



PENSION
consultants inc.

September 8, 2008

Submitted Electronically by E-mail to e-ORI@dol.gov

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

Re: Participant Fee Disclosure Project

Dear Sir or Madam:

Pension Consultants, Inc. is an innovative pioneer in objectively managing and evaluating all facets of employer-sponsored retirement plans. Most importantly, we are an independent advocate for our clients. We have a strong interest in assisting participants in obtaining the information they need to make informed and reasonable decisions about the investment of their retirement savings. We appreciate the opportunity to comment on the Department of Labor's (DOL) proposed regulation that would require disclosure of certain plan and investment-related information to participants in participant-directed individual account retirement plans.

Our firm recognizes the importance of providing adequate disclosures of fees and other plan information to participants and supports the DOL's efforts to improve the quality and effectiveness of the information provided. We commend the DOL on recognizing that all participants can benefit from these disclosures, not just those covered in an ERISA 404(c) plan, thereby broadening the scope of the proposed regulation to include all individual account plans. We reviewed the proposed regulation and respectfully submit our comments. We have identified several areas where further clarification or additional information is necessary.

Consideration should be given to whether or not the disclosure requirements are cost-efficient, as it will be counter-productive if a plan's administrative costs are significantly increased due to the new disclosure requirements, particularly when participants pay those fees. There should be a balance between the amount of information required to be provided and the cost of providing that information.

We are concerned the January 1, 2009 effective date¹ for the proposed regulation is too soon. Most plan sponsors will rely on their vendor service providers to assist with gathering information, preparing and distributing the necessary disclosure materials. These vendors will require additional time to modify and upgrade their documents and systems to meet the new rules. We suggest the regulation be effective for plan years beginning on or after January 1, 2010.

We request clarification on which participants are required to receive the disclosure information on a regular and periodic basis². Is the plan fiduciary required to make the disclosures to all participants eligible to participate in the plan or only to those participants with an account balance? Providing the disclosure information to all eligible participants could be administratively burdensome and expensive.

complete. independent. essential.

We request an explanation of what action constitutes the “date of adoption” for any material change. The regulation proposes notification to participants of material changes not later than 30 days after the date of adoption³. It is our experience that the process to make a change to the investment alternatives offered under a plan requires several steps prior to the participant notification, including the election of the investment alternative by the retirement plan committee and notification to the record keeper. Please provide clarification as to when the formal date of adoption is established for notification to participants.

We agree with the DOL’s comments that it is not particularly useful for participants to have administrative charges broken out and listed on a service-by-service basis⁴. It would not be beneficial if participants are overloaded with information, as they may not use the information or may become overwhelmed and confused and make a bad decision. We support the disclosure of summary fees. However, we are concerned that the requirement to provide an explanation of any plan administrative expenses to the extent not included in investment-related fees and expenses⁵ may result in more providers moving to a bundled services arrangement and reflecting \$0 pricing for administrative services. This may lead participants to think the fees and expenses are less than they really are. We suggest it would be useful to include a statement informing participants of arrangements where the administrative expenses of the plan are paid through investment-related fees.

We agree that Internet-based disclosure tools are likely to be a useful method for participants to access more detailed investment information. However, we disagree with the requirement of providing a specific Internet Web site address⁶. We think the difficulty in monitoring the Web site to ensure the appropriate information is available and the fact that many providers of investment funds do not maintain a Web site will cause this to be an ineffective method of disclosure. Instead, we suggest plan fiduciaries provide participants with the appropriate fund identifier (i.e., Ticker symbol, CUSIP, etc.) and direct them to several suggested investment education Web sites (e.g., Yahoo! Finance, MSN Money) to obtain more detailed information. To address the DOL’s concern with the issues raised under the rules on the use of electronic media, we suggest the fiduciaries provide printed investment fund fact sheets to those participants who fail to affirmatively consent to receive the information electronically. With regard to the list of supplemental information, we do not think including the investment’s portfolio turnover⁷ is helpful information for participants, since many participants will not understand the relevance of this information when comparing different investment alternatives.

We request further explanation on two items of the performance data that must be provided automatically to participants. First, to establish a uniform comparison of the designated investment alternatives, please clarify whether the average annual total return⁸ is to be reported gross or net of fees. We feel it is important that the average annual total return of each investment be stated, measured and reported net of all fees applied to the investment. Reporting the net return provides participants with a more accurate description of the amounts earned in their retirement account. Second, because many investments with a fixed rate of return⁹ change their rate as frequently as quarterly, we are concerned an annual disclosure may not provide participants with sufficient information to understand rate changes during the year. We think it is important for the disclosure to indicate the timeframe for which the stated fixed rate of return is valid and provide instructions on how a participant may obtain the updated rate information.

While the DOL’s expectation is that most plans will identify the performance benchmarks already being used for the investment option pursuant to the prospectus requirements¹⁰, many plan fiduciaries are currently using benchmarks that are more specific when selecting and monitoring investments. We request confirmation that the appropriate benchmark for disclosure to participants need not match the benchmark used for selecting and monitoring investments by fiduciaries.



We suggest a modification to the model comparative chart¹¹ in the fees and expense information section to include a numerical example of the fees charged as a percentage of the value of a participant's investment. This example should include a sample account balance and operating expenses charge. For example, annual expense equals 0.55% and account balance is \$10,000, annual fee equals $0.55\% \times 10,000 = \$55.00$.

Additional clarification is requested regarding the period allowed for a fiduciary to provide the investment information requested by a participant.¹² The proposed regulation leaves this period without any limits. We suggest a minimum of 60 days after the request has been received to provide the requested information to the participant. This allows the fiduciary sufficient time to obtain the information while permitting a timely response to the participant.

Lastly, please define how it will be determined that a fiduciary has accurately completed the model format and thus is deemed to have satisfied the requirements to furnish the information in a comparative format¹³.

Our firm appreciates the opportunity to provide information on this important issue and we would be happy to provide additional input or clarification. You may contact us during regular business hours at (417) 889-4918.

Sincerely,

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¹ §2550.404a-5(b)

² *Id.*

³ §2550.404a-5(c)(1)(ii)

⁴ 73 FR 43016-1

⁵ §2550.404a-5(c)(2)(i)

⁶ §2550.404a-5(d)(1)(i)(B)

⁷ *Id.*

⁸ §2550.404a-5(d)(1)(ii)

⁹ *Id.*

¹⁰ 73 FR 43017-2

¹¹ §2550.404a-5(d)(2)

¹² §2550.404a-5(d)(4)

¹³ §2550.404a-5(e)(3)