**Fiduciary Duty #32**

In a previous email we touched on the concept of “fee disclosure” and the requirements surrounding the need, as a Plan Sponsor, to receive this information from your Covered Service Providers (CSP’s).

However, that only represented the disclosure component that is known as 408(b)(2).

The second aspect of fee disclosure involves information that is to be distributed to your participating employees, which is known as 404(a)(5).   These regulations require that sponsors of participant directed ERISA plans provide specific information to all plan participants.

What is the regulation?

Sponsors of participant directed ERISA plans must provide active and eligible participants with disclosure of plan level information (including fees and expenses that may be assessed against their accounts) and investment level information (including fees and expenses and performance data) at multiple times throughout the year (initially, annually, quarterly and upon change).

Plan Fiduciaries must:

* Give participants an overview of plan investments
* Provide an explanation of general plan fees and expenses that may be assessed against participant accounts
* Allow participants to easily compare the investments offered within their retirement plan by providing performance and benchmark data in a comparative chart format

Why is the regulation necessary?

To ensure participants and beneficiaries receive “sufficient information” to make informed investment decisions.

Who is responsible for disclosing information to whom?

Plan sponsors must issue disclosures to participants, including those eligible to participate but not yet enrolled, and beneficiaries who may direct account investments.

Plan sponsors may reasonably rely on information offered by service providers.

How must the information be disclosed?

Many plan recordkeepers provide a 404(a)(5) report that employs the Dept. of Labor’s “model comparative chart” with slight modifications.  For example, some reports can be made up of as few as 4 simple parts:

* Performance information
* Fee and expense data
* General plan information
* Information about annuity options and guaranteed income for life (if applicable).

Many plan recordkeepers provide participants statements that satisfy the quarterly disclosure requirements and are delivered to active participants either electronically or in hard copy.  Additionally, a recordkeeper’s website may allow eligible and non-participating employees access to the required disclosures as well.

Bottom line:  educate yourself so you understand what the rules require, and what must be included in participant disclosures.  Secondly, educate your participants about fees and expenses so that they have a general understanding of retirement plan fees and are not surprised when they receive their disclosure documents.

If we can assist with any questions you may have about this information, please be sure to let us know.

Mike & Matt