Office of Regulations and Interpretations

U.S. Department of Labor

Employee Benefits Security Administration

Room N–5655,

200 Constitution Avenue NW

Washington, DC 20210

Attention: RIN 1210–AC23 —SECURE 2.0 Reporting and Disclosure.

To Whom It May Concern:

Founded in 2004, Employee Fiduciary, LLC ("Employee Fiduciary") provides 401(k) recordkeeping and Third-Party Administration (TPA) services to more than 5,000 small businesses and approximately 145,000 participants nationwide. We advocate 401(k) fee transparency and believe every dollar spent in fees deserves a measurable return. This letter is our response to section D. of the Department's Request for Information (RFI). We hope you find it helpful as you review 29 CFR 2550.404a–5, as directed by Section 340 of SECURE 2.0.

According to the RFI, your review "must explore how the contents and design of the disclosures under this regulation may be improved to enhance participants' understanding of defined contribution plan fees and expenses, including the cumulative effect of such fees on retirement savings over time." In this letter, we will suggest improvements to the fee disclosure that participant-directed 401(k) plans must distribute to participants on or before the date on which they can first direct investments and at least annually thereafter (the "annual fee disclosure").

Annual Fee Disclosures Are Prepared by Plan Providers

Before we suggest improvements, it is helpful to understand who prepares the annual fee disclosures distributed to participants. The plan provider usually performs this service. In other words, the party receiving the fees.

How Annual Fee Disclosures Fall Short Today

In a 2021 study, the GAO found that "almost 40 percent of 401(k) plan participants do not fully understand and have difficulty using the fee information that the Department of Labor (DOL) requires plans to provide to participants in fee disclosures." Three shortcomings of today's annual fee disclosures contribute to this confusion.

No Standard for Plan-Related Information

The Department developed a model comparative chart for investment-related information but didn't for plan-related information - which includes administrative and individual expenses. Without a disclosure model, providers are free to describe the fees they receive using confusing and non-transparent language. This variability can also make it impossible for 401(k) participants to benchmark their fees – basically, compare them apples-to-apples to the fees charged by other plans.

“Hidden” Fees Can Be Buried in Fund Expenses

All 401(k) providers charge administration fees for delivering plan services such as asset custody, participant recordkeeping, Third-Party Administration (TPA), and professional investment advice. When these 401(k) administration fees are paid from plan assets, they can be “direct” or “indirect” in nature. The difference between the types is how they are paid. Direct fees are deducted from participant account balances, while indirect fees are deducted from investment fund returns.

Indirect fees are often called "hidden" 401(k) fees because they lack the transparency of direct fees. Revenue sharing and wrap fees are the two most common forms.

- Revenue sharing – is paid to a 401(k) provider by some mutual funds. The two most common forms are 12b-1 and sub-Transfer Agency (sub-TA) fees.

- Wrap fees – are paid to a 401(k) provider by some variable annuities. Variable annuities are basically mutual funds that have been wrapped with additional fees and redemption restrictions by an insurance company. The wrap can increase the expense ratio of the underlying mutual fund by 1% or more.

Direct fees must be disclosed as a dollar amount or formula in the plan-related information section of annual fee disclosures today. However, indirect fees can be buried in the expense ratio of funds listed in the investment-related information section, leaving it up to the participant to know whether the operating expenses of a fund have been inflated by indirect fees.

The Cumulative Effect of Fees is an Afterthought

Both direct and indirect administration fees reduce participant returns dollar-for-dollar. Disclosures typically focus on the amount of annual fees paid out by participants, which is only a small portion of the total effect of the fee. Participants will also miss out on the compound interest the payments would have earned had their amount remained invested. This “cumulative effect of fees” can cost a 401(k) participant hundreds of thousands of dollars in retirement.

Despite the stakes, annual fee disclosures tend to inadequately warn 401(k) participants about the cumulative effect of fees. Most bury the warning in the comparative chart. Below is the anodyne statement included in the Department's model comparative chart:

“The cumulative effect of fees and expenses can substantially reduce the growth of your retirement savings. Visit the Department of Labor's Web site for an example showing the long-term effect of fees and expenses at https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/a-look-at-401k-plan-fees.pdf. Fees and expenses are only one of many factors to consider when you decide to invest in an option. You may also want to think about whether an investment in a particular option, along with your other investments, will help you achieve your financial goals.”

Proposals to Address the Shortcomings

Given the cumulative effect of 401(k) fees, we think their dollar amount should be as transparent as possible. We also think that the cumulative effect of fees explanation must be more prominent and compelling.

To achieve these goals, we recommend three changes to the design and content requirements of annual fee disclosures.

Standardize Plan-Related Information

The mix of 401(k) administrative and individual expenses charged by plan providers today can vary dramatically. However, the types of expenses they charge are few. Administrative expenses tend to be flat (based on the number of plan participants) or asset-based (based on a percentage of plan assets), while individual expenses usually relate to distributions and loans. Given the small number of expense types, we recommend the Department develop a model for plan-related information to help participants total and benchmark their fees.

Below is a model chart for administrative and individual expenses. In the next proposal, we recommend the breakout of indirect fees from fund operating expenses in comparative charts. If a plan pays indirect fees, we recommend the chart refer participants to the comparative chart.

Administrative Expenses

Description	**Amount**	**When Charged:**	**Paid to:**
Flat Fee	$50 Annually	Quarterly	[Company Name]
Asset- Based Fee (Direct)	0.50% of balance ($5.00 per $1,000)	Quarterly	[Company Name]
Asset- Based Fee (Indirect)	Varies by Fund. See Comparative Chart.	Quarterly	[Company Name]

Individual Expenses

Description	**Amount**	**When Charged:**	**Paid to:**
Distribution Fee	$75	Per request	[Company Name]
Loan Establishment Fee	$50	Per request	[Company Name]
Loan Maintenance Fee	$50	Annually	[Company Name]
Qualified Domestic Relations Order (QDRO) Fee	$500	Per request	[Company Name]
Check Reissue Fee	$25	Per event	[Company Name]
Stale Check Fee	$25	Per event	[Company Name]

Breakout "Hidden" Fees in the Comparative Chart

Without a doubt, "hidden" fees are the top reason why Americans are confused about their 401(k) fees today. To mitigate their confusion, we recommend the Department require the breakout of indirect administration fees from fund operating expenses in the comparative chart. Below is an example from an actual 401(k) plan administered by a leading national provider. In the chart, the provider breaks out the wrap fee it adds to the expense ratio of mutual funds. We would like to see a similar disclosure for ALL indirect fees.

COMPARATIVE CHART OF PLAN INVESTMENT OPTIONS

Part II - Fee and Expense Information

Table 2 shows fee and expense information for the investment options listed above. This table includes the Total Annual Operating Expenses of the options above. Total Annual Operating Expenses are expenses that reduce the rate of return of the investment option. It also shows Shareholder-type Fees. These fees are in addition to Total Annual Operating Expenses.

Table 2 - Investment Option Fees and Expenses

Name/Type of Option	Gross Expense Ratio	AMC/ Net Asset Fee	Total Annual Operating Expenses		Shareholder-Type Fees
			As a %	Per $1000	
Balanced					
TIAACRF LfCyclnd 2010 Inst	0.22%	0.65%	0.87	8.70	
TIAACRF LfCyclnd 2015 Inst	0.20%	0.65%	0.85	8.50	

Show the Cumulative Effect of Fees in Dollars

In our experience, most 401(k) participants have no idea how dramatically the cumulative effect of fees can impact their retirement savings over time. We think two changes to the annual fee disclosure can help. First, move the cumulative effect of fees explanation from the comparative chart to the opening. Second, add a graphic illustration to the cumulative effect of fees.

The following illustration demonstrates the cumulative effect of fees over 10, 20, 30, and 40 years, assuming $20,000 in annual contributions and a 7% rate of return (compounded daily). We think the dollars would shock a lot of participants.

	10 Years	**20 Years**	**30 Years**	**40 Years**
No Annual Fees				
Account Balance	$289,660.56	$872,926.14	$2,047,399.97	$4,412,341.08
Losses from fees	$0.00	$0.00	$0.00	$0.00
0.25% Annual Fee				
Account Balance	$285,655.90	$846,658.50	$1,948,417.35	$4,112,173.01
Losses from fees	($4,004.66)	($26,267.64)	($98,982.62)	($300,168.07)
0.50% Annual Fee				
Account Balance	$281,720.92	$821,337.63	$1,854,935.64	$3,834,720.26
Losses from fees	($7,939.64)	($51,588.51)	($192,464.33)	($577,620.82)
1% Annual Fee				
Account Balance	$274,054.69	$773,390.28	$1,683,194.18	$3,340,883.23

Losses from fees	($15,605.87)	($99,535.86)	($364,205.79)	($1,071,457.85)

2021 GAO Recommendations Don't Go Far Enough!

In the GAO's 2021 study, the agency recommended four changes to the design and content of annual 401(k) fee disclosures:

1. Use a consistent term for asset-based investment fees (e.g., gross expense ratio).
2. Include the agency's graphic illustration on the cumulative effect of fees.
3. Include fee benchmarks for in-plan investment options.
4. Include ticker information for in-plan investment options, when available.

We support these recommendations, but don't think they go far enough. The reason is "hidden" fees. We would like to see them outlawed in favor of direct fees, but we would be pleased to settle for better disclosure.

Thank you again for the opportunity to comment regarding this important matter. If you would like to discuss the matter further, please feel free to contact me at eric@employeefiduciary.com or (727) 324-4004.

Regards,

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