

Now's the Time for Plan Sponsors to Prepare for Implementation of New DOL Fee Disclosure Regulations – Part II, Participant Fee Disclosure

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Good news: As we noted in our [September alert](#) about the service provider fee disclosure regulations, in July the Department of Labor extended the deadlines for complying with the new retirement plan fee disclosure regulations.

Bad news: With the extended deadlines just around the corner, plan sponsors should begin now working with plan service providers and advisors to prepare for the considerable amount of information required to be provided in the disclosures.

May 31, 2012 Deadline to Begin Fee Disclosures to Participants

The participant fee disclosure regulations require ERISA individual account plans (401(k), 403(b), etc.) with participant-directed investments to provide two types of disclosures to plan participants and beneficiaries: (1) an annual disclosure of specific plan and investment information, and (2) a quarterly disclosure of investment information and fees actually charged to participant accounts. For calendar year plans the initial annual disclosure must be provided no later than May 31, 2012. Thereafter, the plan must provide this annual disclosure information on or before the date new participants can first direct their investments and to all participants at least once every twelve months. In addition, participants and beneficiaries must receive quarterly disclosure statements at least once every three months. For calendar year plans the

initial quarterly statement must be provided no later than August 14, 2012 covering the second quarter of 2012.

While the plan sponsor or a designated plan fiduciary is responsible for satisfying these participant disclosure requirements, the regulations provide protection from fiduciary liability for the completeness and accuracy if they rely reasonably and in good faith on information provided by plan service providers.

- Plan sponsors should prepare for these new disclosure requirements by taking the following steps: Identify plans that are subject to the rules;
- Review all the information required to be disclosed and identify the sources from which it will be obtained;
- Identify the sources (such as service providers) from which required information will be obtained, and confirm they will provide the necessary information on a timely basis;
- Determine who will compile the required information, and review the format requirements to assure that the appropriate information is presented in the right format;
- Identify the covered participants or beneficiaries, and establish a method for updating the covered group;
- Assess distribution options permitted by the regulations and select an appropriate method for timely distribution of the required information;

- Review the internet access requirement for direct access to investment-related disclosures and implement a method for compliance.

Plan sponsors or a designated plan fiduciary have a fiduciary duty to determine that fees paid by the plan are reasonable. Coupled with the new service provider fee disclosure requirements, these regulations provide fiduciaries with the tools necessary to fulfill that duty and for participants to hold the fiduciaries accountable. Responsible fiduciaries also should consider adopting a plan fee policy to facilitate the analysis and determination of fee reasonableness as well as the ongoing compliance with these new rules. Like a plan investment policy, a fee policy can provide a framework for managing these fiduciary responsibilities and, perhaps most importantly, demonstrating compliance with ERISA's prudent process requirement for fiduciary decision making.

Plan sponsors should note that these new disclosure requirements are in addition to existing fiduciary duties to prudently select and monitor service providers and investment options, make sure that fees paid by the plan are reasonable and, for plans seeking the fiduciary liability limitations of ERISA Section 404(c), satisfying the additional requirements of that section.

If you have questions about fee disclosures or meeting your fiduciary responsibilities, contact a member of the employee benefits team.