

IMPACT OF FINAL FEE DISCLOSURE REGULATIONS –ERISA 408(b)(2)

The Department of Labor released final regulations for disclosures to plan fiduciaries on February 2, 2012. The final version included some modifications to the interim version released earlier. The following is a recap of the changes to the interim version.

| | Interim Regulation | Final Regulation | Effects of Change |
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| | Terminated plans, where employer has no further involvement but still contain annuities or custodial accounts were covered. | These plans are no longer covered for purposes of disclosure. | Reporting for such plans must be eliminated and no prohibited transaction violation or fiduciary liability is created for failure to disclose fees. |
| | Indirect compensation must be reported but no details were required about the arrangement that gives rise to the indirect compensation. | A description is required of the arrangement between payer and service provider that explains why the indirect compensation is being paid. | Providers that did not describe the services that involved indirect compensation must now add a description. |
| | Although implied, there was no requirement that investment related information presented to participants had to be consistent with that presented to the plan fiduciary. | Reporting of total operating expenses for designated investments must be consistent with the way similar information is presented to participants. Other material investment related information known to service provider must also be reported to participants. | Investment related information must be made consistent and complete for both the plan and participant disclosures. |
| | Recordkeepers and broker/dealers could comply with requirements to disclose investment related information by delivering materials or extracts from materials that were regulated (prospectus, semi and annual reports). | Recordkeepers and broker/dealers may comply by delivering any materials or extracts from materials that was published by a regulated issuer. | Fact sheets and other abbreviated materials can be used to satisfy disclosure requirements for investment related information. |
| | Regulations made reference to a "summary" that would encapsulate the entire disclosure. | An optional guide is included that points to the location of required information in the disclosure. | No action is required. |
| | Changes to investment related information must be updated within 60 days of when the change is known. | Additionally, updated investment related information must be provided annually. | Annual schedule must be added for service providers that did not already have such a schedule for this. |

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| | Disclosures requested by plan fiduciaries to meet regulatory filing requirements had to be produced in 30 days. | Requested disclosures have to be produced "reasonably in advance" of when the filing is due. | The plan fiduciary is limited to requesting disclosures only as they coincide with filing deadlines. |
| | Disclosure errors must be corrected in 30 days. | In addition, errors in changes to disclosures must be made in 30 days. | Correction to errors in changes has the same time constraints as errors in the initial disclosure. |
| | Descriptions of compensation or cost, as may be expressed by monetary amounts, formulas, percentages, per capita charges, or other reasonable methods. | A "reasonable and good faith" estimate is acceptable if the service provider cannot otherwise readily describe the compensation or cost. | If a "reasonable and good faith" estimate is used, service provider must explain the methods and assumptions used for the estimate. |
| | In the event of a failure to disclose the plan fiduciary must determine whether to terminate or continue the arrangement. | In addition, if services have not yet been rendered, the plan fiduciary must terminate the arrangement. | Plan fiduciary has no discretion as to whether to terminate any arrangement for future services for failure to disclose. |
| | Effective date was April 1, 2012. | Effective date is July 1, 2012. | Additional 90 days are available to comply with plan and participant disclosures. |