

EBSA Releases Final 401(k) Fee Disclosure Rule

The U.S. Department of Labor (DoL) on Thursday released its long-awaited final rule governing a wide variety of investment option disclosures, including fees to workers in participant-directed individual account plans.

Participants now have to get enough information to allow cost comparisons with other investment choices, as well as a Web site with additional details that participants can also consult, regulators said.

“This rule provides uniform disclosure to workers about what they pay for investment options in their retirement plans,” said Secretary of Labor Hilda L. Solis. “For the first time, workers will have at their fingertips important and accessible investment-related information to comparison shop among the plan options available to them.”

Under the rule, participants must be provided, on or before the date they can first direct their investments and then again annually after that,

- general plan information that consists of information about the structure and mechanics of the plan, such as an explanation of how to give investment instructions under the plan, a current list of the plan's investment options, and a description of any "brokerage windows";
- an explanation of any fees and expenses for general plan administrative services that may be charged to or deducted from all individual accounts. Examples include fees and expenses for legal, accounting, and recordkeeping services;
- an explanation of any fees and expenses that may be charged to or deducted from the individual account of a specific participant or beneficiary based on the actions taken by that person. Examples include fees and expenses for plan loans and for processing qualified domestic relations orders.

Participants also must receive statements, at least quarterly, showing the dollar amount of the plan-related fees and expenses (whether administrative or individual) actually charged to or deducted from their individual accounts, along with a description of the services for which the charge or deduction was made.

Performance Data

The DoL said participants have to be provided with performance data including:

- Specific information about historical investment performance: One-, five-, and 10-year returns must be provided for investment options, such as mutual funds, that do not have fixed rates of return. For investment options that have a fixed or stated rate of return, the annual rate of return and the term of the investment must be disclosed.

- Benchmark information: For investment options that do not have a fixed rate of return, the name and returns of an appropriate broad-based securities market index over one-, five-, and 10-year periods (matching the Performance Data periods) must be provided. Investment options with fixed rates of return are not subject to this requirement.
- For investment options that do not have a fixed rate of return, the total annual operating expenses expressed as both a percentage of assets and as a dollar amount for each \$1,000 invested, and any shareholder-type fees or restrictions on the participant's ability to purchase or withdraw from the investment. For investment options that have a fixed rate of return, any shareholder-type fees or restrictions on the participant's ability to purchase or withdraw from the investment.

Information also must be furnished in a chart or similar format designed to facilitate a comparison of each investment option available under the plan; the DoL supplied a model comparison chart with the rule.

Regulators said the 142-page rule is effective December 20, 2010, and will become applicable to covered individual account plans for plan years beginning on or after November 1, 2011. For calendar-year plans, compliance will be required on January 1, 2012. “We have given a sufficiently long effective date because we understand it’s new and different and we think this will give administrators sufficient time to prepare themselves,” said Assistant Secretary of Labor Phyllis Borzi, during a Thursday conference call with reporters.

The DoL announced a separate rule in July that would enhance disclosure of 401(k) fees by requiring plan providers to report to plan sponsors direct and indirect compensation received in connection with account services.

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