

# The Participant Disclosure Regulation

## A Guide for Plan Sponsors

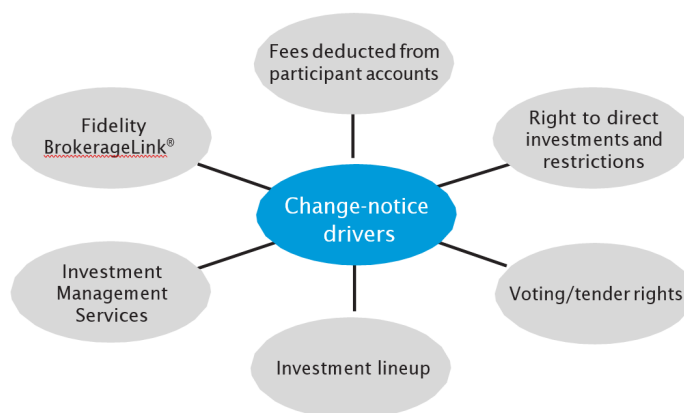
The Department of Labor’s Participant Disclosure Regulation<sup>1</sup> (the “Regulation”) imposes a disclosure regime on plan administrators, which is intended to provide participants with information to assist them in making informed decisions regarding the management of their plan account. You should consider these requirements on a continual basis, as well as when changes to your plan are contemplated, to ensure you are complying with the Regulation. Fidelity can assist you both with navigating these rules and with understanding how you can meet their requirements.

### OVERVIEW

The Regulation requires that plan administrators provide certain plan- and investment-related information to participants initially and on an annual basis thereafter. In addition, any changes to “plan-related information” must also be communicated in advance. While the Regulation requires that investment related information (such as performance and benchmark information) be displayed on a comparative chart to facilitate comparison of the plan’s investment options, it allows plan-related information to be provided in any format, which provides flexibility in disclosing this type of information. Although not required, Fidelity’s Participant Disclosure Service combines the plan- and investment-related information into one notice (the “Participant Disclosure Notice”).

To ensure you are complying with the Regulation, you should also consider whether a change notice is required any time you add, modify, or remove any features or provisions of your plan.

**Changes you make to your plan may require a change notice  
30–90 days in advance**



<sup>1</sup>Department of Labor Regulation §2550.404a-5.

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Generally, plan administrators are required to notify participants of a change to “plan-related” information at least 30 days, but not more than 90 days, before the effective date of the change. When such advance notice is not feasible due to unforeseeable circumstances, then the Regulation contemplates that the change notice be provided as soon as reasonably practical. Generally,

changes to investment-related information that appear on the comparative chart are not subject to the change-notice requirement. \*

## What Is Plan-Related Information under the Participant Disclosure Regulation?

Plan-related information includes the following:

- Circumstances under which participants and beneficiaries may give investment instructions.
- Any limitations or restrictions on the ability to give investment instructions.
- Plan provisions related to voting, tender, or similar rights.
- Identification of the plan’s investment options.
- Identification of any plan-designated investment managers available to manage all or a portion of a participants’ account.
- A description of any arrangements that allow the selection of investments beyond those designated by the plan, such as “self-directed brokerage accounts” or “brokerage windows.”
- Plan administrative fees such as accounting, legal, trustee, recordkeeping, and other administrative expenses that are deducted from participant accounts and that are generally allocated on a plan-wide basis.
- Individual account fees that may be deducted from participant accounts for a service or transaction they select, such as fees for loans, brokerage accounts, or overnight delivery. Keep in mind that individual fees also include shareholder fees deducted from participant accounts, such as short-term redemption fees.

As noted above, you are required to provide an explanation of any fees and expenses for plan administrative services (e.g., legal, accounting, recordkeeping) that may be deducted from accounts of participants, as well as fees deducted for an individual service a participant selects. If such fees change, or you wish to deduct a fee from participant accounts that had not previously been deducted, please consider whether the fee was disclosed or if a change notice is required. Please keep in mind that if you direct Fidelity to deduct fees from participants’ accounts, we will process your request in accordance with our standard practices and will presume that you have met any disclosure requirements.

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## ONGOING CONSIDERATIONS

- For purposes of the Regulation, a “participant” includes anyone with a balance in the plan (including beneficiaries, terminated individuals, or alternate payees who are able to direct investments) and any eligible employee who is not yet participating in the plan. Please keep in mind that this includes employees who are able to roll in money from another plan or receive an employer contribution, even if they are not eligible to contribute to the plan.
- Generally, until your participant disclosure notice is updated for a modification(s), the change notice should be delivered to any newly eligible participants, along with your plan’s current participant disclosure notice.
- When communicating a change to participants, the Regulation does not require that a new participant disclosure notice be distributed; rather, the change notice can simply describe the modification. The DOL has also confirmed that it is not necessary to deliver an updated comparative chart to your participants if information that appears on the comparative chart changes. Rather, information on the comparative chart should be updated on your plan’s Website and reflected in the plan’s participant disclosure notice.
- Moving to a new share class of an investment option may not require a change notice. Neither the Regulation nor Department of Labor guidance addresses this question. However, as a change in share class typically only results in a different expense ratio, arguably a notice would not be required as the Regulation does not require notice when an investment option’s expense ratio changes. It is up to you to determine whether you wish to communicate such scenarios, and there are potential benefits of doing so even if not technically required by the Regulation.
- Changes to investment options, even if not initiated by you, may also require a change notice. For example, if a fund company removes a redemption fee that is deducted from participant accounts, a notice is likely required. When Fidelity finds out about such situations, we typically notify our impacted plan sponsors. Consistent with your plan’s service arrangement, Fidelity may also inform participants of such changes, and that communication may serve to satisfy the Regulation’s requirements. When you become aware of these types of changes, you may want to contact your Fidelity representative for assistance.
- Keep in mind that there may also be fees or expenses participants may incur in connection with certain transactions in their accounts that are not imposed by the plan or the investment option (for example, a loan stamp tax imposed by a state). It is not clear whether these fees are required to be disclosed under the Regulation. Fidelity will follow your directions for the Participant Disclosure Notice and include fees to the extent administratively feasible, but remember that the Regulation permits plan-related disclosures to be made in multiple documents, such as the plan’s summary plan description. Accordingly, you should consider how to handle disclosure of such fees, as well as any changes.

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- If Fidelity is producing your plan's Participant Disclosure Notice, it will be posted online in the Plan Information and Documents section of your plan's Web site and available for you and your participants to view at all times. This Notice is generally updated on a monthly basis (except for performance, which is reported as of December 31, as required by the Regulation for comparative purposes). You are encouraged to review your plan's Participant Disclosure Notice following the effective date of any change requested to ensure it has been captured appropriately.
  - Remember to provide all indicative data to Fidelity for each participant (including those who are eligible but are not participating in the plan)—and to keep this information up to date. Examples of indicative data include date of hire, eligibility date, postal and email address, current status codes, and other fields of information required to be input on Fidelity Plan Sponsor WebStation® for participants and eligible employees.
  - Change notices can be delivered in paper or electronically in accordance with the Department of Labor's "safe harbor"

electronic delivery rules set forth under §2520.104b-1(b). In addition, change notices may be posted online as long as a Notice of Internet Availability (NOIA) is furnished to the electronic address provided for each notice prior to the online posting. If delivering this information electronically or posting online, participants should be advised of their right to receive a print copy. Note that employer-provided email addresses uploaded to Fidelity Plan Sponsor WebStation® will default to safe harbor unless the file indicates that the address is specifically NOT safe harbor.

#### Fidelity Can Help

While complying with this Regulation is the plan administrator's responsibility, Fidelity has spent considerable time reviewing the Regulation and can provide unique insight into these rules. Upon your request, Fidelity can help you communicate plan-related changes to your participants, consistent with your plan's current service arrangement.

Additional fees may apply. Please call your Fidelity representative if you have any questions or to request assistance communicating plan-related changes.

\*Changes to plan-related information such as shareholder fees that are deducted from participant accounts as well as plan-imposed trading restrictions which are included on the comparative chart in Fidelity's Participant Disclosure Notice may be subject to the change notice requirement.

Fidelity does not provide legal or tax advice, and the information provided is general in nature and should not be considered legal or tax advice. Consult an attorney, tax professional, or other advisor regarding your specific legal or tax situation.

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