

# What Plan Fiduciaries can Expect With the 404(a)(5) Disclosures



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## Executive Summary

The Department of Labor (DOL) has focused on reporting, disclosure and transparency as critical components in the operation of account-type defined contribution plans, particularly 401(k) plans. After watching three decades of market shift from traditional defined benefit plans to participant direction-of-investment 401(k) plans, the DOL has promulgated a series of rules and regulations aimed at its three-legged approach to assisting its Employee Benefits Security Administration in enforcing ERISA, in assisting plan fiduciaries in making proper investment structure decisions and in assisting participants in directing their investments.

We will focus on the last leg, assisting participants through disclosure, and what plan fiduciaries might expect when participant disclosures are made. We cover the participant level disclosure regulations, the labyrinth of temporary rules that permit participant level disclosure to be made electronically, and discuss the expected and maybe surprising consequences when the responsible plan fiduciary makes these disclosures next spring. We conclude with suggestions on how to address the issues that might arise.

### **Cost and Service Information Disclosure**

The DOL, through regulations, addresses the perceived need for the responsible plan fiduciary to disclose relevant cost and service information directly to the participants with the expectation that participants in self-directed plans will have the information needed to make better investment decisions and to prevent the fiduciary from failing to act in the best interest of the participants and their beneficiaries. There may be both intended and unintended consequences when these disclosures are made.

### **Effective Dates**

The rule requires that plan fiduciaries disclose participant investment information consistent with the regulation by May 31, 2012, for most plans, and quarterly thereafter. We can help you properly disclose expense information to plan participants so you can meet your regulatory obligations. Our consulting capabilities include a fully integrated in-house communications practice with many years' of experience in financial services and is unmatched for its depth and quality of services.

## Relevant Disclosure Components

The rules require a description of what the participant is paying through the participant's directed-investment account. All of this "expense information" must be disclosed. It includes expenses that are paid from investments and also fees and expenses that are paid directly from the account for certain services such as processing a participant loan or distribution. Descriptions of the contents of a proper disclosure are reviewed in detail, and proper inclusions of omnibus information such as a glossary of terms and benchmarking information are discussed. It is possible to provide much of this omnibus information by access to a Website where the participant can view and download information.

## Expense Information

The regulations require that every participant be given the required expense information in chart format so that it can be more easily understood and processed. We can help you properly disclose expense information to plan participants so you can meet your regulatory obligations. Our consulting capabilities include a fully integrated in-house communications practice with many years' of experience in financial services and is unmatched for its depth and quality of services.

## Electronic Disclosure

The temporary rules for electronic disclosure, including safe harbor methods of disclosing electronically, are presented and described in detail. The DOL recently issued Technical Release 2011-03R to address the permissible methods of providing electronic disclosure, and the Technical Release itself is thoroughly described and analyzed. These delivery rules include items that can accompany the quarterly benefits statement that participants already receive and that pertain to the voluntary provision of e-mail addresses by participants, the additional material that must be contained in the initial notice when it is being delivered electronically, special provisions for an annual notice, and how to confirm that the e-delivery succeeded. A complex special transition provision also allows the employer to use e-mail addresses already on file with the employer so long as a number of additional requirements are met to assure e-delivery.

Our fee disclosure capabilities include e-delivery, archival and web presentment tools to help you with compliance while reducing costs.

## Day 2 Issues

Plan fiduciaries need to plan for the potential reactions from participants when the disclosure information is received by them. It is likely that many participants will see this information for the first time, and it is assured that all of them will see it in the mandated format for the first time. This could result in some difficult "Day 2" issues for plan sponsors and their advisors and consultants. These issues portend great attention to fiduciary duty obligations that are covered and explained.

There is also some concern about reactions of small plan business owners and how they might perceive the additional administrative burden and cost that accompanies disclosure. Addressing their concerns that may even focus on whether or not to terminate their plans is considered as well. Broadridge is ready to assist plan fiduciaries in every aspect of fee disclosure.

## **White Paper Available**

The white paper provides an overview of Rule 404(a)(5) and how to best be compliant with the new rule, what plan fiduciaries should be aware of when evaluating the information contained in the disclosures, and how to use the new rules to provide value to your clients and ultimately grow your business. Visit <http://www.broadridge.com/DOLfeedisclosure/> to request a copy.

This information is provided for informational purposes only and should not be interpreted as legal, financial or other form of advice and no legal or business decision should be based on its content.

## **Trusted Partners with Trusted Solutions**

As long-time consultative partners for the financial services industry, Broadridge provides timely, in-demand products and services to meet plan fiduciary fee disclosure requirements. Our extensive industry knowledge and scale uniquely qualify us as the preferred provider to help plan fiduciaries meet regulatory requirements effectively and efficiently while enhancing the customer experience and drive results. Our highly configurable, transparent solutions enables clients of any size to compile the most up-to-date data, compose documents to client-specific brand and business rules, and make critical information available in a timely, cost-effective manner. Our best-in-class data security and processing standards are unmatched in the industry. We are committed to providing best-in-class security practices and technology to safeguard our clients' valuable information. From our ISO 9001/27001 certifications, SSAE16/CICA 5970 Type II audits and Sarbanes-Oxley reviews to our extensive technology combined with our comprehensive information security program, you can feel confident partnering with Broadridge.

## About Broadridge

Broadridge is a technology services company focused on global capital markets. Broadridge is the market leader enabling secure and accurate processing of information for communications and securities transactions among issuers, investors and financial intermediaries. Broadridge builds the infrastructure that underpins proxy services for over 90% of public companies and mutual funds in North America; processes more than \$4 trillion in fixed income and equity trades per day; and saves companies billions annually through its technology solutions. For more information about Broadridge, please visit [www.broadridge.com](http://www.broadridge.com).

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