

# FEE DISCLOSURE IN PARTICIPANT DIRECTED INDIVIDUAL ACCOUNT PLANS

GINGER B. LACHAPPELLE, ESQ.  
BLITMAN & KING LLP



# FINAL RULE

- On October 14, 2010, the DOL released final regulations under Section 404(a) of ERISA relating to the disclosure of fee and other information to participants in participant directed individual account plans.
- The new rule applies to all individual account plans defined in Section 3(34) of ERISA (except, SEPs, SIMPLEs and IRAs).
- The new requirements apply for plan years beginning on or after November 1, 2011 (January 1, 2012 for calendar year plans).

# Why the DOL Adopted the Regulations:

- To help workers manage and invest the money that they contribute to their 401(k) type pension plans by ensuring that:
  - Workers are given, or have access to, the information they need to make informed decisions, including information about fees and expenses;
  - Investment information is provided in a format that enables workers to meaningfully compare their options;
  - Fiduciaries use standard methodologies when calculating and disclosing expense and return information to achieve uniformity across the spectrum of investments that exist within plans, and
  - A new level of **fee and expense transparency** is achieved.

# Why Plan Administrators Must Comply with the Regulations:

- For all of the reasons that the DOL adopted the regulation;
- AND
- Because failure to provide the required information is a fiduciary breach.

# PLAN RELATED INFORMATION

## PART I

- General Plan Information:
  - How participants and beneficiaries may give investment instructions;
  - Any specific limitations on such instructions under the terms of the plan, including restrictions on transfer to or from a designated investment alternative;
  - Any plan provisions relating to voting, tender, and similar rights, and any restriction on such rights;
  - The identification of any designated investment alternatives;
  - The identification of any investment managers of the designated investment alternatives; and
  - A description of any broker windows or similar arrangements that enable participants and beneficiaries to select investments beyond those designated by the plan.

# PLAN RELATED INFORMATION

## PART II

- Administrative Expenses:
  - Must be disclosed if they may be charged against the accounts of participants and beneficiaries.
  - Include general plan administrative expenses (e.g., legal, accounting, recordkeeping).
  - The notice must explain how the charges will be allocated to, or affect the balance of, each individual account (i.e., pro rata, per capita).
  - If applicable, the notice must also include a disclosure that some of the plan's administrative expenses for the preceding quarter were paid from the total operating expenses of one or more of the plan designated investment alternatives (e.g., through revenue sharing, 12(b)-1 fees, or sub-transfer agent fees).

# PLAN RELATED INFORMATION

## PART III

- Individual Expenses:
  - To the extent not included in the total operating expenses of any designated investment alternative, any charges that may be charged against an individual account must be reported to the individual.
  - Examples include: QDRO fees, plan loan fees, investment advice, broker window fees, commissions, front or back-end loads or sales charges, redemption fees, transfer fees and similar expenses, and optional rider charges on annuity contracts.

# PLAN RELATED INFORMATION

## PART IV

- Statements of Actual Charges or Deductions:
  - Participants must receive statements, at least quarterly, showing the dollar amount of the plan-related fees and expenses (whether administrative or individual) actually charged or deducted from their individual accounts.
  - The statements must include a description of the service for which the charge or deduction was made and may be included in quarterly benefit statements required under Section 105 of ERISA.



# INVESTMENT RELATED INFORMATION

## PART I

- The following information must be provided in advance of the date on which the participant or beneficiary can first direct investments, and at least annually thereafter:
  - Identifying Information:
    - The name of each designated investment alternative.
    - The type or category of the investment (e.g., money market fund, balanced fund (stocks and bonds), large-cap stock fund, employer stock fund, employer securities).
    - A description of whether the investment is actively or passively managed is NOT required.



# INVESTMENT RELATED INFORMATION

## PART II

- Performance Data
  - For designated investment alternatives without a fixed rate of return:
    - The average annual total return of the investment for the preceding 1, 5, and 10-year calendar periods (or the life of the investment, if shorter); and
    - A statement that past performance is not indicative of future performance.
  - For designated investment alternatives with a fixed rate of return:
    - Both the fixed or stated annual rate of return and the term of the investment; and
    - If the issuer reserves the right to adjust the fixed or stated rate of return prospectively during the term of the contract or agreement, the current rate of return, the minimum rate guaranteed under the contract (if any), and a statement advising participants and beneficiaries that the issuer may adjust the rate of return prospectively and how to obtain (e.g., telephone or website) the most recent rate of return.



# INVESTMENT RELATED INFORMATION

## PART III

- Benchmarks:
  - For designated investment alternatives with respect to which the return is not fixed, the name and returns of an appropriate broad based securities market index for the preceding, 1, 5, and 10 calendar years (or for the life of the investment, if shorter).
  - The benchmark cannot be administered by an affiliate of the investment issuer, its adviser, or a principal underwriter, unless the index is widely recognized and used.
  - Plan administrators may blend various benchmarks to reflect the composition of blended investments (such as balanced and target date funds).



# INVESTMENT RELATED INFORMATION

## PART IV

- Fee and Expense Information – for investments without a fixed rate of return:
  - The amount and description of any shareholder-type fees;
  - 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);
  - The total annual operating expenses expressed as a percentage;
  - The total annual operating expense of the investment for a one-year period expressed as a dollar amount for a \$1,000 investment;
  - A statement that fees and expenses are only one factor to consider when making an investment decision; and
  - A statement that the cumulative effect of fees and expenses can substantially reduce the growth of accounts and that participants and beneficiaries can visit the EBSA website for a demonstration of the long term effect of fees and expenses.



# INVESTMENT RELATED INFORMATION

## PART IV (CONT'D)

- For investments with a fixed return:
  - The amount and 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 (such as round trip, equity wash, or other restrictions).
- For both types of investments:
  - Shareholder fees include fees 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.



# INVESTMENT RELATED INFORMATION

## PART V

- Internet Web Address:
  - The name of the investment alternative's issuer;
  - The alternative's objectives or goals;
  - The alternative's principal strategies and principal risks (non-fixed return only);
  - The alternative's turnover rate (non-fixed return only);
  - The alternative's performance data updated at least quarterly (or more frequently if required by other applicable law); and
  - The alternative's fee and expense information.
- Participants and beneficiaries must also be furnished with information on how to request, and obtain free of charge, a paper copy of the information required to be maintained on the website.



# INVESTMENT RELATED INFORMATION

## PART VI

- Glossary
  - A general glossary of terms to assist participants and beneficiaries in understanding the designated investment alternatives, or a website address that is sufficiently specific to provide access to such a glossary along with a general explanation of the purpose of the address.



# INVESTMENT RELATED INFORMATION

## Presentation

- All investment related information required by the regulations must be provided in a chart or similar format, permitting a straight forward comparison of alternatives.
- The Appendix to the regulation includes a model chart to be used for this purpose.
- The distribution of separate charts for different investment alternatives is NOT permitted.
- A plan administrator who completes and uses the model chart will be deemed to meet the regulation's comparative chart requirements.

# When Must Information be Provided?

- Both plan and investment related information must be provided on or before the date on which a participant or beneficiary can first direct his or her investment and at least annually thereafter.
- Plan related information may be included in the SPD.
- A notice and description of any change must be provided at least 30 days, but not more than 90 days, in advance of the effective date of such change (or as soon as reasonably practical in the case of unforeseen events).
- Statements of actual charges or deductions to participant accounts must be provided at least quarterly.

# When Must Information be Provided? (Cont'd)

- Following the plan investment, each investing participant or beneficiary must be provided with any materials provided to the plan regarding the exercise of voting, tender, or similar rights.
- Either at the time the participant can direct the investment, or upon request, the following information must also be provided:
  - Prospectuses;
  - Financial statements and reports;
  - A statement of the value of a share or unit of each alternative; and the valuation date; and
  - A list of assets comprising the portfolio of each alternative that includes plan assets and the value of the assets.

# Special Rules for Employer Securities

- The following website disclosure requirements do not apply unless the security is in a unitized fund:
  - Description of the principal strategies and risks (but an explanation of the importance of a well-balanced and diversified investment portfolio must be provided);
  - Disclosure of portfolio turnover;
  - Disclosure of fees and expenses; and
  - Disclosure of total annual operating expenses.

# Special Rules For Employer Securities (Cont'd)

- For non-unitized investments holding employer securities that are publicly traded on a national exchange or generally recognized market, average total return means the change in value of an investment in one share of stock on an annualized basis over a 1, 5, or 10 year period (assuming reinvestment of dividends).
- Similar formula for determining average annual return for employer securities that are not publicly traded on a national exchange or generally recognized market. The DOL anticipates that administrators will use Form 5500 plan valuation data for purposes of calculating this return.



# Special Rules for Certain Annuities

- If a designated investment alternative permits participants or beneficiaries to allocate contributions toward the current purchase of a stream of retirement income payments guaranteed by an insurance company, the plan administrator must provide certain information regarding the contract, fund or product in lieu of the investment related disclosures regarding identifying information, performance data, benchmarks, fee and expense information and website address.

# Special Rules for Certain Annuities (Cont'd)

- The following information must be provided:
  - The name of the contract, fund or product;
  - The option's objectives or goals;
  - The benefits and factors that determine the price of the guaranteed income payments;
  - Any limitation on the ability of a participant or beneficiary to withdraw or transfer amounts allocated to the option and any applicable fees;
  - Any fees that will reduce the amounts allocated to the option;
  - A statement that the guarantees of an insurance company are subject to its long-term financial strength and claims paying ability;
  - Website address for obtaining supplemental information;
  - A description of the costs or factors that are taken into account in determining the price of benefits under each distribution option; and
  - A description of any limitations on the right to withdraw or transfer amounts allocated to the option and any applicable fees.



# Transition Rules

- For compliance with the initial disclosure rules plan administrators may make the initial disclosure to all current participants within 60 days of the applicability date of the regulations (March 1, 2012 for calendar year plans).
- For plan years beginning before October 1, 2021, a plan administrator who reasonably and in good faith determines that it does not have the information on expenses necessary to calculate 5 and 10 year total average returns for an alternative that is not registered under the Investment Company Act of 1940 may use a reasonable estimate of such expenses or the most recently reported total annual operating expenses.



Questions?

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