

September 24, 2008

Assistant Secretary Bradford Campbell
Employee Benefits Security Administration
Department of Labor
200 Constitution Avenue, NW
Room S2524
Washington, DC 20210

Dear Assistant Secretary Campbell:

We applaud the Department for issuing two sets of proposed regulations relating to plan fee disclosure—one regarding fee disclosures by service providers to plan fiduciaries and one regarding fee disclosures by plan fiduciaries to participants. Both sets of regulations address important issues and both reflect careful consideration of many competing factors.

Both sets of proposed regulations raise numerous critical issues that are very important to the members of the undersigned organizations in implementing the comprehensive disclosure regime mandated by the regulations, including liability protection and electronic communication. The Department has received all of our comments addressing these issues.

We want to emphasize one key issue at this time: the effective date of the regulation addressing disclosure by service providers. It is essential that the regulations not be effective earlier than the first plan year beginning after at least 12 months after the final regulations are published. Accordingly, if, for example, the final regulations are published in November of 2008, the regulations should not be effective prior to January 1, 2010 in the case of a calendar year plan.

This transition period is needed because, in order to comply with the new regulations, there will need to be significant modifications of computer systems, the training of operational and administrative staff, the preparation of new communication and administrative materials for plan fiduciaries, as well as the development of actual disclosure documents. Also, any systems changes need to be thoroughly tested prior to implementation to prevent errors and resulting confusion. Moreover, in addition to the development and testing of service provider systems, plan sponsors will need time to establish their own processes for analyzing and reacting to all of the new information.

Finally, the above burdens will be particularly acute with respect to investment products that do not have pre-existing rules and systems that can produce fee data in the manner prescribed by the proposed regulations. For those products, much of the administrative systems will have to be developed from scratch.

We have similar effective date concerns regarding the other set of proposed regulations, which require the same or greater preparation in order to comply.

In addition to our concerns about the effective date of the service provider disclosure regulations, we are very concerned about the requirement in those regulations regarding contract language. We believe that the rule should focus exclusively on what disclosures are required, not on whether the applicable contracts reflect the disclosure requirements. But if the contract requirement is retained, the final rule should state that service providers can comply with the regulation with respect to existing contracts by providing the disclosures required by the rules, but without any requirement to amend any such contract until the contract is otherwise materially modified.

We support increased transparency with respect to plan fees. We understand the Department's desire for quick finalization of the proposed disclosure rules with respect to defined contribution plans.

We do not, however, support a premature effective date. A premature effective date will only result in “forced” noncompliance and, over the next year, significant private and Department resources devoted to continuing discussions of the need for more time.

We look forward to your consideration of our request.

American Bankers Association
American Benefits Council
American Council of Life Insurers
Committee on Investment of Employee Benefit Assets
The ERISA Industry Committee
The Financial Services Roundtable
Investment Company Institute
National Association of Manufacturers
Profit Sharing/401k Council of America
Securities Industry and Financial Markets Association
United States Chamber of Commerce