

# Participant and sponsor fee disclosure regulations



## What they mean for you

In 2012, the Department of Labor (DOL) finalized its fee disclosure regulations impacting

- the disclosure of fees from plan sponsor to participant; and
- the disclosure of fees from service provider to plan sponsor.

For calendar year plan years, effective August 30, 2012, participant-directed individual account defined contribution plans must provide certain investment and fee information to participants prior to their first right to diversify their investments, and annually thereafter. Effective 45 days after the end of the quarter in which the initial disclosures are required to be furnished to participants (i.e. November 14, 2012), certain fee information must be provided quarterly.

Effective July 1, 2012, covered service providers must disclose to plan sponsors the terms of the arrangements in order to give fiduciaries adequate information to determine whether or not the arrangement is “reasonable.” This information must be provided in writing, and it must describe both the services the provider performs, as well as the compensation received for such services.

## Sponsor Fee Disclosure Under ERISA §408(b)(2)

### **How is First Mercantile, as a covered service provider, planning on meeting its obligation to disclose its services and compensation to sponsors?**

For existing clients, prior to July 1, 2012, each sponsor must receive, in writing, a description of all services performed and compensation received for such services. In addition, covered service providers must disclose to sponsors whether or not they are acting in a fiduciary capacity to the plan.

Although First Mercantile discloses its services and compensation as part of the pre-sale process when a plan is first considering MassMutual, we will provide all existing clients two new disclosures documents that simplify and consolidate the necessary information so that sponsors can easily determine whether or not their arrangements with First Mercantile are reasonable and consistent with the regulations.

The first disclosure document, called the Expense & Compensation disclosure, is a condensed document that lists the designated investment alternatives and the compensation received by First Mercantile and other service providers (e.g. your advisor).

The second document, called the Fee Disclosure Brochure, outlines all of the services that First Mercantile provides to your plan, as well as whether or not First Mercantile acts in any fiduciary capacity.

First Mercantile believes that those two documents will satisfy our obligation to existing plan sponsors.

### **How will First Mercantile satisfy its disclosure obligation to new customers?**

Prior to becoming a new customer of First Mercantile, sponsors will receive as part of their pre-sale materials all of the required disclosure information in a format similar to that which will be provided to existing customers.

### **What if any information in the required disclosure documents changes?**

Although the final regulations allow service providers to disclose investment related changes to the sponsors at least annually, within 60 days of the change of information in the required disclosure documents, First Mercantile will send sponsors the change information allowing sponsors to determine if such change is “reasonable” and appropriate to satisfy the sponsor’s fiduciary obligation. An example of a change of this sort would be a fee change impacting the plan driven by either First Mercantile or a sponsor.

### **Are there any specific rules that apply to First Mercantile as a recordkeeper?**

Yes, as a recordkeeper, First Mercantile is required to separately break out the compensation we receive for recordkeeping services. In addition, we will also separately break out the revenue we receive for sponsor services and participant services. Thus, on the disclosure, the sponsor can easily understand the revenue that First Mercantile receives for sponsor, participant and recordkeeping services.

### **For plans using multiple service providers, how many different disclosures will they receive?**

That depends upon whether each service provider is considered a “covered” service provider as well as how each service provider is paid for its services. Any provider that performs fiduciary services (e.g. RIAs) will be required to separately disclose their services and compensation to sponsors if paid with plan assets. In addition, other service providers that receive indirect compensation of more than \$1,000 from the plan for certain services (e.g. third party administration, investment advisory, actuarial, auditing, legal, etc.) must also provide their disclosure to sponsors.

If the provider performs services to the plan but the sponsor (and not the plan) pays for such services, then the provider would not be considered a “covered” service provider that would need to meet these disclosure requirements.

### **When will First Mercantile be providing these disclosure documents to sponsors?**

During the second quarter of 2012 First Mercantile service representatives will be emailing these disclosure documents to sponsors and their advisors.

## **Participant Fee Disclosure under ERISA §404(a)(5)**

### **Who is responsible for satisfying the participant fee disclosure requirements?**

Plan sponsors are required to provide certain investment and fee information to participants prior to their right to diversify their investments and annually thereafter. In addition, certain fee information must be disclosed on a quarterly basis.

### **How is First Mercantile helping us meet these new requirements?**

First Mercantile will be including the annual participant fee disclosure information in conjunction with one of the quarterly participant statements based upon the plan’s specific investment and fee structure. If a participant has requested e-delivery of his or her statement, the disclosure information will be sent electronically. If the participant also receives a paper version of their statement, the annual disclosure will be provided in paper as well. The first annual participant fee disclosure document will be sent in conjunction with the 2012 second quarter participant statement.

Beginning with the third quarter statement of 2012, First Mercantile will be updating the statement to add a fee section to separately disclose any plan- and individual-related fees that were deducted from participant accounts during the preceding quarter.

This annual disclosure document helps satisfy many of the ERISA §404(c) investment disclosure requirements to help sponsors meet these requirements as well.

#### **What will sponsors need to do to help meet this requirement?**

Since only participants who have a balance will receive statements, sponsors will be required to provide this information to eligible non-participating employees. Generally, First Mercantile does not have the necessary employee data to deliver this information to eligible non-participating employees.

Sponsors can get access to their annual disclosure document via the plan sponsor website at [www.plnsponsor.com](http://www.plnsponsor.com) as it will be posted and updated based upon the most recent information. Sponsors will have access to the most recent version at their fingertips so that they can provide that information to their participants.

#### **Other investment information must be made available via the web. How is First Mercantile helping sponsors meet this requirement for participants who do not have access to the participant website?**

We will be putting a glossary of terms as it relates to investment information, out on [www.firstmerc.com](http://www.firstmerc.com) (First Mercantile's website) so that all participants have access to this required information if they so desire.

#### **If there is a change to the information in the annual disclosure document, when does that information need to be provided to participants?**

The information of the change must be provided to participants 30 days prior to the change's effective date. This information would include investment changes and fee changes. Sponsors would be required to provide this information to their participants if such change were not part of the annual disclosure included with the statement.

#### **What type of fee information will be included on the quarterly statement?**

Any plan and individual related fees deducted from participant accounts in the preceding quarter will show as a dollar amount on the statement with a description of the services for such fees. This disclosure would only include fees that are above and beyond the net operating investment expenses of the investments.

If applicable, First Mercantile will also add a disclaimer on the quarterly statement that reads, "In addition to the fees and expenses disclosed on the quarterly statement, some of the plan's administrative expenses for the preceding quarter were paid from the total operating expenses of one or more of the plan's designated investment alternatives (e.g. through revenue sharing arrangements, Rule 12b-1 fees, sub transfer agent fees)."

For example, if a plan has a 1% asset charge, each participant will see on their quarterly statement their dollar portion of such expense and the service to which it relates. If the plan does not have any plan or individual fees deducted, then there would be no fees shown on the quarterly statement. The annual operating expenses of the investments that are used to pay for administrative expenses are shown on the annual disclosure as a percentage and as a dollar amount per \$1,000 investment for each investment option.

#### **What will the annual and quarterly disclosures look like?**

Attached please find samples of the quarterly statement and annual disclosure document.

This alert is for informational purposes only and should not be construed as legal and/or tax advice. Please consult your own advisor regarding the specific application of the information set forth herein to your own plan.

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