

Corporate & Financial Weekly Digest

Posted at 12:51 PM on July 30, 2010 by [Gary W. Howell](#)

DOL Issues New Rules Regarding Service Provider Fee Disclosures

Co-authored by [Andrew Bridgman](#) and [Daniel Lange](#).

On July 16, the U.S. Department of Labor (DOL) issued interim final regulations that will require certain Employee Retirement Income Security Act (ERISA) retirement plan service providers to disclose information about services performed and fees received from such plans. While the current regulations do not apply to welfare plans, the DOL has indicated that it intends to publish separate regulations requiring welfare plan disclosures at a later date.

Compliance with the regulations' disclosure requirements will be required for contractual agreements between service providers and retirement plans in order to qualify for an exemption from the prohibited transaction rules under ERISA and the Internal Revenue Code of 1986, as amended. In other words, noncompliance with the regulation would mean that the statutory exemption is not available for an agreement if a service provider is a party in interest with respect to the plan, thus making the service provider liable for taxes and penalties related to prohibited transactions. Certain plan fiduciaries may also incur liability if a prohibited transaction occurs, but the regulations contain a special provision to help diligent plan fiduciaries avoid liability.

The regulations generally apply to service providers expected to receive \$1,000 or more in compensation for providing any of the following services: (i) service as a fiduciary or a registered investment advisor; (ii) certain recordkeeping or brokerage services; or (iii) other services for indirect compensation (*e.g.*, accounting, auditing, actuarial, appraisal, banking, consulting, custodial, investment advisory, etc.). Prior to entering into such agreements, or prior to any renewal or extension thereof, the service provider is required to provide plan fiduciaries with a description of (a) the services to be provided; (b) all direct and indirect compensation to be received by the service provider and how it will be distributed among its affiliates; (c) the manner in which compensation will be received; and (d) certain investment disclosures. In addition, during the term of the agreement and upon request by the plan fiduciary, the service provider must disclose all information about its compensation that is necessary for the plan to comply with its own disclosure obligations.

The regulations are expected to become effective July 16, 2011, and are applicable to all agreements for plan services regardless of whether such agreements were in place prior to such

date. The DOL has invited comments on the interim final regulations (due by August 30), perhaps indicating that such regulations may change when published in their final form.

The text of the DOL's interim final regulation can be found [here](#).

Katten Muchin Rosenman LLP

Charlotte Chicago Irving London Los Angeles New York Washington, DC