



# Fact Sheet

U.S. Department of Labor  
Employee Benefits Security Administration  
February 2012

## Final Rule to Improve Transparency of Fees and Expenses to Workers in 401(k)-Type Retirement Plans

*The Department of Labor's Employee Benefits Security Administration (EBSA) released a final rule that will help America's workers manage and invest the money they contribute to their 401(k)-type pension plans. The rule will ensure: that workers in this type of plan are given, or have access to, the information they need to make informed decisions, including information about fees and expenses; the delivery of investment-related information in a format that enables workers to meaningfully compare the investment options under their pension plans; that plan fiduciaries use standard methodologies when calculating and disclosing expense and return information so as to achieve uniformity across the spectrum of investments that exist among and within plans, thus facilitating "apples-to-apples" comparisons among their plan's investment options; and a new level of fee and expense transparency.*

### Background

- EBSA is responsible for administering and enforcing the fiduciary, reporting, and disclosure provisions of Title I of ERISA.
- The agency oversees approximately 708,000 private pension plans, including 483,000 participant-directed individual account plans such as 401(k)-type plans.
- A "participant-directed plan" is a plan that provides for the allocation of investment responsibilities to participants or beneficiaries.
- An estimated 72 million participants are covered by these participant directed plans, which contain nearly \$3 trillion in assets.
- While workers in these plans are responsible for making their own investment decisions, current law does not adequately ensure that all workers are given the information they need or ensure that information, when provided, is furnished in a format useful to workers, particularly information on investment choices including associated fees and expenses.
- In April 2007, EBSA published in the Federal Register a Request for Information (72 FR 20457) soliciting the views, suggestions and comments from participants, plan sponsors, plan service providers and members of the financial community, as well as the public in general, on whether and to what extent rules should be adopted or modified, or other actions should be taken, to ensure that participants and beneficiaries have the information they need to make informed decisions about the management of their individual accounts and the investment of their retirement savings.

### Overview of Final Rule

- The final rule provides that the investment of plan assets is a fiduciary act governed by the fiduciary standards in ERISA section 404(a)(1)(A) and (B), which require plan fiduciaries to act prudently and solely in the interest of the plan's participants and beneficiaries.
- The final rule also provides that when a plan allocates investment responsibilities to participants or beneficiaries, the plan administrator must take steps to ensure that such participants and beneficiaries, on a regular and periodic basis, are made aware of their rights and responsibilities with respect to the investment of assets held in, or contributed to, their accounts and are provided sufficient information regarding the plan and the plan's investment options, including fee and expense information, to make informed decisions with regard to the management of their individual accounts.

- A plan administrator must provide to each participant or beneficiary certain plan-related information and certain investment-related information. These categories of information are described below.

## **Plan-Related Information**

The first category of information that must be disclosed under the final rule is plan-related information. This general category is further divided into three subcategories as follows:

### *General Plan Information*

- General plan information 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" or similar arrangement that enables the selection of investments beyond those designated by the plan.

### *Administrative Expenses Information*

- 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.

### *Individual Expenses Information*

- 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.

The information in these three subcategories must be given to participants on or before the date they can first direct their investments, and then again annually thereafter.

### *Statements of Actual Charges or Deductions*

In addition to the plan-related information that must be furnished up front and annually, participants 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. These specific disclosures may be included in quarterly benefit statements required under section 105 of ERISA.

## **Investment-Related Information**

The second category of information that must be disclosed under the final rule is investment-related information. This category contains several subcategories of core information about each investment option under the plan, including:

### *Performance Data*

- Participants must be provided specific information about historical investment performance. 1-, 5- 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 1-, 5-, 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.

### *Fee and Expense Information*

- 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.

### *Internet Web Site Address*

- Investment-related information includes an Internet Web site address that is sufficiently specific to provide participants and beneficiaries access to specific additional information about the investment options for workers who want more or more current information.

### *Glossary*

- Investment-related information includes a general glossary of terms to assist participants and beneficiaries in understanding the plan's investment options, or an Internet Web site address that is sufficiently specific to provide access to such a glossary.

### **Comparative Format Requirement**

Investment-related information must be furnished to participants or beneficiaries on or before the date they can first direct their investments, and then again annually thereafter. It also must be furnished in a chart or similar format designed to facilitate a comparison of each investment option available under the plan. The final rule includes, as an appendix, a model comparative chart, which when correctly completed, may be used by the plan administrator to satisfy the rule's requirement that a plan's investment option information be provided in a comparative format.

### **Miscellaneous**

- The rule provides plan administrators protection from liability for the completeness and accuracy of information provided to participants if the plan administrator reasonably and in good faith relies upon information provided by a service provider.
- After a participant has invested in a particular investment option, he or she must be provided any materials the plan receives regarding voting, tender or similar rights in the option.
- Upon request, the plan administrator must also furnish prospectuses, financial reports and statements of valuation and of assets held by an investment option.
- The general disclosure regulation at 29 CFR § 2520.104b-1 applies to material furnished under this regulation, including the safe harbor for electronic disclosures at paragraph (c) of that regulation.
- The final rule would also make conforming changes to the disclosure requirements for plans that elect to comply with the existing ERISA section 404(c) regulations.

### **Economic Benefits of the Final Rule**

- The Department estimates that the rule will be economically significant.
- The anticipated cost of the rule is \$425 million in 2012 (2010 dollars), arising from legal compliance review, time spent consolidating information for participants, creating and updating Web sites, preparing and distributing annual and quarterly disclosures, and material and postage costs to distribute the disclosures.
- A significant benefit of this rule is that it will reduce the amount of time participants spend collecting fee and expense information and organizing the information in a format that allows key information to be compared; this time savings is estimated to total nearly 54 million hours valued at nearly \$2 billion in 2012 (2010 dollars).

- Over the ten-year period 2012-2021, EBSA estimates that the present value of the benefits provided by the final rule will be approximately \$14.9 billion and the present value of the costs will be approximately \$2.7 billion.

### **Effective and Applicability Dates**

- The July 1 effective date of the final regulation relating to service provider disclosure under section 408(b)(2) will impact when disclosures must first be furnished under the final rule on fee disclosures for participants. The transitional rule for the final rule on fee disclosures for participants was revised in July 2011 so that the first disclosures would follow the effective date of the 408(b)(2) regulation.
- Consequently, for calendar year plans, the initial annual disclosure of "plan-level" and "investment-level" information (including associated fees and expenses) must be furnished no later than August 30, 2012 (i.e., 60 days after the 408(b)(2) regulation's July 1 effective date).
- The first quarterly statement must then be furnished no later than November 14, 2012 (i.e., 45 days after the end of the third quarter (July through September), during which initial disclosures were first required). This quarterly statement need only reflect the fees and expenses actually deducted from the participant or beneficiary's account during the July through September quarter to which the statement relates.

### **Contact Information**

For questions about the rule, contact EBSA's Office of Regulations and Interpretations at (202)693-8500.