

Benefit Insights

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A non-technical review of qualified retirement plan legislative and administrative issues

October 2011

Participant Fee Disclosure Requirements for Individual Account Plans

Last year the Department of Labor (DOL) issued final regulations requiring broad disclosures of fees, expenses and certain other plan and investment-related information to participants and beneficiaries under individual account plans.

The purpose of the new disclosure requirements is to ensure participants and beneficiaries have access to adequate information to enable them to comparison shop among investment options to make informed investment decisions.

Below is a general overview of the regulations' key disclosure requirements that become effective in 2012.

Plans Subject to the Disclosure Requirements

All individual account plans that are subject to the Employee Retirement Income Security Act of 1974 (ERISA) and permit participants and beneficiaries to direct their account investments must comply with the disclosure requirements. Individual

account plans include not only 401(k) plans but also profit sharing and other tax-qualified plans, as well as 403(b) plans sponsored by tax-exempt employers that permit participants and beneficiaries to direct their own account investments.

The disclosure requirements do not apply to IRA-based plans such as SEPs and SIMPLE plans. Also, governmental plans, as well as church plans that have not elected to be treated as ERISA plans, are not subject to the disclosure requirements.

Compliance Dates

For plans utilizing a calendar plan year (this is true of most plans), plan administrators are required to provide the initial disclosures of plan and investment-related information to participants and beneficiaries no later than May 31, 2012. This deadline is extended to 60 days after the first day of the first plan year beginning on or after November 1, 2011, if this would be a later deadline.

The first quarterly statements of fees and expenses charged to participants' and beneficiaries' plan accounts must be provided no later than 45 days after the end of the calendar quarter in which the first initial disclosures were required (August 14, 2012 for plans utilizing a calendar plan year).

Who Must Provide the Disclosures?

The ultimate responsibility for providing all of the required information and other materials belongs to the plan administrator (usually the plan administrator is the plan sponsor).

As a practical matter, carrying out the responsibility for providing the required information and materials will ordinarily be delegated to a plan's recordkeeper. Accordingly, plan sponsors need to verify that their recordkeepers will provide these services under their contracts. If so, the plan administrator's responsibility will be limited to overseeing the recordkeeper to make sure it is fulfilling its obligations.

The regulations clarify that, to the extent a plan administrator reasonably and in good faith relies on information from an investment or other service provider in making the required disclosures, the administrator will not be held liable for any resulting inaccuracy or lack of completeness.

Designated Investment Alternatives

An important concept under the regulations is the "designated investment alternative." Designated investment alternatives include all funds and other vehicles under a plan into which participants and beneficiaries can direct plan contributions other than brokerage accounts, brokerage windows or similar options that permit investment in vehicles beyond those designated by the plan's fiduciaries.

Plan-Related Information

Before a participant or beneficiary may begin directing the investment of his or her plan account, and at least annually thereafter, the plan administrator must furnish disclosures of the following plan-related information:

- A description of procedures for directing

account investments, including any restrictions on changing investment elections with respect to any designated investment alternative;

- The designated investment alternatives available under the plan as well as any designated investment managers (in most cases, designated investment alternatives are mutual funds and similar vehicles rather than managed accounts—accordingly, most of the required information will pertain to the investment products rather than any designated managers);
- A description of any voting, tender or similar rights associated with any designated investment alternative, including any restrictions on them;
- If applicable, a description of any brokerage account, window or similar feature that permits participants and beneficiaries to invest their plan accounts in any vehicle other than the plan's designated investment alternatives;
- An explanation of administrative expenses, such as recordkeeping, legal and audit expenses that may be charged to all plan accounts and the basis on which such charges will be allocated; and
- An explanation of any fees and expenses that may be charged to individual accounts that are not already reflected in the operating expenses of a designated investment alternative, such as:
 - Commissions and sales charges;
 - Redemption or transfer fees;
 - Fees for individual investment advisory services;
 - Processing fees for plan loans and QDROs; and
 - Charges for use of a brokerage window or similar feature.

Plan-related information may be included in (or with) an SPD or benefit statement if the timing requirements can be met.

Investment-Related Information

The plan administrator must also furnish to each participant or beneficiary certain investment-related information in a chart or similar comparative format. The following information must be provided for all designated investment alternatives under the plan, regardless of whether they have variable or fixed rates of return: the name of the investment and the type or category of the investment (i.e., balanced fund, small cap equity fund, etc.).

Variable Rate of Return Investments

For each designated investment alternative with a variable rate of return, such as a mutual fund, the following information must be furnished:

- The average annual total return for 1-, 5- and 10-calendar-year performance periods ending on the last day of the previous year and the returns, over comparable performance periods, of an appropriate broad-based securities index;
- The amount and description of each shareholder-type fee, such as commissions, sales loads, and redemption and transfer fees that are not already reflected in the operating expenses of the designated investment alternative;
- The operating expenses, both as a percentage and an annual dollar amount for each \$1,000 invested;
- Any purchase, transfer or withdrawal restrictions;
- A statement that fees and expenses are only one of several factors that participants and beneficiaries should consider when making investment decisions;
- A statement that past performance is not necessarily indicative of future performance; and
- A statement that the cumulative effect of fees and expenses can substantially reduce the growth of the retirement account and that

participants and beneficiaries can visit the Employee Benefit Security Administration website for an illustrative example.

Fixed or Stated Rate of Return Investments

For each designated investment alternative with a fixed or stated rate of return, such as a CD or guaranteed investment contract, the following information must be furnished:

- The fixed or stated annual rate of return;
- Any restrictions on purchases, transfers, and withdrawals;
- Any shareholder-type fees of the types described above; and
- The term of the investment.

Stable value and money market funds are not considered to have fixed or stated rates of return. Because they are not free from investment risk, they are subject to the requirements for variable return investments described above.

Website and Glossary Requirements

With respect to each designated investment alternative, the disclosure must also include an Internet website address providing access to certain information about the investment. The website address provided cannot simply direct the participant or beneficiary to the issuer's home page.

The disclosure must also include a glossary of investment-related terms to assist participants and beneficiaries with understanding their investment options or a website address that directs them to such a glossary.

Quarterly Statements of Actual Fees and Expenses

Quarterly statements must also be furnished to each participant and beneficiary, which must provide:

- The dollar amount of any individual fees and expenses actually charged to his or her account

during the previous quarter;

- A description of the services for which the fees were charged; and
- If applicable, an explanation that some administrative expenses were paid from the operating expenses of one or more of the plan's designated investment alternatives, such as through 12b-1 fees or revenue sharing arrangements.

This information may be provided as part of the quarterly benefit statement required under ERISA if the timing requirements can be met. Doing so will allow plan sponsors to avoid the additional costs of providing multiple participant notices each quarter.

Materials Provided Upon Request

Upon request, a participant or beneficiary must be furnished with the following with respect to any designated investment alternative:

- A copy of the prospectus or an SEC-approved short form or summary prospectus;

- Copies of financial statements or reports;
- A statement of the value of a share or unit and the date of valuation; and
- A list of assets comprising the portfolio but only with respect to investments that are "plan assets" under ERISA, and the value of each such asset or its proportion of the investment alternative (this requirement will not apply to mutual funds and most traditional individual account investments as they are not considered to be "plan assets" under ERISA).

Summary

Plan sponsors of individual account plans are encouraged to understand and plan ahead for the new reporting and disclosure requirements. Timely reporting and disclosure is necessary to satisfy fiduciary duties under ERISA.

Compliance dates are rapidly approaching, so plan sponsors should contact their service providers right away to coordinate responsibility for providing the required information and materials.

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