

Understand Participant Disclosure Rules From the Department of Labor

On October 20, 2010, the Department of Labor (DOL) issued final rules under ERISA §404(a) requiring plan sponsors to make certain disclosures to their plan participants. These rules are applicable for plan years beginning on or after November 1, 2011 (January 1, 2012, for a calendar year plan), although the DOL issued a final transition rule which allows plan sponsors additional time to provide their first disclosures to participants. For a calendar year plan, the first disclosure is due no later than August 30, 2012.*

OVERVIEW OF NEW RULES

The new disclosure rules were issued in response to concerns that plan participants need more information about their plans, plan investments, and particularly the fees and expenses paid from their accounts. These rules are the third prong in a larger disclosure initiative the DOL has been pursuing; the other prongs included a new Form 5500 Schedule C disclosure and a rule requiring certain disclosures from plan service providers to plan fiduciaries.

At a high level, the DOL's participant disclosure rules require plan sponsors to make the following disclosures to their plan participants:

- General plan-related information on investments and a participant's ability to exercise plan rights (e.g., voting)
- Information on plan administrative expenses
- Any individual expenses the plan charges to participants
- Charts describing investment options and showing investment fees and performance
- Additional specified information available on a website

Within the above categories, specific information must be provided. For example, investment information must describe plan investment alternatives, identify investment managers,

and describe any special arrangements such as brokerage windows. Moreover, investment information must be provided in a comparative chart and must include a category for each investment (examples: large cap fund, bond index fund), average annual total return over specified periods, and a comparison of returns to benchmarks. Under fees and expenses, a plan sponsor must specify the amount and description of shareholder-level fees, total annual operating expenses shown as a percentage, and there must be a notation indicating that fees are only one factor to consider and that fees can substantially reduce an account balance.

The initial disclosure must be provided no later than August 30, 2012 (for a calendar year plan). After that, disclosures must be provided automatically on or before the date a participant can first direct investments in the plan, and on an annual basis thereafter. In addition, each quarter participants must receive a statement showing the fees actually charged against the participant's account. If the information in the disclosures changes, the plan sponsor is generally required to notify participants at least 30 days, but not more than 90 days before the effective date of the change.

AFFECTED PLANS

Unlike several other recent DOL rules, these new participant disclosure regulations apply to "participant directed individual account plans" of any size (generally, 401(k) and 403(b) plans where participants are permitted to make their own investment decisions). The regulation does not cover IRAs, governmental plans, SEPs, or SIMPLEs. For more information on the participant disclosure regulation, please visit the DOL's web site at www.dol.gov/ebsa.

**For non-calendar year plans, the deadline is the later of August 30, 2012, or 60 days after the first day of the first plan year beginning on or after November 1, 2011.*