

New DOL Participant Fee Disclosure Rules

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The DOL has recently undertaken a 3-part initiative to ensure that retirement plan participants and plan sponsors are informed of the fees they are paying for plan investments and other plan services. This initiative culminated with the release in October 2010 of regulations regarding information that must be disclosed to participants. The purpose of the new requirements is to make sure that participants have regular and periodic access to information that can help them make informed decisions about the management of their accounts and the investment of their retirement savings. The



new rules are effective for plan years that begin after November 1, 2011. So for calendar year plans, they will be effective as of January 1, 2012. There is some transition relief, however, in that the initial disclosures will not be due until February 29, 2012.

The disclosure requirements apply to all ERISA covered plans with participant directed accounts. This means any plan in which a participant has the right to direct all, or even a portion, of the assets in the account, without regard to the size of the plan. The rules are NOT applicable to IRAs, SEPs, Simples, nonERISA 403(b) plans, 457 plans, defined benefit and governmental plans. They are also not applicable to church plans, unless the plan elects to be subject to ERISA. *The DOL has estimated that the regulations will affect 483,000 plans with 72 million participants.*

The required disclosures must be given to all ELIGIBLE participants, even if they don't have a balance in the plan. They must also be given to any beneficiaries who have the right to direct the plan's investments - for example, the beneficiary of an account for a participant who is deceased or an account that has been set up under a QDRO (Qualified Domestic Relations Order).

The disclosures that must be provided fall into two categories – Plan Related Information and Investment Related Information.

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Plan Related Information – the plan must give the participants a notice as soon as they are eligible to direct their investments, and then annually thereafter, that explains:

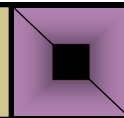
- general information about the plan: transfer restrictions; information on voting, tender and similar rights; identification of investment alternatives and investment managers; and a description of any brokerage windows or self-direct brokerage accounts that can be used; and
- administrative expenses: fees that will be charged for legal, accounting, and recordkeeping services and the basis on which they are charged (pro rata, per capita, etc.); and, if applicable, an explanation that some expenses are underwritten by the investments (through revenue sharing, 12b-1 fees, etc.).

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The DOL has not mandated a specific format for the notice covering these two bullet points. It is possible to incorporate this information into the plan's Summary Plan Description (SPD), but that would then require that the SPD would need to be distributed every year. It is our expectation that plans will distribute this notice at the beginning of each plan year as a stand-alone notice, much like a safe harbor notice or a Qualified Default Investment Alternative (QDIA) notice.

- individual expenses: fees that are **actually paid** from a participant's account must be disclosed on a **quarterly statement** to the participant. The statement must have a description of the fees that were taken as well as the amount. Fees that are paid from the forfeiture account do not have to be disclosed. Any plans that are paying fees directly from the participant accounts must provide this quarterly statement for any quarter in which fees are taken. Fees that must be disclosed include loan fees, fees to process a QDRO, fees for investment advice, sales loads or charges, redemption fees and investment management fees. The fee information must be reported on a separate column on the statement.





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Investment Related Information – the plan must give a notice to participants as soon as they are eligible to direct their investments, and then annually thereafter, that is prepared in the format of a comparative chart. The chart must list all investments and must include the following for each investment:

- name, website and category of the investment;
- performance data for 1 year, 5 years and 10 years (or life of the fund, if less);
- for fixed investments – contractual interest rate, current rate and term for which it is guaranteed;
- broad based index benchmarks for 1 year, 5 years and 10 years;
- fee and expense information;
- commissions, sales loads, sales charges, etc.;
- trading restrictions and limitations;
- expense ratio of the investment, expressed as a percentage and a dollar amount for a \$1,000 investment;
- web site address where participant can get more information.

The regulations make note that brokerage options are not considered to be the type of investment for which information would have to be included in the chart.

The web site requirement was questioned by many people who reviewed the proposed regulations. There was concern that not all investment vehicles currently have their own web site. However, the DOL reiterated in the final regulations that they expect every investment vehicle in the plan to set up and maintain a web site. There is an exception for employer stock and some fixed return investments and annuities. The required web site information includes such items as principal strategies and risks of the investment, frequency of portfolio turnover, and quarterly performance data.

The Department has issued a model comparative chart for investment providers to follow. The regulations also require that participants be given a glossary of terms. This information may be included in the comparative chart or may be made available via the web.

The regulations did provide some relief to plan sponsors in that they amended the requirement to automatically provide prospectuses to participants. Under the new regulations, a prospectus need only be given to a participant if he requests it. The DOL is currently drafting disclosures for target-date type funds. Those disclosure requirements were issued in the form of proposed regulations in November 2010 and the Department is currently reviewing comments on them.

It is important to note that the ultimate responsibility for compliance with the new disclosures lies with the plan administrator. However, the text of the regulations do state that the plan administrator is not liable for the completeness and accuracy of information used to satisfy the requirements if the plan administrator uses reasonable good faith to rely on information received from a service provider or investment provider. Plan sponsors should begin communicating with all plan providers now to ensure commitments from them that they will be able to provide the necessary information in a timely manner, once the new regulations become effective.