

New Disclosure Requirements for Self-Directed Individual Account Retirement Plans Subject to ERISA

Last week the U.S. Department of Labor issued regulations implementing new plan administrator disclosure obligations in connection with participant – directed individual account plans subject to the fiduciary requirements of ERISA.

Effective for plan years commencing on or after November 1, 2011 (January 1, 2012 for calendar year plans), the new requirements will apply to defined contribution retirement plans such as 401(k) plans, discretionary contribution/profit sharing-plans, money purchase pension plans and ERISA-covered 403(b) plans under which participants make their own investment decisions (typically from a menu of options made available by the plan sponsor). In essence, the new regulations require detailed information regarding the plan's investment options, their related fees and other plan administration-related participant fees. The disclosures will be required to be provided to all eligible employees, rather than to plan participants only, before they are able to give investment instructions, and then on an annual basis.

In general, the new disclosure requirements will be as follows:

PLAN – RELATED INFORMATION:

General Plan Information:

- A list of the plan's available investment options.
- Identification of any designated investment managers for the plan.

- A description of how participants are to provide their investment instructions.
- Whether the plan permits participants to invest their plan accounts other than in the options offered under the plan's menu of investments (i.e., a self-directed brokerage option).

Administration Expenses:

- A list of all plan administration fees that may be deducted from a participant's plan account (e.g., record keeping and/or investment advisory fees).

Individual Expenses:

- A list of all participant fees based on individual participant activity (e.g., loan, QDRO and/or distribution fees).

INVESTMENTS-RELATED INFORMATION:

- Historical performance (1, 5 and 10 years) for each investment option and for an identified comparative investment benchmark.
- Total annual operating expenses (as a percentage of assets and as a dollar amount per each \$1,000 invested).
- Shareholder fees.
- Fees incurred upon purchase of or withdrawal from a particular investment option.

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These investments – related disclosure requirements:

- Will not apply to insurance company general account investments which provide for a fixed or stated rate of return, but will apply to money market funds.
- Will be required to be in a table format (the DOL has provided a helpful example (see “Model Comparative Chart” at www.dol.gov/ebsa/).
- Will be required to include the address of a website providing more detailed investment information for plan participants.
- Will be required to include a glossary of terms.

In addition, at least quarterly, each participant will be required to be provided with a statement of the specific fees and/or charges paid from his or her own plan account for that quarter), with a description of the services provided which generated those fees/charges.

Further, upon participant request, investment options prospectuses, financial statements or reports and a list of the assets of each investment option will be required to be provided (much like has been the case under ERISA Section 404(c)).

Sponsors of individual account plans such as 401(k) plans should contact their plans’ third party administrators to begin to prepare for the implementation of these new requirements, for most, as of January 1, 2012.

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