

Plan Obligations Relating To Service Provider Fee Disclosure

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In February 2012, the Department of Labor (DOL) released its final regulations on disclosures by covered service providers to assist fiduciaries of most retirement plans in determining that their arrangements with the service providers qualify as reasonable arrangements as required by the Employee Retirement Income Security Act of 1974 (ERISA).

What should a plan fiduciary do to

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confirm that disclosure received from service providers satisfies the new regulations?

- Identify all covered service providers who are required to provide disclosure.
- Review the content of the disclosure.
- Confirm timely receipt of disclosures from all covered service providers.
- Request any disclosure items that are missing and notify the DOL if disclosure is not provided.
- Request assistance in understanding any information provided.
- As always, document the process.

Who are the covered service providers required to provide disclosure?

- Covered service providers are those

engaged by the plan (through a contract or other arrangement) to provide services to the plan of \$1,000 or more.

- Includes:
 - ERISA fiduciaries or registered investment advisers.
 - Providers of recordkeeping services or brokerage services to plans with self-directed accounts.
 - Those providing certain other services to the plan indirectly where the covered service provider reasonably expects to receive indirect compensation or certain payments from related parties.

What must the content of the disclosures include?

- All compensation (direct and indirect) that will be or is expected to be received

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in connection with the services by the service provider, an affiliate, or a sub-contractor (collectively, the service provider group), including in connection with termination of services.

- A description of how compensation is paid (e.g., identify whether the compensation is direct or indirect and whether it is set based on a transaction basis, charged against participant accounts, etc.).
- A description of the services provided.
- A special description of compensation for those providing recordkeeping services, including (as reasonably expected by the service provider):
 - All direct and indirect compensation that the service provider group is to receive in connection with the recordkeeping services.
 - If some or all recordkeeping services are to be provided without compensation (or when compensation is offset or rebated based on other compensation received by the service provider group), a reasonable and good faith estimate of the cost to the plan of the recordkeeping services, including:
 - an explanation of the methodology and assumptions used to prepare the estimate.
 - a detailed explanation of the recordkeeping services.
 - in both cases, taking into account the rates that the service provider group would charge to or be paid by a third party or the prevailing market rates charged for similar recordkeeping services for a similar plan.
- A special investment disclosure for those providing fiduciary services and for those providing recordkeeping and brokerage services,¹ including the following with respect to each investment contract, product or entity that holds plan assets and in which the plan has a direct equity interest, and for which fiduciary services will be provided pursuant to the contract:
 - A description of any compensation that will be charged directly against an investment (i.e., commissions, redemption fees) that is not included in the annual operating expense of the investment contract, product or entity.

- A description of the annual operating expenses if the return is not fixed and any ongoing expenses in addition to annual operating expenses or, for an the investment contract, product or entity that is a designated investment alternative,² the total annual operating expenses expressed as a percentage and calculated in accordance with ERISA regulations.
- For the investment contract, product or entity that is a designated investment alternative, any other information or data about the designated investment alternative that is within the control of or reasonably available to, the service provider and that is necessary for the plan administrator to comply with ERISA disclosure requirements (i.e., identifying information, performance data, benchmarks, fee and expense information, web site, annuity options, etc.).
- A statement of the service provider's status as a fiduciary (if applicable).
- A statement of the service provider's status as an investment adviser (if applicable).

When is receipt of disclosures from all covered service providers required?

- The new deadline for providing the required disclosures is **July 1, 2012**.
- After July 1, 2012, disclosures from covered service providers are generally required in advance of any new, extended or renewed contract and within 60 days after any change to the information required to be disclosed.

What should the plan fiduciary do if all of the disclosure information is not provided in a timely manner?

- Request in writing disclosure items that are missing.
- If the covered service provider fails to provide information within 90 days,
 - notify the Department of Labor of the service provider's failure;
 - consider whether to terminate the engagement (if missing disclosure relates to past services); and/or
 - terminate the engagement as expe-

ditiously as possible (if missing disclosure relates to future services).

What if the information provided is difficult to understand?

- Request assistance from the service provider (i.e., the service provider should be able to explain the disclosures in an understandable way).

Why does the plan fiduciary need all of the information disclosed by the service providers?

- Plan fiduciaries must assess whether compensation paid for services by each covered service provider is reasonable. For example, plan fiduciaries should:
 - Review the process used to select the service provider, identifying the criteria used and the analysis performed at that time;
 - Confirm the disclosed fees are consistent with expectations;
 - Consider comparing fees and services to available benchmarks; and
 - Understand all the potential costs (e.g., revenue sharing components).
- Plan fiduciaries will be required to provide disclosures to plan participants by **August 30, 2012**.
- Plan fiduciaries must disclose information to plan participants so that they can make informed decisions about the management of their accounts and the investment of their retirement savings.
- Service provider disclosures will provide plan fiduciaries with the information necessary to provide fee disclosure notices to plan participants.

¹ Under certain circumstances, for those providing recordkeeping and brokerage services, providing current disclosure materials of the issuer of the designated investment alternative, or information replicated from such material, is sufficient to meet the disclosure requirements described below.

² A "designated investment alternative" is generally any investment option designated by the plan (such as a fixed income fund or a large cap stock fund) into which participants or beneficiaries may direct the investment of their accounts, but does not include brokerage windows or self-directed brokerage accounts.