



## **REQUIRED PARTICIPANT FEE AND INVESTMENT DISCLOSURES**

**JUNE 2014**

### **Introduction**

Beginning August 30, 2012, investment and fee disclosures had to be given to participants in plans where participants direct the investment of part or all of their accounts. (For this purpose, participants include those who are eligible, but not contributing.) There were both an initial disclosure requirement and an annual disclosure requirement. Additional quarterly disclosures were required beginning November 14, 2012. The disclosures vary by the types of investments offered by the plan. The disclosures can be broken down into several categories: plan-related disclosures, fee-related disclosures and investment-related disclosures. Below is a description of these requirements.

The Plan Administrator – generally, the plan sponsor – is required to provide these disclosures to participants. Failure to timely make the required disclosures is a breach of fiduciary duty, potentially subjecting the Plan Administrator to fines imposed by the Department of Labor and litigation by participants.

### **Working with a Plan's Investment Providers**

Most platform investment providers have put together the required disclosures by providing fee and investment information in a format acceptable to the Department of Labor. However, many of these investment providers are requiring that the Plan Administrator go to the providers' websites and download the disclosures. They are not sending the disclosures to the Plan Administrator automatically. In addition, there may be information the Plan Administrator needs to complete, such as the fees participants' accounts may be charged for certain plan services. Some investment providers will send the disclosures directly to participants, but only upon express agreement between the Plan Administrator and the investment providers and often for an additional fee. So, unless a plan has an agreement with the plan's investment provider that it will send the disclosures to participants, the Plan Administrator must obtain and distribute the disclosures to participants. If the plan has more than one investment provider, as is common with 403(b) plans, the disclosures for all the investment providers must be distributed to participants together. Technically, the Plan Administrator cannot have Companies A and B send their disclosures separately, nor can the Plan Administrator send each company's disclosures to participants separately.

### **Disclosure Timing**

The initial disclosures, which contain the same information as the annual disclosures, must be given to a newly eligible participant prior to the time that he or she can first direct the investment of his or her account. The annual disclosures must be given once each year, no more than 12 months after the prior disclosures were given. For example, if a plan distributed the first round of annual participant disclosures on August 25, 2012, the second round of annual disclosures would have been due no later than August 25, 2013. However, in order to allow plan sponsors to

choose a time for making the annual participant disclosures that works best for the plan and its participants, the Department of Labor allowed a one-time 6-month extension of the annual disclosures deadline for either the 2013 disclosures (otherwise due no later than August 30, 2013) or the 2014 disclosures (otherwise due no later than August 30, 2014). To continue our earlier example, if the 2013 disclosures were otherwise due on August 25, 2013, they instead could be made anytime up to February 25, 2014. If the plan made its 2013 disclosures by August 25, 2013, then it could postpone its 2014 disclosures (which otherwise would be due no later than August 25, 2014) until no later than February 25, 2015.

### **Designated Investment Alternatives**

Many of the requirements focus on the investments offered under the plan that are “designated investment alternatives.” For purposes of these requirements, a “designated investment alternative” (“DIA”) is an investment choice designated by the plan into which participants may direct the investment of their accounts. Self-directed brokerage accounts are not considered DIAs. See the discussion below regarding the disclosures required of plans that offer brokerage accounts as investment vehicles for the plan, either exclusively or in addition to a selection of DIAs.

If a plan offers participants the right to choose from any investment offered by a number of different vendors and the plan sponsor does not choose any default investment options, the plan has no DIAs and the disclosure obligations are reduced. In other words, the plan does not need to treat as DIAs every fund offered by each vendor, so the plan does not need to disclose to participants investment and fee information for every fund offered by each vendor. If a plan offers participants the right to choose from any investment offered by a number of different vendors, but it also has default investment options, those default options would be DIAs and investment and fee disclosures regarding them would be required.

### **Disclosures for All Plans**

All plans must meet certain disclosure requirements. These requirements fall into three broad categories: plan information, fee information and information on financial terms. These requirements are as follows:

#### Plan Information

- An explanation of the circumstances under which participants may give investment instructions.
- An explanation of any limitations on investment instructions under the terms of the plan.
- An identification of any designated investment managers, if applicable.

#### Fee Information

- The purpose and allocation of general administrative expenses charged against participant accounts (other than those reflected in the annual operating expenses of plan investments).
- Expenses that may be charged against a specific participant’s account due to the use of a plan feature (such as loan origination fees, distribution fees, fees for reviewing and implementing a Qualified Domestic Relations Order, and fees for using a designated investment manager to manage the participant’s account).

- Within 45 days of the end of each quarter, each participant must receive a statement of the charges actually deducted from his or her plan account during the preceding quarter and the services provided for such charges. Disclosing fees on quarterly or more frequent investment statements and/or on trade confirmations and similar documents would satisfy this disclosure requirement.

#### Information on Financial Terms

- A glossary of financial terms must be provided, either by paper or electronically (e.g., on a website of the plan's designation).

#### **Additional Disclosures for Plans with DIAs**

If a plan has DIAs, additional plan and fee information and also investment information must be provided to participants, as follows:

#### Plan Information

- An explanation of any restrictions on transfers to or from a DIA.
- A description of plan provisions relating to the exercise of voting, tender and similar rights for a DIA and any restrictions thereon.
- An identification of the DIAs.

#### Fee Information

- If some of the plan's administrative expenses are paid from revenue sharing or otherwise from the annual operating expenses of one or more DIAs, a statement to that effect is required.

#### Investment Information

- A comparative chart, setting forth the name of each DIA, a website for additional information regarding each DIA (with a statement indicating that the website has more up-to-date information), the rate of return of each DIA, the fees and expenses associated with each DIA (shareholder-type fees, short-term redemption fees, annual operating expenses expressed as both a percentage of assets and a dollar amount for each \$1,000 invested, etc.), and a contact for the additional information regarding the DIAs that is available upon request (such as prospectuses, asset listings, financial statements, etc.).
- For variable return investments, a statement that fees and expenses are only one of several factors to consider, but that the cumulative effect of such fees can substantially reduce the growth of a retirement account, and a reference to a Department of Labor website.
- For variable return investments, 1-, 5- and 10-year average rates of return, along with benchmarks (such as those provided by Morningstar) for the same periods, and a statement that past performance is not necessarily an indicator of future performance.
- The rate of return for fixed return investments (the rate set by the investment) and each such investment's term. If the issuer may adjust the return prospectively, the current rate of return and minimum rate guaranteed must be specified and a statement included that the rates may be adjusted and that more current information is available by telephone or website, as applicable.

- For target date funds and similar funds, an explanation of each such fund's asset allocation model, how the asset allocation will change over time and the point of most conservative allocation, along with a statement that participants may lose money by investing and there is no guarantee that the fund will provide adequate retirement income.

### **Additional Disclosures for Plans with Brokerage Accounts (as an Additional Option or as the Only Option)**

If a plan offers self-directed brokerage accounts as an investment option – either as the sole investment option or a part of a menu of investment options – additional plan and fee information must be disclosed, as follows:

#### Plan Information

- A general description of the self-directed brokerage account feature that includes sufficient information to enable participants to understand how it works (e.g., how and to whom to give investment instructions, including whether a participant must use a specific broker or can use his or her own broker; any account balance requirements; and any restrictions or limitations on trading) .
- Contact information for someone who can answer questions about the brokerage accounts.

#### Fee Information

- A general statement that investment-related fees or expenses may be charged against the brokerage account and directions as to how the participant can obtain information about fees charged in connection with a particular investment. The statement should include examples of the types of fees or expenses that may be charged, such as for account origination, maintenance, and/or closure; minimum balance or inactivity fees; and commissions or fees charged in connection with the purchase or sale of a security, including front or back end sales loads. This list does not need to include any fees or expenses of the investments selected by the participant.

As you can see, these disclosure requirements are highly complex. If you have questions regarding your disclosure obligations, you should contact your plan advisor.