

# EBSA releases final rule on participant fee disclosure

SAVING : INVESTING : PLANNING

VALIC will update systems and communication materials as necessary to help you fully comply with the regulations.

The Department of Labor's (DOL) Employee Benefits Security Administration (EBSA) recently released a final rule that will help America's workers manage and invest the money they contribute to participant-directed defined contribution plans that are covered by ERISA [e.g., 403(b) plans and 401(k) plans]. The rule ensures that workers have the information they need to make informed decisions, including information about fees and expenses; the delivery of investment-related information in a format that allows meaningful comparisons between the investment options; and that plan fiduciaries use standard methodologies when calculating and disclosing expense and return information. The final rule could become applicable as early as November 1, 2011.

The participant fee disclosure rule is the latest in a series of rules and regulations issued by the Department of Labor (DOL). It is intended to increase disclosure and transparency of fees to participants, plan sponsors, and the DOL/IRS.

**Insight: The DOL views the participant fee disclosure rule as a general fiduciary requirement for all participant directed ERISA plans, not just plans seeking ERISA 404(c) protection.**

As a general fiduciary requirement, the participant fee disclosure rule requires plan fiduciaries to act prudently and solely in the interest of the plan's participants and beneficiaries, by providing them with plan-related information and certain investment-related information. However, in complying with the rule, plan sponsors may reasonably and in good faith rely upon information provided by a service provider.

**Insight: Plan sponsors are responsible for complying with the new participant fee disclosure rule and VALIC is committed to assisting plan sponsors in this regard. As such, VALIC is reviewing and updating information we currently provide to participants and beneficiaries to determine how to fully meet the requirements of the new rules in advance of the deadline.**

# EBSA final rule on participant fee disclosure

## Overview of Final Rule

- > For ERISA-covered plans, the investment of plan assets is a fiduciary act governed by ERISA section 404(a)(1)(A) and (B), which require plan fiduciaries to act prudently and solely in the interest of the plan's participants and beneficiaries.
- > When a plan allocates investment responsibilities to participants or beneficiaries, the plan administrator must take steps to ensure that such participants and beneficiaries are made aware of their rights and responsibilities with respect to the investment of assets in their accounts and are provided sufficient information, including fee and expense information, to make informed decisions to manage their individual accounts.

A plan administrator must provide each participant or beneficiary certain plan-related information and certain investment-related information as described below:

## Plan-Related Information

This general category is divided into three subcategories as follows:

### General Plan Information

- > This information is about the structure and mechanics of the plan, such as an explanation of how to give investment instructions under the plan, a current list of the plan's investment options, and a description of any "brokerage windows" or similar arrangement that enables the selection of investments beyond those designated by the plan.

### Administrative Expenses Information

- > An explanation of any fees and expenses for general plan administrative services that may be charged to or deducted from all individual accounts. Examples include fees and expenses for legal, accounting and recordkeeping services.

### Individual Expenses Information

- > An explanation of any fees and expenses that may be charged to or deducted from the individual account of a specific participant or beneficiary based on the actions taken by that person. Examples include fees and expenses for plan loans and for processing qualified domestic relations orders.

The information in these three subcategories must be given to participants on or before the date they can first direct their investments, and then again annually thereafter.

**Insight: In order to meet the regulations, you will want to provide the information to all eligible participants, even if they have not enrolled in the plan.**

# EBSA final rule on participant fee disclosure

## Statements of Actual Charges or Deductions

Participants must also receive quarterly statements showing the dollar amount of the plan-related fees and expenses (whether “administrative” or “individual”) actually charged to or deducted from their individual accounts, along with a description of the respective services. These specific disclosures may be included in quarterly benefit statements required under section 105 of ERISA.

## Investment-Related Information

The second category of information that must be disclosed contains several subcategories of core information about each investment option under the plan, including:

### Performance Data

- > Participants must be provided specific information about historical investment performance. One-, five- and 10-year returns must be provided for investment options, such as mutual funds, that have variable rates of return. For investment options that have a fixed or stated rate of return, the annual rate of return and the term of the investment must be disclosed.

### Benchmark Information

- > For investment options with a variable rate of return, the name and returns of an appropriate broad-based index over one-, five- and 10-year periods (matching the performance data periods) must be provided. Investment options with fixed rates of return are not subject to this requirement.

### Fee and Expense Information

- > For investment options with a variable rate of return, the total annual operating expenses expressed as both a percentage of assets and as a dollar amount for each \$1,000 invested, and any shareholder-type fees or restrictions on the participant’s ability to purchase or withdraw from the investment.
- > For investment options that have a fixed rate of return, any shareholder-type fees or restrictions on the participant’s ability to purchase or withdraw from the investment.

### Website Address

- > Investment-related information includes a website address to provide participants and beneficiaries access to specific additional information about the investment options.

### Glossary

- > Investment-related information includes a general glossary of terms, or a website that is sufficiently specific to provide access to such a glossary.

# EBSA final rule on participant fee disclosure

## Comparative Format Requirement

Investment-related information must be furnished to participants or beneficiaries on or before the date they can first direct their investments, and then annually thereafter. It also must be furnished in a format that allows a comparison of each investment option available under the plan. The final rule includes, as an appendix, a model comparative chart, which may be used to satisfy the rule's requirement that a plan's information be provided in a comparative format.

## Miscellaneous

- > The rule provides plan administrators protection from liability for the completeness and accuracy of information provided to participants if the plan administrator reasonably and in good faith relies upon information provided by a service provider.
- > After a participant has invested in a particular investment option, he or she must be provided any materials the plan receives regarding voting, tender or similar rights in the option.
- > Upon request, the plan administrator must also furnish prospectuses, financial reports and statements of valuation and of assets held by an investment option.
- > The general disclosure regulation at 29 CFR § 2520.104b-1 applies to material furnished under this regulation, including the safe harbor for electronic disclosures at paragraph (c) of that regulation.
- > The final rule would also make conforming changes to the disclosure requirements for plans that elect to comply with the existing ERISA section 404(c) regulations.

## Real solutions

Let us put real retirement solutions to work for your organization and your employees

**CLICK**  
VALIC.com

**CALL**  
1-800-972-6978  
ext. 1315

**VISIT**  
your VALIC  
representative  
[Enter Name and  
Phone Number]

## Effective and Applicability Dates

The final rule will become applicable to ERISA-covered individual account plans for plan years beginning on or after November 1, 2011. For calendar year plans, compliance will be required on January 1, 2012.

## For Plan Sponsor Use Only.

Annuity contracts are issued by The Variable Annuity Life Insurance Company and distributed by its affiliate, American General Distributors, Inc., member FINRA.

VALIC represents The Variable Annuity Life Insurance Company and its subsidiaries, VALIC Financial Advisors, Inc. and VALIC Retirement Services Company.



Copyright © The Variable Annuity Life Insurance Company.  
All rights reserved.  
VC 23710 (12/2010) J80046 ER

**VALIC**