



Participant Fee Disclosure: Plan-Related Information for the Quarterly Disclosure

Fee Disclosure Series: Part 3 of 4

By John P. Griffin, JD, LLM and Charles D. Lockwood, JD, LLM

In ASCi Alert 12-02, we provided general information about the participant fee disclosure requirements. As outlined in ASCi Alert 12-02, plan administrators are responsible for the following participant disclosures:

1. General plan-related information (at least annually);
2. General information about administrative expenses (at least annually);
3. General information about individual expenses that may be charged to participant accounts (at least annually);
4. Specific information about administrative expenses and individual expenses actually charged to the participant account (at least quarterly); and
5. Investment-related information (some mandatory and some upon request).

In ASCi Alert 12-03, we discussed the first three plan-related fee disclosure requirements, which must be included in the initial and annual disclosure. Also in ASCi Alert 12-03, we included a summary chart on the timing for all plan-related information under the participant disclosure regulations.

In this ASCi Alert 12-04, we will focus on the fourth disclosure requirement relating to specific information about administrative and individual expenses necessary for the quarterly disclosure. In ASCi Alert 12-05, we will discuss the fifth disclosure requirement relating to investment-related information.

Compliance Date for Initial Quarterly Disclosure

For a calendar year plan, the deadline for the first quarterly participant fee disclosure is November 14, 2012. For non-calendar year plans, the deadline is the 45 days after the end of the first quarter in which the initial annual disclosures are due. (The deadline for the initial annual disclosure is the later of the first day of the first plan year beginning on or after November 1, 2011, or (2) 60 days after the compliance date of the service provider disclosure rules (i.e., July 1, 2012)).

ASci Insight – The quarterly statement must reflect only the fees and expenses deducted for the calendar or plan-year quarter to which the statement relates. For the initial quarterly disclosure, for calendar year plans the first quarterly disclosure is due by November 14, 2012 and need only reflect the fees and expenses actually deducted during the third quarter.

The plan administrator must provide subsequent quarterly disclosures at least once in any 3-month period.

ASci Insight – The plan administrator may include the quarterly disclosure information as part of the quarterly benefit statement rather than issue separate statements.

Plan-Related Information for Quarterly Disclosure

With respect to plan-related information, the regulations require a plan administrator to disseminate certain “specific” administrative and individual expense information on a quarterly basis. These are the actual fees and expenses charges against an individual’s account. The initial quarterly disclosure (due by November 14, 2012 for calendar year plans) must include this information.

ASci Insight – The plan administrator does not need to provide a quarterly statement if there were no charges to a participant’s or beneficiary’s account during the preceding quarter. However, if the plan participates in a revenue sharing arrangement, which requires an explanation of the arrangement (as discussed in item #3 under Specific Administrative Expenses), participants and beneficiaries must still receive such explanation even if no expenses were charged to individual accounts in a given quarter.

Specific Administrative Expenses

At least quarterly, a plan administrator must provide a statement to participants and beneficiaries that includes the following:

1. The dollar amount of fees and expenses for administrative services, such as legal, accounting, recordkeeping and trustee services, that are actually charged (whether by liquidating shares or deducting dollars) during the preceding quarter to a participant’s or beneficiary’s account for such services.
2. A description of the services to which the charges relate.
3. If applicable, an explanation that, in addition to the fees and expenses disclosed under items 1. and 2., the plan paid some of the plan’s administrative expenses for the preceding quarter from the total operating expenses of one or more of the plan’s designated investment alternatives, such as through revenue sharing, 12b-1 fees, or sub-transfer fees.

ASCI Insight – On the quarterly statement, the plan administrator does not need to break down administrative expenses on a service-by-service basis. Instead, the administrative expenses can be disclosed on an “aggregate” basis.

If a plan participates in a revenue-sharing arrangement and previous expenses that were charged to an individual’s account are refunded, the disclosure statement should show a credit to the account.

1. The dollar amount of certain fees and expenses that are actually charged (whether by liquidating shares or deducting dollars) during the preceding quarter to a participant’s or beneficiary’s account for such services. Such individual expenses may include fees relating to participant loans, QDROs, investment advice, brokerage windows, commissions, front- or back-end loads or sales, redemptions, transfers and riders for annuity contracts.
2. A description of the services to which the charges relate.

ASCI Insight – Please refer to the chart provided at the end of this alert for a summary of the plan-related information (both annual and quarterly) that a plan administrator must disclose and when.

Specific Individual Expenses

At least quarterly, the plan administrator must provide a statement to participants and beneficiaries that includes the following:

ASCI has developed a template for the Quarterly Disclosure Statement which can be used as a supplement to the Quarterly Benefit Statement or as a stand-alone Quarterly Disclosure Statement. The templates for the Quarterly Disclosure Statement and the Quarterly Benefit Statement appear on the ASCI DGEM Download Page.

DOL Withdraws Fee Disclosure Q&A Relating to Brokerage and Similar Arrangements

DOL has withdrawn its controversial position on fee disclosure requirements for plans with brokerage and similar arrangements. In ASCI Alert 12-02, “Participant Fee Disclosure – Are Your Clients (and You) Ready?”, we mentioned the controversy caused by the Department of Labor’s Field Assistance Bulletin (FAB) 2012-02 relating to brokerage arrangements, self-directed brokerage accounts, and other investment platforms that consist of a large number of investments. In FAB 2012-02 (Q&A #30), the DOL addressed these types of accounts for purposes of participant fee disclosure by indicating the following:

- A platform consisting of multiple investment alternatives is not itself considered to be a designated investment alternative (DIA).
- The fee disclosure regulations do not require that a plan have a certain number of DIAs.
- Fiduciary responsibilities may mandate “a manageable number of investment alternatives.”
- Fiduciaries must monitor a plan’s “investment menu.”
- If through a brokerage or similar arrangement, a significant number of participants select non-designated investment alternatives, an affirmative fiduciary obligation arises to examine these alternatives and determine whether such alternatives should be treated as DIAs (with the attendant investment fee disclosure requirements).
- Under a “safe harbor,” the DOL will not require an investment platform that holds 25 or more investments to treat such investment alternatives as DIAs, provided the plan administrator makes investment fee disclosures for at least 3 investment alternatives satisfying the ERISA §404(c) rules and any other

investment selected by the greater of 5 participants or 1% of all participants.

This DOL position under FAB 2012-02 created considerable confusion and concern among practitioners on how plans with brokerage and similar arrangements should (or even could) satisfy the disclosure rules. In response to the practitioner outcry, DOL has completely withdrawn its previous response in Q&A #30 and replaced it with a new Q&A #39. Under the new Q&A:

Whether an investment alternative is a DIA depends on whether it is specifically identified as available under the plan.

- A plan does not need a particular number of DIAs.
- A plan may utilize brokerage and similar arrangements.
- The rules of ERISA §404(c) still apply to obtain that fiduciary relief.
- The failure to name a DIA in order to avoid fee disclosure raises fiduciary concerns.
- Fiduciaries of plans with brokerage and similar arrangements have duties of prudence and loyalty with respect to participants using the arrangements.

ASCI Insight – The new Q&A eliminates some of the fee disclosure confusion surrounding the use of brokerage and similar arrangements. Plan administrators do not need to try to comply with the “safe harbor” provided in the withdrawn Q&A. However, the DOL still indicates that it is exploring questions regarding ERISA’s general fiduciary standards and may revise its regulations accordingly.

The following chart provides a summary of the plan-related information (both annual and quarterly) that a plan administrator must disclose and when.

Participant Fee Disclosure Chart – What and When

Item #	Category	Information to Disclosure	Disclose annually ⁱ	Disclose quarterly
1	GPI ⁱⁱ	Explanation of the circumstances under which participants and beneficiaries may give investment direction. [Treas. Reg. §2550.404a-5(c)(1)(i)(A)]	x	
2	GPI	Explanation of any specified limitations on such instructions under the terms of the plan. [Treas. Reg. §2550.404a-5(c)(1)(i)(B)]	x	
3	GPI	Description of (or reference to) plan provisions relating to the exercise of voting, tender, and similar rights appurtenant to an investment in a designated investment alternative as well as any restrictions on such rights. [Treas. Reg. §2550.404a-5(c)(1)(i)(C)]	x	
4	GPI	Identification of any designated investment alternatives under the plan. [Treas. Reg. §2550.404a-5(c)(1)(i)(D)]	x	
5	GPI	Identification of any designated investment managers. [Treas. Reg. §2550.404a-5(c)(1)(i)(E)]	x	
6	GPI	Description of any brokerage windows, self-directed brokerage accounts or similar plan arrangements that enable participants and beneficiaries to select investments beyond those designated by the plan. [Treas. Reg. §2550.404a-5(c)(1)(i)(F)]	x	
7	AE ⁱⁱⁱ	Explanation of any fees and expenses for general plan administrative services, which may be charged against the individual accounts. [Treas. Reg. §2550.404a-5(c)(2)(i)(A)]	x	
8	AE	Actual amount of administrative expenses actually charged. [Treas. Reg. §2550.404a-5(c)(2)(ii)(A)]		x
9	AE	Description of services for administrative expenses charged. [Treas. Reg. §2550.404a-5(c)(2)(ii)(B)]		x
10	AE	If fees paid by revenue sharing, statement to that effect. [Treas. Reg. §2550.404a-5(c)(2)(ii)(C)]		x
11	IE ^{iv}	Explanation of any expenses that may be charged against an individual account on individual basis. [Treas. Reg. §2550.404a-5(c)(3)(i)(A)]	x	
12	IE	Dollar amount of individual expenses actually charged to an individual account. [Treas. Reg. §2550.404a-5(c)(2)(ii)(A)]		x
13	IE	Description of services for individual expenses charged. [Treas. Reg. §2550.404a-5(c)(2)(ii)(B)]		x

ⁱ This column includes the disclosure required for the initial annual disclosure and the disclosure needed on or before the date a participant or beneficiary can first direct his or her investments and at least annually thereafter.

ⁱⁱ GPI = General Plan Information

ⁱⁱⁱ AE = Administrative Information

^{iv} IE = Individual Information

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