

Plan Fiduciaries and Final Guidance on Disclosure of Fee Information

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Fee disclosure action time has arrived. On February 3, 2012, the Department of Labor (DOL) issued final regulations under ERISA Section 408(b)(2) setting new disclosure dates and finalizing its previously published disclosure rules.

These disclosure regulations were originally published by the DOL in two pieces during 2010, with the first piece focusing on obligations of covered service providers (e.g., investment advisors and mutual fund providers) to disclose service details and fee information to the responsible plan fiduciary (e.g., employers).

401(k) and many 403(b) plans would, in turn, provide that information to plan participants.

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For employers, the final regulations do not contain any substantive changes (other than a delayed effective date for disclosing information to plan participants). For service providers, the new rules contain some changes relating to covered plans (e.g., excluding certain frozen 403(b) annuity contracts) and the presentation of disclosures.

This bulletin focuses on how the final rules affect employers and suggests a proposed plan of action for obtaining the relevant information from service providers and, in turn, providing that information to plan participants.

New Effective Dates

The important dates are July 1, 2012

, August 30, 2012

and November 14, 2012

Service providers must give employers service descriptions and fee information by July 1, 2012

. By that date, service providers must transmit that information both for defined benefit and defined contribution plans. (Any obligation to provide similar information regarding welfare plans has been deferred.)

Then, employers who sponsor participant-directed 401(k), 403(b) and other defined contribution plans must provide information relating to investment, fee and expense information to participants by August 30, 2012

. (Certain additional quarterly individual expense information needs to be provided by November 14, 2012

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Given these dates, employers need to develop a timeline for reviewing the information they receive and distributing investment, fee and expense information to plan participants in participant-directed defined contribution plans. The following is a general summary of key considerations.

Fiduciaries' Action Plan

Pre-July 1, 2012 Steps

? Prepare a list of current covered service providers for all defined benefit and defined contribution plans. The service providers on this list would include those who perform services as a fiduciary, registered investment advisor, recordkeeper or broker, as well as those who perform other services to the plan for indirect compensation.

? To the extent service providers on the list have not already been in contact, the employer should contact those covered service providers to ensure their awareness of and intent to comply with these new disclosure requirements.

? For 401(k) and other participant-directed defined contribution plans, the DOL has issued a model form ("Model Comparative Chart") for participant disclosures. In most cases, one of the plan service providers (often the recordkeeper) has already accepted responsibility for completing the DOL Model Comparative Chart. If not, the responsibility of assembling the data from the various providers rests with the employer.

Post-July 1, 2012 Steps

? Review all service provider information for completeness and accuracy.

? For all plans, follow-up on any missing or inaccurate information or on any fees that appear to be excessive.

? For all plans, create a record that the information has been reviewed and any appropriate follow-up actions completed.

? For 401(k) plans and other participant-directed defined contribution plans, carefully review the Model Comparative Chart for accuracy and completeness.

? Determine whether any cover letter or additional explanatory materials should accompany the Model Comparative Chart.

Pre-August 30, 2012 Steps

? Distribute Model Comparative Chart and any accompanying materials.

? Consider use of electronic disclosure for the Model Comparative Chart.

Post-August 30, 2012 Steps

? Anticipate and coordinate responses to participant questions and reactions to the disclosures. For example, some commentators have stated that many participants are unaware of the fees applicable to their plans.

? By November 14 provide disclosures of individual participant expenses that are charged to participant accounts.

Conclusion

Absent any unexpected changes, employers should prepare to fully implement an action plan for these responsibilities. The above represents a proposed plan of action, but it needs to be adjusted for each particular situation.

¹ See, e.g., *Employer's Guide to the New Disclosure Requirements for Defined Contribution Plans*, 39 *ETPL* 12 (2012).

² See, e.g., *Employer's Guide to the New Disclosure Requirements for Defined Contribution Plans*, 39 *ETPL* 12 (2012).

³ See, e.g., *Employer's Guide to the New Disclosure Requirements for Defined Contribution Plans*, 39 *ETPL* 12 (2012).

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