



Daniel J. Keniry
Senior Vice President, Government Relations

Tel: 202-637-8925
Cell: 202-577-1826
Fax: 202-347-2974
dkeniry@tiaa-cref.org

September 8, 2008

Delivered via E-mail to e-ORI@DOL.GOV

Office of Regulations and Interpretations
Employee Benefits Security Administration (EBSA)
Attn: Participant Fee Disclosure Project
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW,
Washington, D.C. 20210

Dear Sir or Madam:

TIAA-CREF appreciates the opportunity to comment on the proposed regulations concerning the fiduciary requirements for disclosure in participant-directed individual account plans, published in the Federal Register on Wednesday, July 23, 2008 (73 Fed. Reg. No.43014, July 23, 2008).

Teachers Insurance and Annuity Association of America (TIAA) is a non-profit legal reserve life insurance company that provides fixed dollar and variable retirement annuities. Its companion organization, College Retirement Equities Fund (CREF), is a non-profit corporation registered as an investment company under the Investment Company Act of 1940, that issues variable retirement annuities. The annuities issued by TIAA-CREF and the mutual funds on its recordkeeping platform are used as funding vehicles for retirement plans maintained by colleges, universities, hospitals, independent schools and other non-profit research and educational organizations, as well as state governmental entities throughout the United States. TIAA provides recordkeeping services to defined contribution plans covered under Internal Revenue Code (IRC) sections 401(a) (including 401(k) plans), 403(a), 403(b), and 457. The majority of these operate under IRC section 403(b). Currently, TIAA-CREF provides retirement products for over 3.4 million participants at nearly 15,000 organizations. As of June 30, 2008, TIAA-CREF had approximately \$428 billion in assets under management.

We support efforts to increase the transparency of pricing and expenses within defined contribution plans, and are pleased with the manner in which the regulations require the data to be presented to participants within these plans. With this proposal, the Department of Labor is taking steps towards achieving its stated goal of giving employees simplified

access to the information that they need in order to make informed decisions about the management of their individual accounts and the investment of their retirement savings. We think the Department's proposal successfully requires disclosures of information about available investment options that should be furnished to participants and beneficiaries without overwhelming them with more information than they can reasonably be expected to use.

The following technical comments are intended to assist in achieving the important goal of clarifying disclosure requirements for individual plan participants.

1. Timing of the implementation of the Final Regulations

It is not clear to us how these regulations are to be applied to existing participants and beneficiaries by their proposed effective date of January 1, 2009. For example, would all existing participants and beneficiaries in a calendar year plan have to get the disclosures on January 1, 2009? It is also our understanding that by the time final regulations are published, there will be very little time before January 1, 2009 for plan fiduciaries to implement them. TIAA-CREF respectfully requests that the Department extend the timeline for these regulations to become effective no earlier than plan years beginning on or after January 1, 2010. This date would coordinate with the final enhanced reporting of service provider and fee information for the annual Form 5500 on Schedule C, requirements that were published in final form on November 16, 2007. Though these reports are for the 2009 plan year, the first such report is not due until July of 2010 (a date that can be easily extended by the plan sponsor until September of 2010). We recommend that the Department give plan fiduciaries the entire plan year to make the first disclosures due under the regulations for existing participants and beneficiaries and those who first begin participation in the 2010 plan year. This should also apply to the quarterly statement requirements, which like all of these participant disclosures will require substantial systems enhancements that run concurrent with the programming changes necessary to comply with the new Schedule C requirements as well as the new ERISA section 408(b)(2) regulations expected by year end.

2. Model Comparison Chart

In preparing the comparison chart, the proposed regulations allow the plan sponsor to reasonably rely on the data provided by fund providers under the plan. In a multi-vendor plan, should one fund provider or a third party administrator take on the responsibility of preparing the omnibus comparison chart for the plan, that fund provider or third party administrator should enjoy the same protections as the plan sponsor with respect to relying on the accuracy of the data provided by the other fund providers. This should be the case because that fund provider or third party administrator will be acting on behalf of the plan sponsor. Therefore, the regulations should extend this relief to such fund providers or third party administrators. In addition, this relief is given in a footnote to the regulation. We recommend that this important fiduciary relief be moved into the body of the final regulation itself.

3. Single Chart Requirement

In a multi-vendor situation, we believe it would be more efficient if a plan sponsor could distribute comparison charts provided by each fund provider; then, each fund provider could prepare its own chart for distribution and directly send them to participants and beneficiaries. For example, a participant in a plan with three providers would receive three charts. Since the chart designed by the Department provides for easy comparisons of designated investment options, we do not think that providing a separate chart for each fund provider would take away from the ability of participants to compare similar investment options among fund providers. Permitting multiple charts will greatly simplify the plan sponsor's task in meeting this requirement.

4. Electronic Delivery

We urge the Department to update its existing electronic delivery rules to permit plans to use electronic means as the default method by which to convey plan information and required disclosures. Under this approach, participants and beneficiaries would receive such disclosures electronically unless they affirmatively opt out of electronic delivery and elect paper delivery instead. Pending new guidance on electronic delivery standards for all notices and disclosures required under Title I of ERISA, the Department should provide that the disclosure requirements under these final participant-level fee disclosure regulations may be satisfied using electronic means that satisfy the IRS's effective ability to access standard. We note that the Department already has taken this approach with its guidance regarding pension benefit statements and Qualified Default Investment Alternative ("QDIA") notices and it is an approach that would, in our opinion, be appropriate for the disclosures required under these regulations as well.

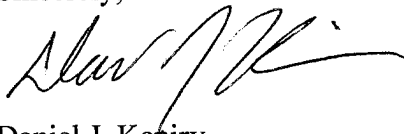
5. Reporting on Guaranteed Insurance Contracts

We agree with the Department that an essential piece of information for participants who choose to invest in guaranteed fixed insurance contracts is the contractual interest rate paid; and we also agree that it does not make sense to assign an artificial fee to this type of product. We note, however, that some guaranteed insurance products, designed to provide lifetime income to participants and beneficiaries, remain in effect throughout the accumulation phase of a participant's career and into and through retirement. Accordingly, they have no fixed term. Such contracts may be designed to guarantee principal and a minimum rate of interest in the accumulation phase, while declaring additional interest in advance for a set period of time, say for a year. The description of these products on the comparison chart should be able to include the declared interest rate applicable when the chart was drafted; the term for which that rate will apply; and where the participant or beneficiary can get more information concerning current rates and their declaration periods. We request that the Department amend its regulations to accommodate this kind of guaranteed annuity contract in the comparison chart.

Conclusion

We are encouraged by the Department's work in this important area and are committed to the fee transparency that this regulation will require. Providing employees with concise, easy to understand information about the cost of their retirement plan will lead to better decision making and will increase the general public's confidence in investing for retirement overall. TIAA-CREF is prepared to assist the Department and would be happy to respond to any questions or concerns that you might have.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan J. Keniry". The signature is fluid and cursive, with a long horizontal stroke at the end.

Daniel J. Keniry
Senior Vice President, Government Relations