
29 C.F.R. § 2550.404a-5

Fiduciary requirements for disclosure in participant-directed individual account plans.

(a) *General.* The investment of plan assets is a fiduciary act governed by the fiduciary standards of section 404(a)(1)(A) and (B) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), 29 U.S.C. 1001 *et seq.* (all section references herein are references to ERISA unless otherwise indicated). Pursuant to section 404(a)(1)(A) and (B), fiduciaries must discharge their duties with respect to the plan prudently and solely in the interest of participants and beneficiaries. When the documents and instruments governing an individual account plan, described in paragraph (b)(2) of this section, provide for the allocation of investment responsibilities to participants or beneficiaries, the plan administrator, as defined in section 3(16), must take steps to ensure, consistent with section 404(a)(1)(A) and (B), 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, including fees and expenses, and regarding designated investment alternatives, including fees and expenses attendant thereto, to make informed decisions with regard to the management of their individual accounts.

(b) *Satisfaction of duty to disclose—(1) In general.* The plan administrator of a covered individual account plan must comply with the disclosure requirements set forth in paragraphs (c) and (d) of this section with respect to each participant or beneficiary that, pursuant to the terms of the plan, has the right to direct the investment of assets held in, or contributed to, his or her individual account. Compliance with paragraphs (c) and (d) of this section will satisfy the duty to make the regular and periodic disclosures described in paragraph (a) of this section, provided that the information contained in such disclosures is complete and accurate. A plan administrator will not be liable for the completeness and accuracy of information used to satisfy these disclosure requirements when the plan administrator reasonably and in good faith relies on information received from or provided by a plan service provider or the issuer of a designated investment alternative.

(2) *Covered individual account plan.* For purposes of paragraph (b)(1) of this section, a “covered individual account plan” is any participant-directed individual account plan as defined in section 3(34) of ERISA, except that such term shall not include plans involving individual retirement accounts or individual retirement annuities described in sections 408(k) (“simplified employee pension”) or 408(p) (“simple retirement account”) of the Internal Revenue Code of 1986.

(c) *Disclosure of plan-related information.* A plan administrator (or person designated by the plan administrator to act on its behalf) shall provide to each participant or beneficiary the plan-related information described in paragraphs (c)(1) through (4) of this section, based on the latest information available to the plan.

(1) *General.* (i) On or before the date on which a participant or beneficiary can first direct his or her investments and at least annually thereafter:

- (A) An explanation of the circumstances under which participants and beneficiaries may give investment instructions;
 - (B) An explanation of any specified limitations on such instructions under the terms of the plan, including any restrictions on transfer to or from a designated investment alternative;
 - (C) A 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;
 - (D) An identification of any designated investment alternatives offered under the plan;
 - (E) An identification of any designated investment managers; and
 - (F) A 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.
- (ii) If there is a change to the information described in paragraph (c)(1)(i)(A) through (F) of this section, each participant and beneficiary must be furnished a description of such change at least 30 days, but not more than 90 days, in advance of the effective date of such change, unless the inability to provide such advance notice is due to events that were unforeseeable or circumstances beyond the control of the plan administrator, in which case notice of such change must be furnished as soon as reasonably practicable.

(2) *Administrative expenses.* (i)(A) On or before the date on which a participant or beneficiary can first direct his or her investments and at least annually thereafter, an explanation of any fees and expenses for general plan administrative services (e.g., legal, accounting, recordkeeping), which may be charged against the individual accounts of participants and beneficiaries and are not reflected in the total annual operating expenses of any designated investment alternative, as well as the basis on which such charges will be allocated (e.g., pro rata, per capita) to, or affect the balance of, each individual account.

(B) If there is a change to the information described in paragraph (c)(2)(i)(A) of this section, each participant and beneficiary must be furnished a description of such change at least 30 days, but not more than 90 days, in advance of the effective date of such change, unless the inability to provide such advance notice is due to events that were unforeseeable or circumstances beyond the control of the plan administrator, in which case notice of such change must be furnished as soon as reasonably practicable.

(ii) At least quarterly, a statement that includes:

(A) The dollar amount of the fees and expenses described in paragraph (c)(2)(i)(A) of this section that are actually charged (whether by liquidating shares or deducting dollars) during the preceding quarter to the participant's or beneficiary's account for such services;

(B) A description of the services to which the charges relate (e.g., plan administration, including recordkeeping, legal, accounting services); and

(C) If applicable, an explanation that, in addition to the fees and expenses disclosed pursuant to paragraph (c)(2)(ii) of this section, some of the plan's administrative expenses for the preceding quarter were paid from the total annual operating expenses of one or more of the plan's designated investment alternatives (e.g., through revenue sharing arrangements, Rule 12b-1 fees, sub-transfer agent fees).

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