

Regulatory Update

The following update summarizes two regulations that are scheduled to take effect this year and that will impact your company's retirement plan and the information you and your employees will begin to receive.

1. Rule 408(b)(2) requires the disclosure of fees from plan service providers to the employer.
2. Rule 404(a)(5) requires the disclosure of certain fees to employees who participate in a workplace retirement plan.

The new regulations are designed to help you better identify and understand the fees and expenses related to the administration of your company's retirement plan and provide participants enhanced information to help them better manage their retirement savings.

SERVICE PROVIDER FEE DISCLOSURE UNDER 408(B)(2)

Effective April 1, 2012, all service providers, including recordkeepers, administrators, and advisors, who expect to receive at least \$1,000 in direct or indirect compensation must disclose their compensation to plan sponsors *before delivering any services or upon entering into a service arrangement*. The disclosure must contain:

- A description of services provided
- The compensation (both direct and indirect) that the service provider expects to receive from the arrangement
- Whether the service provider will serve as an ERISA fiduciary or a Registered Investment Adviser
- The manner in which compensation will be received—for example, whether the plan will be billed for services or the compensation will be deducted directly from plan assets

Please note: Changes to initial disclosures must be provided to the plan sponsor within 60 days.

When I receive the disclosure information, how am I required to use it?

As plan sponsor, you have a fiduciary responsibility to ensure that fees and expenses are reasonable in light of the level and quality of services provided. To accomplish this, you must obtain sufficient information for making an informed evaluation about the reasonableness of the costs associated with plan services and use the information to make an appropriate assessment.

Preparing for the new fee disclosure rules

The new fee disclosure rules look to help plan sponsors understand the true costs of their plans and the fees paid to service providers. As a plan fiduciary, you should become familiar with the requirement and review the fees and compensation paid to service providers to determine whether they are reasonable.

FEE DISCLOSURE FOR PLAN PARTICIPANTS 404(A)(5)

In October 2010, the U.S. Department of Labor finalized a separate set of regulations regarding fee- and investment-related disclosures that must be provided to participants in 401(k) plans and other defined-contribution plans with participant-directed accounts. The disclosures should detail information about the plan, including how it operates, fees that participants might pay, and investment choices that participants will be offered.

The deadline for providing disclosures to participants under 404(a)(5) is no earlier than 60 days from April 1. For calendar-year plans, this means that plan sponsors have until May 31, 2012, to provide the initial disclosures to eligible employees.

What information must be disclosed to plan participants?

The new regulations require that the following be provided to eligible employees:

Plan-related information

- General information about the plan (annually), including an explanation of how participants may give investment allocation instructions and information concerning the plan's investment menu
- An annual explanation of the general administrative service fees that may be charged against their accounts, as well as any individual expenses charged for individualized services (e.g., plan loan processing fee)

Investment-related information

- Fee- and performance-related information relating to the plan's various investment options presented in a comparative format, such as the operating expenses of each investment, shareholder fees, and performance relative to a benchmark
- A website where participants can obtain more information

Please note:

- The disclosures must be provided to all eligible employees on the first day of eligibility for direct investment in the plan and annually thereafter.
- At least quarterly, participants must also receive information about any participant-level fees actually charged to their accounts.

Preparing for the new participant disclosures rules

As noted above, the new participant disclosure regulation requires you to provide participants with plan, investment, and fee information to help them make informed decisions. Many participants have been unaware of the fees charged against their retirement plan assets, so employers should prepare for an increase in the number of questions they receive from employees, once they begin receiving participant disclosures.

Consider the following to help you mitigate questions or potential complaints from employees.

- Familiarize yourself with the new rules.
- Contact your plan service provider to learn what materials they will make available.
- Consider sending a notice to your employees sometime during the second quarter to make them aware that changes are coming to their 401(k) plan.
- Develop and implement internal procedures to track, respond to, and escalate participant inquiries.

WE CAN HELP

Our firm is ready to help you prepare for what's ahead. Whether you need assistance with interpreting disclosure documents or would like to create a communication plan to educate employees about the upcoming disclosures, we're here to assist you.

Commonwealth Financial Network® does not provide legal or tax advice. Please contact your legal or tax advisor for advice on your specific situation.

Authored by the Retirement Consulting Services team at Commonwealth Financial Network.