R. Gregory Barton
Managing Director
Institutional Investor Group

P.O. Box 2900
Valley Forge, PA 19482
610-669-1000
www.vanguard.com

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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, NW
Washington, D.C. 20210

Attention: 408(b)(2) Interim Final Rule

RE: Interim Final ERISA Section 408(b)(2) Fee Disclosure Regulation

Dear Sir or Madam:

Vanguard appreciates the opportunity to submit these comments on the Department's interim final regulation regarding reasonable service provider agreements and fee disclosure under ERISA section 408(b)(2).

Vanguard is one of the world's leading asset managers, managing $1.4 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 nearly $400 billion in DC and DB assets and provide services for more than 3.5 million participants in 2,500 DC plans and approximately 550,000 participants in DB plans.

In our role as a leading provider of low-cost investment, recordkeeping, and administrative services for retirement savings plans, we regularly provide our plan sponsor clients with itemized and complete disclosure of the fees their plans are paying. Our experience has been that sponsors highly value these disclosures and have used them effectively to make sure that the fees paid by their plan and participants are reasonable and appropriate in light of the services provided.

We applaud the Department for its continued efforts to ensure that plan sponsors have all of the information they need in order to determine the reasonableness of their plan's fees. Overall, we believe that the interim final regulation meets this goal, providing for comprehensive disclosure of fee arrangements in a manner that is not overly burdensome. Thus, this comment letter generally supports the regulation as drafted, but we have also noted opportunities for the Department to provide additional clarity.

1. Vanguard supports the requirement that recordkeeping platform service providers give fee information on all designated investment alternatives.

For many years now, Vanguard has been regularly providing sponsors of plans on our full-service recordkeeping platform a Vanguard All-In Fee Report that includes a list of the fees paid by the plan in connection with all designated investments under the plan on our recordkeeping system. These investments may include both Vanguard and non-Vanguard investments. Our plan sponsor clients have found that receiving disclosure of all of the investment-related fees paid by the plan in a consolidated report, rather than through separate, *ad hoc* disclosures passed through from the various investment providers, helps the sponsor to better evaluate and compare the reasonableness of the fees paid for all of the investments under the plan.

As a result of this experience, we support the requirement under the regulation that recordkeeping platform providers affirmatively give the plan sponsor investment fee information for the designated investment options on the platform. Our experience is that the incremental cost of consolidating investment fee information on a periodic basis is relatively small, particularly when compared to the benefit derived by the plan sponsor because the sponsor can get a much better consolidated snapshot of all of the investment-related fees paid by the plan.

Therefore, we encourage the Department to require the recordkeeping platform provider to consolidate the investment-related fees in a summary form. We would further recommend that these disclosures be provided periodically—our recommendation would be annually—to give the plan sponsor the regular opportunity to review and monitor the relative level of investment fees being paid across all options under the plan.

We encourage the Department to confirm that, when consolidated, summary fee information is provided by the recordkeeping platform provider, the platform provider can rely on the fee information provided in disclosure materials issued by the designated investment alternative, unless the platform provider has knowledge that the materials are incomplete or inaccurate. Unless the issuer is an affiliate of the recordkeeping platform provider, the platform provider has no independent means to verify the accuracy of the information provided by the issuer.

2. Service providers should be encouraged to provide a short summary of all fees paid.

In the preamble to the regulation, the Department requests comment on whether covered service providers should be required to furnish a "summary" disclosure statement that would consolidate the fees paid by the plan. As is the case with investment-related fees discussed above, we strongly support the use of summaries by service providers and have found summaries to be very helpful in assisting clients with satisfying their ERISA fiduciary oversight responsibilities.

In our view, a summary of all fees received by the service provider will serve the important purpose of ensuring that sponsors remain focused on *all* of the fees that their plans are paying, not just on an individual component part, such as recordkeeping. We understand the Department's rationale for requiring disclosure of an "unbundled" recordkeeping fee component when a plan does not pay explicit compensation for recordkeeping services, or when compensation for recordkeeping services is offset or rebated based on other compensation received by the recordkeeper or its affiliate. However, investment-related fees represent a significant portion of the fees paid by the plan, and we are concerned that sponsors may become too focused on the recordkeeping charge without giving appropriate consideration to the other fees being paid by the plan.[1]

Requiring a summary will help to ensure that the fees disclosed are considered in their proper context. In this regard, we note that the Vanguard All-In Fee Report that we provide clients effectively itemizes and summarizes all of the fees being paid by the plan, recordkeeping and investment-related, and then rolls up all of those fees to provide an all-in plan expense ratio (essentially, the number is derived by aggregating all of the plan's fees and dividing by the plan's assets to get to a plan-wide expense ratio). Our plan sponsor clients find this to be a highly effective method of monitoring their plans' overall costs and evaluating whether those costs are reasonable.

Therefore, we recommend that the Department mandate that bundled service providers and recordkeeping platform providers be required to calculate and provide plan sponsors a plan expense ratio reflecting the combined cost of the recordkeeping and investment-related fees. Again, this summary and consolidation helps plan sponsors view all of their plan fees in the right context.

[1] For example, Morningstar recently released a study indicating that low mutual fund expense ratios were one of the best predictors of investment success over time. "How Expense Ratios and Star Ratings Predict Success" by Russel Kinnel (www.morningstar.com, August 9, 2010).

3. The Department should confirm that covered service providers may provide all required disclosures electronically.

The interim final regulation does not specifically permit a covered service provider to provide any required disclosures in electronic form. We would encourage the Department to confirm that electronic delivery of the disclosure is an acceptable method for satisfying ERISA section 408(b)(2).

Plan sponsors and their service providers are accustomed to dealing with one another through e-mail and other electronic communications. Our experience as a service provider has been that plan sponsors *prefer* that we communicate with them electronically and leave it to their discretion to determine which materials may be reviewed in electronic form and which are more easily reviewed in printed form.

Thus, we encourage the Department to make clear that a recordkeeping platform provider is permitted to furnish the required information through a website that provides a consolidated source of information on all of the investment options on its platform. The platform provider could then send a notice to its clients informing them that their plan information on the website has been updated and is available for the plan sponsor to review.

We note that for several years the Department has permitted plan administrators to provide plan participants with all notices and other disclosures required by Title I of ERISA through electronic delivery. In our view, it would similarly be sound policy for the Department to confirm that plan sponsors can be afforded the convenience of electronic disclosure in this context, particularly in light of plan sponsors' preference for, and current utilization of, electronic forms of communication.

4. The final regulation should retain the disclosure-based provision of the interim final regulations.

We agree with the Department's determination in the Preamble to the interim final regulation that a detailed written contract should not be mandatory. While plans typically enter into written fee and service contracts with their service providers, many existing contracts may not contain some of the technical details required under the interim final regulation. It is appropriate not to mandate that service providers and plan sponsors incur the potentially significant cost and expense of going back and amending existing contracts to reflect the new requirements. Allowing for the requirements of the interim final regulation to be satisfied in a separate disclosure document is entirely appropriate, and we would encourage the Department to retain this ability in the final regulation.

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Vanguard appreciates the opportunity to provide these comments to the Department, and we reiterate our support of the Department's efforts on behalf of plan sponsors and participants. If you have any questions, or if we can be of any additional assistance on this important initiative, please contact Dennis Simmons, Principal—Legal Department at 610-669-4065 or Ann Combs, Principal—Strategic Retirement Consulting, at 610-503-6305.

Sincerely,

R. Gregory Barton