

## Retirement PLAN news

January/February 2011

### Participant-level disclosure rules

The final part of the U.S. Department of Labor's (DOL's) three-part project to improve fee transparency in 401(k)-type plans is now complete. It is a regulation requiring plan sponsors to provide participants with a disclosure regarding plan fees and expenses.

The DOL's Employee Benefits Security Administration (EBSA) recently released a final rule that requires the disclosure of specific information regarding plan investments, fees, and expenses to participants and beneficiaries. The final rule is the long-awaited follow-up to a proposed rule published in 2008 and is applicable to 401(k)-type plans that have participant-directed individual accounts. Although theoretically effective when published on October 20, 2010, the rule is applicable for plan years beginning on or after November 1, 2011. Thus, calendar-year plans will need to comply beginning January 1, 2012.

#### Meaningful help

The new disclosure requirements will help ensure that participants and beneficiaries are given or have access to the information they need to make informed investment decisions. Investment-related information must be provided in a manner that allows individuals to compare a plan's investment options in a meaningful way.

The new requirements relating to fees and expenses are designed to provide more transparency regarding the true cost of a plan's investment options and plan-related expenses, both of which impact participant account balances. Another goal is to reduce the amount of time a participant must spend collecting the information necessary to properly compare plan investment options.

Once this final rule goes into effect, the following plan-related and investment-related information must be provided to participants and beneficiaries on or before the date they are first eligible to direct their investments, and on an annual basis thereafter.

#### Plan-related information

##### *General plan information:*

- A current list of investment options,
- An explanation of how individuals provide investment instructions under the plan, and

- If applicable, descriptions of a broker-age option and/or similar types of outside investments available under the plan.

*Administrative expense information:*

- An explanation of fees and expenses that may be charged to or deducted from all individual accounts (e.g., plan audit fee, recordkeeping fee).

*Individual expense information:*

- An explanation of fees and expenses that may be charged to or deducted from an individual's account based on his or her actions (e.g., loan origination fee, qualified domestic relations order (QDRO) fee, hardship withdrawal fee, distribution processing fee).

**Investment-related information**

*Performance data:*

- One-, five-, and 10-year returns for all mutual funds and other plan investment options that do not have a fixed rate of return.
- Annual rate of return and investment term for fixed-rate investments.

*Benchmark data:*

- One-, five-, and 10-year returns for appropriate benchmark indexes (to match plan investment performance data periods).

**Example:** A plan that offers a small-cap stock mutual fund as an investment option provides information about its performance over certain date ranges. It also lists the performance of the Russell 2000 Index (the benchmark index for small-cap stocks) for the same date ranges. This provides an individual with an “apples to apples” comparison of the rate of return of the plan's investment option and the performance of its appropriate benchmark.

*Fee and expense information:*

- Non-fixed-rate investments: Total annual operating expenses expressed as a percentage and as a dollar amount per \$1,000 invested. Any shareholder-type fees or restrictions on purchases or withdrawals must also be provided.
- Fixed-rate investments: Any shareholder-type fees or restrictions on purchases or withdrawals.

*Internet resources:*

- Addresses of websites that can provide additional detailed information about the investment options.

*Glossary:*

- A general glossary of terms to assist participants and beneficiaries in understanding the plan's investment options or the address of a website that can provide access to a glossary.

**Additional quarterly disclosure**

Individuals are to receive quarterly statements that report the dollar amount of any fee or expense deducted from their account along with a description of the services related to the fee or expense. This information will most likely be incorporated into quarterly participant statements.

**DOL model chart**

The DOL has issued a model chart to help satisfy the new requirement that plan investment options be provided in a comparative format. The chart is broken down into several tables that focus on comparing investment returns, fee and expense information, and annuity options.

**2011 COLA limits**

The IRS has released the cost-of-living adjustments (COLAs) applicable to the dollar limitations for pension plans and other items for the 2011 tax year. Most 2011 limits related to retirement plans remain the same as in 2010 and 2009. The reason they did not increase as they typically do is that the cost-of-living index for the quarter ending September 30, 2010, still did not exceed 2009 levels.

<b>IRS limits</b>	<b>2009, 2010, and 2011</b>
401(k), SARSEP, 403(b), and 457 plan deferrals/catch-up	\$16,500/\$5,500
SIMPLE plan deferrals/catch-up	\$11,500/\$2,500
Compensation defining highly compensated employee*	\$110,000
Compensation defining key employee/officer	\$160,000
Defined benefit plan limit on annual benefits	\$195,000
Defined contribution plan limit on annual additions	\$49,000
Maximum compensation limit for allocation and accrual purposes	\$245,000
IRA contributions/catch-up	\$5,000/\$1,000

## Phaseout limits for IRA contributions

There are a few changes in 2011 related to the adjusted gross income (AGI) “phaseout” limits for determining what portion of contributions to a traditional IRA are deductible. The phaseout range for single taxpayers (other than those who are married filing separate) remains at \$56,000 - \$66,000. For taxpayers who are active participants filing a joint return (or are qualified widows or widowers), the deduction phaseout range is \$90,000 - \$110,000 of combined AGI (up from \$89,000 - \$109,000 in 2010). For taxpayers who are not active participants but whose spouses are, the phaseout range is \$169,000 - \$179,000 (up from \$167,000 - \$177,000 in 2010).

The same phaseout range applies when determining whether married couples (or qualified widows or widowers) are eligible to contribute to a Roth IRA. For single taxpayers, the Roth IRA phaseout range is \$107,000 - \$122,000 AGI (up from \$105,000 - \$120,000).

\* 2010 amount for use in 2011 plan year tests

## Definition of compensation for 408(b)(2) disclosure

Plan sponsors have a fiduciary duty under ERISA to make informed decisions about the “reasonableness” of the fees the plan pays for services. The new DOL-required fee disclosure that service providers will be sending to plan sponsors is designed to simplify that task and enable them to more easily compare costs.

Under ERISA Section 408(b)(2), a covered service provider\* must provide the responsible plan fiduciary with a disclosure regarding the direct and indirect compensation it expects to receive for the services it provides. The following definitions will give sponsors helpful insight about the disclosures that are to come.

### Compensation

Compensation is defined as anything of monetary value (e.g., money, gifts, awards, and trips). It excludes non-monetary compensation valued at \$250 or less received during the term of the contract or arrangement. The following five categories of compensation must be described in writing in the disclosure.

**1) Direct compensation** — compensation a covered service provider, an affiliate, or a subcontractor reasonably expects to receive directly from the covered plan. Direct compensation may be described either in the aggregate or by service.

**2) Indirect compensation** — compensation received from any source other than the plan, the plan sponsor, another covered service provider, an affiliate, or a sub-contractor. The service provider must identify the services for which the indirect compensation will be received and the entity paying the indirect compensation. This is expected to have a strong impact on bundled providers, recordkeepers, and brokers.

**3) Compensation paid among related parties** — includes any compensation paid between the covered service provider, affiliate, or subcontractor in connection with the services provided. The disclosure must indicate whether compensation is determined on a transactional basis (e.g., commissions, soft dollars, finder's fees, or other similar incentive compensation) or is charged directly against, and reflected in the net value of, the plan's investment (e.g., Rule 12b-1 fees).

The services for which such compensation will be paid must be detailed and the identity of the payers and recipients disclosed, including the status of a payer or recipient as an affiliate or subcontractor (with the exception of compensation received by an employee for work performed).

**4) Compensation for termination of contract or arrangement** — compensation the covered service provider, affiliate, or subcontractor reasonably expects to receive in connection with the termination of the contract or arrangement, including a description of how any prepaid amounts will be calculated and refunded.

**5) Recordkeeping services** — all direct and indirect compensation the covered service provider, affiliate, or subcontractor reasonably expects to receive in connection with recordkeeping services. If recordkeeping services will be provided without explicit compensation for such services, or if compensation for recordkeeping services will be offset or rebated based on other compensation received, a reasonable and good faith estimate of the cost must be provided, including the methodology and assumptions used to prepare the estimate and a detailed explanation of services that will be provided. The estimate must take into account either the rates the service provider, affiliate, or subcontractor would charge to third parties or the prevailing market rates charged for similar services for a similar plan.

## **Payment**

The disclosure must also include a description of the form of payment, including such details as whether the plan will be billed or if payment will be deducted directly from the covered plan's accounts or investments.

These sponsor-level fee disclosure rules become effective July 2011.

\* A service provider is covered if it reasonably expects to earn \$1,000 or more in direct or indirect compensation for providing one or more covered services. The rule applies to services expected to be performed or compensation received by the covered service provider, an affiliate, or a subcontractor.

## **RECENT developments**

### **Form 1099 series penalty increase**

The IRS has established a new, tiered penalty structure for failing to timely mail Form 1099-R to recipients and has increased penalty amounts for failing to timely file Form 1099-R with the IRS. The changes are effective for forms mailed after January 1, 2011. Penalty amounts are based on when the error is corrected.

#### **New penalty structure for late filing or mailing of Form 1099:**

- *Tier 1:* corrected within 30 days of deadline; \$30 per form, maximum \$250,000 (small business maximum \$75,000)
- *Tier 2:* corrected more than 30 days after deadline but by August 1; \$60 per form, maximum \$500,000 (small business maximum \$200,000)
- *Tier 3:* corrected after August 1; \$100 per form, maximum \$1,500,000 (small business maximum \$500,000)
- *Intentional disregard* of mailing and filing requirements; \$250 per form, no maximum

#### **In-plan Roth conversions**

On September 27, 2010, President Obama signed into law a bill immediately permitting 401(k) and 403(b) plans (and, starting in 2011, governmental 457(b) plans) to allow individuals with a distributable event to convert non-Roth plan accounts into designated Roth accounts within the plan. In order to add this feature, the plan must allow for designated Roth elective deferrals. This new law allows plans to retain more assets. Previously, plan participants could only convert assets to a Roth account by moving their money out of the plan and into a Roth individual retirement account (IRA). At press time, the IRS had not yet released guidance regarding the plan amendment, disclosure, or reporting requirements of this optional plan provision.

#### **Proposed fiduciary rule**

On October 21, 2010, the DOL issued a proposed rule to update the definition of fiduciary. The proposal would amend a 1975 regulation that defines when a person providing investment advice becomes a fiduciary under ERISA. The changes would make it easier to enforce fiduciary requirements, thus allowing the DOL to better protect plan participants and beneficiaries.

The general information in this publication is not intended to be nor should it be treated as tax, legal, or accounting advice. Additional issues could exist that would affect the tax treatment of a specific transaction and, therefore, taxpayers should seek advice from an independent tax advisor based on their particular circumstances before acting on any information presented. This information is not intended to be nor can it be used by any taxpayer for the purpose of avoiding tax penalties.