

EVALUATING FEE DISCLOSURES

What to know before your meeting

If you are like most plan sponsors, plan fees and expenses are a key concern, in part because the Department of Labor (DOL) expects you, as part of your fiduciary duty to plan participants, to evaluate fees regularly to ensure they are reasonable. But bundled service arrangements can disguise the fee structure of a plan, making it unclear what each service provider is paid and for what particular services. That creates potential risk. Congress, the IRS and the DOL have shown increased interest in plan fee transparency, resulting in a proliferation of fee disclosure regulations. As a result, plan service providers must annually deliver to you comprehensive written fee and service disclosures.

You, in your fiduciary capacity, are required to evaluate this information to determine whether or not the fees are reasonable for the services and products received. In the past decade, there has been an increasing number of lawsuits against plan sponsors alleging fiduciary violations for “excessive plan fees.” Moreover, you are required to report detailed fee information on your plan’s annual Form 5500, Schedule C filing, and regularly provide plan participants with detailed plan and investment-related disclosures.*

There have been three major regulatory changes to fee disclosure rules in the past few years that affect plan sponsors. A fee disclosure analysis could be beneficial in several ways. First, it could help you verify whether you are completing your Form 5500, Schedule C filing correctly given the requirement to report fees paid by the plan in more detail. Second, it could help you determine what information you should be receiving from plan service providers annually and how to interpret and apply the information. Third, a fee disclosure analysis could help you ensure you are meeting fee disclosure requirements with respect to plan participants.

Questions to review before your meeting

Q: What are participant-level disclosures and when must I provide them?

A: If you allow participants in your plan to self-direct the investment of their account balances, then you are required to distribute to them specific plan- and investment-related information on an annual and quarterly basis as a result of participant-level disclosure rules. Fortunately, the regulations include a model investment-related disclosure form you can use to fulfill a portion of the requirements. Any changes to the plan-related information require that participants receive a notice at least 30 days and no more than 90 days before the effective date of the change.

For newly eligible participants, you must provide the annual disclosure on or before the date on which a participant or beneficiary can first direct his or her investments.

Q: If my recordkeeper completes Form 5500 for me, what is my responsibility?

A: Even if your plan’s recordkeeper fills out Form 5500 on your behalf, you are ultimately responsible for the accuracy of the information reported. That makes it important for you to fully understand the new requirements. If you willfully violate any reporting or disclosure requirements, you could be subject to various penalties, including fines, imprisonment or both.

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Q: How do I determine if the fees for my plan are reasonable?

A: In order to make an assessment as to whether plan fees are reasonable, you must start with clear information on the amount of each fee, what services the fee covers and to whom the fee is paid. While you have always had the responsibility to obtain and analyze this information, the DOL mandated a set of service provider disclosures that you began receiving in 2012. The DOL's goal is to ensure your plan service providers give you the detailed fee and service information you need to make an accurate assessment. In fact, the DOL has a long-range goal to release disclosure regulations that will require plan service providers to furnish a guide to assist you with your fee disclosure review. Once you have an understanding of your plan's fees and expenses, benchmarking them is the next step. Reliable benchmarking of plan fees is the litmus test for establishing reasonableness. Your financial advisor can help you and your legal and/or tax advisors can review the information and suggest resources to help you benchmark your plan. The DOL provides helpful fee-related information on its website. Be sure to talk to your attorney about any legal questions you may have with respect to plan fee disclosures.

Checklist to complete before your meeting

Before you meet with your financial advisor, you may want to gather some important information and documents:

- Your most recent retirement plan documents
- A copy of your most recent Form 5500 filing, including Schedule C, if applicable
- A list of the investment alternatives for your plan
- Copies of your service provider agreements
- Copies of plan information you currently provide to participants, including the summary plan description, investment prospectuses and information, and account statements
- Any written procedures you may have currently for the distribution of participant information
- The most recent fee benchmarking report you may have

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