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FILED ELECTRONICALLY

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
Attn: 408(b)(2) Guide

Re: 408(b)(2) Guide (RIN 1210-AB08)

Dear Sir or Madam:

Vanguard¹ appreciates the opportunity to comment on the Department of Labor's (the Department) notice of proposed rulemaking that, if adopted, would require covered service providers to furnish a guide to assist plan fiduciaries in evaluating certain fee and service disclosures provided under ERISA section 408(b)(2) (the Proposed Rule).

As a leading provider of low-cost investment, recordkeeping and administrative services for retirement savings plans, our experience has been that delivering material fee and service disclosures in an integrated, easy-to-read format is an effective way to provide responsible plan fiduciaries with the information they need to fulfill their fiduciary obligations.

Vanguard has appreciated the Department's flexible approach in the final 408(b)(2) regulation (the Final Rule), which listed required information to disclose but accommodated each service provider's insight into the disclosure format that would be most useful to its clients. The Final Rule encouraged service providers, including Vanguard, to be innovative and to invest in creating effective disclosures for their plan sponsor clients. In Vanguard's view, this approach has been successful, providing plan sponsors, consultants and benchmarking firms with more transparent information about fees and services and facilitating a more robust focus on fees, services and value to participants.

¹ Vanguard is one of the world's leading asset managers, managing \$2.6 trillion in assets for institutional and retail investors. We are also a leading asset manager and recordkeeper for defined contribution (DC) and defined benefit (DB) plans and Individual Retirement Accounts. Specifically, we manage \$680 billion in DC and DB assets and provide recordkeeping and administrative services for 4 million participants in over 4,000 DC and DB plans.

Vanguard has supported the Department's efforts to date to ensure that plan sponsors receive full and transparent disclosure of all relevant fees associated with the services they have selected for their plans.² For a variety of reasons explained in further detail in this letter, however, Vanguard is concerned about the additional requirements contemplated by the Proposed Rule. Specifically, Vanguard questions the Department's ability to thoroughly evaluate the need for further regulatory change so soon after the Final Rule was adopted. In addition, Vanguard has significant concerns about the technological feasibility of meeting the requirements of the Proposed Rule at a reasonable cost. Without significant changes to the Proposed Rule, Vanguard is concerned about the cost of compliance, which will ultimately be borne by plan sponsors and participants without a clear corresponding level of benefits to plan sponsors. If the Department remains convinced that further regulation is necessary, we propose that the Department's goals could be achieved with much less disruption and at a much lower overall cost.

Vanguard's first-hand knowledge gained from working closely with plan fiduciaries serves to inform our comments to the Department's Proposed Rule as follows:

- The Final Rule has successfully provided plan fiduciaries the information necessary to prudently select and monitor service providers, and Vanguard does not believe the Department has demonstrated a need for additional regulation.
- If the Department concludes that additional steps are needed to help plan fiduciaries digest the disclosures provided under the Final Rule, the Department should require service providers to identify a single point of contact for further information.
- If the Department decides to pursue a mandatory guide or summary despite the lack of apparent need, any amendment should retain the Final Rule's flexibility as to the format of the disclosures; this would recognize the significant investments already made by service providers to comply with the Final Rule. At a minimum this flexibility should permit the following approaches:
 - The Department should permit a "hybrid" summary and guide, summarizing much of the information required by the Final Rule and cross referencing other documents for additional information.
 - Cross references to a document by name, rather than a page or section number, should be considered sufficiently specific.
 - The Department should not require summaries in excess of a specified page limit to also include a guide.
 - The Department should not require a guide, if necessary, to be provided to plan fiduciaries separately from the information disclosed under the Final Rule.

² See prior Vanguard comment letters to the Department regarding 408(b)(2) proposed rule (February 11, 2008) and interim final rule (August 30, 2010).

- The Department should reflect the variety of detail required to be disclosed under the Final Rule for different service arrangements, and (if any guide is required) should only mandate a guide for recordkeeping or brokerage arrangements.
- If the Department pursues further amendment of the Final Rule, the effective date for the Proposed Rule should take into account the extent of changes to the Final Rule and the corresponding burdens of implementation.

I. The Final Rule has successfully provided plan fiduciaries the information necessary to prudently select and monitor service providers, and the Department has not demonstrated a need for additional regulation.

The Final Rule accomplished an important goal in ensuring that plan fiduciaries – whether maintaining large or small plans – received important information from service providers about services and all sources of compensation. Vanguard applauds the Department’s fee disclosure efforts to date and supports the Department’s emphasis on the overall value of services to plans and participants because Vanguard agrees that costs matter. Indeed, during the comment period for the Final Rule, Vanguard supported the concept of a consolidated summary to provide plan fiduciaries an overview of both recordkeeping and investment costs associated with the services provided to their plans. Vanguard continues to believe it is important to view plan costs holistically, avoiding isolated focus on recordkeeping or investment costs alone. In this regard, for over a decade Vanguard has provided plan sponsors on our recordkeeping platform with a Vanguard “All-In” Fee Report. Vanguard updated this report in 2012 to comply with the Final Rule. That said, as described in more detail below, Vanguard does not believe the Proposed Rule’s mandatory guide or summary format is necessary or cost-effective for our plan fiduciary clients.

Vanguard amended its All-in Fee report for its full-service recordkeeping clients to address each of the elements of the Final Rule. In our experience, plan fiduciaries understood the information presented in our updated All-in Fee report. Consistent with their fiduciary obligation to prudently monitor our services to the plan, fiduciaries reviewed the report closely. Vanguard did not experience a material volume of questions about the report from plan fiduciaries. When they arose, questions were more often generated by uncertainty over whether Vanguard was a covered service provider or a desire for additional confirmation that the information presented in the report was complete.³ Importantly,

³ For example, most questions Vanguard received regarding the 408(b)(2) disclosure were questions from plans whose only relationship with Vanguard was in its capacity as a mutual fund company, not as a covered service provider. Vanguard replied to those requests by explaining the nature of its services to the plan and referring plan fiduciaries to the mutual fund prospectus for more information about Vanguard’s mutual funds.

Vanguard did not receive questions from plan fiduciaries expressing confusion about how to locate the information referenced in the report.

In our view, the retirement plan market is already reaping the benefits of greater fee transparency, reducing average service costs and allowing participants to preserve more of what they save for retirement.⁴

Against this backdrop, the Proposed Rule seeks to impose material additional regulation of the format of the disclosures mandated by the Final Rule without a demonstrated need for such regulation. In Vanguard's view, the Proposed Rule is unnecessary because plan fiduciaries already have information mandated by the Final Rule to perform their fiduciary oversight responsibilities. The Department acknowledges this in the preamble to the Proposed Rule, but indicates that it believes additional regulation will enhance plan fiduciaries' access to and understanding of information already provided.⁵ However, the Department did not demonstrate that responsible plan fiduciaries are having trouble accessing the required information. In fact, in tandem with the Proposed Rule, the Department has published an Information Collection Request designed to elicit reactions to the format of disclosures required by the Final Rule from a segment of the market, small plan sponsors. In our view, this information is likely to be both incomplete by covering only one portion of the market and collected too late in the process to impartially inform the Department's approach in the Proposed Rule.⁶

Without a demonstrated need for additional regulation, Vanguard does not support changing the current regulatory structure to impose complex additional formatting requirements with the corresponding significant implementation, systems and maintenance costs necessary to comply.

II. If the Department concludes that additional steps are needed to help plan fiduciaries digest the disclosures provided under the Final Rule, the Department should require service providers to identify a single point of contact for further information.

Vanguard regularly addresses questions from plan fiduciaries regarding plan operations and services. Fiduciaries may seek additional information about the particular aspects of an investment, a new service or ongoing operational aspects of their plans. Plan fiduciaries are able – and expect – to engage regularly with their relationship teams. Those teams, in turn, connect plan fiduciaries with Vanguard subject matter experts who are in the best position to provide additional information sought by the fiduciary. In our experience, plan fiduciaries prefer speaking directly with a service provider

⁴ Average Expense Ratios Paid by Mutual Fund Investors Continued to Decline in 2012, April 11, 2013, ICI.

⁵ 79 Fed. Reg. at 13951.

⁶ See May 12, 2014 joint comment letter from the SPARK Institute, American Bankers Association, American Council of Life Insurers and the Securities Industry and Financial Markets Association regarding the information collection request (OMB 1210-NEW) "Evaluating the Effectiveness of the 408(b)(2) Disclosure Requirements."

representative who can answer their questions about services and related fees instead of reviewing additional mandated disclosures.

To the extent the Department concludes that plan fiduciaries need additional regulatory protection to ensure they can navigate the disclosures required by the Final Rule, Vanguard proposes that the Department simply require service providers to identify an individual, including contact information, for assistance with the disclosures mandated by the Final Rule. Such an approach provides plan fiduciaries a way to quickly and easily locate and understand the disclosed information in a manner that is more customer friendly than additional paper in a one-size-fits-all guide. In our experience, when a plan fiduciary has a question regarding a particular aspect of the All-in Fee disclosure or the plan's contracts or arrangements, it does not involve how to locate information provided in the disclosure. Rather, those questions involve broader topics (like the scope of services to the plan) that are best handled in a one-on-one discussion. Identifying a point of contact and phone number would not only provide the fiduciary with more direct access than a guide to the disclosed information, but also provide answers to each plan fiduciary's individual questions on issues in a customized way that a guide would not be able to match.

As noted, this approach reflects existing client relationship structures and client expectations. Accordingly, the plan fiduciaries are more likely to gain the information they seek in a manner they expect, at a significantly lower cost of compliance. Importantly, providing a point of contact and phone number along with the disclosures provided under the Final Rule would also deliver an effective solution to the Department's concerns at a reasonable cost, keeping expenses lower for plan sponsors and participants.

III. If the Department nevertheless decides to require a guide or complete summary, then any amendment should recognize the investments already made by service providers to comply with the Final Rule and should retain the Final Rule's flexible format.

It has been less than two years since the Final Rule's effective date, which imposed significant disclosure changes for service providers. Because there is not a clear and compelling need for additional regulation so soon after the Final Rule's implementation, as noted, Vanguard suggests that the Department significantly alter its approach in the Proposed Rule. If the Department continues to advance the Proposed Rule, Vanguard urges the Department to recognize the significant resources already invested by covered service providers to comply with the Final Rule by providing covered service providers maximum flexibility in providing additional information.

In the Final Rule, the Department adopted a regulation that prescribed the content of disclosures but maintained flexibility in the format of those disclosures. In adopting that approach, the Department reserved for future consideration the question of mandatory standardized disclosures, instead proposing a model guide with the Final Rule for review and comment. In Vanguard's experience, its plan

fiduciary clients preferred the structure provided by the All-in Fee report rather than that of the model guide. Further, the model guide's structure (similar to the Proposed Rule) required specific cross references to static page numbers or sections in documents. This approach both failed to reflect the variation in service structures and provisions, and promised to cost Vanguard (and, ultimately, plan sponsors and participants) a significant amount to implement.

Vanguard estimates the cost to research the necessary historical information, to manually prepare a guide as proposed for our existing contracts and arrangements and to build a technology solution for new contracts and arrangements to be approximately \$4.75 million. This effort would require thousands of hours from multiple internal teams to complete.

In the absence of a required format for disclosure in the Final Rule, since 2012 service providers have made costly investments to provide the required disclosures listed in the Final Rule to plan fiduciaries. These disclosures have taken a variety of formats and approaches among service providers, including summaries, consolidated documents, guides and other materials. In developing these methods, service providers were able to reflect the needs of their clients as well as the service providers' own systems capabilities. For existing arrangements, service providers are in the best position to understand their plan sponsor clients' particular needs. At the same time, to successfully compete for new business, service providers have a strong incentive to deliver service and fee information, including the detailed information required by the Final Rule, in a format that is direct and easy for plan fiduciaries to understand and compare.

Through the Final Rule's flexibility, the Department recognized and fostered innovation by service providers in developing disclosures reflecting client expectations and information technology capabilities. Further regulation, if adopted, should provide service providers with the flexibility to continue using the approaches they have newly developed to comply with the Final Rule. If the Department pursues the Proposed Rule, the Department should revise its proposal as described below to better reflect the variety of service provider systems and client expectations.

A. The Department should permit specific cross references in a single document summary as an alternative to a guide.

As Vanguard recognized in its comment letters during the Department's development of the Final Rule, providing plan fiduciaries with a holistic summary of fee and service information enables fiduciaries to quickly evaluate important information more efficiently than they can with fragmented disclosures.

That said, to provide a customized, systematically generated summary of plan information, Vanguard and other service providers often direct plan fiduciaries to separate documents for detail regarding certain aspects of the Final Rule. This approach helps ensure that plan fiduciaries can find a more

complete description of services provided while keeping the All-in Fee report concise and easy to understand.

Vanguard encourages the Department to allow it and other service providers to continue delivering summary disclosures that include cross references to identified documents, such as agreements or procedures, for certain additional information. Such a summary would allow plan fiduciaries to continue receiving key information in a centralized format with specific cross-references where necessary to additional documents. Without that flexibility, covered service providers will have to further modify procedures to include the negotiated terms of each client's service arrangements in existing summaries. Alternatively, service providers would need to develop a new guide to repeat information already presented in the summary in a format its clients might not need or want. Such an effort would require significant manual implementation and monitoring, resulting in increased cost to plan sponsors and participants. As with any effort requiring manual intervention, such an approach would also increase the risk of inadvertent disparity between the terms of an underlying agreement and the terms of the summary or guide, increasing the likelihood of client confusion or misunderstanding.

B. Cross references to a document name, as opposed to a page or section number, should be considered sufficiently specific.

Importantly, cross references contained in either a summary or guide should be considered sufficiently specific if they reference additional documents by document name, rather than a specific page number or section heading. Service providers generally do not have a systematic way to provide page number or section headers as specific locators for a required guide. Service providers would therefore be required to manually capture any required page and section references for a guide across thousands of plans and documents at a substantial cost. As described earlier, Vanguard anticipates such an effort would require thousands of hours and considerable cost to implement.

A material portion of the information required to be disclosed under the Final Rule depends upon individually negotiated and customized agreements that vary from client to client, as well as by service and product. Plan sponsors and responsible plan fiduciaries are directly involved in the negotiations upon which these documents are based. It is reasonable to expect those same fiduciaries to be sufficiently familiar with the documents, including the terms and structure of the documents, without the need for a specific locator.

C. The Department should not require summaries of all information required under the Final Rule that exceed a specified page limit to include a guide.

The Proposed Rule generally would not require service providers to produce a guide to disclosures if the service provider discloses all information required by the Final Rule in a single document. However, if that single document exceeds an undefined length, the Department has proposed that service providers

should still be required to produce a guide to the disclosure. Vanguard does not agree that this approach will improve the overall clarity of disclosure provided to plan fiduciaries and Vanguard believes, in some cases, such a requirement may hamper the effectiveness of disclosure.

Depending on the scope of a service provider's relationship with a plan, the Final Rule can require service providers to disclose a substantial amount of information. If a service provider elects to integrate all of the necessary information into a single document, the number of pages in the document is not a clear indication of that document's complexity or digestibility. Depending on the format of the disclosure, the length may result from a variety of factors, including the number of investment choices the plan fiduciary has elected to offer in the plan's line-up, the number of services a plan fiduciary has decided to offer participants, or additional charts and explanations provided by the service provider to assist plan fiduciaries in analyzing the disclosed information. A page limit on a single document disclosure could cause service providers to curtail additional graphs, tables or other illustrations in favor of a bare-bones disclosure document, which would not reflect plan fiduciary needs or preferences.

D. A separate notice for any required guide (if the Department pursues the Proposed Rule) would not be beneficial for plan sponsors.

Any guide required by the Proposed Rule should not need to be separate from other disclosures if a single integrated document is disclosed by the service provider. Requiring a guide as a separate document would create confusion rather than clarity for responsible plan fiduciaries where a disclosure intended to address the requirements of the Final Rule has already been delivered. For example, a plan sponsor would find that a guide placed at the beginning of a summary or consolidated document to be of more practical use, much like a table of contents, than if the plan sponsor were to receive the guide as an entirely separate disclosure.

E. The Proposed Rule should reflect the variety of covered service provider contracts and arrangements and should not require a guide for non-recordkeeping arrangements.

As drafted, the Proposed Rule would require a guide to disclosure under the Final Rule for all covered service provider contracts and arrangements, whether simple or complex. This approach does not reflect the wide variation between a recordkeeping arrangement requiring communication of investment expenses and complex plan recordkeeping, educational, communications, enrollment, testing and compliance services, and an investment advisory arrangement involving one contract and a simple compensation arrangement. Applying a separate guide requirement to basic arrangements would provide no benefit to plan fiduciaries and may actually increase the time a plan fiduciary must take, on average, to review disclosures covering those arrangements. If the Department continues to pursue a mandatory guide, it should only apply that requirement to service providers delivering certain recordkeeping and brokerage services described in section (c)(1)(iv)(F) of the Final Rule.

IV. If the Department pursues further amendment of the Final Rule, the effective date for the Proposed Rule should take into account the extent of changes to the Final Rule and the corresponding burdens of implementation.

As stated throughout this letter, if the Department does not alter the approach it has summarized in the Proposed Rule, Vanguard and other covered service providers will face extraordinary cost and complexity in complying with those requirements. If the Department continues to pursue further amendment of the Final Rule, despite the lack of demonstrated need for additional disclosure, Vanguard urges the Department to reflect the complexity of its ultimate approach in the effective date of those changes. If the Department elects to require service providers only to identify a contact person for further information and guidance regarding the information disclosed in the Final Rule, as described in item 2 above, an effective date 12 months following finalization of the Proposed Rule would be feasible. However, if the Department pursues any requirements beyond this approach, it should provide service providers with at least 24 months to comply to allow service providers enough time to complete the significant manual and systems work that would be necessary.

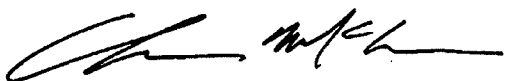
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Vanguard appreciates the opportunity to provide these comments to the Department, and we reiterate our support of the Department's prior efforts on behalf of plan sponsors and participants. In only two years, the Final Rule has increased fee transparency in the market, leading to reduced costs and further clarity for plan fiduciaries and participants. The Department should not undercut that success by imposing further costly and complex regulation in the form of a mandatory guide or summary of disclosures. If you have any questions, or require any additional information, please contact me or Josh Bobrin, Associate Counsel, Legal Department, at (610) 669-7979.

Sincerely,



Chris D. Mclsaac