



Retirement Plan Fee Disclosures

Among the many required disclosures of retirement plans, there are two regarding fees. The Department of Labor (DOL) issued regulations for fee disclosures to ensure that there is transparency for plan fiduciaries and participants regarding retirement plan fees. The first disclosure – 408(b)(2) – requires service providers to disclose information about the fees they receive for providing plan-related services. The second disclosure – 404(a)(5) – requires plan fiduciaries to provide plan and investment fee information to participants and beneficiaries, so they can make informed decisions about their retirement investments.

Here's What You Really Need to Know:

- In 2021, the Government Accountability Office (GAO) published a report that found that 40% of participants did not fully understand fee information, and 41% did not even know they paid fees.¹
- The GAO was asked to review plan sponsor and service provider perspectives on the fee disclosure regulations. This included reviewing literature and stakeholder groups' views on how fee disclosure regulations affected 401(k) fees and investments. The GAO found that while fees had decreased following the disclosure regulations, the regulations might not have been directly responsible for that trend.
- Plan fiduciaries are responsible for collecting 408(b)(2) disclosures for all covered service providers (CSP) that are paid from plan assets, and plan fiduciaries are responsible for sending 404(a)(5) disclosures to all participants and beneficiaries.

Let's Dive In

Before considering the impact, let's review what the fee disclosures require, who must provide them, and when.

Service Provider Disclosure – 408(b)(2)

WHY: This disclosure requirement was established to help fiduciaries make informed decisions when selecting and monitoring service providers, thereby ensuring the reasonableness of fees and services provided to retirement plans.

WHO: The 408(b)(2) disclosure must be provided by CSPs to plan fiduciaries. A CSP is a service provider that expects to receive at least \$1,000 in compensation for services to a covered plan. Covered service providers include ERISA fiduciary service providers, investment advisors, recordkeepers, brokers, and providers of specific services (such as accounting, auditing, actuarial, banking, consulting, custodial,

insurance, investment advisory, legal, securities brokerage, third-party administration, or valuation services).

WHEN: Service providers must provide the 408(b)(2) to plan fiduciaries at three specific times to ensure transparency and compliance. An initial disclosure must first be provided before a contract is entered into or when services are first provided. Second, when there are changes to the information that is initially disclosed, CSPs must notify the plan fiduciary as soon as practicable, but no later than 60 days after the CSP is informed of the change. Finally, CSPs must provide any additional information upon request by plan fiduciaries.

WHAT: The disclosure must describe the services to be provided and all direct and indirect compensation to be received by a CSP, its affiliates, or subcontractors. In general, indirect compensation is compensation received from any source other than the plan sponsor, the CSP, an affiliate, or subcontractor.

Participant Disclosure – 404(a)(5)

WHY: The participant disclosure helps participants understand the costs associated with their retirement plans, enabling them to make more informed investment decisions.

WHO: The 404(a)(5) disclosure must be provided to participants and beneficiaries who have the ability to direct the investment of their accounts.

WHEN: The disclosure needs to be provided prior to when an individual can first provide investment direction, and annually thereafter. Generally, this means the disclosure should be provided to all eligible employees and all plan participants.

WHAT: This disclosure is required to include: plan-related information (including administrative and individual expenses that may be charged against an individual's account) and investment-related information for the plan's designated investment alternatives (in other words, the plan line-up). Additional information must be available upon request. Investment-related information must be provided in a format that facilitates comparison (the DOL has provided a model chart that may be used).

What the GAO Found

It has been more than a decade since the DOL issued these two fee disclosure regulations (2010 and 2012). The GAO was asked to review and evaluate the impact, if any, of these disclosures on the fees paid by 401(k) plans. In other words, have these required disclosures worked?

A recent report by the GAO concluded that while fees for 401(k) plans have generally decreased since 2012 – it might not be a direct result of the disclosures.¹ That said, the literature that the GAO reviewed showed the disclosures might have influenced service providers to charge more transparent fees and participants to invest in funds with lower fees – which arguably contributed to the decrease in fees.

As part of its assessment, the GAO interviewed stakeholder groups who said that fee disclosures have led to positive benefits. Specifically, they noted that fee disclosures provided to plan sponsors increased their awareness and ability to manage their plans. Five stakeholder groups indicated that the fee disclosures benefited smaller plans more than larger plans, since the smaller plans may not have the resources to otherwise access fee information. It was also noted that the fee disclosures given to participants can increase participants' knowledge of and involvement in their retirement plans.

Other Factors

Though average fees have declined since the disclosure regulations were finalized, other factors may have played a large role. The GAO noted that “10 out of the 13 stakeholders we spoke with said they did not believe the fee disclosure regulations played a measurable role in decreasing fees.” However, the disclosure rules were said to have led many service providers to adopt simpler direct fee models rather than indirect fees. Stakeholders pointed to litigation, technology, innovation, and competition among service providers as having a greater impact.

While skepticism remains about many participants’ willingness to read and ability to understand the current disclosures, the GAO explained that those who do could still create positive change in the plan for all participants. In essence, this creates economic pressure on providers to lower fees which benefits even those who don’t read the disclosures.

The report notes that the DOL continues to assess the implementation of fee disclosures through the preparation of two statutorily required reports on disclosures, due December 2025.

Action Items for Plan Sponsors

Plan Sponsors should consider establishing a regular review process for all required disclosures. To comply with fee disclosure requirements:

1. Stay informed of the fee disclosures received from service providers. Ensure the plan committee reviews and understands the fee disclosures, including both the fees paid and the services rendered. Seek help from a knowledgeable retirement plan advisor if necessary.
2. Review and possibly update participant fee disclosures or offer education to improve participants’ financial literacy and understanding of their retirement plan benefits and associated fees.
3. Ensure compliance with the requirement to provide fee disclosures to plan participants under 404(a)(5) – and make sure your plan’s disclosures comply.
4. Check in with your retirement plan recordkeeper, in some cases they likely assist with the preparation and delivery of the 404(a)(5) disclosure to plan participants.
5. Document your review and actions taken by the committee in regard to the disclosures.

¹ Government Accountability Office. (2021). 401(k) Retirement Plans: Many Participants Do Not Understand Fee Information, but DOL Could Take Additional Steps to Help Them. GAO-21-357. <https://www.gao.gov/products/gao-21-357>



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