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DOL Service Provider Fee Disclosure Regulations To Go Into Effect in Early 2012

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By Daniel R. Salemi

As discussed in a previous alert, the Department of Labor (DOL) issued new rules that will require certain types of ERISA retirement plan service providers to disclose new fee information directly to plans. Since our last alert, there have been a few developments on these new rules.

First, the DOL extended the deadline for compliance with these rules. Covered service providers must now provide the required disclosures no later than **April 1, 2012**. While it is not clear what form the disclosures will take, some service providers have begun creating template disclosures in anticipation of the approaching deadline. Plan fiduciaries should therefore expect to receive some form of disclosure in the upcoming months. The DOL's regulations are currently in interim final form, and final regulations are expected in the next few weeks. Although the final regulations are not expected to contain any significant substantive changes, it is possible that the effective date for compliance could be extended.

Second, although the disclosure obligations under the new rules are primarily obligations of a retirement plan's covered service providers, the rules also impose certain implicit obligations on plan fiduciaries. More specifically, if a service provider does not provide all of the required disclosures, then the service arrangement will no longer be considered "reasonable" under ERISA's prohibited transaction rules, and a prohibited transaction will arise. Plan fiduciaries who do not receive all of the required disclosures from a service provider are protected from liability for this type of prohibited transaction as long as the plan fiduciaries meet the requirements of a new prohibited transaction exemption. The exemption applies if the plan fiduciaries, upon discovering that the service provider failed to satisfy its obligations, send a written request for the missing information to the provider. If the provider does not respond to the plan fiduciaries' satisfaction within 90 days, the fiduciaries generally must report the provider to the DOL. The exemption is therefore significant because it requires plan fiduciaries to analyze the new disclosures to determine if service providers have satisfied all applicable requirements. The exemption is also significant for service providers because a failure to comply with the new disclosure requirement could result in DOL enforcement activity.

Finally, we previously noted that the DOL's primary aim in creating these rules was to provide retirement plan fiduciaries with a more complete picture of how their service providers are compensated so that plan fiduciaries are better able to determine whether a plan's arrangement with a service provider is reasonable. Because plan fiduciaries will likely start receiving fee information that has never before been disclosed, the new rules will require plan fiduciaries to create and undertake some type of process to review the disclosures. Plan fiduciaries should consider whether its current process for periodically reviewing the reasonableness of its service arrangements is adequate in light of the new information that will be provided.

More Information

Daniel R. Salemi
drs@franczek.com
312.786.6511

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