

OAK CREEK PARTNERS LLC



# **PARTICIPANT FEE DISCLOSURE**

## **Overview of Rules and Effective Dates**

**March 2012**

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ERISA requires plan fiduciaries, when selecting and monitoring service providers and plan investments to act prudently and solely in the interest of the plan's participants and beneficiaries. Plan fiduciaries must also ensure that arrangements with their service providers are "reasonable" and that only "reasonable" compensation is paid for services.

Fundamental to the ability of fiduciaries to discharge these obligations is obtaining information sufficient to enable them to make informed decisions about an employer benefit plan's services, the costs of such services, and the service providers.

~ US Department of Labor  
February 2012

- **Service provider fee disclosure (408(b)(2)) designed to help Plan Administrator:**
  - Understand services plan is receiving
  - Understand fees plan is paying
  - Make comparisons among vendors
  - Ensure that plan fees are reasonable
  - Obtain information needed for:
    - ✦ Schedule C
    - ✦ Participant disclosures
  
- **Participant fee disclosure (404(a)(5)) designed to fulfill Plan Administrator's duty in participant directed plan to make sure investments are prudent, by providing participants with materials so they can make informed choices**
  - Annual notice
  - Quarterly notices



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- Disclosure required for each participant and/or beneficiary that has the right to direct the investment of assets held in, or contributed to, his or her individual account
- Includes those who are eligible but not participating
- Includes terminated with account balance
- Includes divorced spouse (if QDRO in plan) or beneficiary of deceased participant (if account in plan)

# Fee Initiatives

<b>Regulation</b>	<b>Disclosure From</b>	<b>Disclosure To</b>	<b>Effective Date</b>	<b>Summary</b>
Form 5500 Schedule C	Plan Sponsors of plans with 100 or more participants	DOL and IRS	Plan years beginning in and after 2009	Detailed reporting of fees paid – directly or indirectly – to plan service providers from plan assets or participant accounts for the prior year.
Service Provider Fee Disclosure 408(b)(2)	Covered Service Providers (\$1000 or more during the life of the contract)	Plan Sponsors	July 1, 2012	Disclosures describing fees and expenses incurred by plan fiduciaries from Covered Service Providers.
Participant Fee Disclosure 404(a)(5)	Plan Sponsor	Plan participants and beneficiaries	August 30, 2012 (for calendar year plans)	Fee disclosure to plan participants including plan-related and investment-related fees and expenses.

# Importance of Compliance

- Plan fiduciaries must meet ERISA fiduciary responsibilities or be personally liable. Responsible fiduciaries potentially include:
  - Plan Sponsor
  - Investment Committee Members
  - Administration Committee Members
  - Board of Directors, individually
  - Officers
- Potential excise taxes and action by the DOL

# Disclosure/Information Flow

## PLAN ADMINISTRATOR

- Obtain information from service providers
- Select service providers
- Inform participants



**INITIAL DISCLOSURE JULY 1, 2012**

## SERVICE PROVIDERS

(Fund Company, Financial Advisor, Third Party Administrator, Auditor, etc.)

- Description of services provided
- Compensation for services (dollars, percentage or formula)
- Fees for investment options
- Declaration of whether services are provided as a plan fiduciary

**INITIAL DISCLOSURE AUGUST 30, 2012 AND**

**ANNUALLY AFTER THAT**

**(SEPTEMBER 30, 2012 STATEMENT)\***

## PARTICIPANTS

(Eligible/Participating, termed with account balance in plan, beneficiaries with accounts)

- Plan information
- Investment information (in the form of a chart)
- Charges deducted from participant accounts

\*Initial disclosure 8/30/2012 for plans with plan year start dates of 11/1/2011 to 7/1/2012 or 60 days after the first day of the plan year for plans with plan-year start dates on or after 8/1/2012

# What Plan Expenses Need to be Disclosed to Participants? Required Notices and Content



## Initial and Annual

- General plan information
- List of all designated investment options
- Description of brokerage window
- Designated investment managers
- Investment related information (in DOL-prescribed chart format)
- Procedure for designating investment elections
- Restrictions on investment changes
- Voting or tender rights
- Explanation of fees deducted directly from participant accounts (not in annual operating expenses of investment vehicle), such as:
  - Legal , audit, accounting
  - Record keeping and admin
- Individual expenses that may be deducted from participant accounts, such as:
  - Loan initiation fees
  - Fees for QDROs
  - Certain investment expenses

## Quarterly

- Fees and expenses that were actually deducted from participant accounts, such as:
  - Plan loans, QDROs
  - Distribution fees
  - Redemption fees, sales/loads
  - Investment advice
  - Brokerage windows
  - Similar services charged on an individual basis
- A description of services provided for these fees
- If revenue sharing from the investment funds is used to pay these types of fees, this fact must be disclosed



## What Investment Expenses Need to be Disclosed to Participants?

- A comparative chart including:
  - Prominent display of the date;
  - A statement that additional investment information (including current performance information) is available at the listed web addresses (it appears there is no obligation to update other than annually);
  - A statement of how to request paper copies free of charge
- Identification information
  - Name of each designated investment alternative
  - Website for additional information
  - Glossary of terms – can be provided through a web portal
  - Type or category of investment
- Performance data
- Fee and expense information



## Other Tidbits

- Midyear entrants – simply provide plan’s last annual investment information chart and any updates to plan-related information that has been sent
- Prospectus no longer required automatically, only on request

# Self-directed Brokerage Accounts

- Covered service provider must describe or disclose (annually for potential/quarterly for actual):
  - Services that will be available to participants who elect to take advantage of the brokerage window
  - Any fees or charges that may be paid “directly” from the plan (or from a participant’s or beneficiary’s account)
  - Any compensation that may be received “indirectly” or from related parties in connection with the brokerage window
  - The party from whom indirectly compensation will be received
- Indirect compensation may be expressed in general terms (service providers do not have to furnish the investment-specific information concerning each possible investment available through the brokerage window)

*Start making inquiries of brokerage account providers right away*

# Service Provider Checklist

- ❑ Identify the service providers required to disclose and request and verify they will comply fully and timely
- ❑ Create a checklist or timeframe for confirming that required disclosures have been provided; include a process for follow-up and/or notification to the DOL if information is not received or is not adequate
- ❑ Analyze the disclosures and consider whether the fees charged are competitive and/or reasonable; document decision
- ❑ Establish ongoing processes to monitor and analyze disclosures for purposes of determining whether the compensation paid to service providers is reasonable
- ❑ Establish a policy for responses to participant inquiries about information they receive; educate participants
- ❑ Review information provided by fund companies and recordkeepers for completeness and accuracy
- ❑ Prepare supplemental participant materials to fill disclosure gaps, if any
- ❑ Monitor developments as the DOL continues to provide additional guidance