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Insight — February 9, 2012

The Department of Labor released last week the latest guidance in its efforts to improve and enhance the information available to 401(k) plan participants. New regulations will require service providers to disclose details about their fees -- including revenue sharing arrangements -- to plan fiduciaries. The plan fiduciaries have an obligation to review and analyze the information, and if it is not provided, the fiduciaries are required to terminate the contract.

The new regulations provide a pathway for employers, as plan fiduciaries, to confirm that no more than reasonable amounts are diverted from the plan to pay service providers. Service providers are "parties in interest" for purposes of the DOL's "prohibited transaction" standards. This means that if a fiduciary causes the plan to pay more than reasonable fees to a service provider, both the fiduciary and the service provider could be subject to damages, penalties and excise taxes.

Service providers that must disclose their fees under the new regulations include registered investment advisors, recordkeepers, and brokers who have entered into contracts with the plan. Subcontractors or affiliates are not required to provide disclosures. However, the regulation does reach beyond the direct contractual relationship by requiring covered service providers to describe arrangements by which they receive indirect compensation. The purpose of this "look through" requirement is to provide information to the plan fiduciary to determine whether the relationship raises any conflicts of interest.

Specifically with respect to investment alternatives offered to participants under the plan, the new regulations require detailed disclosure of fee arrangements. Service providers must provide employers with a description of: (a) any compensation that will be charged directly in the event of any acquisition, sale, transfer, or withdrawal from the investment; (b) annual operating expenses (if the return is not fixed); and (c) any ongoing expenses.

Service providers are required to provide their disclosures reasonably in advance of entering into the contract, and in advance of any extension or renewal of the contract. Any changes must be disclosed as soon as practicable, but generally no later than 60 days after the service provider learns of the change. Significantly, however, changes in investment related information need only be provided annually.

The regulations provide a sample form of disclosure. While the form is not

required, the DOL "strongly encourages" its use. Employers should plan to spend some time and effort in reviewing the disclosures they receive, since the regulations put the burden on plan fiduciaries to analyze whether the information reveals any conflicts of interest, and whether the compensation and fees described are reasonable.

If a service provider fails to provide sufficient information, the employer is required to request it in writing. If the service provider still does not comply, the employer must terminate the contract.

The regulations are effective on July 1, 2012. Even though this is an extension from the April 1 effective date established under earlier interim guidance, it will be a challenge for service providers and plan fiduciaries to pull the pieces together. Employers should reach out to their service providers now, and confirm that adequate information will be available in time for compliance.

And as soon as that milestone is past, employers must set their sights on the next one. The DOL clarified that the participant level disclosure regulations must be furnished sixty days after the service provider disclosures, which is August 30. More detail on the participant fee disclosure rules can be found on the DOL's website, http://www.dol.gov/ebsa/newsroom/fsparticipantfeerule.html.

If you have any questions about your obligations under these new regulations or any other benefit plan issue, contact a member of the Benefits Law Group.

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