

## FIDUCIARY SERIES

# 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 required by the Employee Retirement Income Security Act of 1974, as amended (ERISA) and/or the Internal Revenue Code. Your organization may choose to disclose additional information that is unrequired by law but that you deem appropriate for your plan participants.

How do you design a communication program that educates your employees, encourages them to participate in the plan, and helps them make informed decisions? Start by considering three concepts to help you effectively administer your plan and, if your plan is subject to ERISA, to help meet your fiduciary obligations.

### Disclosure guidelines



#### 1. Communicate plan changes

Update participants about any changes made to the plan, and, if your plan is subject to ERISA, provide required documentation and notices.



#### 2. Provide plan education

Offer education opportunities to give participants the ability to make more informed decisions.



#### 3. Required ERISA notices

If your plan is subject to ERISA, you must provide participants with specific notices including, but not limited to, required Fee Disclosure, Summary Annual Report (SAR) and Summary Plan Description (SPD).

You should always consult with your legal counsel to ensure you are meeting your notice and disclosure obligations. If your plan is subject to ERISA, you should always consult with your legal counsel to ensure you are meeting fiduciary obligations.

# Disclosures—informing and educating plan participants

## 1: Communicate plan changes

If your plan is subject to ERISA, you have an obligation to keep your participants and beneficiaries informed of your plan's provisions—and any changes—by timely providing them with the appropriate documents and participant notices. Not doing so could result in penalties and legal liability.

- 1. Plan terms and changes to plan terms:** For plans that are subject to ERISA, new participants must timely receive a Summary Plan Description (SPD) explaining the plan's material provisions in simple language. Participants must also receive an updated SPD every ten years. If there are any material modifications to the plan, a revised SPD or a separate Summary of Material Modifications (SMM) must be timely provided. If an SMM is provided, a new SPD must also be provided five years from the change. Plans that are not subject to ERISA are not required to provide an SPD or SMM.
- 2. Investment option changes:** If you decide to make changes to your investment menu, 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.

**NOTE:** If your plan is not subject to ERISA, you are not subject to the ERISA disclosure and notice requirements included herein (e.g., SPD, SMM, SAR and QDIA). As always, we encourage you to consult with your legal counsel to ensure you are meeting all required disclosure and notice obligations for your plan.

## 2: Provide plan education opportunities

A quality communications and education program that goes beyond what might be required under the applicable guidance for your plan might not be legally necessary, but can be valuable. Strong education opportunities can increase participation and help participants make informed decisions in an effort to effectively plan for retirement.

Education for participants might include:

- More information about how the plan works (e.g., eligibility, vesting, etc.)
- The benefits of participating (e.g., tax-deferred savings, employer contributions, etc.)
- How to enroll
- Information about the investment opportunities available under the plan

Investment education: It can be useful to provide your participants with educational materials that help them better 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 understand and take more control of their

If a participant in an ERISA-covered plan can demonstrate that a fiduciary breached its fiduciary obligations, which might include a failure to disclose required information, such a fiduciary could face professional and personal liability.

### 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.

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## 3: Required ERISA Notices

**Plan finances:** If your plan is subject to ERISA, you must timely provide your participants with a Summary Annual Report (SAR), which summarizes the financial information in the plan’s annual report filed with the IRS (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 Form 5500 filing.

**Other required notices:** If your plan is subject to ERISA and your plan has implemented a Qualified Default Investment Alternative (QDIA), you would be responsible for timely providing participants with an initial QDIA notice and a change notice in the event the QDIA is changed. If your plan implements automatic enrollment for your participants, you would be obligated to timely provide participants with the required and auto-enroll notices. If you offer a 403(b) elective deferral plan, whether or not the plan is subject to ERISA, you are required to provide a universal availability notice to all eligible employees upon hire and to existing employees no less frequently than annually. The notice is intended to inform eligible employees of their right to defer to the plan as well as any other benefits and limits under the plans.

**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.

**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.

**Fee disclosure:** One of your ERISA disclosure obligations is that 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—and for access to articles and checklists designed to make compliance easier—visit PlanFocus®.

### 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.



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