



Washington Update

Proposed changes that could affect your Retirement Program

September 2008

DOL proposes participant fee disclosure rules

On July 23, 2008, the Department of Labor (DOL) published proposed rules requiring certain defined contribution plans to disclose specific investment-related information, including fee and expense information, to participants and beneficiaries. These rules would apply to participant-directed plans covered by ERISA, including both qualified plans and 403(b) plans. As proposed, these rules would be effective for plan years beginning on or after January 1, 2009. Written comments regarding these proposals were due September 8, 2008, and DOL officials have indicated that this is one of their high priority projects.

If finalized as proposed, these new rules will require extensive reprogramming of most recordkeeping systems, in a very short timeframe. As a result, a common theme running throughout the comments submitted by various industry groups, including those submitted by the American Council of Life Insurers (ACLI), the American Benefits Council (ABC), the Investment Company Institute (ICI) and the Society of Plan Asset Managers and Recordkeepers (SPARK Institute) is a request for a delayed effective date. In general, these groups are asking for an effective date that is not earlier than the first day of the first plan year beginning on or after January 1, 2010. Prudential supported the development of these comments and is hopeful that the DOL will be responsive to these requests.

To give plan sponsors an opportunity to prepare for the implementation of these new rules (whether in 2009 or 2010), we are providing a summary of the DOL's proposals. However, plan sponsors need to be aware that they cannot rely on these proposed rules. If a plan sponsor takes action now and the final rules depart from the proposals, the plan will have to change course in order to comply with those final rules.

Background and general information

Under ERISA, plan fiduciaries must act prudently and solely in the interest of participants and beneficiaries. In plans where participants and beneficiaries have investment responsibility for their accounts ("participant-directed plans"), fiduciaries must provide participants and beneficiaries with information that enables them to make informed decisions regarding their accounts.

If a plan satisfies ERISA section 404(c) requirements, plan fiduciaries will not be liable for any loss that is a result of the participant's or beneficiary's investment direction. The section 404(c) requirements include specific participant disclosure rules. However, compliance with section 404(c) is voluntary and those disclosure rules do not extend to participants and beneficiaries in *all* participant-directed defined contribution plans.

The new proposed rules are an attempt to establish uniform, basic disclosures for participants and beneficiaries, whether or not the plan intends to comply with ERISA section 404(c). These proposals require plan fiduciaries to provide participants and beneficiaries with disclosures of both plan-related information and investment-related information.

Disclosure of plan-related information

Plan-related information includes: general plan information, administrative expenses information, and individual expense information. Some of these disclosures must be provided at the time the individual is first eligible to participate in the plan and then annually thereafter. Other disclosures must be provided quarterly. The DOL proposal does allow plan fiduciaries to include the disclosures in the plan's summary plan description (SPD) or on quarterly benefit statements, as long as the required timing is met.

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The following chart summarizes the information that must be provided to participants and beneficiaries under the proposed rules, the timing for providing these disclosures, and possible non-exclusive methods of delivery.

Required information	Due date	Possible location
General plan information		
<ul style="list-style-type: none"> • How participants and beneficiaries give investment instruction; • Specific limitations on instructions, such as restrictions on transfers, etc.; • Exercise of voting and similar rights, and restrictions on those rights; • A list of designated investment alternatives offered under the plan; and • Designated investment managers to whom participants and beneficiaries may give investment directions. 	<ul style="list-style-type: none"> • On or before the date the participant is eligible to be a participant or beneficiary under the plan; and • At least annually thereafter. • Material changes to required information must be provided not later than 30 days after the date of adoption. 	SPD, if timing requirements can be met.
Administrative expenses information		
<ul style="list-style-type: none"> • An explanation of fees and expenses for plan administrative services (e.g., legal, accounting, recordkeeping) that may be charged against participant accounts; and • The basis on which the charges will be allocated (e.g., pro rata, per capita). 	<ul style="list-style-type: none"> • On or before the date the participant is eligible under the plan; and • At least annually thereafter. 	SPD, if timing requirements can be met.
<ul style="list-style-type: none"> • Amounts actually charged during the preceding quarter to the participants' or beneficiaries' accounts; and • The general descriptions of services to which the charges relate. 	<ul style="list-style-type: none"> • At least quarterly. 	Quarterly benefit statement.
Individual expense information		
<ul style="list-style-type: none"> • An explanation of fees and expenses that may be charged against the individual account of a participant or beneficiary for service provided on an individual basis (e.g., loan processing fees, qualified domestic relations order fees, or investment advice fees or similar services charged on an individual basis.) 	<ul style="list-style-type: none"> • On or before the date the participant is eligible under the plan; and • At least annually thereafter. 	SPD, if timing requirements can be met.
<ul style="list-style-type: none"> • Amounts actually charged during the preceding quarter to the participant's or beneficiary's account for individual services, and • A description of the services provided to the participant or beneficiary. 	<ul style="list-style-type: none"> • At least quarterly. 	Quarterly benefit statement.

Disclosure of investment-related information

Automatic disclosures required

Under the proposed rules, plan fiduciaries must automatically provide identifying information, performance data, benchmarks, and fee and expense information for each designated investment alternative offered under the plan. A “designated investment alternative” is any investment option offered under the plan to which participants and beneficiaries may direct their account assets, other than self-directed brokerage accounts.

Specifically, these disclosures, which must be provided in a comparative format, must identify:

- The name of the investment alternative;
- The category of the investment alternative (e.g., money market mutual fund, balanced fund, index fund);
- Whether the investment is actively or passively managed; and
- An internet website address that will lead participant and beneficiaries to supplemental information regarding the investment alternative, including its principal strategies, risks, performance, and costs.

In addition, for plan investments that have a fixed return, the fiduciary must provide both the fixed rate of return and the term of the investment. Additional clarifications have been requested regarding how certain fixed investments such as stable value without a “term” should be disclosed. We are hopeful that DOL will provide guidance on this issue when the regulations are finalized.

For investments that do not have a fixed return, the fiduciary must provide the average total return (expressed as a percentage) of the investment for one-year, five-year, and ten-year periods, if available, measured as of the end of the applicable calendar year. The fiduciary must also include a statement indicating that an investment’s past performance is not necessarily an indication of how the investment will perform in the future. In addition, the disclosures must provide benchmark returns for one-year, five-year, and ten-year periods.

For investments without a fixed return, the following fee and expense information must also be provided:

- The amount and a description of each shareholder-type fee, such as sales loads, redemption fees, surrender charges, exchange fees, account fees, purchase fees, and mortality and expense fees;
- The total annual operating expenses of the investment expressed as a percentage (expense ratio); and
- A statement indicating that fees and expenses are only one of several factors that participants and beneficiaries should consider when making investment decisions.

Plan sponsors must provide this investment-related information on or before the date the participant first becomes eligible to participate in the plan and annually thereafter. To satisfy the initial disclosure requirement, plan fiduciaries may provide new participants with the most recent annual disclosures, in addition to information regarding material changes to those disclosures.

The DOL has provided a [model comparative chart](#) that plan sponsors may use to satisfy these requirements.

Disclosures provided upon request

Upon request, the plan fiduciary must also provide the following information:

- Copies of prospectuses;
- Copies of financial statements or reports;
- A statement of value of a share or unit of each designated investment alternative and the date of valuation; and
- A list of assets comprising the portfolio of each designated investment alternative that constitutes plan assets and the value of each such asset or its proportion of the investment alternative.

Timetable for finalizing these rules

Now that the DOL has received written comments, final regulations are expected by year-end. When these regulations are published, we will provide you with additional information.



Washington Update by Prudential Retirement

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