

Date: September 4, 2008

TCRS 2008-07: Department Of Labor Proposed Regulations On Participant Fee Disclosure

The Department of Labor (DOL) has proposed regulations that, upon adoption, would require plan fiduciaries to disclose certain plan and investment-related information, including fee and expense information, to participants and beneficiaries under participant-directed individual account plans subject to ERISA. The DOL, in proposing these regulations, wanted to ensure that these participants and beneficiaries have the information they need to make well informed decisions about the management and investment of their accounts. The DOL issued these proposed regulations with conforming amendments to the regulations under ERISA section 404(c). It is the DOL's intent through these regulations to establish uniform, basic disclosures that would apply to such participants and beneficiaries, without regard to whether the plan that covers them is a section 404(c) plan. As required by these regulations, disclosures must be written in a manner calculated to be understood by the average participant. Fees and expenses are required to be disclosed only to the extent they are charged or assessed to participants and beneficiaries.

The proposed regulations address the types of information that must be disclosed, the timeframes for providing the information and the form in which information may be disclosed.

EFFECTIVE DATE

These regulations, including the amendments to ERISA section 404(c), are proposed to be effective for plan years beginning on and after January 1, 2009. The DOL expects to issue final regulations by year-end. Written comments on these proposed regulations must be submitted to the DOL by September 8, 2008.

Under the proposed regulations, two types of information must be disclosed, plan-related information and investment-related information.

PLAN-RELATED INFORMATION

General Plan Information is required to be furnished on or before the date of plan eligibility and at least annually (once in any 12-month period) thereafter, based on the latest information available to the plan, and must include:

- Under what circumstances participants and beneficiaries may give investment instructions,
- Any specified limitations on such instructions, such as restrictions on investment transfers to and from a designated investment alternative,
- A description of the plan provisions relating to the exercise of voting, tender and similar rights associated with an investment in a designated investment alternative and any restrictions on such rights,
- A list of the designated investment alternatives offered under the plan, and
- Identification of any designated investment managers to whom participants and beneficiaries may give investment instructions.

In addition, a description of any material changes to this general plan information must be furnished to participants and beneficiaries not later than 30 days after adoption of the changes. General plan information may be disclosed in the plan's summary plan description, provided the timing requirements are met.

Administrative Expense Information

Administrative expense information, to the extent not included in investment-related fees and expenses, must be furnished on or before the date of plan eligibility and at least annually thereafter. The proposed

regulations provide that this information is required to ensure that the plan's fiduciary informs participants and beneficiaries about the plan's day-to-day operational expenses that will be charged against their accounts. This information may be disclosed in the plan's summary plan description provided the timing requirements for providing the information are met, and must include:

- An explanation of any fees and expenses for plan administrative services (e.g. legal, accounting and record-keeping), and
- The basis on which the fees and expenses will be allocated to each individual account (e.g. pro rata or per capita).

Currently, administrative expenses and fees are not required to be disclosed to participants. The proposed regulations would require that, at least quarterly (once in any 3-month period), a statement of the dollar amounts actually charged to participants' and beneficiaries' accounts for the preceding quarter for administrative expenses and fees and a general description of such fees be disclosed. The DOL does not, however, require these expenses and fees to be broken down on a service-by-service basis. The disclosure requirement may be satisfied by including information in the quarterly benefit statements provided to participants and beneficiaries.

Individual Expense Information

The required individual expense information relates to expenses that are assessed on an individual-by-individual basis, rather than on a plan-wide basis, such as fees attendant to plan loans, investment advice services and qualified domestic relations orders. For most plans, individual expenses are currently being disclosed to participants. Under the proposed regulations this information may be disclosed in the plan's summary plan description and the dollar amounts actually charged for the preceding quarter disclosed in the quarterly benefit statements, similar to the required disclosure of administrative expenses and fees.

INVESTMENT-RELATED INFORMATION

Investment-related information must be provided to participants and beneficiaries based on the latest information available to the plan, automatically and upon request.

Information To Be Provided Automatically

This information must be provided on or before the date of plan eligibility and at least annually thereafter, with respect to each designated investment alternative offered under the plan. The regulations specifically exclude from the definition of designated investment alternative, brokerage windows, self-directed brokerage accounts or similar arrangements that enable participants and beneficiaries to invest in funds outside of those offered under the plan.

- **Basic Identifying Information**

- Name and category (e.g. money market, balanced, large-cap) of the designated investment alternative,
- Type of management (whether actively or passively managed), and
- A website address that is sufficiently specific to lead participants and beneficiaries to supplemental information, such as the name of the issuer or provider, the investment's principal strategies and attendant risks, the assets comprising the investment's portfolio, the portfolio turnover, investment performance and related fees and expenses.

- **Performance Data**

For designated investment alternatives for which the return is not fixed:

- The average annual total percentage return for 1-year, 5-year, 10-year periods, if available, and
- A statement that past performance is not necessarily an indication of future performance

For designated investment alternatives for which the return is fixed:

- The fixed rate of return, and
- The term of the investment

- **Benchmarks**

For designated investment alternatives for which the return is not fixed:

- The name and returns of an appropriate broad-based securities market index over the 1-year, 5-year, 10-year periods comparable to the above performance data periods, and
- The designated investment alternative must not be administered by an affiliate of the investment provider, its investment adviser or a principal underwriter, unless the index is widely recognized and used.

- **Fee and Expense Information**

For designated investment alternatives without a fixed return:

- The amount and description of each type of shareholder fee, such as sales loads and sales charges, deferred sales charges, redemption fees, surrender charges, exchange fees, account fees, purchase fees and mortality and expense fees,
- The total annual operating expenses expressed as a percentage (e.g. expense ratio), and
- A statement that fees and expenses are only one of several factors participants and beneficiaries should consider when making investment decisions.

For designated investment alternatives with a fixed return:

- The amount and description of any shareholder type fees that may apply to a purchase, transfer or withdrawal of the investment (in whole or in part)

With respect to information to be provided automatically, the requirement to provide such information on or before the date of plan eligibility may be satisfied by furnishing the most recent annual disclosure and any material changes furnished to satisfy disclosure of general plan-related information.

Except to the extent these regulations require dollar amounts to be reported, such as the quarterly charges for administrative and individual expenses, fees and expenses may be expressed in terms of a monetary amount, formula, percentage of assets or per capita charge.

Comparative Format

Investment-related information to be provided automatically is required to be disclosed in a chart or similar format designed to facilitate comparison by participants and beneficiaries of the information across designated investment alternatives available under the plan. In addition, a statement containing the name, address and phone number of the plan fiduciary (or someone acting on its behalf) to contact for information to be provided upon request (see below) and a statement that more current investment-related information may be available at a listed website must also be furnished. Additional information may be included provided it is not inaccurate or misleading.

A plan fiduciary that uses the model chart will be deemed to have satisfied the comparative format requirement of these regulations.

Information To Be Provided Subsequent To Investment

After an investment is made, investing participants and beneficiaries must be furnished materials provided by the plan relating to the exercise of voting, tender, or similar rights to the extent those rights are passed through under the terms of the plan.

Information To Be Provided Upon Request

The following information must be provided either (1) on or before date of plan eligibility and at least annually, or (2) upon request with respect to each designated investment alternative:

- Copies of prospectuses (or any short-form or summary prospectus) approved by the SEC, or similar documents provided by entities that are not registered under the Securities Act of 1933 or the Investment Company Act of 1940,
- Copies of any financial statements or reports, such as statements of additional information and shareholder reports and other similar materials, to the extent provided to the plan,

- A statement of the value of a share or unit and the valuation date, and
- A list of the assets comprising the portfolio which constitute plan assets and the value of each such asset (or the proportion of the investment it comprises).

The proposed regulations do not appear to expand on the ERISA section 404(c) regulations to require the disclosure of revenue sharing arrangements.

The Preamble to the proposed regulations states that it is the responsibility of each plan fiduciary to assure itself that the information contained in the disclosure it provides is complete and accurate. However, a plan fiduciary will not be liable for reasonable and good faith reliance on information furnished by service providers with respect to disclosures to be provided automatically.

According to the proposed regulations, disclosures may be furnished electronically, provided current DOL guidelines on the use of electronic media are met.

AMENDMENTS TO ERISA SECTION 404(c) REGULATIONS

ERISA section 404(c) regulations are amended to eliminate the disclosure requirements that specifically relate to section 404(c), provided the requirements under these regulations are met.

The ERISA section 404(c) regulations are also amended to make clear that compliance with section 404(c) does not relieve a plan fiduciary of the duty to select and monitor the designated investment manager(s) or the designated investment alternatives offered under the plan.

COMMENTS REQUESTED BY THE DOL

- The earliest date on which the proposed regulations can and should be effective, considering administrative, programming and other related issues
- How the regulations would be applied to investments and investment products not subject to the securities laws
- The type of information required to be disclosed and the timing and form of such information
- Whether the proposed regulations raise any issues under the existing DOL rules on the use of electronic media
- The impact on service providers and plan sponsors of in-house managed investments offered as designated investment alternatives under the plan
- Whether and how the regulations may need to be modified to include a narrowly based index that reflects the financial market sector for ERISA plan investment alternatives that are not subject to the securities laws
- Challenges that the proposed regulations' definition of "average annual total return" and "total annual operating expenses" may present for investments and products not subject to the Investment Company Act of 1940. The DOL is asking for suggestions on alternative approaches and definitions.

This Summary is designed to provide an overview of the Department of Labor's Proposed Regulations on Participant Fee Disclosure and is not intended to be comprehensive. The Transamerica Center for Retirement Studies® ("The Center") is a non-profit corporation and private operating foundation. The Center may be funded by contributions from Transamerica Life Insurance Company and its affiliates or other unaffiliated third-parties. For more information about The Center, please refer to www.transamericacenter.org. The Center and its representatives cannot give ERISA, tax or legal advice. This material is provided for informational purposes only and should not be construed as ERISA, tax or legal advice. Interested parties must consult and rely solely upon their own independent advisors regarding their particular situation and the concepts presented here. Although care has been taken in preparing this material and presenting it accurately, The Center disclaims any express or implied warranty as to the accuracy of any material contained herein and any liability with respect to it.