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Office of the Assistant Secretary for Policy / Chief Evaluation Office
U.S. Department of Labor
Room S-2312
200 Constitution Avenue N.W.
Washington, DC 20210
Email: e-ORI@dol.gov

Re: Proposed Information Collection Request Submitted for Public Comment: Evaluating the Effectiveness of the ERISA §408(b)(2) Disclosure Requirements (“Proposal”)

Ladies and Gentlemen:

In response to the request of the Department of Labor (“DOL”) for comments on the Proposal, Charles Clark and I are submitting this letter. While we are employed by Milliman, these comments are ours alone, they do reflect the view of our employer, Milliman. Charles is a Principal at Milliman and director of the Employee Benefits Research Group. He is a member of the Society of Actuaries and the American Academy of Actuaries and has been working in the pension field for 34 years. I have worked for consulting and actuarial firms for over 30 years in the defined contribution area and currently manage the defined contribution practice for the Milliman Southern Employee Benefits (“SEB”) practice. I am also one of the six owners of the Milliman Southeast Employee Benefits Practice.

Concern with the Proposal

Milliman is a consulting and actuarial company that has worked with retirement benefit plan sponsor for over 60 years. In our roles, we can tell you that, along with our Milliman colleagues, we have always been advocates for full fee disclosure and understand the challenges that employers face trying to determine exactly how much is being paid in fees to the plan’s service providers. However, we do not believe the issue lies with locating the fee disclosure information in the current required summaries, but with understanding the information provided under DOL regulations.

Producing a guide to direct the plan sponsor’s responsible fiduciaries to explanations of the fees will be a time consuming and costly endeavor for most providers in the industry that most likely will not result in the desired outcome - a better understanding of the fees charged. However, it will result in additional cost to the providers which will ultimately be paid for by the sponsor or more likely the plan participant.

Our Research Supporting Our Comments

We conducted a survey to determine what are the challenges of producing a guide as outlined in the Proposal and received 19 responses to the survey representing a variety of providers from the insurance, trust, mutual fund, brokerage and consulting industries. These 19 providers represent over 150,000 plans of various sizes. The survey requested information on development of the

guide, the cost to produce the initial and on-going guides and encouraged comments regarding the proposed guide.

All but one of the providers noted that the production of a guide would be a manual process. Contracts have been drafted over many years and have changed as the business and investment products have changed. Providers would be required to manually review each contract to verify the section and page numbers where the appropriate fee information would be located. Many commented that there would not be a mechanism to automate this process.

In addition, some providers provide open brokerage windows or a significant menu of mutual fund choices for participants. In these cases, the providers directed the participants (and therefore the fiduciaries) to the investment's prospectus for the relevant fee information. Since the prospectus is produced by the fund company, the provider has no control on changes made to the documents and cannot reasonably keep track of page number or section changes in the documents.

The one provider who did not comment that this would be a manual process represented 100 retirement plans.

The estimated cost for the 19 service providers to produce the initial guides as outlined in the proposal is about \$50 million or an average of \$330 per plan. This cost is a portion of the actual cost and is substantially greater than the Proposal's estimate of the fiduciaries' total cost savings of \$40.3 million when using a guide to locate information. This cost most likely will be passed on to the plan sponsors and then to plan participants. Though \$330 per plan does not appear to be an economic burden, it is a significant cost for smaller plans. For a 10 person plan, it increases the per-head cost by \$33 per participant. The on-going cost for the 19 providers is estimated at about \$11 million or an average of \$73 per plan.

The providers estimated that it would take between 6 and 36 months to prepare the guides as outlined in the Proposal, averaging about 17 months. It was noted that the resources it would take to produce the guides would necessitate a reshuffling of the providers' staff off of other projects that were more suited to servicing the plan sponsors and participants, for example, building efficiencies to reduce the cost of overall recordkeeping or programming additional educational materials for the participants.

Comments

Based on our experience and the comments from the providers surveyed, very few questions were received regarding the ERISA §408(b)(2) notices. The questions received from the few readers of the disclosures were not "Where do I find the information?" but "What should I understand about the information provided?"

It was also suggested that the ERISA §408(b)(2) regulations provided a mechanism for plan fiduciaries to report any providers to the DOL that did not provide adequate fee disclosure information. This mechanism should be used by the plan sponsors to identify providers not complying with the regulation instead of forcing many of the providers to provide additional information to the plan sponsors at an additional cost when it was not requested.

We encourage the DOL to read the comments requested and perform focus group discussions regarding this topic to help determine:

1. Is the issue wide spread or just within a certain demographic (e.g. size of plan, type of specific provider, etc.)?
2. Is locating the fee information a problem or is interpreting it the problem?
3. Would sending more information to read versus talking to the provider a better solution?
4. Is there perceived value in producing the additional document versus the actual economic cost of its production?

We respectfully dissent and conclude that the production of this guide will not benefit the plan sponsors, responsible fiduciaries nor plan participants. In most cases the cost of producing this guide will be paid by the participants.

We appreciate the opportunity to provide comments on the Proposal and are available to answer your questions. Please call Laura at (303) 672-9050 or send an email to laura.van.domelen@milliman.com.

Respectfully Submitted,



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Principal



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