

## Penalties for Failure To Disclose Retirement Plan Fees

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[John H. McKendry Jr.](#)

Providers of services to a retirement plan must disclose their fees associated with the plans, according to an updated U.S. Department of Labor (DOL) regulation. On July 16, the DOL reiterated its long-standing position that fiduciaries must understand the fees and expenses associated with plans that allow participants to direct their investments.

Beginning July 16, 2011, a failure to disclose will result in prohibited transaction excise tax penalties of 15 percent of the fees, compounded for each year that the violation continues.

### Who Is Required To Disclose?

Service providers are responsible for making the disclosure if they reasonably expect to receive \$1,000 or more in compensation. The requirement to disclose covers the following service providers:

- Fiduciaries of the plan, including investment managers and anyone who gives investment advice to the plan in exchange for a fee
- Fiduciaries of plan assets in which the plan has a direct equity investment
- Registered investment advisers
- Providers of the plan's record keeping and brokerage services
- The following service providers, if they receive indirect compensation – accounting, auditing, actuarial, appraisal, banking, consulting (regarding investment policy or objectives or selection or monitoring of service providers) custodial, insurance, investment advisory, legal, recordkeeping, securities, brokerage, third-party administration or valuation

### What Must Be Disclosed

The service provider is required to disclose the following information -- in writing -- before providing services:

- A description of the services to be provided
- A statement of the provider's fiduciary status
- A description of all direct and indirect compensation to be received for covered services (sales loads or charges, deferred sales charges, redemption fees, surrender or exchange fees, account fees, the annual expense ratio or operating expenses, wrap fees, mortality or expense fees)

- A disclosure of compensation paid to the service provider and affiliates or subcontractors, either on a transaction basis or on the net value of the investment
- A description of any compensation payable upon termination of the arrangement
- If recordkeeping services are provided, a separate identification of the cost of the services

### **Enforcement - Tattling**

Anyone who sponsors a retirement plan or selects the service provider must request the disclosure information. If the information is not received, those who requested it must notify the DOL within 90 days of the request. Otherwise, those who requested the information also are liable.

### **How to Proceed**

Plan sponsors should identify all service providers of retirement plans and request the disclosures. Most of the providers should have already been identified because fee disclosures are required for the plan's Schedule C for the 2009 annual form 5500 filing. In addition, the service providers should be alert to pending regulations that are expected to require similar disclosures be passed along to plan participants.

The full text of the DOL regulations can be found [here](#).

If you have any questions regarding the disclosure requirements or other DOL regulations, please contact John McKendry or any other a member of the Warner Norcross & Judd Employee Benefits Practice Group.