

# Rules Changes for Retirement Plan Fiduciaries

*Have you kept up with them? Have they raised new questions for you?*

Provided by *Benedict A. Mitchell Jr.*

On July 1, 2012, the Department of Labor implemented some rules changes for ERISA-covered defined benefit and defined contribution pension plans. These changes were made to improve transparency.<sup>1</sup>

**Covered service providers (CSPs) must fully describe services & fees.** Financial advisors, financial consultants or third-party administrators who expect to receive \$1,000 or more in direct or indirect compensation for their services are considered CSPs and must detail their compensation and/or fee structure to fiduciaries. CSPs also include financial advisors or TPAs who act as fiduciaries or Registered Investment Advisors for plan sponsors. If applicable, the CSP must detail any fees charged for recordkeeping along with recordkeeping methods.<sup>1</sup>

CSPs must offer this information to a plan sponsor before the plan sponsor contracts their services, and they must provide updates in the event a contract is renewed or extended or when their fees change.<sup>2</sup>

**Plan fiduciaries must detail fees (and more) to plan participants.** Fiduciaries are now required to disclose (and update) the kind of information that was often buried deep within the typical fund prospectus.

*Key plan information must be clearly communicated.* Each plan participant should be provided with a) a list of the plan's investment alternatives (options) and designated investment managers, b) a description of any self-directed brokerage accounts offered, c) how plan participants may direct invested assets and any restrictions or limits on asset transfers, d) the plan provisions regarding voting, tender and similar rights.<sup>3</sup>

*Investment-related information has to be clearly & graphically presented.* A user-friendly comparison of investment alternatives within the plan must be presented to each plan participant. This comparison must take the form of a chart or something similar. The plan is required to disclose a) the name and asset class of each investment alternative, b) a website address where the employee can go for specific information on each investment option, c) any loads, surrender charges, redemption fees and other examples of shareholder-type charges pertaining to each investment alternative, d) the annual rate of return and terms of investment for each fixed-rate investment option, e) the complete annual operating expense for each variable-return investment option, expressed as both a percentage of assets and dollar amount per \$1,000 invested.<sup>1,3</sup>

In addition, 1-year, 5-year and 10-year performance data must be presented for each investment alternative, expressed in calendar years. (If the investment option hasn't been

around for 5 or 10 years, then mid-term or long-term performance data for its “life” should be offered). Performance data should be compared to the S&P 500 or other broad securities market benchmark.<sup>3</sup>

*Initially and annually, a plan sponsor has to disclose plan-level and participant-level fees. The plan-level fees for general plan administrative services have to be stated, and any loan fees or QDRO fees must be explained to the linked plan participant. Per quarter, the plan sponsor has to state the actual dollar amount of fees taken from the plan participant’s account (not including investment expenses).<sup>3</sup>*

In addition, plan participants have to be given at least 30 days of notice regarding changes to plan information, fee information and investment choices.<sup>3</sup>

If participant-level fee disclosures aren’t provided to plan participants, then a plan participant or beneficiary may claim a violation of fiduciary duty on the part of the plan sponsor. Calendar year plans must provide annual “plan-level” and “investment-level” disclosures clearly stating plan fees and expenses. Quarterly plan disclosures must show fees and expenses deducted from the participant or beneficiary’s retirement plan account.<sup>1</sup>

**The definition of a “fiduciary” could change.** In 2010, the Dodd-Frank Act gave the Securities & Exchange Commission (SEC) the power to hold anyone providing retail investment advice to a fiduciary standard. Months later, the DOL proposed broadening its definition of “fiduciary” to include anyone who provides investment advice to a retirement plan.<sup>4</sup>

Then things stalled: four years later, the SEC and DoL have yet to make these moves. The DoL will revisit broadening its fiduciary definition in January 2015. (Any DoL redefinition may not correspond to the SEC’s definition of a fiduciary, however.)<sup>4</sup>

**Employees need to clearly understand the value of a plan.** The range of investment options, the potential of those investments, the degree of participant direction allowed, the fees and terms of participation – all this has to be clear and comprehensible.

**Employers need to evaluate the utility of a plan & keep up to date.** Do you know what (direct and indirect) fees you are paying? Can you explain what are they for? Are the fees reasonable? To find out if you are truly getting what you pay for, you need a trusted, independent advisor on your side. I can step forward to help you manage the new rules and responsibilities and see that your retirement plan offering provides appropriate value at appropriate cost.

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**Citations.**

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