



SUMMIT

Benefit & Actuarial Services, Inc.

The IRC Sections 408(b)(2) and 404(a)(5) Fee Disclosure Regulations

The fee disclosure regulations are intended to help plan sponsors and plan participants understand *fees that are being paid from plan assets*. These fees may be paid directly by the plan to its service-providers or indirectly through the investments held under the plan.

Fee disclosure will assist plan sponsors in evaluating whether a service-provider's charges when paid from plan assets are no more than reasonable, which is a fiduciary duty. For defined contribution plan participants who direct the investment of some or all of their individual accounts, fee disclosure will help them understand how their individual account balances are affected by fees paid from the plan and their investment choices.

Consequently, there are *two sets of required fee disclosures*:

- disclosures from the plan's service-providers to the plan sponsor ("service-provider fee disclosures"); and
- disclosures from the plan sponsor to *defined contribution* plan participants who can choose their investments ("participant fee disclosures").

Since the plan sponsor will need to receive and evaluate information about the fees paid from plan assets to service-providers in order to turn around and disclose this information to plan participants, the *service-provider fee disclosure deadline occurs first*. Your plan's service-providers covered under these regulations must provide to you the necessary disclosures regarding how they are paid from plan assets *by July 1, 2012*.

What should you as plan sponsor do with regard to this service-provider fee disclosure deadline? At a minimum:

- Remember that these service-provider fee disclosures concern fees paid from plan assets.
- Collect any and all fee disclosure information provided by the plan's service providers in one location. These documents may refer to IRC Section *408(b)(2)*.
 - The disclosures may be quite lengthy and detailed, in particular disclosures from the plan's investment service providers.
- Make note of any of the plan's service providers that you believe are or may be paid from plan assets, either directly or indirectly. If you have not received fee disclosure information from them by the deadline, contact them and ask them if they are subject to the service-provider fee disclosure rules and if so ask for the required disclosures.
- Use the provided disclosures to evaluate whether the service-provider's fees are no more than reasonable.

The *participant fee disclosure* is a two-part disclosure with *two deadlines*. Generally for calendar year plans and most off-calendar year plans, you as plan sponsor must provide participants with fee disclosure on a *plan-level by August 30, 2012*, and on an *individual participant-level by November 14, 2012*.* The plan-level fee disclosure covers information about the plan, expenses and investments and must be provided at least annually. A large part of the required plan-level information is investment-related, including performance history

and benchmarks, much of which must be formatted as a comparative chart of investment alternatives. The participant-level fee disclosure covers fees charged to the participant's account or paid by plan assets within the participant's account and must be provided on a quarterly basis.

What should you as plan sponsor do with regard to the participant fee disclosure deadlines?

At a minimum:

- Remember that these rules apply only to defined contribution plans where participants have the ability to choose their investments.
- Gather any information for purposes of participant fee disclosures provided to you by the plan's service providers in one location. These documents may refer to IRC Section **404(a)(5)**.
- Compile information on any self-directed brokerage windows or accounts available under your plan including how the window works and any associated fees and expenses. Brokerage windows are not fully covered under the service-provider fee disclosure regulation, so you may not receive this information automatically. However you must disclose this information under the *participant fee* disclosure regulation so you must ask your broker for assistance.
- Make note of any investment option available to plan participants for which you have no fee information and contact that investment provider.
- Understand that the responsibility for providing participant fee disclosures rests with the plan sponsor as plan administrator and is a fiduciary duty.
- Using the information provided from the service-provider fee disclosures, work with your plan's investment providers to create and distribute the participant fee disclosures by the applicable deadlines.

Summary

Although these fee disclosure regulations are newly effective, they are intended by the Department of Labor to help plan sponsors address their long-standing fiduciary obligation under ERISA to act prudently and in the sole interest of participants and beneficiaries under their plans.

As part of their duties, fiduciaries must ensure that a plan is maintained for the exclusive benefit of its participants and have a responsibility to see that no more than reasonable costs of maintaining the plan are charged against plan assets. Further, when participants are allowed to choose their investments under a plan, a fiduciary must provide them with sufficient information such that participants are aware of their rights and responsibilities surrounding the investment of the assets in their accounts.

The fee disclosure regulations were designed to give the plan sponsor/plan administrator as fiduciaries a series of specific rules to enable them to comply with the fulfillment of their fiduciary obligations.

**certain off-calendar plan years will have different participant fee disclosure deadlines.*