

## U.S. Department of Labor Issues Temporary Electronic Disclosure Policy under Participant Fee Disclosure Regulations

Author: John D. Martini, Partner, Philadelphia

Author: Russell J. Boehner, Partner, Pittsburgh

Author: Dennis R. Bonessa, Partner, Pittsburgh

Author: David N. Pardys, Partner, Philadelphia

Author: Janine Connell, Associate, Philadelphia

Author: John E. Cunningham, Associate, Philadelphia

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On September 13, 2011, the Department of Labor (the "DOL") issued Technical Release 2011-03, which sets forth a temporary policy regarding the use of electronic media to satisfy the disclosure requirements with respect to certain fee and expense information that will need to be provided to participants in self-directed individual account plans (such as certain 401(k) plans). The participant-level fee disclosure regulation requires plan fiduciaries to disclose more information about plan administrative and investment costs to participants in self-directed retirement plans on an annual basis and to provide quarterly statements of the actual fees and expenses charged to participant accounts. Plan administrators are not required to provide the initial disclosure about plan administrative and investment costs any earlier than May 31, 2012, nor the initial quarterly statement until August 14, 2012 (and in some cases, later).

Plan administrators are presently required to provide quarterly statements of account balances and vested percentages (sometimes called "pension benefit statements") to participants in self-directed plans under the requirements added by the Pension Protection Act of 2006 ("PPA"). Technical Release 2011-03 enables plan administrators to provide the new information that is required to be provided under the participant fee disclosure regulations electronically, subject to the conditions set forth therein. One of the more helpful provisions permits the general plan information and the actual expense information that may be included in a pension benefit statement (such as explanations of plan administrative expenses) to be provided electronically, to the extent and in the same manner that the pension benefit statement added by the PPA may be electronically delivered. Under the guidance that the Department of Labor provided in Field Assistance Bulletin 2006-03 applicable to the current pension benefit statements, this means that certain of the newly required disclosures can be provided through the use of continuous-access websites, so long as the participants are provided with a separate notification of the availability of the information, how to access it, that they have the right to obtain paper copies free of charge, and if certain other conditions are met.

With respect to fee and expense disclosures that may not be included in a pension benefit statement (such as investment-related fee, expense and performance data), plans can deliver such information electronically by satisfying numerous other conditions. These conditions include, but are not limited to, requiring participants to voluntarily provide e-mail addresses in response to a notice describing the information to be provided electronically (simply having an employer provided e-mail is not sufficient); ensuring actual receipt of such information; and providing periodic notices to participants reminding them of their right to revoke their consent and/or to receive paper copies. Alternatively, the DOL states that plan administrators may provide such information pursuant to the DOL's safe harbor electronic media regulations (2002) - which are no less onerous than the conditions set forth in the Technical Release.

The DOL will not take enforcement action based solely on a plan administrator's use of electronic technologies to make the required disclosures under the participant fee disclosure regulation if the administrator complies with the conditions in the Technical Release. This policy is temporary until the DOL issues further guidance in this area.



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