

From: Parker Payson [payson@employeefiduciary.com]
Sent: Wednesday, September 20, 2006 12:06 AM
To: EBSA, E-ORI - EBSA
Subject: 5500 Regulation Revisions (RIN 1210-AB06)

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OFFICE OF REGULATIONS
AND INTERPRETATIONS
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September 19, 2006

RE: 5500 Regulation Revisions (RIN 1210-AB06)

Dear Secretary Combs,

I am Executive Vice President of Employee Fiduciary Corporation, which provides daily recordkeeping services and third-party administration for 401(k) plans across the nation.

Summary of Comments

The proposed disclosure rules should be amended to

- 1) require full disclosure of all plan costs
- 2) apply to all sized plans, especially small plans, which would benefit the most from additional fee disclosure and scrutiny.

The costs for administrators to provide disclosure information will be negligible.

Commentary

Under the current laws and proposed regulations, plans with fewer than 100 employees do not have to file a Schedule C with their annual Form 5500 tax returns and are exempt from most fee disclosure laws.

While the proposed changes may provide some additional clarity on fees for those with larger plans, the proposed rules offer no benefit to participants and employers in the majority of plans in the nation, who have fewer than 100 employees, do not file a Schedule C, and perhaps not coincidentally, pay the most in total plan fees.

The proposed rules provide no useful information to the small business employer who has a fiduciary responsibility to ensure that plan costs are reasonable. They do not help workers employed on Main Street, who may lose a third or more of their annual returns to plan fees, and they waste a huge opportunity to unleash market forces in a highly competitive industry to drive down participant costs for all American workers.

The Details

Retirement plans offered to small businesses are exponentially more expensive than those offered to large companies. Participants in small business plans shoulder the vast proportion of plan costs, often unknowingly, paying 2%-3% or more, while wondering why their nest eggs never grow as large as anticipated.

Imagine two hard-working employees: Both dutifully save and invest in their retirement plans \$10,000 each year for twenty years. One works for the Employee Benefit Security Administration (EBSA) and participates in the federal worker Thrift Saving's Plan (TSP); the other works on Main Street and

pays the average fees we've seen in plans offered to small business. In 2005, the EBSA employee pays \$7 in annual plan charges. The Main Street employee pays \$263. Both investments earn 7% per year, which is the average annual return of US stocks and bonds from 1925 to 2005. Over twenty years, the size of the nest egg of an employee working in your office will grow to nearly 30% larger than the nest egg of an employee working on Main Street (\$406,835 vs. \$309,477).

To add insult to injury, under the proposed rules, employees and employers at large companies can use Schedule C to determine if they are getting a good deal, but employees and employers on Main Street get no updated annual fee disclosure data to evaluate their plan.

The Costs of Disclosure

It has been argued that the burden on vendors to collect annual fee data would drive up the costs of 401(k) administration for small plans. This is an exaggeration. If the law required full disclosure, our firm would be able to provide full fee disclosure on the Form 5500 for all plans---regardless of size---with no additional cost increase. And our price structure---\$25 per eligible employee (\$1,500 min), less any revenue sharing---is among the most competitive in the nation. Other firms, which charge more, could surely do the same.

Proposed Amendments

Here are four steps we believe ESBA should take to make disclosure laws more effective, spur competition, and provide equal protection for all 401(k) participants regardless of where they're employed:

1. Require all plans to disclose fees on Schedule C, not just large plans. By adding this requirement, small plan employers will be able to perform an annual review of expenses as part of their fiduciary mandate to monitor service providers.
2. The \$5,000 disclosure threshold should be lowered to \$500 or, at the very least, be changed to incorporate the lesser of a certain percentage of plan assets or \$5,000. This will uncover charges paid by plans with a smaller asset base that may make up a significant percentage of plan assets.
3. Require disclosure of all fees, including expense ratios and investment charges, which according to the Government Accountability Office, make up as much as 80% of total plan costs. The Department of Labor has a thorough fee disclosure form for employers considering alternative vendors. This should be the model for annual fee-disclosure requirements as well.
4. Applicable surrender charges, which often come as a surprise to plan sponsors and trustees who try to improve the plan on the behalf of participants, should be an annual line-item disclosure.
5. The disclosure laws should apply to fiduciaries and those who disavow fiduciary responsibility alike, if they earn revenue either directly or indirectly off the plan. This would allow those with the responsibility to ensure that plans are being operated solely in the best interests of participants to avoid unexpected conflicts of interest.

Conclusion

Considering.....

- fees are highest in small plans,
- small business 401(k)s make up the largest number of plans in the nation,
- small businesses employ an increasing proportion of our population,

- the gap between savings and the amount retirees will need is expected to grow
 - that there is no requirement to itemize fees deducted from participants' returns
- on individual account statements

it is unconscionable to exempt small plans from fee disclosure rules and deny information to those American workers who need it most.

The right to find out what your being charged and the right to save and invest efficiently should not just be a privilege afforded only to those workers fortunate enough to work for the federal government or other large Corporations. The same rules need to apply to everyone.

Thank you for your consideration.

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