

## DOL Finalizes New Fee and Investment Disclosure Rules for Participant-Directed Plans

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The Department of Labor has issued final regulations setting forth certain fiduciary obligations regarding the disclosure of fees and expenses to participants and beneficiaries in participant-directed individual account plans, such as 401(k) plans. The final regulations require plan administrators of such plans to:

- give participants and beneficiaries quarterly statements of plan fees and expenses deducted from their accounts;
- give participants and beneficiaries basic information about plan investments, including the cost of those investments, prior to their initial plan investment and at least annually thereafter;
- give participants and beneficiaries access to certain supplemental investment information following receipt by the plan or upon request; and
- use standard methodologies when calculating and disclosing expense and return information about plan investment options and present the information in a format to facilitate "comparison shopping" among the investment options.

Section 404(a) of the Employee Retirement Income Security Act of 1974 ("ERISA") requires fiduciaries of ERISA plans to act prudently and solely in the interest of plan participants and beneficiaries. The new rules are based on the premise that plan administrators of participant-directed individual account plans cannot meet this requirement without taking steps to ensure that participants and beneficiaries, on a regular and periodic basis, are given sufficient information about the plan and its investment options, including fee and expense information, to make informed decisions regarding the management of their plan accounts.

To some extent, disclosure of such information already is required by plans that elect to comply with the requirements of ERISA Section 404(c)-often referred to as "Section 404(c) plans"; however, compliance with the ERISA Section 404(c) disclosure requirements is voluntary and does not extend to all participant-directed individual account plans. The new rules apply to all participant-directed plans and impose uniform, basic disclosure requirements on plan administrators of such plans.

Brief descriptions of the plan-related information and the investment-related information that plan administrators must provide to participants and beneficiaries are set forth below.

Plan-related information that must be disclosed includes: (i) general information about the structure and mechanics of the plan (e.g., an explanation of how to give investment instructions under the plan, a list of the plan's investment options, and a description of any "brokerage windows" or similar arrangement that enables the selection of investments beyond those designated by the plan); (ii) an explanation of administrative fees (direct and indirect) that may be charged against plan accounts (e.g., fees and expenses for legal, accounting and recordkeeping services); and (iii) an explanation of participant-level fees (e.g., fees and expenses for plan loans or for processing qualified domestic relations orders, or front- or back-end sales loads or charges). This plan-related information must be disclosed by the date a participant or beneficiary can first direct his or her plan investments, annually thereafter and generally following any material change to the disclosed information.

Investment-related information that must be disclosed includes: (i) descriptions of all plan investment options and of fees and expenses charged on the options, with the exact information to be disclosed depending on the type of investment option (i.e., investment options with fixed rates of return, options that do not have fixed rates of return, options investing in qualifying employer securities, and annuity options); (ii) an Internet address that gives access to additional information about the plan's investment options for those who want more, or more current, information; and (iii) a general glossary of terms to assist in understanding the plan's investment options, or an Internet address that gives access to such a glossary. This information must be disclosed by the date a participant or beneficiary can first direct his or her plan investments and annually thereafter. Also, investment-related information must be furnished in a chart or similar format designed to facilitate comparison among designated investment options. The regulations provide a model chart that can be used to satisfy these requirements.

Additionally, participants and beneficiaries must receive statements, at least quarterly, showing the dollar amount of plan-related fees and expenses actually charged to, or deducted from, their accounts, along with a description of the services for which the charge or deduction was made. (Fees and expenses reported in transactional confirmations do not need to be reported on the subsequent quarterly statement.) These disclosures may be included in the plan's quarterly benefit statements.

Other items of note in the regulations include the following: (i) a plan administrator will not be liable for the completeness and accuracy of information it provides if the plan administrator reasonably and in good faith relied upon information provided by a service provider or investment issuer; (ii) when a plan provides for the pass-through of voting, tender and similar rights, the plan administrator must provide participants and beneficiaries who have invested in an investment option with these features any materials about such rights that the plan receives; (iii) upon request, a plan administrator must furnish prospectuses, financial reports and statements of valuation and of assets held by an investment option; and (iv) IRA-based plans, including simplified employee pensions (SEPs) and simple retirement accounts (SIMPLEs), are not subject to these new disclosure rules.

The final regulations are effective December 20, 2010, but are not applicable until plan years beginning on or after November 1, 2011 (*i.e.*, January 1, 2012 for calendar year plans).

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