



Fee disclosure Q&A: Answering plan sponsor questions about Department of Labor regulations

Spring 2012

U.S. Department of Labor (DOL) regulations outlining obligations of plan sponsors and service providers to disclose plan fee and investment information have raised a number of questions. This set of questions and answers can help sponsors sort through issues related to these new DOL requirements. The topics covered are associated with two separate regulations—one designed to provide transparency in plan fees and expenses to participants (participant fee disclosure), and the other to enhance what service providers disclose to retirement plan fiduciaries (plan sponsor fee disclosure).

Topic: Plan sponsor and investment committee concerns

1. **Who is considered liable when disclosing fee information to participants?** Plan sponsors, as the plan fiduciaries, are liable for providing participant fee disclosure information to participants, beneficiaries (and alternate payees) with an account balance, and eligible nonparticipating employees. Unlike some of the other disclosure rules under ERISA, in which failure to provide required disclosure in a timely manner may result in a fine, failure to provide required information under the participant fee disclosure regulation may result in a breach of fiduciary duty. This could expose the plan fiduciaries to both professional and personal liability if the participant can demonstrate that he or she had losses related to the failure to disclose the required information.
2. **What information should be provided to a 401(k) plan's investment committee?** With respect to plan sponsor fee disclosure, the committee should review the enhanced All-in Fee Report for their defined contribution plan(s), and other related disclosures for defined benefit plans and advisory services, in order to make a reasonableness determination regarding fees paid for services received. (See Questions 16 and 17.) For participant fee disclosure, if the investment committee is also responsible for plan administration, the committee should review the annual notice (and any related change notices) for completeness and accuracy. The committee should also review the distribution process for the notice to ensure compliance with the regulation.
3. **What should employers do to comply with the participant fee disclosure regulations, in addition to the actions Vanguard is taking?** Sponsors of Vanguard-recordkept plans (recordkeeping clients) should partner with Vanguard through their relationship representative to ensure that the information contained in the initial participant fee disclosure notice, subsequent annual notices, and any change notices, is complete and accurate. For example, there may be fees that Vanguard may not be aware of, such as legal, accounting, or audit fees that the plan sponsor passes through to plan participants. Plan sponsors will need to identify those fees and how they are paid, whether pro rata or per capita, so that the appropriate required information can be disclosed.

In addition to fee information requirements, the participant fee disclosure regulation requires disclosure of a broad array of investment information, including benchmarks for each designated investment alternative offered under the plan. Determination of the benchmark is relatively easy for mutual funds covered under the Investment Company Act of 1940. However, some plan sponsors may need to work with the investment manager to determine an appropriate benchmark for non-mutual fund investments, such as collective trusts, separate accounts, and company stock funds.



4. **With regard to the participant fee disclosure regulations, will the additional costs of compliance impact the plan and the investments?** Because of the amount of information that must be disclosed and the broad population to whom it must be delivered, plans or plan sponsors will need to share in the cost of compliance with this regulation. Increased costs associated with the additional disclosures may be paid directly by plan sponsors or passed through to participants. We do not expect the additional costs associated with compliance to directly impact the expense ratios of our funds.
5. **What is Vanguard doing to help sponsors get ready for the start date of the participant fee disclosure regulations in 2012?** Vanguard has developed a notice for participants and a participant communication plan to help prepare participants for the notice. Also, Vanguard made significant technology enhancements to our participant statement system and our website in preparation for compliance with the regulation. Sample notices for recordkeeping clients are now available. Please contact your Vanguard representative to review in more detail.
6. **If the plan sponsor pays for all participant fees, are the same participant notices required?** Some disclosures are required regardless of who is paying the fees—such as the investment information now required in the form of a comparative chart. For plan sponsors paying administrative or individual fees on behalf of participants, the regulation does not require information related to these specific fees to be disclosed.

Topic: Compliance concerns

7. **When will the regulations go into effect?** For most plans, the first participant fee disclosure notices must be provided by August 30, 2012. Updated statement requirements are effective for third-quarter statements (which must be distributed by November 14, 2012).

For plan sponsor fee disclosure, Vanguard will provide the required disclosures to plan sponsors in advance of the July 1, 2012, compliance date.

8. **Are plan sponsors currently complying with the new regulations?** For plan sponsor fee disclosure, plan sponsors have always had the fiduciary duty under ERISA to make sure fees paid for services are reasonable. However, until now, there hasn't been any formal regulatory disclosure requirement governing service provider compensation. The plan sponsor fee disclosure regulation is designed to provide plan sponsors the information needed to determine the reasonableness of fees and compensation received by service providers to the plan.

For participant fee disclosure, while that regulation is not yet effective, Vanguard currently provides most of the required information to participants through different communications and channels. In addition, plans intending to comply with ERISA Section 404(c) have been providing some of this information to participants already. Once the regulation is effective, this information will be consolidated into a single annual notice. Other notice and disclosure obligations under ERISA (for example, Summary Plan Description, Summary of Material Modification, or Qualified Default Investment Alternative (QDIA) notice) continue to apply.

9. **Do the fee disclosure rules apply only to qualified plans or to nonqualified plans as well?** Neither regulation applies to any plan that is not subject to Title I of ERISA. Specifically, participant fee disclosure rules apply to all participant-directed individual account plans, but do not apply to defined benefit, governmental, non-ERISA 403(b), or nonqualified plans; or SEPs, SIMPLEs, or IRAs.

Plan sponsor fee disclosure rules cover all qualified plans (defined contribution and defined benefit plans) except SEPs, SIMPLEs, and IRAs. Because they are not qualified plans, non-ERISA 403(b) and nonqualified plans also are not covered.



10. **For participant fee disclosure, what kind of participant consent is needed for e-delivery?** Under current DOL electronic delivery guidance, plan sponsors can deliver the participant fee disclosure notice electronically with participant consent. Plan sponsors may also meet the requirements for “worksite” e-mail delivery if participants are required to access e-mail as an integral part of their job duties. If neither alternative can be satisfied, the notices must be mailed.

The DOL has issued additional guidance applicable only to electronic delivery of participant fee disclosure notices, requiring additional notification to plan participants and participant consent to electronic delivery. Due to these additional requirements, most plan sponsors will not be relying on this guidance for electronic delivery of participant fee disclosure notices.

11. **Does either regulation require a company to provide any notices in addition to the disclosures provided by Vanguard?** The plan sponsor fee disclosure regulation does not require companies to provide additional notices. However, to the extent that there are other third-party covered service providers (in addition to Vanguard) providing plan services and receiving compensation either directly or indirectly from the plan, the company should receive a disclosure directly from those service providers.

For participant fee disclosure, clients may need to provide additional information. (See Question 3.) The participant fee disclosure regulation does not eliminate the requirement to provide any previously required legal notices to plan participants. Additionally, for 403(b) plans using more than one vendor, the annual notice from each vendor must be provided to participants simultaneously, in the same communication. (See Question 31.)

12. **If a participant has opted not to receive a printed statement, will showing the fees on the electronic statement still meet the requirements?** Yes, all participant statements will be updated with the additional fee information regardless of how the statement is delivered (paper or electronic), and participants who have elected to receive statements electronically can continue to receive them, in accordance with DOL guidance on electronic delivery. (See Question 10.)

13. **When is notice of changes to the plan’s investment lineup required?** For plan sponsor fee disclosure, covered service providers, such as Vanguard, generally must notify plan sponsors of changes to the required disclosure information as soon as practicable, but no later than 60 days after the service provider is aware of the change. Changes in expense ratios and other investment-related changes must be communicated annually.

For participant fee disclosure, notice to participants of any changes to the investment lineup generally must be provided 30 to 90 days before the effective date of the change. If investment options are changed for prudence reasons (for example, an investment no longer a prudent investment alternative), the plan sponsor must provide notice as soon as reasonably practicable, even if that is fewer than 30 days before the change.

14. **If our calendar-year plan is distributing the participant fee disclosure notice in August 2012, will future notices be required in August every year?** For calendar-year plans, the initial notice is required by August 30, 2012, and at least annually thereafter. While plan sponsors could provide the notice each August, they may provide future notices at a different time (as long as an annual notice is provided at least once in each 12-month period).

15. **Is posting the participant fee disclosure notice to the company intranet effective delivery to new hires?** No, under the current DOL electronic delivery rules, posting information to a company intranet, without additional communications, does not constitute effective delivery. The participant fee disclosure notice must be provided before the participant can first direct his or her investments. A best practice would be to include the notice with other new hire materials such as an enrollment kit or health care information.

16. **As a plan sponsor, how do I know if fees are reasonable under ERISA section 408(b)(2)?** ERISA is a procedural statute that requires a plan sponsor to base any decision on the relevant facts and circumstances. When determining reasonableness of fees, plan sponsors should consider such aspects as quality of services, costs, complexity of the plan, and needs of the participants. No one factor is dispositive when determining reasonableness. Please review Vanguard Strategic Retirement Consulting’s paper, *Determining reasonableness of retirement plan fees*, for more information.



17. **When determining whether fees are reasonable, should the sponsor solicit competitive bids?** As noted in Question 16, there are a number of factors plan sponsors should consider when determining reasonableness. While obtaining a competitive bid can be one way to evaluate fees, plan sponsors may want to consider other alternatives such as industry benchmarks and surveys.
18. **Are standard footnote disclosures required in the annual audit report?** No, the plan sponsor fee disclosure regulation does not address the specific information to be included in the annual audit report.

Topic: Vanguard's role in fee disclosure

19. **Will Vanguard provide participant fee disclosure notices to the plan sponsor for us to disseminate to our employees?** Vanguard will provide recordkeeping clients with a notice based on the information in our recordkeeping system. Plan sponsors can then verify that information and deliver notices to their participants and eligible employees. (See Question 3.)
20. **How will Vanguard's participant statement change to reflect the participant fee disclosure regulation?** Vanguard has always included total fees on our participant statements. In addition to this summary, we will add a detail page showing an itemized list of fees paid by the participant. These changes will display on statements for periods beginning in the second quarter of 2012.
21. **Do Vanguard's participant statements show actual asset-based investment fees?** While not required by the participant fee disclosure regulation, Vanguard's participant statement system allows plan sponsors to include investment information, including investment expense ratios, on participant statements. Statements also include the participant's balance in the investment as of the statement date. This allows participants to calculate their specific asset-based fees. As required by the participant fee disclosure regulation, notices will display investment information, including expense ratios, in a comparative chart format.
22. **What is the most recent information as to when this will be required, and will Vanguard be ready for early adoption?** The plan sponsor fee disclosure regulation was originally effective July 16, 2011; however, the DOL has extended the effective date to July 1, 2012. Vanguard will deliver plan sponsor fee disclosures to plan sponsors before July 1, 2012. Initial notices under the participant fee disclosure regulation generally are required by August 30, 2012. Vanguard will provide information notices by that date. (See Question 7.)
23. **Will Vanguard fee disclosure include a "required revenue" amount to help plan sponsors in benchmarking plan fees?** In accordance with the plan sponsor fee disclosure regulation, Vanguard will separately disclose direct and indirect compensation and any recordkeeping fees Vanguard expects to receive. For all investments offered under the plan, Vanguard will show the expense ratio and an industry benchmark. This information should help plan sponsors in determining reasonableness. (See Question 16.)
24. **What should plan sponsors do with the information they receive from their service providers, including Vanguard?** Vanguard will comply with the plan sponsor fee disclosure regulation with an enhanced All-in Fee Report. Plan sponsors should make review of the enhanced All-in Fee Report an agenda item for their committee meeting, just as they have done in the past with the existing All-in Fee Report, to determine and document reasonableness. If a plan receives similar disclosures from other service providers, a similar process of review and documentation should occur. (See Question 19 for additional information on participant fee disclosure notices.)
25. **If Vanguard sends enrollment kits for a plan, can the participant fee disclosure information be included?** Yes, if the plan sponsor uses print (non-electronic) enrollment kits. However, under current DOL electronic delivery rules, the initial notice cannot be provided as part of an electronic enrollment kit. Instead, Vanguard suggests providing the initial notice with other new hire materials. (See Question 10 for additional information on electronic delivery.)



26. **What if the plan sponsor, and not the plan itself, pays for all recordkeeping and consulting fees. Is this reflected in your All-in Fee Report?** Yes. Although not required under the plan sponsor fee disclosure regulation, Vanguard's All-in Fee Report will reflect any compensation paid to Vanguard by the plan sponsor (that is, not paid out of plan assets). We believe this information is important for plan sponsors making a reasonableness determination as to the "all-in" costs of the plan. Note that any compensation paid by the plan to other service providers will not be included in our All-in Fee Report. Instead, plan sponsors should be receiving a disclosure directly from those providers, if those service providers are paid from plan assets.
27. **How do the plan sponsor's responsibilities for participant fee disclosure change when most of the fees are not paid by the plan?** Plan sponsors must still comply with the participant fee disclosure regulation even if some or all of the fees are not paid by the plan. While this regulation has been characterized as fee disclosure, it covers additional information, including investment performance, benchmarks, restrictions, and expense ratios. All of this information must be provided in the form of a comparative chart so that the participant can compare investment alternatives and make an informed investment decision. In addition to the comparative chart, a website where participants can obtain additional investment information must be provided.

Topic: Vanguard Brokerage/Company stock

28. **How will Vanguard handle Vanguard Brokerage accounts and VBO® investments held by plan participants?** For participant fee disclosure, notices for plans offering Vanguard Brokerage Option (VBO) will include information regarding fees for establishing and maintaining VBO, including the commission schedule. If a participant elects to use VBO, those fees will be reflected on each quarterly statement. The regulation does not require sponsors to provide investment information on investments offered through brokerage.
- For plan sponsor fee disclosure, Vanguard will include in the All-in Fee Report any fees associated with the use of VBO as well as additional information regarding commissions and indirect compensation received through VBO. The regulation does not require disclosure of fees, such as the expense ratios, charged by investments held in a brokerage window.
29. **For participant fee disclosure, what are some reasonable benchmarks for company stock?** The participant fee disclosure regulation requires the notice to include an appropriate, broad-based securities market index as a benchmark for each investment alternative. Plan sponsors will need to determine a reasonable benchmark for company stock. Depending on the company, the S&P 500 Index may be an appropriate benchmark.

Topic: Eligibility/403(b) plans

30. **If a plan offers immediate eligibility, how will a new hire receive the participant fee disclosure before enrollment?** The participant fee disclosure regulation requires that participants receive a notice before they can first direct their investment under the plan. For new hires, Vanguard suggests providing the notice with other new hire materials.
31. **Do multiprovider 403(b) plans need to send out a single participant fee disclosure notice or one per vendor?** Multiprovider 403(b) plans must provide disclosures covering each vendor and must send these notices to participants simultaneously—that is, in a single envelope. The disclosures may, but are not required, to be aggregated into one notice or one comparative chart.