

Congress of the United States
Washington, DC 20515

June 10, 2014

Phyllis C. Borzi
Assistant Secretary
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

**Re: Comments on Proposed Amendments to the Service Provider Disclosures under
ERISA Section 408(b)(2) – RIN 1210-AB08**

Dear Assistant Secretary Borzi:

We write to express our strong support for the Department of Labor's proposed rule that would ensure employers are given a summary of the fees being charged in connection with their 401(k) and other retirement plans. The Department's recent fee disclosure rules are playing a critical role in shining light onto retirement plan fees and driving down costs. However, many employers – especially small business owners – still have a difficult time evaluating plan fees because the disclosures often are not made clearly and as part of a single document. The Department's efforts to require service providers to provide a summary of fees will start to solve the problem and make it easier for employers to offer cost-effective retirement plans.

Over 70 million workers, retirees and their family members are counting on 401(k) and similar type plans for their retirement security. Traditionally, employers provided defined benefit plans that have professional investment managers and under which employers are liable to make up any investment short-fall. However, most employers now offer defined contribution plans – such as 401(k) plans – in which workers usually choose their own investments and bear all of the investment risk.

Until the Department's fee disclosure regulations became effective in 2012, there was no clear legal obligation to notify workers of the fees and expenses involved in these plans. Both the Department and the GAO have repeatedly found that large majorities of workers did not know that they were paying any fees on these plans and that a 1% difference in fees, for example, could reduce retirement savings by approximately 30%.

There is evidence that the new rules are leading to lower investment fees, and one of the key reasons is the employer disclosures.¹ Employers are legally liable if they agree to fees that are “imprudent” or “unreasonable.” The employer disclosures and related legal responsibilities are a powerful motivator to make sure that employers are reviewing the fees, asking questions when they don’t understand the information, and if necessary, consulting experts to make sure employers are fairly carrying out their legal obligation to “act solely in the interests of the participants and beneficiaries.” Despite the success of the rules, many employers have expressed concern that evaluating fees is difficult because the fees are not disclosed clearly in a single document.

The employer fee disclosure rules will only be truly effective if they are communicated to plan fiduciaries in a clear and consistent manner. Currently, the rules permit disclosures to be made in multiple documents, so plan fiduciaries often find themselves overwhelmed by reams of paper and unable to identify all of the fee information. For example, service providers simply could provide plan fiduciaries with copies of prospectuses or investment contracts, which typically are drafted for a broad range of investors and do not specify the particular fees that will be charged to the plan. The rules should ensure that the disclosures made by service providers include a description of all fees and compensation in one place and in a manner that is understandable to average plan fiduciaries.

We enthusiastically support the Department’s efforts to modify the fee disclosure rules to require service providers to furnish the responsible plan fiduciary a single document that highlights all direct and indirect compensation and fees (*i.e.*, investment management, recordkeeping, and all other fees) received in connection with the plan’s receipt of services. It is critical the document be understandable to the average small business owner and specify exactly where the plan fiduciaries can find more detailed disclosures.

We are convinced – as are many in the retirement plan community – that the minimal cost of preparing a summary disclosure is greatly outweighed by the benefit increased clarity has to plan fiduciaries (and the participants to whom they owe a fiduciary duty).² In fact, we understand that some disclosure-minded service providers already provide a written summary of key terms to their customers because they believe that these up-front summary disclosures actually reduce their marketing and sales costs.

We realize that some employers and financial service firms feel that they have worked hard to come into compliance with the initial rules and are wary of the time and expense of making changes. We support giving employers and industry time to make needed changes and to

¹ See, *e.g.*, Steyer, Robert, *DC Plans Cutting Costs Using ‘Big Stick’ of Fee Disclosure*, Pensions & Investments (Jan. 7, 2013); *The Economics of Providing 401(k) Plans: Services, Fees, and Expenses*, Investment Company Institute (June 2013).

² Many of the comments received by the Department in response to the proposed rule supported requiring some sort of consolidated disclosure statement. See, *e.g.*, Comment Letters from AFS Financial Group (Feb. 28, 2008), James G. Auger (Feb. 11, 2008), AARP (Feb. 11, 2008), ASPPA and CIKR (Feb. 11, 2008), Jeffrey Harris (Feb. 7, 2008), National Coordinating Committee for Multiemployer Plans (Feb. 11, 2008), Pension Consultants, Inc. (Feb. 11, 2008), and Watson Wyatt Worldwide (Feb. 11, 2008). Similar statements were made at Congressional hearings on fee disclosure.

minimize expenses as much as possible. However, these concerns cannot and should not be an obstacle to important and needed modifications to the rules. Workers and employers should not have to search to see the fees they are being asked to pay. Most sellers, be they doctors or car dealers, are required by law to provide an itemized bill for their services, financial service firms, with their large resources and computer expertise, can do the same.

The Department of Labor should be commended for starting the process of bringing sunlight to workers' retirement accounts, and we wholeheartedly support the proposal to further improve and simplify the disclosure of the fees and expenses being charged to workers and employers.

Sincerely,



TOM HARKIN
Chairman
Senate Committee on Health,
Education, Labor and Pensions



GEORGE MILLER
Senior Democratic Member
House Committee on
Education and the Workforce



RON WYDEN
Chairman
Senate Finance Committee



SANDER LEVIN
Senior Democratic Member
House Committee on Ways and Means