

New Annual Disclosure Requirements for Participant Directed, Defined Contribution Plans

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Effective for the first plan year beginning on or after November 1, 2011 (January 1, 2012 for calendar year plans), all retirement plans with participant-directed investments will have increased disclosure obligations, according to a new regulation issued last week by the U.S. Department of Labor (DOL). The full text of the new regulation is available at: <http://edocket.access.gpo.gov/2010/pdf/2010-25725.pdf>.

The purpose of the new regulation is to “ensure that all workers who direct their plan investments will have access to the information they need to make informed decisions regarding the investment of their retirement savings, including fee and expense information.” The new disclosure obligations are summarized below. Compliance is required for all plans, large or small.

Method of Delivery. Although many of us hoped that the DOL might loosen the standard for electronic delivery of this information, the DOL announced that they will request comment on the standard for electronic distribution of requirement plan disclosures. For now, electronic delivery will only be available for individuals who have to access electronic information as part of their regular job or for those who have elected to receive electronic communications in a manner that demonstrates their ability to receive the communications.

Disclosure of Plan Information. The Plan Administrator must furnish, on or before the date that a participant could first direct their investments and annually thereafter, the following:

- Information regarding the structure and mechanics of the plan (e.g., situations under which a participant or beneficiary might give investment instructions, any plan level trading restrictions, how to give investment instructions under the plan, a current list of the plan’s investment options, and a description of any “brokerage windows” or similar arrangement that enables the selection of investment options beyond those offered by the plan);
- An explanation of fees and expenses for general plan administrative services (e.g., legal, accounting or recordkeeping services); and
- An explanation of any fees and expenses that may be charged to or deducted from the individual account of a specific participant or beneficiary based on the actions taken by that person (e.g., fees and expenses for plan loans or processing qualified domestic relations orders).

Disclosure of Investment-Related Information. The Plan Administrator must also furnish additional performance and investment fee information for each investment option, on or before the date that a participant could first direct their investments, and annually thereafter. The regulations include a model comparative chart that could be used for this disclosure. The investment-related disclosure must contain the following information:

- 1-year, 5-year and 10-year investment performance returns and applicable benchmark returns for each investment option that does not have a fixed rate of return (although not required by the regulation, the model comparative chart also shows return since fund inception);

- Fee and expense information for each investment option;
- An internet address that provides participants and beneficiaries access to additional information about each investment option; and
- A glossary of investment-related terms.

You can obtain a copy of the Model Comparative Chart at:
<http://www.dol.gov/ebsa/participantfeerulemodelchart.doc>.

Observations about the Expanded Notices. The DOL understood the challenge created by “day 1” eligibility and has replaced the original proposed timing (before the date of plan eligibility) with the more flexible (before date on which the participant can first direct their investment).

These first two disclosures are required to be made for each individual who is eligible to participate in the plan plus beneficiaries who have an account in the plan (like the estate of a deceased participant or the alternate payee under a QDRO). A plan is not allowed to limit the disclosures just to individuals who have chosen to participate in the plan.

Any changes to this information must be communicated to participants as soon as practicable (generally 30 to 90 days before the change becomes effective). The changes do not have to be material.

Expanded Quarterly Account Statement. In addition, plan participants must receive statements, at least quarterly, showing the actual dollar amount of plan-related fees and expenses actually charged to or deducted from their individual accounts, along with a description of the services for which the charge or deduction was made. A plan will no longer be permitted to show returns net of fees, or the aggregate plan fee amounts, but must instead break out fees so each participant can understand the impact of fees on his or her account balance.

New Required Disclosures for Plans with Annuity Investment Options. Additional disclosures will be required for self-directed plans that offer annuities.

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