



Participant Fee Disclosures in 401(k)/403(b) Plans

The Department of Labor (DOL) has issued final guidance on fee disclosures to plan participants. These rules apply to defined contribution plans where employees are allowed to direct the investments (or a portion of their investments) in their accounts, most typically 401(k), and ERISA 403(b) plans. A profit sharing plan or a money purchase plan that allows participant investment direction will also be subject to these rules. The disclosure rules are effective for plan years beginning on or after November 1, 2011.

Plan sponsors must fully understand these new disclosure rules so they know if their disclosures to participants meet the requirements.

There are four broad categories of disclosures:

- General plan disclosures
- Administrative expense disclosures
- Individual expense disclosures
- Investment disclosures

General Plan Disclosures

Annually, employers must provide plan participants the following information:

- 1) Explanation of circumstances under which participants may direct their investments including:
 - a) instructions of how participants make investment elections (online, paper enrollment form)
 - b) limitations on plan accounts available for investment direction, e.g., deferral account may be directed but not employer contributions
 - c) contact information for questions about investment direction
- 2) Explanation of limitations on investment direction including:
 - a) limitations on when an employee may make investment elections (daily, monthly, quarterly)
 - b) limitations on investment changes, if any (daily, monthly, quarterly)
 - c) any other limitations imposed by the plan
- 3) Description of plan terms relating to exercise of voting rights for each investment alternative and any restrictions on such rights
- 4) Identification of each investment alternative under the plan, e.g., if the plan designates 15 identified mutual funds into which participants may direct investments, each of the 15 mutual funds is a designated investment alternative (DIA). The term does not include a brokerage window, a self-directed brokerage account or similar arrangements permitting participants to select investments beyond the designated investment alternatives.
- 5) Identification of designated investment manager for the plan including name of person or company
- 6) Description of any brokerage window or self-directed brokerage account or similar arrangements available to participants

Deadlines to provide general plan disclosures

These disclosures must be provided on or before the date the participant first becomes eligible and annually thereafter.

Initial disclosure notice – for existing participants, the initial disclosure must be provided by the later of August 30, 2012 or 60 days after the service provider fees disclosures are due to plan

sponsors. For calendar year plans, the initial disclosures should be provided no later than August 30, 2012.

Changes to information in disclosure notice – if changes are made to any provisions contained in the disclosure notice, the plan administrator should provide each participant a description of the change (or a revised notice) at least 30 days, but not more than 90 days, before the effective date of the change. If advance notice is not possible due to circumstances beyond the plan administrator's control, the revised notice should be provided as soon as reasonably practicable.

Administrative Expense Disclosures

Annually, participants should be given an explanation of the following:

1. Fees and expenses for general administrative services that may be charged against their individual accounts, e.g., recordkeeping, compliance, 5500 preparation, legal, accounting
2. The basis for which the charges will be allocated (pro rata or per capita)
3. Do not include annual operating expenses of designated investment alternatives

Quarterly, participants should be given a statement that includes:

1. The dollar amount of the administrative fees and expenses actually charged to the participant's account during the preceding quarter
2. A general description of the administrative services to which the charges relate (plan administration, recordkeeping, etc.)
3. If applicable, an explanation that, in addition to the fees and expenses paid directly by the plan for general administrative services, some of the plan's administrative expenses for the preceding quarter were paid from the total annual operating expenses of one or more of the plan's DIA's (i.e., revenue sharing)

The annual information may be provided in the Summary Plan Description or some other notice that is provided annually to participants. The quarterly information may be provided in the quarterly benefit statements.

Individual Expense Disclosures

Annually, participants should be provided an explanation of the following:

1. Fees and expenses that can be charged to an individual participant's account, rather than on a plan-wide basis. For example, fees for loans, qualified domestic relations orders, investment advice, front or back-end loads or sales charges, redemption fees, etc. should be disclosed.

Quarterly, participants should be given a statement that includes:

1. The dollar amount of the individual fees and expenses actually charged to the participant's account during the preceding quarter
2. Description of the individual services to which the charges relate (loan, QDRO, etc.)

Once again, the annual information may be provided in the Summary Plan Description or some other notice that is provided annually to participants. The quarterly information may be provided in the quarterly benefit statements.

Deadlines to provide administrative and individual expense disclosures

Initial annual disclosure – for existing participants, the initial disclosure must be provided by the later of August 30, 2012 or 60 days after the service provider fees disclosures are due to plan sponsors (currently July 1, 2012). For calendar year plans, the initial disclosures should be provided no later than August 30, 2012. The quarterly information should be provided in the benefit statement within 45 days after the calendar quarter in which initial notice is due. For most plan years, the due date of the quarterly disclosures is November 14, 2012. Please refer to the last section entitled "Disclosure Deadlines."

Changes to information in disclosure notice – if changes are made to any provisions contained in the notice, the plan administrator should provide each participant a description of the change (or a revised notice) at least 30 days, but not more than 90 days, before the effective date of the

change. If advance notice is not possible due to circumstances beyond the plan administrator's control, the revised notice should be provided as soon as reasonably practicable.

Investment Disclosures

There are six categories of investment disclosures to provide plan participants annually. Items 1 – 4 are to be provided in a comparative chart format. The DOL has provided a model comparative chart for reference. The plan administrator must base the disclosures on the latest information available to the plan. These rules only apply to designated investment alternatives, so the information does not include investment information for a brokerage window. The items to include for DIA's are:

1. Identifying information – name of fund and type (e.g., large cap stock fund, money market fund). The employer can rely on how the investment institution characterizes the investment.
2. Performance data – for each investment without a fixed rate of return, provide the average annual return for 1-, 5-, and 10-calendar-year periods (or the life of the investment alternative, if shorter). Include a statement indicating that an investment's past performance is not necessarily an indication of how the investment will perform in the future. For fixed return investments, provide the fixed or stated annual rate of return and investment term. If the issuer reserves the right to adjust the fixed or stated rate of return prospectively during the term of the contract or agreement, include a statement advising participants that the issuer may adjust the rate of return prospectively and how to obtain the most recent rate of return (telephone or website).
3. Benchmark comparisons – name and returns for appropriate broad-based securities market index over 1-, 5-, and 10- calendar year periods (or for the life of the investment alternative if shorter). A benchmark can not be administered by an affiliate of the investment issuer, its investment adviser, or a principal underwriter, unless the index is widely recognized and used.
4. Fee & expense information – investment alternative expenses
 - a. DIA without a fixed return should include the following information:
 - i. Amount and a description of each shareholder-type fees. Shareholder-type fees are those charged directly against a participant's or beneficiary's investment, such as commissions, sales loads, sales charges, deferred sales charges, redemption fees, surrender charges, exchange fees, account fees, and purchase fees, which are not included in the total annual operating expenses of any designated investment alternative. The disclosure should also include a description of any restriction or limitation that may be applicable to a purchase, transfer, or withdrawal of the investment in whole or in part (such as a round trip, equity wash, or other restrictions)
 - ii. Total annual operating expenses of the investment expressed as a percentage (i.e., expense ratio). The regulations offer a calculation which differs for mutual funds and other investments.
 - iii. The total annual operating expenses of the investment for a one-year period expressed as a dollar amount for a \$1,000 investment (assuming no returns, and based on the percentage described in (ii) above. For example, if the expense ratio for an investment alternative is 50 basis points (50/100 of 1%), the total annual operating expenses for a one-year period for a \$1,000 investment would be \$5.00)
 - iv. A statement indicating that fees and expenses are only one of several factors that participants and beneficiaries should consider when making investment decisions.
 - v. A statement that the cumulative effect of fees and expenses can substantially reduce the growth of a participant's and beneficiary's retirement account and that participants and beneficiaries can visit the Employee Benefit Security Administration's website for an example demonstrating the long-term effect of fees and expenses.

- b. DIA with a fixed return should include the amount and a description of any shareholder-type fees and a description of any restriction or limitation that may be applicable to a purchase, transfer or withdrawal of the investment in whole or in part.
5. Internet website information – website address that provides participants the following information:
 - a. DIA's issuer name;
 - b. Objectives or goals in a manner consistent with the SEC Form N-1A or N-3;
 - c. Principal strategies;
 - d. Turnover rates;
 - e. Performance data updated on a least a quarterly basis, or more frequently if required by other applicable law; and
 - f. Fee and expense information described in #4 immediately above.
 6. Glossary of terms – investment glossary to assist participants with investment alternatives and investment terms or an internet website address that is sufficiently specific to provide access to such a glossary along with a general explanation of the purpose of the site address.

If a DIA is part of a contract, fund or product that permits participants or beneficiaries to allocate contributions toward the future purchase of a stream of retirement income payments guaranteed by an insurance company (annuity contract), the following must be provided:

1. The name of the option;
2. The option's objectives or goals (i.e. to provide a stream of fixed retirement income payments for life);
3. The benefits and factors that determine the price of the guaranteed income payments (e.g., age, interest rates, form of distribution);
4. Any limitations on a participant's ability to withdraw or transfer amounts allocated to the option (i.e., lock-ups) and any fees or charges applicable to such withdrawals or transfers;
5. Any fees that will reduce the value of amounts allocated to the option, such as surrender charges, market value adjustments, and administrative fees;
6. A statement that guarantees of an insurance company are subject to its long-term financial strength and claims-paying ability; and
7. An internet website address that provides participants access to the following information:
 - a. The name of the option's issuer and of the annuity product;
 - b. A description of the option's objectives or goals;
 - c. A description of the option's distribution alternatives/guaranteed income payments (e.g., payments for life, payments for a specified term, joint and survivor payments, optional rider payments), including any limitations on the right to receive such payments;
 - d. A description of costs and/or factors taken into account in determining the price of benefits under the option's distribution alternatives/guaranteed income payments (e.g., age, interest rates, other annuitization assumptions);
 - e. A description of any limitations on a participant's right to withdraw or transfer amounts allocated to the option and any fees or charges applicable to a withdrawal or transfer; and
 - f. A description of any fees that will reduce the value of amounts allocated to the option (e.g., surrender charges, market value adjustments, administrative fees).

In addition, employers can provide the following information with the initial investment disclosures. If employers do not provide, participants have the right to request the following information at any time:

1. Copies of prospectuses (or any short-form or summary prospectus approved by the SEC) for entities registered under either the Securities Act of 1933 (stocks) or the Investment Company Act of 1940 (mutual funds), or similar documents relating to DIAs that are not registered;
2. Copies of any financial statements or reports, or similar materials relative to the DIA's, to the extent such materials are provided to the plan;
3. A statement of the value of a share or unit of each DIA as well as the date of the valuation; and
4. A list of the assets comprising the portfolio of each DIA which constitutes plan assets under the plan asset regulations (i.e. a PSA), and the value of each such asset (or proportion of the DIA which it comprises).

Target Date Funds (TDF's) – if your plan contains target date funds, once DOL final guidance is published, there will be a requirement to provide additional information as an appendix to the investment comparative chart. The following information is currently proposed to include:

1. An explanation of the TDF's asset allocation, how the asset allocation will change over time, and the point in time when the TDF will reach its most conservative asset allocation, including a chart or other graphical representation illustrating the change in asset allocation over time (that does not obscure a participant's understanding of the information explained in this paragraph);
2. If the TDF is named or otherwise described with reference to a particular date (e.g., "the 2030 fund"), an explanation of the age group for whom the TDF is designed, the relevance of the date, and any assumptions about a participant's contribution and withdrawal intentions on or after that date; and
3. A statement that the participant may lose money by investing in the TDF, including losses near and following retirement, and that there is no guarantee that the TDF will provide adequate retirement income.

Deadlines to provide investment disclosures

Investment disclosures must be provided to participants on or before the date a participant can first direct his or her investments and annually thereafter. There is no requirement to update this information as the data changes throughout the plan year.

Initial disclosure – for existing participants, the initial disclosure must be provided by the later of August 30, 2012 or 60 days after the service provider fees disclosures are due to plan sponsors (currently July 1, 2012). For calendar year plans, the initial disclosures should be provided no later than August 30, 2012. This date may be extended if the DOL extends the deadline of the service provider fee disclosure rules to plan sponsors.

Electronic Participant Fee Disclosures

These required notices can be provided electronically. The DOL and IRS have rules regarding electronic delivery of required notices. TRI-AD will be addressing these rules in a separate document.

Disclosure Deadlines

Below is a recap of the participant disclosure due dates.

Plan Year Beginning	Plan Year End	Initial Annual Notice Due Date	Quarterly Disclosure Due Date
11/1/2011	10/31/2012	8/30/2012	11/14/2012
12/1/2011	11/30/2012	8/30/2012	11/14/2012
1/1/2012	12/31/2012	8/30/2012	11/14/2012
2/1/2012	1/31/2013	8/30/2012	11/14/2012
3/1/2012	2/28/2013	8/30/2012	11/14/2012
4/1/2012	3/31/2013	8/30/2012	11/14/2012
5/1/2012	4/30/2013	8/30/2012	11/14/2012
6/1/2012	5/31/2013	8/30/2012	11/14/2012
7/1/2012	6/30/2013	8/30/2012	11/14/2012
8/1/2012	7/31/2013	9/30/2012	11/14/2012
9/1/2012	8/31/2013	10/31/2012	2/14/2013
10/1/2012	9/30/2013	11/30/2012	2/14/2013

What compliance offers fiduciaries

If plan administrators meet the disclosure requirements, there is no breach of fiduciary duty. If the plan is relying on fiduciary protection, these rules must be followed. Plan administrators will not be liable for completeness or accuracy of information when the administrators rely on information from service providers.

What Should Plan Sponsors Do Now?

- ✓ Determine the affected plans
- ✓ Determine who will complete disclosures to participants
- ✓ Determine disclosure requirements – analyze current disclosures and add required information
- ✓ Determine method of delivery to participants
- ✓ Determine who will deliver (may vary)
- ✓ Meet initial deadline – 8/30/12 for most plans
- ✓ Update enrollment materials
- ✓ Meet quarterly disclosure deadline – provide with participant statements and for most plans, by November 14, 2012
- ✓ Meet annual disclosure deadline
- ✓ Monitor changes in the future

Plan sponsors should ask their service providers if they will be preparing the required disclosures. TRI-AD will assist our clients by providing the disclosures required to meet these new rules. These disclosures will be prepared and provided by the appropriate deadlines. TRI-AD will then monitor and assist clients with modifications and ensure that required annual notices are provided. Please contact your Client Service Manager if you have questions about this information.