



eActionAlert

DOL Proposes Additional Disclosure Rules for Defined Contribution Plans

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Under ERISA, the investment of plan assets requires plan fiduciaries to act prudently and solely in the interest of participants. For plans that place investment responsibilities with participants, the Department of Labor (DOL) requires plan fiduciaries to provide participants with information sufficient to enable them to make informed decisions about the investment management of their accounts. Last year, DOL proposed regulations that would:

- 1. Impose new requirements on plan sponsors to disclose fees and expenses charged to participants in self-directed defined contribution plans. This includes 401(k) plans and 403(b) plans except where participants have self-directed brokerage accounts or brokerage window accounts.*
- 2. Require fee disclosures on Form 5500, Schedule C.*
- 3. Require disclosure of recordkeeping and other vendor fees to plan fiduciaries. (We discussed this requirement in detail in our August 15, 2008 eAction Alert.)*

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The Proposed Regulations

As proposed by the DOL, these rules will be effective January 1, 2009. They will require plan fiduciaries to disclose four specific categories of information to participants:

1. General plan information
2. General administrative expense information
3. Individual account administrative expense information
4. Investment-related information, including specified fee and expense information

Investment-related information must be provided in a chart or similar format that allows for easy comparison of the investment alternatives provided under the plan. The proposed regulations provide a model chart that may be used to satisfy this requirement.

General Plan Information

Plan fiduciaries must provide the following information:

- How participants may give investment instructions
- Any plan limitations on investment direction, such as blackout periods
- A description of any voting, tender or similar rights that may be exercised by participants who invest in a particular investment alternative under the plan
- A list of investment alternatives offered by the plan
- The name of the investment manager for each alternative

General Administrative Expenses

This includes an explanation of the fees and expenses for administrative services provided to the plan such as accounting, recordkeeping and legal expenses that may be allocated to participants' individual accounts. The explanation must describe the basis on which such charges will be allocated to affect the balance of such accounts, either pro rata or per capita.

Individual Account Administrative Expenses

This describes expenses that are charged directly to an individual participant's account for specific services. Such services include Qualified Domestic Relations Orders, plan loans and investment advice.

Investment-Related Information

This is information about the plan's investment options, their historical rates of return and their related fees and expenses. For each investment alternative, this includes:

- The investment's name, investment category (such as money market fund, balanced fund or small-cap fund), whether it is actively or passively managed and the web site address where more information (such as investment strategies and risks) is available
- For each investment alternative without a fixed return (such as equity index fund) performance data for the preceding one-, five- and ten-year periods, an appropriate broad-based benchmark for the same periods with a statement that past performance is not necessarily an indication of future performance
- For an investment with a fixed rate of return (such as a guaranteed investment contract), the rate of return and the term of investment
- Shareholder fees and expenses related to the purchase, holding and sale of the investment alternative, such as sales loads, redemption fees, exchange fees and the total annual operating expenses (expressed as a percentage of assets, such as an expense ratio), with a statement that fees and expenses are only one of several factors to consider in making investment decisions

Timing for Disclosures

Each type of disclosure must be provided within a specific timeframe. The disclosures regarding general plan information and investment-related information must be furnished before the day an employee becomes eligible to participate and at least annually thereafter. The information regarding expenses actually allocated to an individual participant's account must be provided quarterly.

Copies of a prospectus (or summary prospectus) and the financial statements for an investment alternative need be furnished only upon a participant's written request. The general information may be provided in an annually published Summary Plan Description while the individual information may be provided in quarterly statements received by participants.

What This Means to You and M&A's Recommended Actions

Some of these disclosures are already provided by plans that have voluntarily elected to comply with section 404(c) of ERISA. However, these new rules extend such disclosure requirements to participants in all participant-directed defined contribution plans.

Although the DOL continues to maintain that the rules will be final for plan years beginning on and after January 1, 2009, many practitioners believe most plans cannot meet this short timeframe for compliance. Nonetheless, M&A recommends that plan sponsors and other plan fiduciaries begin assembling the required information and developing communication materials.

Together with M&A, you should contact your recordkeepers and investment managers now to meet this imminent deadline as proposed. Ask them what they are doing to bring your plan into compliance with these new disclosure rules.

M&A is an employee benefit consulting and management firm and, as such, we do not practice law. Marc Zimmerman and David Hooban, practitioners in our Qualified Plans Department, are equipped to discuss with you the progress being made by your defined contribution plan service providers. Messrs. Zimmerman and Hooban can be reached at extensions 224 and 291 respectively.