

DOL Delays Effective Date of Fee Disclosure Rules

Within the last year the U.S. Department of Labor (“DOL”) has issued two sets of regulations designed to increase the amount and scope of disclosure plan fiduciaries and plan participants receive about fees paid in connection with the administration of retirement plans. These two important new rules are 1) the service provider fee disclosure regulations and 2) the participant fee disclosure regulations. The DOL recently announced a short delay in the effective dates of both of these regulations. While this extension of time is helpful, plan sponsors subject to these rules should not delay in implementing procedures so that they are able to comply with these regulations when they become effective. Note that these rules only apply to retirement plans that are subject to the provisions of ERISA.

Service Provider Fee Disclosure

The service provider fee disclosure rules provide that an arrangement between a covered plan service provider and a covered plan is not “reasonable” unless the service provider discloses information about the services it is providing and the compensation it is receiving. An arrangement that is not “reasonable” under the regulations is impermissible and can result in significant penalties.

A service provider is covered by this rule if it reasonably expects to receive \$1000 or more in direct or indirect compensation for providing certain services. These services include direct service as a fiduciary, investment advisor or registered investment advisor, for providing recordkeeping or brokerage services, and for providing other services for which indirect compensation is received. The service providers must disclose to the plan the services to be provided, a description of all direct and indirect compensation, the compensation paid among related parties, any compensation that would be received in connection with the termination of the arrangement, and, in the case of a bundled recordkeeping arrangement, an estimate of the cost of the recordkeeping services.

Originally, with respect to both new and existing arrangements between covered plans and service providers, initial disclosures to plans were required to be made by July 16, 2011. Under the new DOL guidance, initial disclosures are now required for covered existing arrangements by April 1, 2012. Disclosures regarding all new or renewed arrangements after that date must be made reasonably in advance of the date that the arrangement is entered into, extended or renewed.

Participant Fee Disclosure

The participant fee disclosure rules require that plan administrators disclose certain information to participants of individual account plans such as 403(b) and 401(k) plans. The information required to be disclosed includes plan related information and investment related information.

Plan related information must be provided on or before the date a participant or beneficiary can first direct investments under the plan, and thereafter at least annually. In addition, a report of actual expenses charged to a participant must be provided at least quarterly. Plan information includes:

- General information about the plan rules regarding the giving of investment instructions, limitations on such instructions and transfers between investments, and a description of the investment alternatives under the plan and any brokerage windows available.
- Information about administrative expenses which may be charged against a participant's account and are not part of the expense charge of an investment option.
- Information about individual expenses or fees that can be charged against the participant's individual account for various services such as for processing plan loans, QDROs, investment advice, or fees for brokerage windows.

Investment related information includes a range of detailed information about the investment alternatives, including its name and category, performance data, benchmarks, and fee and expense information. Other information must be provided upon request. The regulations require that this information be provided to participants in a chart or similar format designed to facilitate a comparison of the information for each investment alternative. Investment information must be provided by the plan administrator on or before the date on which a participant or beneficiary can first direct investments under the plan, and thereafter at least annually.

Under the new DOL guidance, the effective date of the participant fee disclosure rules relates to the new effective date of the service provider fee disclosure rules. For calendar year plans, initial disclosures to participants now must be furnished 60 days after the effective date of the service provider fee disclosure rules, or May 31, 2012. (A different date may apply to non-calendar year plans.) The quarterly disclosure requirements have also delayed until no later than 45 days after the end of the quarter in which the initial disclosures are required.

Both the service provider fee disclosure rules and the participant fee disclosure rules impose new responsibilities on plan administrators. While some of the compliance burden will be shouldered by plan investment providers, plan administrators will have important obligations to fulfill under these rules. We will be providing you with additional information about these rules in future newsletters. But please feel free to call us anytime with questions or for further guidance.