



PRI ADVISER BRIEF: PARTICIPANT INQUIRIES

In October 2010, the Department of Labor (DOL) published its final rule requiring sponsors of ERISA-covered, self-directed retirement plans (e.g., 401(k) plans) to provide additional information to plan participants. Numerous studies have shown that the majority of plan participants do not believe there are any fees associated with their retirement plan or that they believe the plan sponsor pays those fees.¹ It is, therefore, imperative that plan sponsors not only begin to determine how this information will be collected, evaluated and delivered, but that they take steps to ensure plan participants understand the customary nature of the fees and the process used by the plan sponsor to determine the services are necessary and the fees are reasonable. This guide outlines the new requirements and provides a list of action items for plan advisers to consider when preparing their sponsors to respond to participant inquiries about the fees and expenses highlighted in the new disclosures.

REQUIRED DISCLOSURES:

Among other things, the new rule requires plan sponsors to provide each participant or beneficiary with two categories of information by no later than June 1, 2012 and annually thereafter:

1. Plan-Related Information:
 - (i) General Plan Information – concerning the structure and mechanics of the plan (i.e., how to give investment instructions, a current list of designated investment alternatives, descriptions of any “brokerage windows,” etc.);
 - (ii) Administrative Expenses – regarding any fees for general administrative services that may be charged to the participants’ accounts (i.e., legal, accounting, recordkeeping, etc.); and
 - (iii) Individual Expenses – information relating to any fees that may be charged to a participant’s account based on actions taken by the participant (i.e., loans, QDROs, etc.).
2. Investment-Related Information:
 - (i) Performance Data – including specific information about historical investment performance of the plan’s designated investment alternatives, and the one-, five- and ten-year returns for any investments that do not have a fixed or stated rate of return.²
 - (ii) Benchmark Information – the disclosure must show the name and returns of an appropriate broad-based securities market over the same time periods as those reported for the designated investment alternatives;³
 - (iii) Fee and Expense Information – including the total annual operating expenses expressed as both a percentage of assets and as a dollar amount for each \$1,000 invested and any shareholder-type fees or restrictions on withdrawing from the investment.

Both categories of information must be presented to the plan participant prior to the participant’s first direction of investments and annually thereafter. The rule requires that investment-related information be presented in a comparative format such as a chart or similar comparative format, and the information must be provided in plain language the average participant can understand.⁴

¹ See e.g., www.aarp.org/401kfeesurvey.

² For investment options that have a fixed rate of return, the annual rate of return and the term of the investment must be disclosed.

³ Investment options with a fixed rate of return are not subject to this requirement.

⁴ See Model Comparative Chart at www.dol.gov/ebsa/participantfeerulemodelchart.doc



On a quarterly basis, plan sponsors must ensure that participants receive statements that show the dollar amount of the plan-related fees (whether administrative or individual) actually charged to their individual accounts along with a description of the services for which the charge was made. If applicable, the quarterly statements must also include an explanation that, in addition to the expenses reported on the statement, some of the plan's administrative expenses for the proceeding quarter were paid from the annual operating expense of one or more of the plan's designated investment alternatives.

Lastly, the rule requires that the disclosures include a website for participants to access for specific additional information about the investment options as well as a glossary of terms to assist participants in understanding the plan's investment options.

In addition to the required disclosures, plan sponsors are further tasked with the formal requirement to address participant inquiries. Upon participant request, plan sponsors must be prepared to provide specific plan information including the following:

- (i) Prospectuses;
- (ii) Financial reports;
- (iii) Statements of valuation; and
- (iv) Statements of assets held by an investment option.⁵

ACTION ITEMS:

While the rule provides plan sponsors protection from liability for the completeness and accuracy of information provided to participants if the sponsor reasonably and in good faith relies upon information provided by a service provider, the burden will fall on the sponsor to demonstrate reasonable reliance. Given the fact that the new plan-level disclosures under 408(b)(2) requires service providers to disclose this information to plan sponsors, at a minimum, sponsors will be expected to reconcile this information with that which may ultimately be provided to participants by a service provider. Advisers can add value by assisting the sponsor with the intake and evaluation of the service provider disclosures and the development of processes designed to streamline the sponsor's reconciliation of the data to be provided to plan participants.

Additionally, advisers should consider helping the sponsor with establishing procedures to proactively educate participants on the nature of the services provided and the compensation received by the plan's other service providers. By helping to develop these protocols, the adviser can "insert" him/herself into the process and increase the retention of their retirement plan clients, and this service can be presented to prospective clients as a differentiator. The following action items are meant to serve as a guide for advisers to consider when preparing their clients for the new rules.

- Step 1:** Become familiar with the disclosure rules and educate their plan sponsors on what is required;⁶
- Step 2:** Determine which service providers are likely to disclose the required information as part of the 408(b)(2) disclosures;
- Step 3:** Coordinate with the service provider(s) to deliver the required information to participants;
- Step 4:** Review the proposed disclosure with the sponsor and reconcile it with information gathered from the 408(b)(2) disclosures to ensure the data is accurate;

⁵ It is important to note that these items are in addition to those that are already required to be provided to participants by plan sponsors.

⁶ See Final Rule at: <http://webapps.dol.gov/federalregister/HtmlDisplay.aspx?DocId=24323&AgencyId=8>.



- Step 5:** Prepare for situations in which participant inquiries may arise (e.g., proactively benchmark the fees and expenses to ensure they are reasonable, evaluate the utilization of services in relation to the costs, etc.);
- Step 6:** Help the sponsor identify and locate relevant documents required to be produced upon request, implement procedures for delivery of requested information and designate the person(s) responsible to resolve any participant inquiries;
- Step 7:** Conduct fee-specific employee education explaining the customary nature of the fees, the services for which the fees are charged and the process used by the sponsor to determine the reasonableness of the fees;
- Step 8:** Help prepare a record of any unresolved participant inquiries, forward to the designated person(s), and obtain acknowledgement of receipt;
- Step 9:** Assist the designated person(s) gather materials for a response and obtain acknowledgement of receipt of the response from the participant; and
- Step 10:** Document resolution of the inquiry or escalate accordingly.