

# BENEFITS EDGE

A RESOURCE FOR PLAN SPONSORS



## ERISA §408(b)(2) Fee Disclosure Rules

As a plan fiduciary, you have the obligation to act prudently when selecting a service provider and pay only a reasonable compensation for services necessary to the plan. Cost is only one aspect of selection process, and the law does not require the plan to select the service provider with the lowest fees. In an effort to help plan fiduciaries better meet their obligations and understand the compensation a service provider receives, new Department of Labor (DOL) regulations will take effect January 1, 2012.

### What is §408(b)(2) and how does it pertain to my company's retirement plan?

ERISA 408(b)(2) is a DOL regulation requiring certain service providers to disclose information in an effort to assist plan fiduciaries in understanding the reasonableness of the fees being charged for plan services. Plans covered under the new rules include defined contribution plans – such as 401(k)s and ERISA-covered 403(b)s – and defined benefit pension plans.

Under 408(b)(2), a covered service provider must provide the responsible plan fiduciary with a disclosure regarding the direct and indirect compensation it expects to receive for the services it provides. The information must be provided “reasonably in advance” of their service agreement.

### What types of compensation must be disclosed?

Compensation is defined as anything of monetary value (e.g. money, gifts, awards, and trips). It excludes non-monetary compensation

valued at \$250 or less or received during the term of the contract or arrangement. The regulations define five categories of compensation that must be described in writing in the disclosure:

- **Direct Compensation** – Compensation a covered service provider, an affiliate, or a subcontractor reasonably expects to receive directly from the covered plan. Direct compensation may be described either in aggregate or by service.
- **Indirect Compensation** – Compensation received from any source other than the plan, the plan sponsor, another covered service provider, an affiliate, or a subcontractor. The service provider must identify the services for which the indirect compensation will be received and the entity paying the indirect compensation.
- **Compensation Paid Among Related Parties** – Includes certain compensation paid between the covered service provider, affiliate, or subcontractor in connection with the services provided. The disclosure must indicate whether compensation is determined on a transactional basis (e.g., commissions, soft dollars, finder's fees, or other similar incentive compensation) or is charged directly against, and reflected in the net value of, the plan's investment (e.g., Rule 12b-1 fees).

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## New Retirement Plan Fiduciary Guide Available



You're sponsoring a valuable retirement plan for your employees, and BB&T is happy to assist you in that effort. Employees value the benefits you provide, and you have the satisfaction of knowing you're helping them prepare for a financially secure retirement.

Sponsoring a retirement plan brings about roles and responsibilities that present some unique challenges, such as collecting and transmitting employee contributions and making sure the plan is in compliance with laws and regulations.

But you're not in this alone. BB&T is eager to help you meet your fiduciary obligations. Our new Retirement Plan Fiduciary Guide refreshes and reinforces your responsibilities as a fiduciary, and the tools and services we provide to help satisfy your obligations.

To receive a copy of our Guide, contact your Retirement and Institutional Services Consultant.

## Jobs Act Allows In-Plan Roth Conversions

Has your retirement savings plan lost assets to Roth IRA conversions? Have employees asked about converting their accounts? Under the Small Business Jobs Act of 2010, 401(k) and 403(b) plans and — starting in 2011 — governmental 457(b) plans that have a designated Roth account feature can allow plan participants to roll over some or all of their traditional plan account assets to a Roth account within the employer's plan.

### Who Can Convert?

Current or former employees who participate in your plan can elect to convert an eligible distribution. Surviving spouses, but not non-spouse beneficiaries, can also elect to convert eligible distributions. If your plan offers rollover Roth accounts for purposes of in-plan Roth conversions, it must also offer designated Roth accounts for employee plan deferrals. Plans do not have to offer a conversion feature.

### Direct and Permanent

In-plan Roth conversions must be direct rollovers. And, once an in-plan conversion is completed, the employee cannot recharacterize the Roth assets as pretax plan assets. Also, unlike a Roth IRA, designated Roth plan accounts are subject to required minimum distributions (RMDs) during the employee's lifetime. RMDs generally must begin once an employee reaches age 70½ (or retires from the plan sponsor, if later).

### What Amounts Can Be Converted?

Generally, eligible distributions of the following amounts can be converted to a Roth account:

- Pretax 401(k), 403(b), and governmental 457(b) deferrals
- Certain employer matching contributions
- Profit sharing contributions
- After-tax contributions
- Any earnings on the deferrals and contributions

The distribution must be an eligible rollover distribution. Hardship distributions, RMDs, lifetime payments, or series payments made over 10 years or longer cannot be converted. Normally, in-service distribution and conversion of pretax employee deferrals can be made once an employee reaches age 59½. After-tax contributions and rollover amounts that are held in a separate account generally can be converted at any time.

A plan can choose to allow in-service distribution and conversion of employer contributions. The contributions must be fully vested and, at a minimum, must have been in the plan for two years, or the employee must have participated in the plan for at least five years.

### What About Taxes?

Employees who roll over pretax amounts to a Roth account with the plan have to include the rollover amount in their income for federal income-tax purposes. But those younger than age 59½ generally won't be subject to the 10% early withdrawal penalty on the amount rolled over. However, converted funds that are distributed within five years of the conversion may be subject to the early withdrawal penalty if the employee is under age 59½.

If your plan offers rollover Roth accounts for purposes of in-plan Roth conversions, it must also offer designated Roth accounts for employee plan deferrals.

To learn more about adding an in-plan Roth conversion to your plan, contact your Retirement and Institutional Services Consultant.

# Participant-Level Disclosure Rules

The final part of the U.S. Department of Labor's (DOL's) three-part project to improve fee transparency in 401(k)-type plans is now complete. It is a regulation requiring plan sponsors to provide participants with a disclosure regarding plan fees and expenses.

The DOL's Employee Benefits Security Administration (EBSA) recently released a final rule that requires the disclosure of specific information regarding plan investments, fees, and expenses to participants and beneficiaries. The final rule is the long-awaited follow-up to a proposed rule published in 2008 and is applicable to 401(k)-type plans that have participant-directed individual accounts. Although theoretically effective when published on October 20, 2010, the rule is applicable for plan years beginning on or after November 1, 2011. Thus, calendar-year plans will need to comply beginning January 1, 2012.

## Meaningful help

The new disclosure requirements will help ensure that participants and beneficiaries are given or have access to the information they need to make informed investment decisions. Investment-related information must be provided in a manner that allows individuals to compare a plan's investment options in a meaningful way.

The new requirements relating to fees and expenses are designed to provide more transparency regarding the true cost of a plan's investment options and plan-related expenses, both of which impact participant account balances. Another goal is to reduce the amount of time a participant must spend collecting the information necessary to properly compare plan investment options.

Once this final rule goes into effect, the following plan-related and investment-related information must be provided to participants and beneficiaries on or before the date they are first eligible to direct their investments, and on an annual basis thereafter.

## Plan-related information

### General plan information:

- A current list of investment options,
- An explanation of how individuals provide investment instructions under the plan, and
- If applicable, descriptions of a brokerage option and/or similar types of outside investments available under the plan.

### Administrative expense information:

- An explanation of fees and expenses that may be charged to or deducted from all individual accounts (e.g., plan audit fee, recordkeeping fee).

### Individual expense information:

- An explanation of fees and expenses that may be charged to or deducted from an individual's account based on his or her actions (e.g., loan origination fee, qualified domestic relations order (QDRO) fee, hardship withdrawal fee, distribution processing fee).

## Investment-related information

### Performance data:

- One-, five-, and 10-year returns for all mutual funds and other plan investment options that do not have a fixed rate of return.
- Annual rate of return and investment term for fixed-rate investments.

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## Important ERISA Compliance Dates for DB/DC/403(b) Plans

### April 30

PBGC covered DB plans must provide notice of funded status to PBGC, participants and beneficiaries. Plans that cover 100 participants or fewer must provide by their 5500 due date.

### July 29

Summary of Material Modifications (SMM) due for amendments made in 2010 (or 210 days after plan year end).

### August 1

Form 5500 due for 12/31 year end plans. Form 5558 due for 12/31 year end plans if 5500 is not ready to be filed.

### August 1

Form 5330 to report excise taxes related to employee benefits plans due to IRS.

### August 2

New IRS Form 8955-SSA for 2009 and 2010. This replaces Schedule SSA that was previously filed with Form 5500 and is no a separate filing with the IRS.

### September 15

Minimum Funding deadline for pension plans.

### September 30

Summary Annual Report (SAR) must be provided to participants in calendar year plans if Form 5500 was filed by August 1.

## Participant Rules (Cont'd)

### Benchmark data:

- One-, five-, and 10-year returns for appropriate benchmark indexes (to match plan investment performance data periods).

*Example: A plan that offers a small-cap stock mutual fund as an investment option provides information about its performance over certain date ranges. It also lists the performance of the Russell 2000 Index (the benchmark index for small-cap stocks) for the same date ranges. This provides an individual with an "apples-to-apples" comparison of the rate of return of the plan's investment option and the performance of its appropriate benchmark.*

### Fee and expense information:

- Non-fixed-rate investments: Total annual operating expenses expressed as a percentage and as a dollar amount per \$1,000 invested. Any shareholder-type fees or restrictions on purchases or withdrawals must also be provided.
- Fixed-rate investments: Any shareholder-type fees or restrictions on purchases or withdrawals.

### Internet resources:

- Addresses of websites that can provide additional detailed information about the investment options.

### Glossary:

- A general glossary of terms to assist participants and beneficiaries in understanding the plan's investment options or the address of a website that can provide access to a glossary.

### Additional quarterly disclosure

Individuals are to receive quarterly statements that report the dollar amount of any fee or expense deducted from their account along with a description of the services related to the fee or expense. This information will most likely be incorporated into quarterly participant statements.

### DOL model chart

The DOL has issued a model chart to help satisfy the new requirement that plan investment options be provided in a comparative format. The chart is broken down into several tables that focus on comparing investment returns, fee and expense information, and annuity options.

## 408(b)(2) Sponsor Rules (Cont'd)

- **Compensation for Termination of Contract or Arrangement** – Compensation the covered service provider, affiliate, or subcontractor reasonably expects to receive in connection with the termination of the contract or arrangement, including a description of how any prepaid amounts will be calculated and refunded.
- **Recordkeeping Services** – All direct and indirect compensation the covered service provider, affiliate, or subcontractor reasonably expects to receive in connection with recordkeeping services. If recordkeeping services will be provided without explicit compensation for such services, or if compensation for recordkeeping services will be offset or rebated based on other compensation received, a reasonable and good faith estimate of the cost must be provided, including the methodology and assumptions used to prepare the estimate and a detailed explanation of services that will be provided. The estimate must take into account either the rates the service provider, affiliate, or subcontractor would charge to third parties or the prevailing market rates charged for similar services for a similar plan.

### What does this mean for me as a plan fiduciary?

When comparing plan service providers, it is important to be sure the appropriate disclosures have been both requested and received. The new disclosure regulations will make it easier for you to compare providers "apples-to-apples", and make a prudent decision as to service provider.

BB&T will continue to make fees as transparent as possible to our clients and will comply fully with the new rules.