

MEMO# 35910

October 31, 2024

GAO Issues Report on 401(k) Plans and the Reported Impacts of DOL's Fee Disclosure Regulations

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TO: ICI Members
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: GAO Issues Report on 401(k) Plans and the Reported Impacts of DOL's Fee Disclosure Regulations

On October 28, 2024, the US Government Accountability Office (GAO) released a report entitled "401(k) Plans: Reported Impacts of Fee Disclosure Regulations, and DOL Efforts to Support Implementation of Regulations" ("Report").[\[1\]](#) The Report responds to a request from Senator Patty Murray (former Chair of the Senate Committee on Health, Education, Labor and Pensions ("Senate HELP Committee"), Senator Bernie Sanders (current Chair of the Senate HELP Committee), and Representative Bobby Scott (Ranking Member of the House Committee on Education and the Workforce) that the GAO review plan sponsor and service provider perspectives on DOL's fee disclosure regulations (both the participant-level fee disclosure regulation (see 29 CFR 2550.404a-5) and the disclosure that service providers must furnish to plan fiduciaries (see 29 CFR 2550.408b-2)).

According to the GAO, the Report addresses (1) literature and selected stakeholder groups' views on how the fee disclosure regulations affected 401(k) fees and investments; (2) selected stakeholder groups' views on the benefits and challenges plan sponsors and service providers experienced as a result of the fee disclosure regulations; and (3) how DOL assisted plan sponsors and service providers with following the disclosure regulations.

The Report is short, providing three key findings described below. It does not include any new recommendations for DOL but does reference prior GAO recommendations.[\[2\]](#)

Multiple Factors, Including 401(k) Fee Disclosures, May Have Contributed to Changes in 401(k) Fees and Investments, According to Stakeholders and Literature

The majority of the stakeholders the GAO interviewed said that DOL's fee disclosure regulations did not play a measurable role in the downward trend in 401(k) plan fees.

Rather, litigation, technology and innovation, and competition among service providers had a greater impact on fees. Three stakeholders voiced a different view, opining that the fee disclosure regulations did influence the types of fees charged by providers and led to the industry offering funds with easier to understand fees, such as fees charged as a dollar amount rather than as a percentage of savings.[3] The GAO cited a study that found that, after the fee disclosure regulations became effective, more participants moved money away from funds with higher expense ratios, but GAO also acknowledged that the increased use of automatic enrollment and target date funds may also explain these changes.

The GAO suggested that its prior recommendations relating to the Form 5500[4] would enhance DOL's understanding of fees and assist it in providing more effective and efficient oversight of 401(k) fees.

Some Stakeholders Reported That Fee Disclosures Increase Transparency, and Financial Education Benefits Participants

Stakeholders interviewed by GAO generally provided positive feedback regarding the fee disclosures from service providers to plan sponsors. Their comments indicated that the disclosures increased sponsors' awareness and ability to manage their plans, gave sponsors information needed to negotiate fees, and benefited smaller plan sponsors more than larger ones.

Regarding the fee disclosures provided to plan participants, some stakeholders told GAO that the disclosures increased participants' knowledge of and involvement in their plans and allowed them to make more informed decisions. However, several stakeholders told GAO that the disclosures have challenges—namely, that participants may not understand the information provided, that the disclosures may promote the idea that lowest cost options are the best options, and that the disclosures may contribute to fee litigation—and that the cost of providing the disclosures may not be worth the benefit they provide. Some stakeholders suggested that the disclosures could be modified to be easier to understand and that providing financial literacy education would help participants' understanding.

DOL Supports Fee Disclosure Compliance with Resources and Monitoring

GAO noted that, to assist plan sponsors and service providers, DOL provides written resources, a help line, and compliance assistance training. The majority of stakeholders interviewed told GAO that plan sponsors and service providers did not need any additional assistance from DOL.

DOL monitors compliance through investigations,[5] a web portal that allows plan sponsors to report service providers that fail to provide the required disclosures, and two reports to Congress that DOL is currently working on, as required by the SECURE 2.0 Act—a report on fee disclosure regulation for participant-directed individual account plans and a report on the effectiveness of retirement plan disclosures.[6]

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Notes

[1] The Report is available at <https://www.gao.gov/products/gao-24-107125>. The Report

references the GAO's prior report from 2021, titled "401(k) Retirement Plans, Many Participants Do Not Understand Fee Information, but DOL Could Take Additional Steps to Help Them." For a summary of the 2021 report, see ICI memorandum No. 33743, dated September 1, 2021, available at <https://www.ici.org/memo33743>.

[2] In footnote 4 of the Report, the GAO notes that its 2021 report included five recommendations, which DOL has not yet addressed. However, DOL indicated that it would consider those recommendations as it reviews the fee disclosure regulations in 2024. Section 340 of the SECURE 2.0 directed DOL, by December 29, 2025, to review its fee disclosure regulation for participant-directed individual account plans and explore how the disclosures could be improved to enhance participants' understanding of fees. For a summary of the SECURE 2.0 Act, see ICI Memorandum No. 34795, dated January 12, 2023, available at <https://www.ici.org/memo34795>.

[3] The Report also cites a 2020 study that found a shift from indirect compensation to direct compensation in plans. See footnote 14 of the Report.

[4] For example, in 2014, the GAO recommended that DOL make revisions to the Form 5500. GAO, "Private Pensions: Targeted Revisions Could Improve Usefulness of Form 5500 Information," GAO-14-441 (June 5, 2014), available at <https://www.gao.gov/products/gao-14-441>. In 2024, GAO noted that the Form 5500 does not include information on fees for certain kinds of target date funds. GAO, "401(k) Retirement Plans: Department of Labor Should Update Guidance on Target Date Funds," GAO-24-105364 (March 28, 2024), available at <https://www.gao.gov/products/gao-24-105364>.

[5] DOL told GAO that it has not found significant non-compliance with fee disclosure requirements.

[6] For a summary of the SECURE 2.0 Act, see ICI Memorandum No. 34795, dated January 12, 2023, available at <https://www.ici.org/memo34795>. Section 340 of the Act requires DOL to report to Congress on the findings of a review on the participant-level fee disclosure regulation and recommendations for legislative changes to address its findings. Section 319 of the Act directs DOL, the Treasury Department and the Pension Benefit Guaranty Corporation to provide a joint report to Congress on the effectiveness of the reporting and disclosure requirements in ERISA and the Code applicable to pension and retirement plans. Both reports are due by December 29, 2025 (within three years of enactment of the SECURE 2.0 Act).