirement that information relating to investment options under a plan (including the attendant fees and expenses) be provided to participants in a summary and/or uniform fashion? Such a requirement might provide that: A) all investment options available under a participant-directed individual account plan must disclose information to participants in a form similar to the profile prospectus utilized by registered investment companies; or B) plan fiduciaries must prepare a summary of all fees paid out of plan assets directly or indirectly by participants and/or prepare annually a single document setting forth the expense ratios of all investment options under the plan.\3\ Who should be responsible for preparing such documents? Who should bear the cost of preparing such documents? What are the burden/cost implications for plans of making any recommended changes?

This would seem to be a good idea, just to ensure that the information is adequately conveyed at all.

5)
How is information concerning investment options, including information relating to investment fees and expenses, communicated to plan participants, and how often? Does the information or the frequency with which the information is furnished depend on whether the plan is intended to be a section 404(c) plan?

Currently, fees and expenses are either not communicated at all or are usually hidden in prospectuses, statements of additional information, and/or Annual Form 5500 filings. This is inexcusable for this vitally relevant information to be so difficult for a participant to find.

6)
How does the availability of information on the internet pertaining to specific plan investment options, including information relating to investment fees and expenses, affect the need to furnish information to participants in paper form or electronically?

If the plan has an internet web site which prominently and easily makes the relevant information available, this can work. There shouldn't be any need to necessarily do it on paper, in my opinion. But then again, if the information is electronically only available by finding it in a Prospectus (available by Internet), Statement of Additional Information (available by Internet) or annual Form 5500 filing (available by Internet), that would still be inadequate.

7)
What changes, if any, should be made to the section 404(c) regulation, to improve the information required to be furnished or made available to plan participants and beneficiaries, and/or to improve likelihood of compliance with the disclosure or other requirements of the section 404(c) regulation? What are the burden/cost implications for plans of making any recommended changes?

Require that a comparison of all the relevant fees/expenses for all available investing vehicles be made readily available. This has virtually no cost burden.

8)
To what extent should participant-directed individual account plans be required to provide or promote investment education for participants? For example, should plans be required or encouraged to provide a primer or glossary of investment-related terms relevant to a plan's investment options (e.g., basis point, expense ratio, benchmark, redemption fee, deferred sales charge); a copy of the Department's booklet entitled ``A Look at 401(k) Fees'' (http://www.dol.gov/ebsa/publications/401k_employee.html) or similar publication; or investment research services? Should such a publication include an explanation of other investment concepts such as risk and return characteristics of available investment options? Please explain views, addressing costs and other issues relevant to adopting such a requirement.

I don't think that it is fair or reasonable to expect an employer/plan sponsor to educate their employees. In my opinion, requiring them to do so would end up unnecessarily adding LARGE expenses to the plan. However, if they could do so simply by providing a booklet, that might help some.

9) What information is currently furnished to participants about the plan and/or individual administrative expenses charged to their individual account? Such expenses may include, for example: audit fees, legal fees, trustee fees, recordkeeping expenses, individual participant transaction fees, participant loan fees or expenses.

Several of these fees are typically well-disclosed at present (i.e., the participant loan fees).

10) What information about administrative expenses would help plan participants, but is not currently disclosed? Please explain the nature and usefulness of such information.

Examples of types of administrative expenses that would be useful to be disclosed:
- For variable annuities, the mortality and expense fee.
- For variable annuities, any administrative fee in addition to the

mortality and expense fee.
- For variable annuities, redemption fees.
- Expense ratios of all investing vehicles (i.e., including management fees, 12b-1 fees, etc.)

The usefulness of knowing these fees should be obvious. All else being equal, an investing vehicle with lower fees (of any type) WILL be superior going forward to one with higher fees. Not only is it useful to compare investments and vendors by comparing fees, but it also allows one to determine if the fees are so high so as to completely offset the expected benefit of tax deferral that is the primary reason for the plan to exist in the first place.

11) How are charges against an individual account for administrative expenses typically communicated to participants? Is such information included as part of a participant's individual account statement or furnished separately? If separately, is the information communicated via paper statements, electronically, or via website access?

Most expenses aren't communicated to participants at all. Occasionally, some of them appear on statements, but it is usually unclear what the nature of those expenses showing up are.

12) How frequently is information concerning administrative expenses charged to a participant's account communicated?

Rarely, if ever.

13) What, if any, requirements should the Department impose to improve the disclosure of administrative expenses to plan participants? Please be specific as to any recommendation and include estimates of any new compliance costs that may be imposed on plans or plan sponsors.

a) It would be nice if ALL costs were well-disclosed in advance. For those that differ between investments and between vendors, they should be in a format where they are easily compared.
b) On an ongoing basis, it would be nice if most costs were separately detailed in participant statements, perhaps with fine print describing the nature of each such cost.

14) Should charges for administrative expenses be disclosed as part of the periodic benefit statement required under ERISA section 105?

Yes.

15) What, if any, distinctions should be considered in assessing the informational needs of participants in plans that intend to meet the requirements of section 404(c) as contrasted with those of participants in plans that do not intend to meet the requirements of

section 404(c)?

I don't see any distinctions as prudent.

16)
What (and what portion of) plan administrative and investment-related fees and expenses typically are paid by sponsors of participant-directed individual account plans? How and when is such information typically communicated to participants?

Very small portion, if any. And this is a large part of the problem. Plan sponsors typically don't worry too much about these plans because they are typically "free" to the plan sponsor, with virtually all costs being borne by the participants. Of course, the participants pay "through the nose" for the plan sponsor's inadequate attention to this vital issue.

17)
How would providing additional fee and expense information to participants affect the choices or conduct of plan sponsors and administrators, and/or that of vendors of plan products and services? Please explain any such effects.

It MIGHT cause plan fiduciaries to be more sensitive to providing good investing choices. It MIGHT cause vendors to be less greedy in providing only high-cost (i.e., high profits for the vendor) investment options.

18)
How would providing additional fee and expense information to participants affect their plan investment choices, plan savings conduct or other plan related behavior? Please explain any such effects and provide specific examples, if available.

It MIGHT allow them to better complain to their employers about poor choices. It MIGHT allow them to make better investing decisions (i.e., lower cost investments).

19)
Please identify any particularly cost-efficient (high-value but inexpensive) fee and expense disclosures to participants,
and to the contrary any particularly cost-inefficient ones. Please provide any available estimates of the dollar costs or benefits of such disclosures.

I don't understand the question.

Feel free to contact me directly if you'd like to further discuss these issues.

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