



Disclosures—informing and educating plan participants

As a plan sponsor, you're required to disclose certain information about your plan to your participants and beneficiaries, as well as educate them about the plan's saving and retirement investment opportunities. Some of this information is mandated by ERISA and/or the Internal Revenue Code, but some relies on your judgment.

How do you design a communication program that educates your employees, encourages them to participate in the plan, and helps them make appropriate decisions? Start by focusing on three key guidelines to help meet your fiduciary obligations.

Disclosure guidelines



#1 Communicate plan changes

Update participants about any changes made to the plan, and/or provide statutory notices.



#2 Provide plan education

Offer adequate investment education to empower participants to make informed decisions.



#3 Disclose plan fees

Give participants a clear breakdown of all plan fees, in accordance with fee disclosure rules.

Remember, you can always seek advice from your legal counsel to help you meet your fiduciary responsibilities.

1: Communicate plan changes and required notices

Under ERISA's fiduciary reporting and disclosure provisions, you must keep your participants and beneficiaries informed of your plan's provisions—and any changes—by providing them with certain documents and notices. Not doing so could result in penalties and legal liability.

Required disclosures fall broadly into three categories:

- 1 Plan terms and changes:** New participants (and beneficiaries) must receive a Summary Plan Description (SPD) explaining the plan's material provisions in simple language. Participants must also receive an updated SPD every five years and a revised SPD or a separate Summary of Material Modifications (SMM) if you modify any of the plan's material provisions.
- 2 Plan finances:** Provide your participants with a Summary Annual Report (SAR), which summarizes the financial information in the plan's annual report (Form 5500). The SAR must be provided to participants by the end of the ninth month following the end of your plan year, taking into account extensions for the ERISA 5500 filing.
- 3 Statutory notices:** You're also responsible for providing participants with initial Qualified Default Investment Alternative (QDIA) and auto-enroll notices (if applicable to your plan).

If you offer a 403(b) elective deferral plan, you're required to provide a universal availability notice to new employees upon hire and to existing employees at least once a year. This notice lets employees know the plan is available to them and describes eligibility requirements and contribution limits.



Safe harbor for electronic disclosures

If you choose to distribute disclosures electronically, you can take advantage of a Department of Labor safe harbor. To qualify for the safe harbor, your participants must have regular access to your electronic system or website in the course of their job. You should also know that distributing disclosures electronically outside the workplace generally requires a written consent from the participant, unless they update their electronic preferences online.

2: Provide plan and investment-related education

A quality communications and education program that goes beyond required disclosures may not be legally necessary, but it's vitally important. It can help motivate employees to join the plan and help participants keep their retirement savings on track. An effective program should show employees

- how the plan works,
- the benefits of participating,
- how to enroll (at least every 12 months), and
- information on how to invest their money.

Investment disclosure and notice requirements

Through greater fee transparency, you can help participants make more educated decisions about their retirement plans. Meeting your plan's disclosure requirements are also part of your fiduciary responsibilities, and not providing some of the required disclosures could result in a breach of fiduciary duty.

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Required participant investment disclosures include:

QDIA notices: When offering a Qualified Default Investment Alternative, you must provide both initial and annual notices. They must include

- the circumstances in which default investments will be made on participants' behalf,
- participants' right to direct the investment,
- a description of the QDIA,
- participants' transfer rights to other plan investment options, and
- where to get information on the plan's other investment options.

Initial notices: Provide this notice to new hires at least 30 days before a participant's date of plan eligibility or first investment in a QDIA. Or, you could provide the notice on or before the date of the participant's plan eligibility, if they can make a permissible withdrawal under an auto-enrollment plan.

Annual notices: Provide this notice to all eligible employees 30 days before the beginning of each plan year.

If a participant can show losses related to a fiduciary's failure to disclose required information, such a fiduciary could face professional and personal liability.

Investment option changes. If you decide to make plan investment changes, remember that you are required to give your participants advance notice (at least 30 days). This also applies to any blackout periods that may limit participants' ability to make transactions in their accounts.

Quarterly benefit statements. These must include all transaction activity within participant accounts (e.g., deferrals, fees, withdrawals, etc.) as well as the allocation of their account balance and future deferrals by asset class and other relevant information.

Annual vesting disclosure. You must let your participants know the vesting schedule of any employer contributions and what percentage of their workplace savings plan is currently vested.

Investment education. It's best practice to provide your participants with educational materials that help them understand your plan's investments. Whether you provide this education through newsletters, fact sheets, seminars, or electronic and print publications, the end goal is to help your employees take control of their investment decisions.

SECURE Act lifetime income disclosure requirement

Several SECURE Act provisions highlight the importance of lifetime income in retirement. In particular, the requirement for defined contribution benefit statements to include lifetime income disclosures makes it easier for these participants to see how their account balances translate into a guaranteed monthly income stream. The requirement will apply to statements provided more than 12 months after the DOL provides calculation guidelines and will be required on at least one statement in a 12-month period.

3: Participant fee disclosure

As part of your disclosure requirements, you must provide participants with information about all fees associated with your plan. These requirements fall under ERISA Section 404a-5.

ERISA's rules are designed to help participants make more informed investment decisions when managing their account and planning for retirement. They require that you provide sufficient information about the plan and its investment options on an annual basis.

For a comprehensive discussion of plan sponsor requirements under the fee disclosure rules—and for access to articles and checklists designed to make compliance easier—visit the **TIAA Fee Disclosure Center**.¹

Participant fee disclosures fall into two categories



Plan related

Information about your plan structure (i.e., investment options including brokerage windows), administrative fees and individual transaction expenses



Investment related

Information about your plan's investment options, including historical performance information, benchmark performance and expense information in a comparative chart that makes it easy for participants to compare their choices

You must provide the plan and investment information on or before the date an employee or beneficiary can direct an investment under the plan. Participants must receive information each quarter that describes any fees that were charged directly to their accounts. If any items listed in the disclosure are changed, participants must receive written notification at least 30 days in advance.



¹ Direct link: www.tiaa.org/public/plansponsors/land/fee-disclosure-center

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