

DOL Clarifies Electronic Fee Disclosure Guidance

The U.S. Department of Labor's revised and restated interim policy release answers questions regarding the use of electronic media to satisfy participant-level fee disclosure requirements.

December 12, 2011

In September 2011, the U.S. Department of Labor (DOL) provided interim guidance, in the form of a temporary enforcement policy, detailing how the newly required disclosures for participant-directed retirement plans could be delivered in electronic form.¹ This guidance, Technical Release 2011-03, raised a number of questions. DOL has now provided some clarification by revising and restating its prior release as Technical Release 2011-03R.² The revised release addresses two specific points relating to the use of continuous-access websites for disclosure purposes:

- **Availability for investment-related information.** The original release suggested a distinction in the ability to use website access between the two disclosure categories under the new rules: “plan-related information” and “investment-related information.” It specifically indicated that “plan-related information” could be provided through a secure, continuous-access website, in accordance with DOL’s prior guidance on using this approach to furnish participants with pension benefit statements, but it implied that the approach would not be available for “investment-related information.” The revised technical release clarifies that the continuous-access website approach can in fact be used for “investment-related information” where such information is furnished as part of, or along with, pension benefit statement information.
- **Availability under interim disclosure approach.** The original release described an interim approach that could be used as the basis for providing electronic disclosure to plan participants pending further guidance. However, it did not specify that continuous-access websites could be used under this approach. The revised technical release clarifies that electronic disclosures may be furnished using continuous-access websites under the interim approach.

These clarifications address only some of the concerns raised in response to the prior guidance. Further clarification may be necessary to address other details of the interim approach, such as what constitutes

1. See the Morgan Lewis LawFlash, “DOL Releases Interim Guidance on Electronic Delivery of Participant-Directed Retirement Plan Disclosure” (Sept. 15, 2011), available at http://www.morganlewis.com/pubs/EB_LF_Participant-DirectedPlanDisclosureGuidance_15sept11.pdf.

2. To view Technical Release 2011-03R, visit <http://www.dol.gov/ebsa/newsroom/tr11-03r.html>.

sufficient evidence of “electronic interaction” between a participant and the plan to avoid the need to provide the participant with a paper notice.

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