
Implementation Deadline For New ERISA Participant Fee Disclosure Rules is Fast Approaching

By Stephanie L. Hicks / Aug 07, 2012

Earlier this year, the Department of Labor finalized regulations that detail new participant disclosure rules under ERISA. These new regulations will become effective for most plans on August 30, 2012. This E-Alert generally describes these new disclosure rules and how plan administrators should prepare for them.

I. Background

The new participant fee disclosure rules require plan administrators to disclose certain plan and investment-related information to participants in participant-directed individual account plans (e.g., 401(k) plans). If the plan allows participants to direct the investment of their plan accounts, the plan administrator has an obligation to give participants sufficient information regarding the plan and its investment alternatives, including an explanation of fees and expenses, to make informed decisions about the investment of their plan accounts.

II. Effective Date

The participant fee disclosure rules apply to plan years beginning on or after November 1, 2011, and provide for annual and quarterly disclosures. The required initial annual disclosures must first be furnished to each participant by the later of (1) 60 days after the first date on which the rules are applicable under the preceding sentence, or (2) August 30, 2012. For calendar year plans, the initial annual disclosures must be provided to participants by August 30, 2012.

Further, the initial quarterly disclosures must be furnished to each participant by no later than the 45th day after the end of the calendar quarter in which the initial annual disclosures must be made. This due date is November 14, 2012 for a calendar year plan.

III. Complying with the Participant Fee Disclosure Rules

The participant fee disclosure rules require the plan administrator of an individual account plan that allows participants to direct the investment of their plan accounts to provide plan-related information and investment-related information to each participant.

A. Plan-Related Information

The plan administrator must provide plan-related information, which is comprised of "general information", "administrative expense information", and "individual expense information", to participants by the date on which participants may first direct the investment of their plan account, and annually thereafter.

The plan administrator must also provide each participant, at least quarterly, a statement showing the dollar amount of the administrative and individual expenses actually charged to their account for the quarter.

If there is a change to any plan-related information, each participant must be given a description of the change at least 30 days, but not more than 90 days, in advance of the effective date of such change.

"General information" consists of:

1. An explanation of how and when participants may give investment instructions and any limitations;
2. The names of the plan's designated investment alternatives and designated investment managers;
3. The plan's rules for the exercise of voting, tender and similar rights, including restrictions, with respect to the plan's designated investment alternatives; and
4. A description of any brokerage windows, self-directed brokerage accounts, or similar plan arrangements that enable participants to select investments beyond those designated by the plan.

"Administrative expense information" is information about fees and expenses for general plan administrative services, such as accounting, recordkeeping, or legal fees that may be charged to or deducted from participants' accounts, including a description of how the fees and expenses are allocated.

"Individual expense information" covers fees and expenses that may be charged to or deducted from a specific participant or beneficiary's account based on their actions, such as fees for a plan loan or QDRO determinations.

B. Investment-Related Information

The plan administrator must also provide to each participant, by the date on which the participant may first direct the investment of his account and annually thereafter, investment-related information. Investment-related information must be described in a comparative chart format. The Department of Labor has provided a sample comparative chart, which can be found at www.dol.gov/ebsa/participantfeerulemodelchart.doc.

Investment-related information includes:

1. The name and type of category of the designated investment alternative.
2. Performance data, including the average annual total return of the investment for one-, five-, and 10-calendar year periods, the name and returns of an appropriate market index over the one-, five-, and 10-year periods, a statement that an investment's past performance is not necessarily an indication of how the investment will perform in the future, and extended expense and fee information.
3. The annual return rate, if the investment has a fixed rate of return.
4. A website that is sufficiently specific to provide participants with the name of the investment's issuer, the investment's objective or goals, the investment's principal strategies, the turnover rate, and performance data, and fee and expense information.
5. A general glossary of terms (or refer to a website that provides the glossary).
6. A statement that the plan administrator will furnish each participant, upon request, copies of prospectuses, copies of any investment financial statements or reports that have been provided to the plan, a list of the investment's portfolio of assets, and a statement of the value of a share of, or unit of interest in, the investment.

IV. Preparing For Participant Fee Disclosure Rules

In consultation with their counsel, plan administrators should consider taking the following steps to prepare for the new participant fee disclosure rules:

1. Become familiar with the new rules.
2. Identify service providers or investment issuers that have the needed performance and fee information, and request that information.
3. Determine who will compile the information and prepare the comparative chart (i.e., the plan administrator or a third-party administrator).
4. Arrange for timely distribution of the participant fee disclosures (by the plan administrator or by a third party administrator or record keeper).
5. Review each plan's investments based on the investment returns and fees disclosed, and determine if each investment alternative should be continued.

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