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DOL Delays Retirement Plan Fee Disclosure Rule Until 2012

But plan sponsors and service providers still have lots to do in 2011

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The Department of Labor (DOL) recently announced that its 2010 "interim final" rule for plan service providers to disclose their fees will *not* take effect July 16, 2011, as previously planned. Instead it will be delayed until Jan. 1, 2012, while the DOL works on a "final" rule. The final rule will then apply to both new and existing service provider contracts.

The service provider fee disclosure rules, also known as "408(b)(2)" rules, are designed to help plan fiduciaries fulfill their duty to ensure that retirement plans and plan participants are charged no more than "reasonable" fees by plan service providers. Otherwise, both the service provider and the fiduciaries can be subject to sanctions for allowing a "prohibited transaction" to occur.

The rules cover plan service providers, such as trustees, recordkeepers, third-party administrators, brokers, and investment advisors. They require providers to disclose to the plan, in advance, the fees they will receive, both from direct charges to the plan or plan accounts, and indirectly from revenue sharing and through relationships with other providers. This will require providers to tease out and disclose fees that may be hidden in a "bundled" platform, so that plan administrators can better monitor and compare them.

These rules will apply to all defined benefit and defined contribution plans, regardless of size, and to all providers that will receive at least $1,000 directly or indirectly from the plan.

While this delay allows a bit more time for service providers to prepare, there is still much for plan sponsors and administrators to do in 2011. First, they need to be prepared to evaluate the information they will receive from service providers. (In fact one of the reasons for the delay was to develop a summary document that plan fiduciaries could use to asses the fees disclosed.)

Second, delay of the broad service-fee reporting rule does not affect the rule already in place for Form 5500 Schedule C, which requires reporting of direct and indirect fees paid to service providers. Plan administrators must also collect that information from service providers. The existing rule covers a somewhat different list of providers who receive at least $5,000 in compensation from the plan, and only applies to plans large enough to have to file Schedule C. The existing rule will remain in place alongside the fee disclosures that service providers must make to the plans.

Third, the DOL issued separate rules on Oct. 20, 2010, requiring plan fee disclosures to participants in individually directed account plans like the typical 401(k) plan. Those rules take effect for plan years beginning after Nov. 11, 2012, so also Jan. 1, 2012, for many plans.

The DOL's October rules require quarterly reporting of the actual amount of plan fees charged to participant accounts, and annual reporting of the fees paid through the plan's investment options (and the performance of the options). They also require yet another annual disclosure of plan information regarding how to direct investments, the available funds or brokerage windows to invest in, the fees charged to all accounts for plan services, and individually charged fees (e.g., for loans). Plan administrators will thus be working with their third-party administrators or recordkeepers during 2011 on how to provide this set of disclosures.

Employer checklist for 2011:

- File Form 5500 for last plan year, with Schedule C disclosures if applicable.
- Review service provider contracts for existing fee disclosures, contact service provider to ensure

they will comply with disclosures to the plan under 408(b)(2) rules.

- Review model format for participant fee disclosures, contact third-party administrator or recordkeeper regarding responsibility for quarterly report of plan fees to participants, annual report of performance data, and annual plan information.