

Fees Disclosures Are Here, Now What? Plan Sponsor's Responsibilities Going Forward

by Gary S. Young on July 20, 2012

Plan sponsors should have now received fee disclosures from their "Covered Service Providers" (CSPs). If you did not receive such information, you must notify the U.S. Department of Labor (DOL) who will then take appropriate action (CSP failure will become your failure if you fail to notify the DOL).

Assuming that you did receive such required disclosures, understand that this is only the beginning of what you must do as a plan fiduciary. It is now your fiduciary responsibility to review and analyze the provided information.

Here are recommended preliminary actions to be taken as part of an orderly compliance process:

1. **Verify Receipt and Quality of All Required Disclosures.** Make sure that all CSPs have provided you with the required information. If a CSP has failed to provide the required disclosures, Plan sponsors must make a written demand for information. If the CSP fails to respond within 90 days, it will be your legal responsibility to notify the DOL, and the non-responsive CSP should be terminated. Failure to follow this procedure will expose the plan sponsor and its fiduciaries to the severe consequences of an ERISA-prohibited transaction! Further, it is your fiduciary duty to insure that all required information is included in the disclosures. Unfortunately, this responsibility is complicated as the method and type of disclosure will widely vary based on both the type of services involved and the source of compensation received by each CSP.
2. **Analyze the Fees Paid and Services Provided.** The duty to receive the information is only the beginning of what must be done. It then becomes the plan sponsor's fiduciary duty to analyze and understand the information that has been provided. If the information is unclear or not completely understandable, you must ask for clarification to the extent necessary.
3. **Make a Determination as to the Reasonableness of the Compensation and Quality of Services.** It is the plan sponsor's responsibility to determine that the fees are proper taking into account the quantity and quality of services offered. It is also very important to assess both the fees and services from a quality control perspective.

You may ask, "How can I possibly do this as I (or we) do not possess the expertise to make these assessments?" This is a very good question. You will need the assistance of other professionals, often to include an ERISA 3(21) independent fiduciary, to assist in evaluating your plan's fees, services and investment performance. This process is called "benchmarking" and is essential as the next step after receiving CSP disclosures. Even if

you have provided “self-directed” investments for your participants under ERISA 404(c), the overall fiduciary responsibility for fees and overall investment performance still rests with the plan sponsor and the plan’s fiduciaries.

Plan sponsors must now understand that the “bar has been raised” with regard to their legal responsibilities. Scarinci & Hollenbeck can assist you in obtaining such benchmarking services and compliance with the complicated duties and responsibilities of ERISA.