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## A Checklist for Participant Fee Disclosures Effective in 2012

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Historically, one of the salient challenges for retirement plan sponsors and participants in the U.S. has been the lack of information regarding fees. Without a clear understanding of fees associated with the services being provided to them and their plans, sponsors and participants cannot make informed decisions related to their investment options and other issues.

The U.S. Department of Labor's (DOL) Employee Benefits Security Administration (EBSA), which oversees retirement plans subject to the Employee Retirement Income Security Act (ERISA), has addressed the problem in three important ways:

- **Expanding Form 5500 filing requirements.** The **updated Schedule C requirement** for Form 5500 was implemented with 2010 plan filings.
- **Regulating provider-to-sponsor fee disclosure.** The provider-to-sponsor disclosure is required by July 1, 2012, under the DOL's final rule **Reasonable Contract or Arrangement Under Section 408(b)(2) – Fee Disclosure**.
- **Regulating sponsor-to-participant fee disclosure.** The sponsor-to-participant disclosure is required Aug. 30, 2012, for calendar year plans under the DOL's final rule **Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans**.

Under sponsor-to-participant disclosure, sponsors will be required to provide multiple types of disclosures to participants in forms that help them understand the fees being paid for services rendered and to compare investment alternatives on their own. All disclosures are to be presented in an intuitive comparative table. EBSA has released a **template version** of what these charts are to look like.

It is likely that the plan recordkeeper will produce all of the required information listed below. The final rule protects sponsors from fiduciary liability created in the issuance of inaccurate or incomplete information by third-party providers. However, it is the plan sponsor's responsibility to ensure that the information is distributed to plan participants in a timely manner.

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Additionally, if there are multiple plan recordkeepers, the disclosure information produced by each vendor must be distributed to participants and beneficiaries in the same package. In these circumstances, the plan sponsor will need to convince one of the recordkeepers to collect the information from the other vendors and distribute all of the required information for each. This request might be greeted with resistance from the vendors or might be met with the imposition of a fee to complete the task. Alternatively, the plan sponsor will need to put together the packages and distribute them to participants and beneficiaries.

### Plan-Related Disclosures

Within plan-related disclosures, the DOL has created three major categories: general plan information, administrative expense information, and individual expense information. All required updates may be placed in the summary plan descriptions or in quarterly plan statements.

All required information must be released to each individual participant or beneficiary on or before the date on which they will be able to deposit investments to the plan and then annually after this first disclosure. If there is a change to any information, the updates must be produced at least 30 days and no more than 90 days prior to the official date of change. In the event of unavoidable or unpredictable circumstances beyond the plan sponsor's control, all information must be released as quickly as possible.

Below is a listing of the different categories of disclosure information and what these communications must include.

#### General Plan Information:

- Information on how to provide investment instructions.
- An explanation of any limitations on such instructions, including any restrictions on transfer to or from a designated investment alternative.
- A description of or reference to the plan provisions regarding the exercise of voting, tender or similar rights.

- Identification of any designated investment alternatives offered under the plan.
- Identification of any designated investment managers.
- A description of any brokerage windows, self-directed brokerage accounts or similar plan arrangements that enable participants and beneficiaries to select investments beyond those designated by the plan.

### Administrative Expense Information

Plan sponsors or administrators are to produce information on all fees pertaining to general plan services, such as recordkeeping, legal and accounting charges. These fees may be charged by the plan to the participant accounts and will not be included or referenced in the total operating expenses of any designated investment alternative. The sponsor must release to the participants an explanation as to the basis on which these charges may be allocated to each person's account or how they may affect the total account. To keep in line with the new notice of changes being made at least 30 days and no more than 90 days before the change, sponsors should be sure to review their service provider contracts to confirm that all related periods fall within the time allotted by the new regulation.

On a quarterly basis, plan sponsors are required to produce a report to participants and beneficiaries that includes the following information:

- The hard dollar amount of the fees charged during the previous quarter.
- A description of the services for which the fees are charged.
- If applicable, an explanation that in addition to administrative expense fees and expenses disclosed, some of the plan's administrative expenses for the previous quarter were paid using Rule 12b-1 fees, revenue-sharing fees or sub-transfer agent fees.
- Revenue-sharing fees paid by funds to the recordkeeper must be included in the information provided to the participants in the administrative expense information.

### Individual Expense Information

Plan sponsors and administrators are to produce a detailed explanation of all fees that may be charged to participants that will not be included or referenced in the total operating expenses of any designated investment. This explanation must be created on an individual basis to prevent confusion about fees such as those for qualified domestic relations orders (QDROs), processing plan loans, investment advice, brokerage windows, commissions, transfer fees, sales charges and any related or similar expenses.

On a quarterly basis plan sponsors are required to produce a report to participants and beneficiaries with the following information:

- The hard dollar amount of fees charged during the preceding quarter.
- A clear description of the services for the fees charged.

### Investment-Related Disclosures

The plan sponsor must provide automatically, on or before the date the participant can first direct investments to their plan and at least once a year thereafter, the following details based on the most up-to-date information available:

- Identifying information, including the name and type or category of each investment.
- Performance data for fixed and non-fixed funds.
- Benchmark information.
- Fee and expense information for all investments.

After directing funds to a designated investment, a participant must receive all literature provided to the plan relating to any pass-through voting, tender or similar rights passed on to the participant. In addition, on request of the participant or beneficiary the following information must be made available immediately:

- Prospectuses and other similar documents.
- A value statement for a share or unit of each investment.
- Financial statements or reports (provided such information is given to the plan).
- A list of portfolio assets and their values for the designated investment.

### Additional Requirements

- **Glossary of Investment Terms.** Plan sponsors are required to produce a clear glossary of general investment terms that can be obtained easily by participants and beneficiaries to aid them in making better decisions regarding their investments (if this glossary is provided via the plan's web site, the link for it must have a clear and concise explanation of what the glossary is for). A [sample glossary](#) has been made available by the Society for Human Resource Management in partnership with other associations representing plan sponsors.
- **Website information.** Plan sponsors are required to produce and update regularly a website that is capable of acting as a second source of all specific information required to be released to participants and beneficiaries on the plan and each designated investment.

### Conclusion

The fee disclosure regulations for participants are dense and contain an overwhelming amount of information. It seems likely, particularly in multivendor situations, that there will be plenty of participant confusion leading to questions of the plan sponsor. As the industry drives towards the implementation of these new regulations, plan sponsors might wish to speak with their advisors to understand the disclosure information for responding to participant questions and to confirm that they are on track to

fulfill their fiduciary responsibilities.

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#### **Related Articles**

[DOL Final Rule Extends Deadlines for Service Provider and Participant-Level Fee Disclosures](#), *SHRM Online* Benefits Discipline, February 2012

[DOL Offers More Guidance on Electronic Fee Disclosure](#), *SHRM Online* Benefits Discipline, January 2012

[Plan Sponsors Lack Knowledge of Revenue-Sharing Fees](#), *SHRM Online* Benefits Discipline, January 2012

[Sample Glossary of Investment-Related Terms for Disclosures to Retirement Plan Participants](#), *SHRM Online* Benefits Discipline, December 2011

[What 'Fee Disclosure' Really Means for Plan Sponsors](#), *SHRM Online* Benefits Discipline, November 2011

[Schedule C: Disclosing and Documenting Eligible Indirect Compensation](#), *SHRM Online* Legal Issues, April 2010

[Pay Attention to Expansion of Form 5500 Schedule C](#), *SHRM Online* Legal Issues, May 2009

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