

EBSA encourages interested persons to submit their responses electronically by e-mail to [e-ORI@dol.gov](mailto:ORI@dol.gov),

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

RIN 1210-AB07

Fee and Expense Disclosures to Participants in Individual Account Plans

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Request for information.

Signed at Washington, DC, this 20th day of April 2007.

Bradford P. Campbell,

Acting Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

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Response offered by:

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Disclosure of Information Relating to Plan Investment Options	
1. What basic information do participants need to evaluate investment options under their plans? If that information varies depending on the nature or type of investment option (options offered by a registered investment company, options offered under a group annuity contract, life cycle fund, stable value product, etc.), please include an explanation.	The department needs to understand that there is a wide range of participant sophistication. The vast majority are not investment savvy. Therefore, a summary statement of the fees is vital to clear communication and understanding. It should be delivered in a format that allows them to seek greater detail but not inundate them with all the answers.
2. What specific information do participants need to evaluate the fees and expenses (such as investment management and 12b-1 fees, surrender charges, market value adjustments, etc.) attendant to investment options under their plans? If that information varies depending on the	There should be three basic answers provided to all participants: 1) the total expense charged to your retirement investments on a per investment basis including all categories of expenses possible. This should be in percentage format with no "industry lingo" allowed.

<p>nature or type of option, or the particular fee arrangement relating to options (e.g., bundled service arrangements), please include an explanation.</p>	<p>i.e. 1.00% 2) There IS/IS NOT a surrender charge, CDSC or MVA. If there IS, then a clear explanation of when it applies and if so how much. 3) Where can I easily look to find all of the detailed inventory of expenses. The format of this should be a similar format as used in mutual fund prospectus'. However, the format should be limited to the expense ratios.</p>
<p>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?</p>	<p>This depends entirely on service provider and investment manager. For example: Principal Financial Group has a very easy to use and clearly formatted expense detail calculation that demonstrates the total and weighted average expenses applicable at the plan level. It includes investment management expenses, plan administrative expenses that are charged to the assets, advisor compensation charged to the assets. You could also find unbundled arrangements where the diversity of providers, each of whom is deducting fees from the assets, makes it difficult to summarize and detail these expenses. Yes, this information must be required to be disclosed. However, the regulators must avoid the temptation to deliver these disclosures in a form such as a prospectus. Again, you must recognize the lack of sophistication of the average participant! This data should summarize facts and that is it! The plan sponsor must be delegated the responsibility to hire the appropriate parties to summarize the data. The services providers must have liability or they will shirk their responsibilities to the public. Therefore, it is up the sponsor to require their current provider(s) to the information or find one who can and will. I doubt most fully integrated and bundled service platforms will have any difficulty delivering this information. Therefore, there should be little or no cost to provide this. Some unbundled and exotic arrangements may have difficulty.</p>
<p>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</p>	<p>Yes, as I've said before, summary should be the format of delivery with the option for the participant to dig deeper via an easy to use web site or printed publication. However if the provider does have a web site, duplication and increased costs of printed materials is a hardship. A) Yes B) Yes i The vendor or investment manager ii This can be negotiated by the vendor, investment manager and sponsor. It should be an allowable expense of the plan for possible charge to the assets. iii Some are going to complain. Too bad. But if you make it an overly burdensome regulatory framework</p>

<p>indirectly by participants and/or prepare annually a single document setting forth the expense ratios of all investment options under the plan.</p> <p>i Who should be responsible for preparing such documents?</p> <p>ii Who should bear the cost of preparing such documents?</p> <p>iii What are the burden/cost implications for plans of making any recommended changes?</p>	<p>that is vague and non-specific, you will drive up the costs. The EBSA must coordinate with the SEC NASD and other regulators to establish a coordinated and uniform set of rules.</p>
<p>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?</p>	<p>The better providers already fully disclose in tabular format the expense ratios in the same table that they make available for investment reporting. Some are daily, some monthly and some quarterly. These do not currently translate to the plan level of expense deductions. This additional layer of information would be adequate if reported in a tabular format once per year.</p> <p>The frequency should not impact 404(c)</p>
<p>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?</p>	<p>As I've said earlier, the internet should be the dominant allowable communication method. Consideration should be given to e-mail distribution of pdf or hotlinks to the information. Paper is expensive and a waste of important resources. Most participants don't read the material and throw it away – they probably don't even recycle the paper.</p>
<p>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?</p>	<p>If these regulations were implemented, then 404(c) should merely be amended to reference them. I think these regulations go beyond 404(c) which is optional. These regulations should not be.</p> <p>This brings up an important point. For many years those of us in the advisor community who offer group annuity insurance sponsored products have had the disclosure requirement of a Schedule A as part of the Form 5500. This regulation should extend to all service providers earning compensation in all formats of payment, for all reasons that compensation is paid and for all methods of payment. i.e. 12(b)-1 fees, legal bills, investment advisory fees all should be reported on one schedule to the 5500 rather than the partial disclosure that occurs today. The presumption that a prospectus adequately discloses trail compensation is a fallacy. Let's level the playing field! All services disclose all fees in the same format and the same way.</p> <p>i.e. Plan is \$5,000,000 and I earn \$5,000, my compensation is 0.10%; investment manager charges flat fees of \$50,000 which are deducted from the plan, compensation is 1.00%.</p>

	<p>It is a simple and clear representation of the facts.</p> <p>For ease of calculation, these fee disclosures should be on a cash accounting basis.</p>
<p>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</p>	<p>There must be no requirement to promote investment education. There is no role for the government to define what is or is not "required investment education". With the exception of attempting to qualify for a section 404(c) safe harbor (which does not exist yet). In truth the QDIA regulations to be published later this summer should handle all of the needed solution to this problem.</p> <p>The retirement community has done extensive research and practical applications of every variant of investor education. Whether detailed or not, the consensus is that it has not worked. The department could blame the industry but that would be incorrect. For 22 years I've personally tried everything I could to develop educated participants. I've used my own materials and the best in the industries materials. The reality is, behavior is difficult to change and education doesn't do it in a large scale way. Thus, QDIA's are a rational legislative, regulatory and practical solution.</p>
<p>Disclosure of Information Relating to Plan and Individual Account Administrative Fees and Expenses</p>	
<p>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.</p>	<p>This information is typically expressed as a percentage of asset deduction but in some cases it is shown as a dollar amount deduction.</p>
<p>10. What information about administrative expenses would help plan participants, but is not currently disclosed? Please explain the nature and usefulness of such information.</p>	<p>I think uniformly requiring all expenses that are deducted from a participants account in the form of a percentage of assets figure is the only way it can be done.</p> <p>The issue is \$100 is just a number. It is a huge percentage of \$200. It is a miniscule percentage of \$1,000,000. Thus, showing the percentage is the only meaningful way to characterize the expenses. It is consistent with the way the financial industry expresses these matters.</p>
<p>11. How are charges against an individual account for administrative expenses typically communicated to participants? Is</p>	<p>This is inconsistent and needs a standardized set of ground rules. Again, percentage of assets is the way to do it.</p>

<p>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?</p>	
<p>12. How frequently is information concerning administrative expenses charged to a participant's account communicated?</p>	<p>There is no norm today.</p> <p>It should be a normalized part of the overall plan statement and investment performance report. This may be difficult for some vendors and advisors to accomplish. Nevertheless, making it a requirement will serve to keep the playing field level.</p>
<p>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.</p>	<p>I think I've expressed this in previous answers. To summarize:</p> <p>Replace Schedule A with a consolidated Schedule of all fees and expenses.</p> <p>Express any fee deducted from participant accounts as a percentage of assets.</p> <p>Do not require that there be any participant statement level detail. Allow for this detailed information to be reviewed in an internet session.</p>
<p>14. Should charges for administrative expenses be disclosed as part of the periodic benefit statement required under ERISA section 105?</p>	<p>Yes.</p>
<p>General Questions</p>	
<p>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)?</p>	<p>None.</p>
<p>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?</p>	<p>It is all over the boards. There is no standard except for ERISA's requirements.</p>
<p>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.</p>	<p>It will change the norms of current behavior. That is, it's difficult to get everyone to speak the same language. Many sponsors think they get something for free. This is an illusion. Which does not mean they are overpaying, they just don't know and don't have an advisor or provider that makes it easy to understand. This will level the playing field. Everyone will have to communicate the same information in the same way.</p>

<p>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.</p>	<p>It will have no effect. It is for the purposes of information disclosure and transparency not to effect their choices. For example, international funds are almost uniformly higher in expenses than other funds. This doesn't make them bad. It just expresses the nature of the costs to manage this type of fund.</p> <p>The information will make it easier for sponsors to make sense of the plan services decisions they have to make. Those who deal with specialists in the industry probably won't have any different experience than they do now. Those who deal with generalists will probably have an eye opening experience.</p>
<p>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.</p>	<p>This is a data processing matter. Once a system is programmed to handle the method of calculating the expense ratios there shouldn't be any inefficiencies except to those providers who don't specialize in qualified plans.</p> <p>It will be necessary to require that any provider that wants to service retirement plans must be willing to provide open access to the data necessary to calculate these expense ratios. This will eliminate any problems those who are mandated by regulations to provide the data to participants and plan sponsors may have from recalcitrant investment managers or other parties.</p>
<p>Revenue Sharing – addition to DOL/EBSA questions</p>	
<p>Comment on Revenue Sharing</p>	<p>Revenue sharing is an area that has been demonized recently. I am not entitled to any revenue sharing. My clients and the plan I sponsor are entitled to it. I believe based on much experience pricing plans for other sponsors, were it not for revenue sharing, that the inherent costs of being a small 401(k) plan sponsor could be prohibitive. I am able to offer my 4 employees a state of the art, big company 401(k) plan with all of the bells and whistles that the Intel's of the world can enjoy. Yet my purchasing power is small. If we had to be "nickel and dimed" by our service provider for every internet option we'd pay a greater amount than we do today. It is right that the mutual fund companies that get the opportunity to have me invest my 401(k) assets with them, via my 401(k) plan provider, should pay my provider something for that. The fact that those funds may or may not be directly accounted for in my case is not meaningful to me. I believe that my provider is better bale to offer full-scale services because of those revenue sharing payments.</p>

This is a free enterprise system. The market should dictate what is and is not a valuable proposition. Purchasers can choose to be knowledgeable or not. What the market cannot do is hide or fail to disclose meaningful data that purchasers can choose to know about or not. This should be the full scope of the regulations. Any effort to regulate the amount, range, manner or availability or different pricing models or options would be completely counter productive and anti-competitive. In other words, strive to retain the American free enterprise system while addressing these important regulations.

Sincerely,

William J. Heestand