

July 24, 2007

VIA E-MAIL

Robert Doyle
Director
Office of Regulations and Interpretations
Employee Benefit Security Administration
Room N-5669
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

**Re: Comments on the Request for Information on
Fee and Expense Disclosures to Participants in
Individual Account Plans, 72 Fed. Reg. 20,457 (April 27, 2007)**

Dear Mr. Doyle:

The Financial Planning Association ("FPA") welcomes the opportunity to submit these comments in response to the request for information from the Employee Benefits Security Administration ("EBSA") on fee and expense disclosures to participants in individual account plans. The FPA is the largest organization in the United States representing financial planners and affiliated firms, with approximately 28,500 members.¹

Retirement planning is a core area of practice for financial planners. Many FPA members act as fiduciaries to qualified plans by serving as investment managers who select and manage the plan options as well as providing personalized investment advice to plan participants and their beneficiaries. These comments have been developed with the feedback of members who witness on a daily basis the costly mistakes of plan participants who subsequently come to them for professional assistance.

FPA supports the broad intent of the EBSA to improve disclosure of key elements of a qualified plan to its participants. Most financial literacy studies suggest consumers often do not understand the basic fundamentals of investing and as a result make mistakes that may not be readily apparent, but are costly and undermine their ability to achieve financial independence at retirement. Most plan participants do not have access to, or cannot afford, professional advice on their own. While we, and no doubt other commenters, provide a number of suggestions regarding core areas of disclosure, EBSA should be careful not to overwhelm the participant with disclosures that cumulatively tend to discourage the participant from taking positive action.

¹ Most individual FPA members are affiliated with investment adviser firms registered with the Securities and Exchange Commission ("SEC"), state securities administrators, or both. FPA is incorporated in Washington, D.C., where it maintains an advocacy office, with headquarters in Denver.

Effective disclosure should be carefully designed so that a worker receives a basic overview of the plan expenses and investment options, and knows where to find additional information.

Plan participants in 401(k) plans usually are required to direct the investment of the assets held in their plan accounts among a number of investment options.² The plan sponsor (or other fiduciary) normally selects and monitors the investment options and plan service providers, and is required under ERISA fiduciary rules to do so prudently. In carrying out these fiduciary responsibilities, plan sponsors, among other things, must determine the reasonableness of the costs. In order to make this determination, the employer must ascertain and understand all fees and expenses incurred in connection with the investments offered under the plan.

Plan participants likewise need to be provided with information about the various investment options offered under the plan in order to make informed investment decisions, including any default investment options. They also need to know about other administrative costs that are deducted from their accounts. Part of the information needed to make investment decisions is an understanding of the fees and expenses associated with the various investment options and the effect that they have on the returns received. Participants also need explanations of the various charges associated with their investment choice including any that may be deducted from their accounts. Moreover, participants need to be able to compare the fees of their investment choices with other types of investments.

Currently, ERISA contains numerous statutory and regulatory disclosures, but only a few require identification of the investment fees and expenses. For plan sponsors availing themselves of the §404(c) liability exemption under ERISA, the regulations require participants be provided with: (1) a description of any transaction fees and expenses that affect the participant's account balance in connection with purchasers or sales of interests in investment alternatives; (2) a copy of any prospectuses, financial statements and reports and any other materials related to the various investment choices that are provided to the plan sponsors; and (3) a description of the annual operating expenses of each investment choice and the aggregate amount of such expenses expressed as a percentage of average net assets.

The prospectuses of mutual funds include the fees and expenses related to the fund in a standardized table, which includes the overall expense ratio, the individual categories of fees and the effect those fees have on a hypothetical investment. However, for investment alternatives other than mutual funds, annual operating fees and expense information comparable to that contained in the prospectus are normally not available at all.

The recently enacted Pension Protection Act ("PPA") imposes another notice requirement on those acting as "fiduciary advisers" retained by plan sponsors to provide participant investment advice under ERISA §408(b)(14). The fiduciary adviser must disclose in writing to participants "all fees and other compensation relating to the advice that the advisor or its affiliates may

² In the absence of an investment election by a plan participant, the Pension Protection Act of 2006 ("PPA") provides for the participants contribution to be directed to a default investment. When such a default investment is made in accordance with the PPA, a plan participant will be deemed to have exercised control over the account assets. Early indications are that plan sponsors are availing themselves of the default investment option.

receive (including compensation from a third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or property which are investment options under the plan.” It is unclear at this time, without Department of Labor (“DOL”) guidance, whether the actual amount of fees and expenses the fiduciary adviser and/or its affiliates receive relating to the investment options will have to be disclosed.

ERISA §404(c) and the PPA exemption for “fiduciary advisers” do not apply to all individual account plans in which participants direct their investments. Even in some plans which are denominated §404(c) plans, participants do not regularly receive the information required under the DOL regulations. Thus, in FPA’s view, the DOL should require that all participants who are responsible for directing their investment accounts be provided with information they need to know and understand the investment options available under the plan, as well as the expenses associated with investment options and fees charged in connection with the administration of the plan. We believe that plan fiduciaries, as part of the general duty of prudence in the operation of the plan, should be required to provide such information.

However, the information must be presented in a format that balances brevity with data that is both understandable and relevant to the investment decisions of the participant. Care should be taken to make sure that participants in making investment decisions are not making them solely on the basis of the fees associated with the investment options or, conversely, with historical performance. While fees and performance are important considerations, there are other pertinent factors that must also drive their investment decisions, including investment risk and the benefits of diversification.

Notices of investment-related fees and expenses should be provided to participants and beneficiaries at least annually in a summary notice and should be included with the other pertinent information provided to participants regarding their investment options. Care should be taken in how this information is provided so that it is meaningful to the average plan participant. A level of detail that is overly technical or lengthy should be avoided. The FPA believes that the information on the investment expenses must be provided in a clear, concise and (most importantly) uniform manner. Otherwise, participants cannot make “apples to apples” comparisons of the various investment options. Should the opportunity be presented, coordination of the disclosure format with the SEC’s “point-of-sale” format for funds and variable annuities, likely to be re-proposed later this year, would be helpful in order to achieve consistency of disclosure format and content, and hence greater understanding of disclosures. The utilization of a graphic designer to develop clearer disclosure forms would be helpful, as well as focus group testing of any disclosure forms which may be developed. We believe that only information on fees and expenses actually being deducted from the participants’ accounts or otherwise incurred in connection with the investments should be reported.

In providing this information, the overall administrative costs of the plan paid by the participant and the investment management fees should be provided as a percentage of overall assets and in actual dollars, if feasible. If the participant is a new employee, these expenses could be described in the context of a hypothetical portfolio, such as overall percentages and resulting dollar cost for a \$100,000 portfolio. Separate from these two big-picture costs, supplementary disclosure materials should break down the individual expenses of each area and explain them.

For example, with respect to investment expenses, if there are loads (front-end or back-end) for shares or different classes of shares, these should be explained in plain-English and the percentages of the charges based on the amount of assets should be listed. The investment management fees, 12-b fees, and other types of fees which are part of the annual operating expenses for each investment option should be noted in the supplementary disclosure materials and each quantified as a percentage of assets. We encourage the DOL to work with the SEC and consultants to develop criteria in which transaction costs (commissions paid in connection with the purchase or sale of securities within the fund, bid-ask spreads, market impact, opportunity costs due to delayed or canceled trades) can be estimated and disclosed for funds, as well as opportunity costs due to cash holdings held by the fund. If turnover rates are to be utilized as a substitute means of disclosure, a more accurate methodology for determination of turnover rates should be utilized. Other administrative fees (e.g., recordkeeping, trust/custody fees, etc.) should also be separately described either as annual charges or a percentage of assets in supplemental disclosure materials. A brief description should be given for what services the fees are covering.

In summary, the total amount of annual asset-based fees (the annual operating expense of the investment options and the administrative fees, if charged separately) should be reported as a percentage of assets and as a dollar amount based on the participant's assets. A participant would thus be made aware of how much of his/her monies are being allocated towards administrative costs and how much to investment expenses. Participants can then be directed to other sources for more information.

We realize that plan sponsors are already inundated with numerous statutory and regulatory notice requirements under ERISA and the Code. As noted earlier, we are also cognizant of the fact that participants many times do not read the information already provided to them by plan administrators. We expect that the providers of the investment options would have to either make this information available to the plan sponsors or provide this information directly to plan participants. We also recommend that plan sponsors (or providers) be given the flexibility of providing the information electronically, although participants should be allowed the option of receiving it in paper form.

We very much appreciate having the opportunity to respond to EBSA's request for information and believe through DOL's leadership on plan fee disclosures that participants will be better able to make educated investment decisions. Meaningful and easily understandable disclosures should assist participants in asking questions, getting answers, and becoming better informed consumers.

Please do not hesitate to contact me at 202-449-6343, if you have any questions or require additional information.

Sincerely,



Daniel Barry
Director of Government Relations