



UPDATE Employee Benefits and Compensation

AUGUST 2012

Participant Fee Disclosures Are Right Around the Corner

Beginning on August 30, 2012, plan administrators of calendar year 401(k) plans, 403(b) plans, and other participant-directed individual account plans are required to disclose certain plan and investment-related information to participants and beneficiaries under final regulations issued by the Department of Labor (DOL). The regulations obligate plan administrators to review and analyze the fee information and then deliver such information to plan participants to ensure that they will have the information needed to make informed decisions about the management of their plan accounts and the investment of their retirement savings.

ANNUAL PARTICIPANT FEE DISCLOSURE

The regulations require participant-level fee disclosures to any participants and beneficiaries who direct their own investments in ERISA-covered 401(k), 403(b), and other individual account retirement plans. The plan administrator (in most plans, the employer is the plan administrator) is responsible for delivering participant-level fee disclosure notices by August 30, 2012, to any participants or beneficiaries who have the right to direct the investment of assets contributed to their individual accounts. This includes new hires and any employees eligible to participate in the plan, even those employees not actually enrolled in the plan. Generally, that disclosure is required to be made by mail unless the participant has affirmatively consented to the disclosure of such information electronically. This notice is required annually thereafter.

[Fiduciary-level disclosures](#) by certain plan service providers were due to plan fiduciaries by July 1, 2012. If a service provider failed to deliver the information accurately or in a timely manner, the plan administrator may report the deficiency and shift the compliance burden to the service provider through the filing of a Delinquent Service Provider Disclosure (DSPD) Notice to the DOL and the Internal Revenue Service (IRS). A DSPD Notice filing may expose the service provider to possible excise taxes and disgorgement of previously earned compensation. The notice is required to be filed no later than 30 days following the earlier of (1) the service provider's refusal to furnish the requested information or (2) 90 days after the

date of the plan administrator's written request to the service provider.

QUARTERLY PARTICIPANT ACCOUNT STATEMENTS

In addition to the annual disclosure requirement, the new regulations require plan administrators to furnish quarterly statements to participants and beneficiaries detailing the actual fees and expenses charged during the preceding quarter to their individual accounts and the services to which the charges relate. For plans operating on a calendar year, the initial quarterly disclosure for the quarter ending September 30, 2012, is due to be provided to participants no later than November 14, 2012. Drafts of the new quarterly statements should be coming from service providers soon and may need to be reviewed for compliance with the new rules.

Robinson & Cole's [Employee Benefits and Compensation Practice Group](#) is available to provide assistance in satisfying the new disclosure requirements. If you have any questions, please contact any of the following attorneys:

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