



DOL Investment and Fee Disclosure Regulations

The Department of Labor ("DOL") has issued final regulations which specify the actions plan administrators must take to provide participants and beneficiaries sufficient information about their designated investment alternatives and plan and investment fees and expenses. These regulations address fiduciary duties which are in addition to a plan administrator's duty under ERISA to prudently select and monitor directed investment alternatives. These regulations apply regardless of whether a plan has elected to comply with ERISA section 404(c). The effective date of the final regulations is the plan year beginning on or after November 1, 2011 (or January 1, 2012, for a plan with a calendar year/plan year).

Covered Plans: The regulations apply to ERISA participant directed individual account plans, such as 401(k) and profit sharing plans which provide participant directed investment options. The regulations do not apply to individual retirement accounts or annuities (IRAs), including simplified employee pensions (SEPs) and simple retirement accounts (which are types of IRAs).

Fee Disclosure Requirements include:

- An initial and annual disclosure of *plan related fee information*;
- An initial and annual disclosure of *investment related fee information*; and
- A quarterly disclosure in participant account statements of the actual amount of individual and administrative fees that have been charged to a participant or beneficiary's plan accounts.

Plan Related Fee Disclosure includes:

- General Information about
 - Investment directions, including "how to" information, plan limits and restrictions;
 - Voting rights;
 - Designated investment alternatives;
 - Investment manager alternatives, if applicable; and
 - Any brokerage window alternative.
- Administrative Expenses include fees and expenses for general plan administrative services (e.g., recordkeeping, accounting, etc.) which are charged against individual

accounts and are not reflected in the total operating expenses of the plan's designated investment alternatives. If applicable, disclosure of plan administrative fees must include a statement that some of the plan's administrative fees are paid from the annual operating expenses of the plan's designated investment options (e.g., 12b-1 fees or other revenue sharing arrangements). The disclosure of administrative expenses must also describe how such expenses are allocated to participant accounts (e.g., pro-rata or per capita).

- Individual Expenses include any expenses that can be charged to a participant or beneficiaries' account on an individual, rather than a plan-wide basis, such as qualified domestic relations order expenses, plan loan fees or brokerage window commissions.

Plan-related fee disclosure may be disclosed in a summary plan description which is updated and distributed each year or in quarterly participant account statements. Plan-related expenses that are actually deducted from participant or beneficiary accounts must be disclosed in quarterly participant account statements. Changes in the fee information provided annually must be communicated at least 30 days, but not more than 90 days, before the change is effective, unless the change is unforeseeable or beyond the plan administrator's control.

Investment-Related Fee Disclosure

Investment-related fee disclosure must be provided before a participant or beneficiary can first direct investments and at least annually thereafter, and must include a comparative chart. The DOL regulations include a chart that can be used to satisfy this requirement which can be found at www.dol.gov/ebsa/modelcomparativechart.doc.

The investment related disclosure must include:

- the name of each designated investment alternative;
- the type of investment (e.g., money market fund, balanced fund, large cap stock, qualifying employer securities);
- performance data (on a calendar year basis compared to a benchmark based on one, five and ten calendar year periods, if available);
- a glossary of terms to assist participants in understanding the designated investment alternatives or the address of a website with such a glossary; and
- fee and expense information (such as expense ratios, expressed as both a ratio and as a dollar amount for a \$1,000 investment).

Separate criteria are provided in the regulations for fixed return investments and annuities (as illustrated in the DOL model comparative chart).

Separate criteria are also provided in the regulations for disclosures relating to qualifying employer securities.

Internet web addresses of designated investment alternatives must also be included in the annual disclosure so participants and beneficiaries can access more current performance and

other information, such as the designated investment alternative's goals and objectives, turnover rate and information about fee and expenses.

The fees and expenses portion of the DOL comparative chart must include the following statement:

The cumulative effect of fees and expenses can substantially reduce the growth of your retirement savings. Visit the Department of Labor's website for an example showing the long term effect of fees and expenses. Fees and expenses are only one of many factors to consider about whether an investment in a particular option will help you achieve your financial goals.

A non-calendar year plan should consider providing investment-related fee disclosure on a calendar year basis because the investment performance data in the comparative chart must be provided on a calendar year basis.

Target Retirement Date Fund Disclosures

The DOL has also proposed regulations relating to investment-related disclosures about target retirement date (or similar) funds. The proposed regulations, however, are not effective until 90 days after they have been published in final form.

These regulations:

- Prescribe expanded disclosure in the required qualified default investment alternative annual notice; and
- Propose that an appendix be added to the DOL investment performance comparative chart with the following information:
 - An explanation of the target retirement date fund's asset allocation, how it will change over time, the time when the fund will reach its most conservative allocation, including a chart, table or other graphical illustration of how such allocation changes over time;
 - An explanation of the age group for whom the target date retirement fund is designed and any assumptions about a participant's or beneficiary's contribution and withdrawal intentions after such date; and
 - A statement that the participant or beneficiary may lose money by investing in the target date retirement fund and that there is no guarantee that the fund will provide adequate retirement income.

What are the consequences of a fiduciary's failure to comply with the final investment and fee disclosure regulations?

A plan participant or beneficiary could bring a civil action against the plan administrator for breach of ERISA fiduciary duties for any losses the participant or beneficiary incurs as a result of the failure of the plan administrator to discharge his/her fiduciary duty to provide the required fee and investment disclosure.

What should sponsors of ERISA participant-directed plans that provide designated investment alternatives be doing?

- Coordinate with your investment and plan recordkeeping service providers to determine who will be primarily responsible for preparing these required disclosures.
- Develop an implementation action plan, which should include sufficient time to make any plan recordkeeping system changes that may need to be made to comply with these regulations.

Please let us know if we can be of assistance.

Dated: January 24, 2011

Written by: Thomas C. Graves