

Strong Designs that Work and Last

## Don't let the new rules on transparency give your clients the impression that their 401(k) plan isn't wearing any clothing

The Department of Labor's Employee Benefits Security Administration (EBSA) announced last week that for calendar year-end plans, as of January 1, 2012, employers will be responsible for providing improved transparency of fees, expenses *and* performance for their company's 401(k) plan. This means that on January 1, 2012, your clients must share certain information with their employees. This alert contains an overview of what will be required and the steps they'll have to take to prepare their company for this change in legislation.

The information that must be provided to employees starting January 1, 2012 can be broken down into two categories. First, *general plan information*. This category includes disclosing *both on a plan level and an individual employee level* all of the fees and expenses that the plan pays. Be prepared to explain that the fees and expenses your clients are paying are competitive when benchmarked against the services they are receiving. Secondly, on January 1, 2012, there is investment-related performance data to be shared with employees. The form and substance of that information is as follows:

*Performance Data* – participants must be provided specific information about historical investment performance. 1, 5, and 10-year returns must be provided for investment options.

*Benchmark Information* – the name and returns of an appropriate broad-based security index over 1, 5 and 10 year periods must be provided to participants, along with a comparison as to how the plan's investment performance stacks up against the relevant benchmark.

*Fee and Expense Information* – the total annual operating expenses (both as a percentage of assets and as a dollar amount for each \$1,000 invested) must be provided. Any shareholder type fees or restrictions on a participant's ability to purchase or withdraw (like from many guaranteed investment contracts or GICs) must now be provided.

*Internet Website Address* – an internet web address that allows participants and their beneficiaries access to specific information about the investment options must be provided (or created if it doesn't exist).

*Glossary* – a general glossary of terms to assist participants in understanding the plan's investment options must be provided.

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*Comparative Format Requirement* – investment-related information must be furnished to the participants on or *before* the date that they can first direct their investments and then again annually thereafter. The final rule includes a comprehensive comparison model that details the performance of your client’s funds compared to applicable benchmarks (click [here](#) for an example of what must be provided).

There is both positive and negative aspects to these new disclosure rules. First, the good news. It’s the service provider and record keeper that has the responsibility to provide this information. And your client, as the plan sponsor, is allowed to rely on the information, if they reasonably and in good faith believe it to be accurate.

Now the bad news. Let’s be honest. How many of your clients have specific procedures and practices in place to monitor the plan’s investments? How many of them review the funds annually, have a watch list for those funds that recently seem to be struggling, and a set time frame to replace them if they fail against their benchmark for three or more quarters?

This is the time to play “beat the clock.” A year is enough time for your client to adopt an Investment Policy Statement (an IPS), to form an investment committee, and to review the plan’s funds using a set of independent empirical metrics. A year is enough time if your client is with a service provider that forces the plan into 50% of their funds (or in some cases, 100% of their funds) to investigate options, or to see if they have relaxed their restrictions, or have added funds that might be a better fit than the ones that your client is currently using.

It is essential that you understand that in one year a lot of information, in an easy to understand format, will need to be shared with your client’s employees. We’re here to help. You do not want your client’s employees to discover that the company’s 401(k) plan is not wearing any clothing.

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