

REMINDER: Ongoing Participant Fee Disclosure Obligations for Retirement Plan Sponsors

In 2011 and 2012, we alerted you to new requirements on plan administrators of participant-directed defined contribution retirement plans (e.g., 401(k) plans, 403(b) plans, profit sharing plans and money purchase plans) that are covered by the Employee Retirement Income Security Act ("ERISA") to disclose certain plan and investment-related information, including fee, expense and investment performance information, to participants and beneficiaries. Please [click here](#) to read those prior Alerts.

For most plans, the first annual fee disclosure notices were initially required by August 30, 2012, and many plans distributed their first annual fee disclosures in August 2012.¹ As a result, we now write to remind you that the second round of annual notices will be due by the first anniversary of the date that the first annual notices were distributed, which for most plans will be in **August 2013**. As detailed in our prior Alerts, the annual notice must be distributed to participants and beneficiaries and must include plan-related information and a comparative chart of investment-related information. Other disclosures to participants and beneficiaries continue to be due on a quarterly basis (these disclosures must include actual administrative and individual expenses charged to individual accounts).

Practitioners and employers have appealed to the U.S. Department of Labor ("DOL") to make the annual fee disclosure requirements less of an administrative burden for plan administrators by enabling annual fee disclosures to be provided at some point later in the calendar year (e.g., during open enrollment periods) along with other plan materials or at some other more feasible dates during a year rather than being subject to the stringent requirement to provide annual notices by an arbitrary yearly anniversary date (which date could change from year-to-year depending on the actual distribution date each year).² However, to date, the DOL has not changed the rules. As such, plan administrators should be preparing to distribute the second round of annual fee disclosure notices by the anniversary date on which the 2012 initial annual notices were distributed.

It is likely that service providers (especially recordkeepers, investment managers and investment providers) to defined contribution plans will provide plan administrators with the necessary information to distribute annual notices to plan participants and beneficiaries (or, in some cases, the service providers may provide the annual disclosures directly to plan participants and beneficiaries), and so plan administrators should contact their service providers to discuss whether annual fee disclosure notices have been prepared. Notably, because of the requirement that disclosures be sent together, if a plan has multiple investment providers, it will fall on the plan administrator to compile and distribute relevant investment-related information in a comparative format to plan participants and beneficiaries.

Please contact one of the attorneys named below if you would like further information about participant fee disclosures.

¹ For non-calendar year plans whose 2012 plan year began after July 1, 2012 but before November 1, 2012, the first annual notices were initially due 60 days following the first day of the 2012 plan year.

² At least one commentator has asked the DOL to consider that the participant fee disclosure rules be interpreted to enable distribution of the annual fee disclosure notice at any time during a calendar year so long as it is within 18 months from the last annual disclosure. Another request has been for the DOL to provide for a one-time "realignment" of a plan's yearly fee disclosure anniversary by extending the deadline for providing the second round of annual notices.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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