



FEBRUARY 2012

Department of Labor Issues Final Regulation on Service Provider Fee Disclosures

The U.S. Department of Labor (DOL) has issued its long-awaited final regulation under Section 408(b)(2) of ERISA on fiduciary-level disclosures that must be furnished to plan fiduciaries in order for a contract or arrangement to be "reasonable." The DOL also extended the compliance deadline for such disclosures by three months, to July 1, 2012, for all contracts or arrangements, regardless of whether they were entered into before the effective date. This extension also affects when disclosures must first be furnished under the participant-level disclosure regulation, which was [previously extended](#) so that the first disclosures would follow the effective date of the fiduciary-level disclosures. Consequently, for calendar year plans, the initial annual participant-level disclosures must now be provided by August 30, 2012, and the first quarterly statement with disclosures must now be provided by November 14, 2012.

FIDUCIARY DISCLOSURE REGULATIONS

The fiduciary disclosure regulations require certain plan service providers to disclose information to assist plan fiduciaries in understanding the reasonableness of the fees being charged for plan services and to assess potential conflicts of interest. The rules cover plan fiduciaries and other persons who provide services to the plan, such as trustees, recordkeepers, third-party administrators, brokers, and investment advisors, for which the service provider reasonably expects to receive compensation, as well as persons who receive any indirect compensation in connection with accounting, actuarial, appraisal, auditing, legal or valuation services (collectively, Covered Service Providers). The requirements apply to Covered Service Providers who reasonably expect to receive fees of at least \$1,000.

Covered Service Providers must make initial and ongoing disclosures to a responsible plan fiduciary. They must disclose the following information.

- A description of the services provided to the plan. The responsible plan fiduciary must determine whether it has enough information to conclude that fees are reasonable. If a particular description lacks sufficient detail, the fiduciary is obligated to request additional information.

- A description of direct compensation, which may be in aggregate or by service, and indirect compensation the Covered Service Provider (including its affiliates and subcontractors) reasonably expects to receive.
- A description of any compensation that will be "paid among related parties," which includes bundled service arrangements under which a plan enters into a single contract and pays for multiple services provided by multiple parties.
- A reasonable estimate of the stand-alone cost of recordkeeping services, including a detailed explanation of the methodology and assumptions, if compensation is for recordkeeping services.

Information must be furnished in writing, although there is currently no set form for disclosure. The DOL intends to publish a notice of proposed rulemaking in the near future under which Covered Service Providers may be required to furnish disclosures in a specific format, such as a guide or similar tool. The final regulation did, however, include a sample guide that can be used on a voluntary basis to assist plan fiduciaries with their review of initial disclosures.

For more information, or if you have questions about the new DOL disclosure rules, please contact any of the following attorneys in Robinson & Cole's [Employee Benefits and Compensation Practice Group](#):

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