

## Corporate & Financial Weekly Digest

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### **DOL Issues 401(k) Plan Participant Fee Disclosure Rules**

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On October 20, the U.S. Department of Labor (DOL) issued final regulations that will require certain Employee Retirement Income Security Act retirement plan sponsors to disclose to plan participants information about plan fees and expenses, as well as other information about available investment alternatives. The regulations go into effect for plan years beginning on or after November 1, 2011.

Compliance with the regulations' disclosure requirements will be required for plan sponsors of individual account retirement plans which allow for participant-directed investment of plan accounts, a typical feature for 401(k) and profit-sharing plans. Failure by a plan sponsor to provide the information required by the regulations will allow a plan participant or beneficiary to allege a breach of fiduciary duty—possibly making the plan sponsor liable for losses incurred by plan participants.

The regulations generally require plan sponsors to provide annual disclosure of (1) rules related to providing plan investment instructions (including limits on transfers as well as any voting rights a participant may have); (2) plan fees and expenses paid from participant accounts together with a description of the fees to be provided (e.g., legal, account, recordkeeping) and the method for allocating the amounts among participants; and (3) specific fees and charges that may be taken from the accounts of individual participants (e.g., loan fees, Qualified Domestic Relations Order processing fees, investment advice fees). If any of the foregoing information changes during the year, updated disclosure must be provided to participants at least 30 days prior to the implementation of any such change. In addition to the annual disclosures required by the regulations, plan sponsors must also provide quarterly statements disclosing to participants the amounts actually charged to their accounts.

The regulations also provide specific requirements regarding the information that must be made available to participants about each plan investment alternative. Much of this information is already provided in “fact sheets” that are typically available from most investment providers. However, the regulations require that participants be provided a summary chart that compares the relevant features (e.g., past performance, benchmark comparison, fees) of plan investment alternatives against each other.

Between the participant fee disclosure rules issued on October 20 and the service provider fee disclosure rules issued in July, the DOL has made clear that it views disclosure of retirement plan fees as a significant enforcement issue. Plan sponsors should work with service providers and investment providers to ensure compliance in order to preserve the protections available under the law.

The text of the DOL's participant fee disclosure rules can be found [here](#).  
Our prior description of the DOL's service provider fee rules can be found [here](#).

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