

Fiduciary Duty #30

On February 3, 2012, the Dept. of Labor (DOL) published final regulations on fee disclosure for retirement plans. The final regulations represented the last steps in a process that the DOL began in 2008 to expand disclosure of compensation paid to service providers of ERISA-subject plans.

These regulations became effective on July 1, 2012.

The regulations raise several important questions for plan sponsors, and service providers, that should be considered in order to implement systems that are compliant with these regulations.

In essence, anyone who provides services to a 401k plan, and receives compensation from the plan of at least \$1,000 per year, is referred to as a Covered Service Provider (CSP)

In general, the information that a CSP is obligated to provide to a responsible plan fiduciary (RPF) includes the following:

- Their fiduciary status
- A description of their services
- The fees charged for those services

Questions:

- Do you know all of the CSP's that service your plan?
- Can you locate all of the service and fee disclosures that they have provided?
- Have you determined that, in light of the services received, the fees being assessed are "reasonable"?

In order to establish "best practices" for documenting a formal fee review process, consider the following:

- Identify all of your CSP's – the list may include attorneys, benefits consultants, actuaries, CPA's, investment advisors, TPA's and record-keepers.
- Document the steps you will take to ensure you've received all of the required fee disclosures and that they are adequate and in good order for your evaluation.
- Document the steps you will take if information is missing from any of your CSP's.
- Name the key people who will be accountable for each step of the process and consider establishing a formal plan fee review committee.
- Document the plan committee's annual reviews and decisions in formal meeting minutes.
- Identify the benchmark you will use to compare fees and determine how often you will benchmark fees.
- Set up a calendar for fiduciary tasks, indicating how long the tasks may take and if they need to coordinate with any of your company's other processes.

Bottom line: the 408(b)(2) disclosures are your responsibility to collect from the CSP's for your plan. It is the duty of the CSP to provide this information to you.

Be sure that you have received this information, and, if you have not, be certain to request it, and review it. Doing so will enable you to determine the reasonableness of the fees in light of the services being received.

We hope that you find this helpful, and don't hesitate to give us a call if you have any questions.

Mike and Matt