

# Fee Disclosure Q&A for Employers

September 2014

The Department of Labor (DOL) has issued two sets of final regulations requiring the disclosure of fees and expenses under plans governed by the Employee Retirement Income Security Act of 1974 (ERISA). Disclosures must be provided 1) by certain service providers to retirement plan fiduciaries (DOL Regulation §2550.408b-2), and 2) by plan fiduciaries to plan participants and to their employees prior to participating in a defined contribution retirement plan where employees direct investments (DOL Regulation §2550.404a-5). Under the latter regulation, disclosure must also be provided to beneficiaries of deceased participants and alternate payees under a Qualified Domestic Relations Order (QDRO), who have the right to direct the investment of assets held in their account under the plan. These regulations cover plans subject to ERISA, such as your plan.

The following questions and answers are designed to help plan sponsors better understand the issues related to the DOL requirements for both regulations.

## **Sponsor Disclosure – ERISA §408(b)(2)**

### **1. Who is responsible for disclosing fee information to plan sponsors (i.e. to plan fiduciaries)?**

The regulations require that covered service providers disclose certain direct and indirect fees they charge for services they provide to the plan as well as a description of the services.

Voya Financial™ \* will provide you with information regarding the services we provide to you. Voya™ will not be providing disclosure on behalf of any other entities (Third Party Administrator, investment advisor, etc.) which may provide services relative to your retirement program. It is the responsibility of each individual service provider to disclose to you the fees they charge for their services.

### **2. What plans are covered by this regulation?**

These regulations cover plans subject to ERISA; however the final regulation provides that certain contracts in ERISA 403(b) plans are excluded. The DOL regulations specify that they do not apply to 403(b) contracts where contributions of any type ceased as of December 31, 2008, provided that the contract was issued before January 1, 2009; all rights and benefits under the contract are legally enforceable against the insurer or custodian by the participant without your involvement; and the participant is fully vested in the contract.

### **3. When did the regulations take effect?**

The initial disclosure to existing ERISA plans was required to be furnished to plan fiduciaries by July 1, 2012. Initial disclosure to new ERISA plans for which Voya is a covered service provider must be provided reasonably in advance of the contract being entered into. Any subsequent changes to the fee information must generally be disclosed within 60 days from the date on which a service provider becomes aware of or initiates the change. If circumstances do not permit notification within this timeframe, the rules provide that the disclosure should be provided as soon as practicable. However, changes to investment related information must be disclosed at least annually.

### **4. What should a plan fiduciary do with the information they receive from each provider?**

The regulations are intended to help you, as a plan fiduciary, meet your obligation to determine if the fees you pay for the services provided to your plan are reasonable. The information should be reviewed by the plan fiduciary as well as any other individual(s) involved in making any decisions regarding the plan (such as members of an investment committee, plan administration committee, etc.) to make a determination that the fees charged for the various services provided to your plan are reasonable based upon the circumstances of your plan.

## 5. What information must be disclosed?

- A description of services to be provided;
- If applicable, a statement that the service provider will provide services as a fiduciary and/or a registered investment advisor;
- A description of all direct and indirect compensation that the service provider reasonably expects to receive in connection with the provision of its services to the plan;
- A description of any compensation the service provider reasonably expects to receive in connection with termination of a contract or arrangement; and
- A description of the manner in which the compensation is to be received (e.g., billed or deducted from the plan or investments).

## How will Voya provide you with this information?

The following reports summarizing the fees and expenses associated with the Voya products under your plan are posted on the Voya plan sponsor website:

- *Investment Expenses and Indirect Compensation Report* - This report includes mutual fund operating expenses and contract charges, as well as compensation that service providers receive from fund companies and others providing services in connection with the plan. Indirect compensation generally refers to compensation that is paid as part of the investment expenses rather than as hard dollar payments.
- *Service Description and Direct Compensation Report* - Direct compensation generally refers to hard dollar fees that are deducted from plan participant accounts or the plan forfeiture account for recordkeeping or other administrative services.

Voya intends to update these reports monthly on the Voya plan sponsor website to reflect any changes to the required disclosures.

**Please Note:** The reports that Voya provides to you do not supersede the terms of your program agreement with Voya. In the event of a conflict between this summary and the contract or other program agreements or disclosure, the terms of the contract and/or other program agreements and disclosure will prevail. In addition, Voya offers a variety of products to meet the needs of our clients, and the terminology used to describe fees in your contract may differ slightly from the terminology used in the fee disclosure reports (for example, Self Directed Brokerage option vs. Self Directed Brokerage Account).

- To help you understand Voya's disclosure reports, a "How To Read" guide for both the 408(b)(2) sponsor disclosure and the 404(a) participant disclosure is available at <http://foremployers.voya.com/retirement-plans/fee-disclosure>.

## Participant Disclosure - (DOL regulation §2550.404a-5)

### 1. Who is responsible for disclosing fee information to plan participants?

Under the DOL regulations, the plan sponsor (as the plan fiduciary) is responsible for providing fee disclosure information. Failure to do so may be found to be a breach of fiduciary duty under ERISA.

### 2. Who must receive the information?

Plan sponsors must provide both plan-related and investment-related information to all of their plan participants and to eligible employees. This also includes beneficiaries of deceased participants and alternate payees under a QDRO, who have the right to direct the investment of assets held in their account under the plan (collectively noted as “eligible employees”).

### 3. What information must be provided?

The information that must be provided includes plan-related information, such as investment option descriptions, instructions for selecting investments, and a description of expenses and fees that could be deducted from individual accounts for general and optional services. It also includes “investment-related” information such as fund performance data, benchmark comparisons, and, for investments that do not have a fixed rate of return, fees and expenses shown both as a percentage of assets and as a dollar amount for each \$1,000 invested.

In 2012, the DOL issued Field Assistance Bulletin (FAB) 2012-02. Q&A 5 of the Bulletin addresses the level of specificity required when disclosing to participants an explanation of any fees and expenses, for general plan administrative services, which may be charged against participants’ and beneficiaries’ accounts, as well as the basis on which such charges will be allocated. Q&A 5 specifies that:

- When fees for a given service are known at the time of the disclosure, the explanation must clearly identify the service (e.g. recordkeeping), the cost of the services (e.g. .12% of the participant’s account balance or \$25 per participant), and the plan’s allocation method (e.g. pro rata).
- When services, fees, or both are not known at the time of the disclosure, the explanation required must reasonably take into account the known facts and circumstances.

Beginning in April 2013, Voya will provide you with a new data capture facility (“Fee Data Entry (for 404a5 Participant Disclosure)”) via the Plan Sponsor and TPA websites, to allow you (or your TPA) to note general plan administrative services fee information not otherwise reported by Voya. Participant fee disclosure reports will be modified to reflect this information beginning with the reports reflecting May 31, 2013 data.

To navigate to this new screen:

- **Sponsor Web** – under Plan Level Information, select the Fee Information drop-down; the new screen will be the 3<sup>rd</sup> option. Note: The user must have Update access to view this screen.

**Note:** This information is for Fee Disclosure reporting purposes only and will not support actual fee processing.

If there is a change to any required disclosure information, notice must be provided to plan participants, eligible employees and beneficiaries at least 30 days, but not more than 90 days, in advance of the effective date of those changes. If circumstances render that timeframe infeasible (such as the need to immediately eliminate an investment fund determined to be no longer a prudent investment alternative), notice of the change must be furnished as soon as reasonably practicable.

4. **Must disclosure be provided on an ongoing basis? If yes, if the plan distributes the initial disclosure in August, must subsequent disclosure be sent each August?**

Yes. Disclosure of this information must be provided at least annually.

While the initial disclosure notice must have been provided by August 30, 2012 (for calendar year plans and most non-calendar year plans), subsequent annual notices can either be provided by August 30 of each subsequent year, or can be provided at a different time, as long as notice is received at least once in each 12-month period after the initial disclosure.

In addition to the disclosure of what may be charged, there must be a quarterly disclosure of actual dollar amounts charged to a participant's account and a description of the services to which the charges relate. Voya discloses the required information in our quarterly participant statements.

Note that when an ERISA plan adds Voya as a covered service provider, Voya's initial disclosure to the plan fiduciary will be provided reasonably in advance of the transition, so that the fiduciary can provide it to eligible participants.

5. **If a plan sponsor pays a fee directly, not from plan assets, are those fees reported?**

No. Only fees deducted from plan assets are reported, not any fee paid directly by the plan sponsor.

6. **Can the information be provided to participants electronically?**

The DOL currently allows ERISA-required notices to be provided electronically if the employee has consented to electronic delivery, or if the employee uses a computer as an integral part of their job duties. In general, if neither option is satisfied, notices must be mailed. For more information on the DOL electronic delivery rules, please see DOL Technical Release 2011-03R (<http://www.dol.gov/ebsa/newsroom/tr11-03r.html>).

7. **Would posting the disclosure to our own intranet site satisfy the delivery requirement for newly hired employees?**

No. Under the current DOL rules, this would not satisfy the delivery requirement. Employees must receive the disclosure before they are first able to direct investments. A best practice would be to provide the disclosure with an enrollment kit.

8. **If our plan has more than one provider, are there any special considerations in delivering the participant disclosure?**

Yes. If your plan has more than one product provider (either current or inactive), you must provide participant fee disclosures about all of the providers within the same communication.

You may combine multiple documents from each of your plan's product providers within one envelope to satisfy the comparative chart requirement of the regulation. Otherwise, according to the DOL, you may compile the data received from each investment provider by investment fund category (such as stock funds, bond funds, etc.), using the DOL's model format for the comparative chart to group investment alternatives by issuer.

In the regulations, the DOL cautions that permitting individual investment providers to separately distribute comparative charts reflecting their particular investment alternatives will not provide participants with the disclosure information in the required comparative format.

9. **To what extent is the plan fiduciary responsible for the accuracy of the information provided to participants and beneficiaries?**

The DOL regulation affords plan administrators protection from liability for the completeness and accuracy of information provided to participants if the plan administrator reasonably and in good faith

relies upon information provided by a service provider.

## **Voya's Role in ongoing participant fee disclosure:**

### **What you can expect from Voya**

Voya will provide you, the plan sponsor, with one report (designed to comply with the DOL regulations) that includes both the plan and investment-related information maintained on our database, as well as any general plan administrative fee information you (or your Third-Party Administrator) choose to input to Voya's new Fee Data Entry (for 404a5 Participant Disclosure) data capture facility, as required by the regulation. The reports will be posted on the Voya plan sponsor website, as well as to our participant website. To help you and your employees understand the disclosure reports you receive from Voya, a

- "How To Read" guide for both the 408(b)(2) sponsor disclosure and the 404a(5) participant disclosure has been posted to <http://foremployers.voya.com/retirement-plans/fee-disclosure>.

In addition, fees actually charged to a participant are shown in the Voya quarterly statements.

Note that Voya provides information regarding the products we provide to your employees. Voya does not provide participant disclosure on behalf of any other entities (other investment providers, investment advisor, etc.) which may provide services relative to your retirement program, with the exception of your Third-Party Administrator, who may choose (or you may direct) to input plan administrative fee information in Voya's new Fee Data Entry (for 404a5 Participant Disclosure) data capture facility. It is the responsibility of each individual service provider to provide you with their information.

### **Helping inform your participants with a notice of change**

To assist you in meeting the requirement to report changes in required information to your eligible employees, Voya can provide you with a "Notice of Change Instruction" explaining the details and two additional "Sample of Change Notice" letters. Voya will provide these to you upon your request. You may revise the letters as needed to reflect the specific change being made to your plan, and provide them to your eligible employees.

### **For plans under which Voya is the exclusive provider**

- ***Distribution of disclosures by Voya*** – Unless you directed us otherwise, in 2012 Voya sent the initial participant disclosure reports to participants (as well as deceased participant's beneficiaries and alternate payees under a QDRO) with accounts under the Voya product(s) by U.S. mail. We anticipate mailing the 2013 annual notice in August 2013. Disclosures are provided to new plan participants in enrollment information for you to distribute. Ongoing, Voya will provide the required annual disclosure to participants with accounts under the Voya product(s) via U.S. mail, as well as posting them to Voya's participant website. Please note that participants who have elected electronic delivery of their Voya statements WILL NOT receive the initial participant disclosure electronically. It will ONLY be distributed by U.S. mail.

**Note:** It is important that you update all missing or incorrect addresses maintained on Voya's database to ensure that all participating employees receive the disclosure in a timely manner. Voya bears no responsibility for disclosures that are not delivered as required due to a missing or incorrect address. Please refer to the plan sponsor website for your current address report, and update the information as appropriate.

- ***Distribution of disclosures by fiduciary*** – While Voya will distribute disclosures in paper form to participating employees (as well as deceased participants' beneficiaries and alternate payees under a QDRO who maintain an account under a Voya product), **you will be responsible for**

**distributing disclosures to individuals who are eligible but not participating in your plan and who, as a result, do not have an account under a Voya product or have not received Voya enrollment information, in accordance with the timeframes established by the DOL.**

Note that the DOL regulations require that you provide the disclosure to all eligible but non-participating employees annually.

#### **For plans with multiple providers**

As noted above, if your plan has more than one product provider (either current or inactive), you must provide participant fee disclosure about all of these providers to both your participating employees and individuals who are eligible but not participating in your plan. Participant disclosures are provided to you on the Voya plan sponsor website.

\*Voya refers to Voya Retirement Insurance and Annuity Company and/or Voya Institutional Plan Services.

More detailed information for qualified plans is available regarding fee disclosure in the following editions of Qualified Plan News (QPN) at [www.voya401kinfocenter.com](http://www.voya401kinfocenter.com). A qualified plan is one that satisfies the requirements of Internal Revenue Code (IRC) section 401(a) in both form and operation. For example a defined contribution plan including a 401(k) plan, a profit sharing plan or a money purchase plan. The plan document must include the provisions required under the IRC and must be operated in **accordance** with those plan provisions.

QPN 2011-2 DOL Final Participant Fee Disclosure Regulations

QPN 2012-1 Final Fee Disclosure Regulation for Service Providers Released (ERISA 408(b)(2))

QPN 2012-3 Electronic Delivery of Disclosures Under the Participant Fee Disclosure Regulation

QPN 2012-4 Department of Labor Releases Participant Fee Disclosure guidance

QPN 2012-6 Failure to Furnish Sponsor Fee Disclosure under ERISA 408(b)(2) has Significant Consequences

QPN 2012-7 Notifying Participants of Changes to the Annual Fee Disclosure Report

#### **IRS Circular 230 Disclosure**

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this document is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing, or recommending to another party any transaction or matter that is contained in this document.

Neither Voya or its affiliated companies or representatives offer legal or tax advice. Please seek the advice of a tax attorney or tax advisor prior to making a tax-related decision.

Any insurance products, annuities and funding agreements that you may have purchased are sold as securities and are issued by Voya Retirement Insurance and Annuity Company ("VRIAC"). Fixed annuities are issued by VRIAC. VRIAC is solely responsible for meeting its obligations. Plan administrative services provided by VRIAC or Voya Institutional Plan Services, LLC ("VIPS"). Neither VRIAC nor VIPS engage in the sale or solicitation of securities. All companies are members of the Voya family of companies. **Securities distributed by Voya Financial Partners, LLC (member SIPC) or other broker-dealers with which it has a selling agreement.**

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