

INVESTMENT ADVISER ASSOCIATION

June 15, 2011

Via Electronic Filing

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Re: Fee Disclosure Applicability Dates

Ladies and Gentlemen:

The Investment Adviser Association¹ appreciates the opportunity to provide comments concerning the proposed extension of the applicability dates for regulations governing the disclosure of fee information to plan fiduciaries and participants. We support the extension of the applicability dates, but urge the Department to provide further extensions, in light of the delay in issuing the final regulation under section 408(b)(2).

Substantive Issues

The Department's interim final rule under Section 408(b)(2), published in July 2010, raised a number of issues that have not yet been resolved. First, as noted in its announcement of its intention to extend the effective date of the rule from July 16, 2011 to January 1, 2012, the Department is contemplating adding a requirement that service providers include a summary document to the required disclosures. As noted in our August 30, 2010 comment letter, we are concerned that the development and implementation of a summary document requirement would be difficult, because of the variety of arrangements to which it would apply. Furthermore, we requested that the summary document requirement not apply to defined benefit plans, given the relatively simple structure of the compensation arrangements applicable to such plans.²

Not only would the preparation of a new summary document take time, but also, even if service providers were able to anticipate in advance the exact specifications for this summary,

¹ The IAA is a not-for-profit association that represents the interests of investment adviser firms that are registered with the SEC. For more information, please visit our web site: www.investmentadviser.org.

² We also note that if the Department includes the summary document requirement in the final regulation, service providers, plan fiduciaries and other interested parties will not have had an opportunity to comment on the specific requirements. Interested parties should be provided an opportunity to comment on these requirements before they are finalized, but, barring such opportunity, should be provided sufficient time to review the requirements and request and receive any necessary DOL guidance before they take effect.

the content of the underlying disclosures that this document would need to summarize are still unclear. Of critical importance to investment advisers is the extent to which advisers may rely on the extensive disclosures that they provide to their clients under the Investment Advisers Act of 1940. We requested in our 2008 and 2010 comment letters that the final rule (and/or the preamble) include a safe harbor allowing the use of Form ADV (along with the parties' investment advisory agreement) to satisfy an investment adviser's disclosure responsibilities under section 408(b)(2). The resolution of this issue will affect significantly the extent of the preparation time required for the required disclosures; therefore, advisers may need additional time following the issuance of the final regulation to prepare the section 408(b)(2) disclosures.

In addition, we requested that the final regulation return to the "materiality" standard for those changes to the required information that must be disclosed to plan fiduciaries within 30 days. This issue does not directly impact the initial disclosures that will be required under the final regulation, but will impact the parameters of the tracking systems that advisers will need to establish in order to identify those changes that must be reported within 30 days.

Further Extension of Applicability Dates

These and other substantive issues may remain unresolved until as late as September; therefore, investment advisers will not have a standard against which to assess their disclosures until that time. In addition, when finalized, the disclosures may vary among the adviser's clients and necessitate the creation of different disclosures (and summaries thereof). Advisers therefore may need further extension of the applicability dates, depending on the extent of the required disclosures.

Further extension of the applicability dates also would be in the interests of plan fiduciaries and participants. Although the Department seeks to assure that plan fiduciaries, administrators and participants benefit from the increased transparency provided by the rules as soon as possible, the quality and completeness of these disclosures will be equally as important as their timing. Allowing investment advisers and other service providers the time to prepare well-considered, complete disclosures (and potentially summaries thereof) ultimately would redound to the benefit of both plan fiduciaries and participants, as plan administrators may use the information in the preparation of their participant-level disclosures.

Rather than providing a fixed applicability date, we recommend that the regulation become effective 180 days after its publication in the Federal Register. This schedule would accommodate any unanticipated delays in the finalization of the regulation. Furthermore, we recommend a corresponding delay in the applicability date for the participant-level disclosure regulation.³

³ 29 C.F.R. § 2550.404a-5.

Conclusion

Please do not hesitate to contact us if we may provide any additional information as you consider these important issues.

Sincerely,

-s- Kathy D. Ireland
Kathy D. Ireland
Associate General Counsel