



Retirement Plan Fee Disclosure:

Preparing for Participant Questions

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The time clock for fee disclosure is ticking. Starting in 2012, the U.S. Department of Labor (DOL) is requiring retirement plan administrators to provide more information about the fees and expenses associated with their plans. The purpose of the DOL regulation is to provide greater transparency and make sure that participants and beneficiaries have the information they need to make informed decisions about the investment of their plan accounts.

As a plan sponsor, you may want to give some thought to how your employees may react to the new disclosures. Some employees may think that you, as their employer, currently pay all the plan costs. When they receive the initial disclosures, they may think they are being charged new fees they didn't have to pay before. And those who do realize they pay some plan costs may be concerned when they receive disclosures showing how those fees reduce their plan accounts.

Here are some questions and answers about fee disclosure and how to prepare your employees for it.

Which plans do the disclosure rules apply to?

The rules apply to most plans that allow participants to direct the investment of their account assets, such as 401(k) plans, profit sharing plans, money purchase pension plans, and 403(b) tax-deferred annuities that are subject to the pension law (ERISA). The rules don't apply to simplified employee pension plans (SEPs), SIMPLE plans, IRAs, or non-ERISA employer-sponsored plans.

Who is responsible for making the disclosures?

The plan administrator is responsible for making the required disclosures. Many plan sponsors also serve as plan administrators.

Who must receive the required disclosures?

You will have to provide the required disclosures (detailed later) to each plan participant and beneficiary who has the right to direct investments under the plan.

How much time do we have to prepare employees?

If your plan operates on a calendar-year basis, the latest date for furnishing participants with their initial participant disclosures (all disclosures other than disclosures required at least quarterly) is August 30, 2012. For plans that operate on a fiscal-year basis, you have until the *later* of (1) 60 days after the first day of the first plan year beginning on or after November 1, 2011, or (2) August 30, 2012.

What can we do to prevent our employees from thinking they're being charged new fees?

Point out that fees are standard in the retirement plan and investment industries, and make sure they realize they're currently paying certain plan costs. You might provide them with individual benefit statements showing how much you pay for all of the benefits they receive as employees, including plan administration fees if you pay some (or all) of them, and how much they pay in plan fees, health insurance premiums, etc. Or you might include an article in your company newsletter or prepare a specific communication to proactively prepare your employees for the receipt of the disclosure documents.

Do participants need any other information about fees before they receive the required disclosure?

You may want to tell them fees are only one factor to consider when investing their plan accounts, and their investments should be based on their particular needs and circumstances. In some cases, a fund with a higher fee might better meet a participant's needs and goals. Let them know that your plan offers a variety of choices that allow them to select an investment mix that's best for them.

Can we do anything else to reduce participant fee "shock" once disclosures begin?

Even if you prepare your participants by educating them about plan fees in advance, when you begin furnishing required disclosures, stress that the fees you're reporting are not new fees. It's the disclosure rules that are new. You are simply giving them added

value by providing them with more detailed information than you did previously. Also explain how plan fees and expenses are regularly reviewed by plan officials to ensure they are reasonable and competitive. If employer matching contributions are made, show how the money helps to offset the plan fees they pay. Tell them about any employer-paid fees and expenses, and be ready to answer questions concerning the disclosures.

Do you have any tips for handling those questions?

Depending on the size of your organization, you should designate and train one or more people to answer employee questions about the disclosures and your retirement plan. A good approach might be to brainstorm with your human resources department and any other people designated to handle employee questions to come up with a list of questions you think employees may ask and the answers to those questions.

Are there any other reasons for starting a fee communications program now?

Beginning your fee communications program now will help you put a system in place for the ongoing disclosures plan sponsors are required to provide. After the initial disclosure, the DOL requires plans to provide follow-up disclosures annually. And new participants and beneficiaries must receive disclosures on or before the date they can first direct their plan investments. In addition, participants must receive statements, at least quarterly, showing certain administrative and individual expenses actually charged to or deducted from their plan accounts. Most sponsors will provide this information in their participant statements.

What kinds of information do we have to furnish in the disclosures?

In the initial and annual disclosures, you have to include both plan-related information about the structure and mechanics of the plan and investment-related information. A description of the required information follows.

| Required Plan-related Information | |
|--|--|
| General plan information | A current list of investment options offered by the plan An explanation of how plan participants may give investment instructions If applicable, a description of any brokerage window, self-directed brokerage account, or similar arrangement that enables a participant to select investments beyond those designated by the plan |
| Administrative expenses | An explanation of any fees and expenses for general plan administrative services that may be charged to or deducted from all individual accounts Examples: fees and expenses for legal, accounting, and recordkeeping services |
| Individual expense information | An explanation of any fees and expenses that may be charged to or deducted from the individual account of a specific employee or beneficiary based on the actions taken by that person Examples: fees and expenses for plan loans and for processing qualified domestic relations orders (QDROs) |
| Required Investment-related Information | |
| Investment options that do not have a fixed rate of return (e.g., mutual funds) | |
| Performance data | 1-, 5-, and 10-year returns (or for the life of the investment alternative, if shorter) |
| Benchmark information | The name and returns of an appropriate broad-based securities market index over 1-, 5-, and 10-year periods (matching the performance data periods) |
| Fee and expense information | The total annual operating expenses expressed as both a percentage of assets and as a dollar amount for each \$1,000 invested Any shareholder-type fees or restrictions on the participant's ability to purchase or withdraw from the investment Examples: commissions, sales loads, sales charges, deferred sales charges, redemption fees, exchange fees, account fees, and purchase fees |
| Investment options that have a fixed rate of return | |
| Performance data | The annual rate of return and the term of the investment |
| Fee and expense information | Any shareholder-type fees or restrictions on the participant's ability to purchase or withdraw from the investment |
| Annuity options | |
| General information | The name of the contract, fund, or product The option's objectives or goals (e.g., to provide a stream of fixed retirement income payments for life) The benefits and factors that determine the price (e.g., age, interest rates, form of distribution) of the guaranteed income payments |
| Fee and expense information | Any limitations on the ability of a participant or beneficiary to withdraw or transfer amounts allocated to the option (e.g., lock-ups) and any fees or charges applicable to such withdrawals or transfers Any fees that will reduce the value of amounts allocated by participants or beneficiaries to the option, such as surrender charges, market value adjustments, and administrative fees |
| Guarantees | A statement that guarantees of an insurance company are subject to its long-term financial strength and claims-paying ability |
| Other investment information | |
| Internet website address | An Internet website address through which participants and beneficiaries can obtain additional and more current information about the plan's investment options, including any annuity options |
| Glossary | A glossary of terms to assist participants and beneficiaries in understanding the plan's investment options or an Internet website address that provides such a glossary |
| This list is not all-inclusive. | |

What has to be included in the quarterly disclosure statements?

Quarterly disclosure statements must contain the dollar amount of the plan-related fees and expenses (administrative or individual) actually charged to or deducted from the participant's individual account, along with descriptions of the services for which any charges or deductions were made. These specific disclosures may be included with your plan's quarterly benefit statements. Calendar-year plans must furnish the first quarterly disclosure by November 14, 2012. Other plans have to provide the first quarterly disclosure within 45 days after the close of the quarter in which the initial disclosure was required to be furnished.

Do we have to furnish the information in a particular format?

All disclosures should be written so that the average plan participant can understand them. In addition, your plan's investment information must be presented in a chart or similar format designed to make it easy for participants and beneficiaries to compare each of the investment options available under your plan. The DOL has provided a model comparative chart as an appendix to the applicable regulation (www.dol.gov/ebsa/pdf/frparticipantfeerule.pdf, pages 139–142).

Are there penalties or other consequences for failure to comply?

A plan administrator's failure to provide the required disclosures could result in a breach of fiduciary duty. In addition to allowing participants to sue for breach of fiduciary duty, the pension law authorizes the DOL to collect a civil penalty for fiduciary breaches.

Can we rely on information we receive from a service provider or mutual fund company?

Generally yes. You won't be liable for the completeness and accuracy of disclosure information provided to participants if you reasonably and in good faith rely on information received from or provided by a plan service provider (such as our organization) or the issuer of a designated investment alternative.

I've heard there are special rules for target date funds. What are they?

Many retirement plans use target date funds as their qualified default investment alternative (QDIA) for participants and beneficiaries who fail to direct how they want their individual plan accounts invested. Section 404(c) of the pension law provides fiduciary relief to a plan fiduciary, such as a plan sponsor, who invests undirected accounts in the plan's QDIA. The DOL has proposed regulations that would amend the QDIA and participant fee disclosure regulations to include requirements specifically for target date funds. If the proposed regulations are adopted, you would have to include additional information in your investment-related fee disclosures about any target date funds your plan offers to participants. Remember, though, that this proposed rule has not yet been adopted.

What information would have to be included?

In addition to the information that has to be included for all investments with variable returns, the proposed rules require new disclosures about the design and operation of target date or similar investments, including:

- An explanation of the fund's asset allocation and a graphical representation showing the fund's "glide path," that is, how the fund's asset allocation will change over time.
- If the fund is named or described by reference to a particular date (for example, the 2020 fund), an explanation of the age group for whom the investment is designed, the relevance of the date, and any assumptions about a participant's contribution or withdrawal intentions on or after that date.
- A statement that the participant or beneficiary may lose money by investing in the target date fund, including losses near and following retirement, and that there is no guarantee that the fund will provide adequate retirement income. In addition, the fund's principal risks must be disclosed, including the risks to which the fund's particular portfolio as a whole is expected to be subject and the circumstances

reasonably likely to adversely affect the fund's net asset value, yield, or total return.

Can we incorporate the plan-related information and investment-related information chart into one communication?

Yes. A single communication may be the most effective way to convey all of the required fee and expense information to participants and beneficiaries. Start the communication with an introduction explaining its purpose. The plan-related information can follow the introduction, with the investment-related information last. You might want to preface the investment-related information with an explanation of how to read and use the investment information chart.

Is there anything else we should do to prepare for ongoing fee disclosure?

Make sure you understand what's required of you under the fee disclosure regulations. As discussed earlier, have someone trained to answer questions participants and beneficiaries may have concerning the fee disclosures. You will also want to document all decisions your organization makes concerning the plan's investment options, review your disclosure statement annually, and continuously monitor plan fees.

Where can we get help?

Start with us. We will work with you to develop a strategy for communicating the required participant fee information. Contact us at your convenience.

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. However, the general information herein is not intended to be nor should it be treated as tax, legal, or accounting advice. Additional issues could exist that would affect the tax treatment of a specific transaction and, therefore, taxpayers should seek advice from an independent tax advisor based on their particular circumstances before acting on any information presented. This information is not intended to be nor can it be used by any taxpayer for the purposes of avoiding tax penalties.

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