



eBenefits Alert: Fee Disclosure Deadline Extended

February 21, 2012

The Department of Labor (DOL) has extended the deadline for compliance with the now finalized service provider disclosure regulations by 90 days to July 1, 2012. Correspondingly, for calendar year plans, the related participant-level disclosures must now be provided no later than August 30, 2012, and the first quarterly statement is due on November 14, 2012.

After more than four years of consideration, the DOL has issued final regulations requiring the disclosure of fees and other information to plan fiduciaries in connection with services provided to retirement plans covered by ERISA. These new requirements arise from the complexities surrounding the fee structures in the retirement plan industry and are intended to assist plan fiduciaries in assessing the reasonableness of compensation paid for plan services. They go into effect on July 1, 2012, for both new and existing service contracts and arrangements, 90 days later than the previously scheduled compliance deadline.

As a result of this extension, the earliest deadline for plan administrators to comply with the related participant-level fee disclosure regulations is extended by 60 days. Plan administrators of calendar year plans (and plans having a plan year of November 1 or later) now have until August 30, 2012, to provide the initial disclosures, and November 14, 2012, to provide the first quarterly disclosures. Non-calendar year plans with a plan year ending before November 1 will have additional time to comply.

As under the interim final version, the final regulations require "covered service providers" to furnish written disclosures about their services and related compensation to "responsible plan fiduciaries" of "covered plans." In addition to extending the deadline for compliance, the DOL adopted a number of clarifications and substantive changes to the interim final regulations, such as:

- Enhancing information relating to indirect compensation to include a description of the arrangement between the payer and service provider (or its affiliate or subcontractor, as applicable);
- Modifying certain investment-related disclosures to better conform to the requirements under the participant-level fee disclosure regulations;
- Expanding the "pass-through" relief for investment-related disclosures with respect to "off-platform" designated investment alternatives;
- Changing the deadline for communicating changes to previously disclosed investment information to "at least annually" rather than within 60 days;



- Changing the deadline for providing information upon request needed to comply with ERISA's reporting and disclosure requirements to "reasonably in advance of the date upon which" the plan fiduciary or plan administrator "states that it must comply with" applicable reporting and disclosure requirements;
- Clarifying that the provision applicable to inadvertent errors and omissions also covers changes made to initial disclosures;
- Modifying how compensation may be expressed and expanding the use of estimates beyond the context of recordkeeping;
- Modifying the class exemption from the prohibited transaction rules available to plan fiduciaries to encourage prompt decision-making regarding the termination of a service arrangement where disclosure failures have occurred; and
- Excluding from coverage certain frozen Section 403(b) plans.

The DOL also announced, in the regulatory preamble, its intent to propose a new rule that would require covered service providers to provide a guide or similar tool along with their initial disclosures. To encourage service providers to assist responsible plan fiduciaries in identifying information in multiple documents and managing and analyzing the potentially complex disclosures, a sample guide is included in the appendix to the regulation.

At this point, plan service providers should already be in contact with responsible plan fiduciaries to ensure compliance with the initial disclosures. Plan fiduciaries, with the assistance of their financial consultants, should carefully evaluate disclosed information to identify any deficiencies and assess the reasonableness of compensation. Special consideration should be given to any potential conflicts of interest that may affect the quality of the services received by the plan.

Plan fiduciaries and their outside administrators should also begin to prepare materials to comply with the participant-level disclosures that will be required as early as August 30, 2012, absent a further postponement by the DOL.

For more information about the service provider or participant-level fee disclosure regulations, contact any member of Gray Plant Mooty's Employee Benefits and Executive Compensation practice group.

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