

## FIDUCIARY FOCUS:

# New U.S. Department of Labor Retirement Plan Disclosure Regulations



*This material is an educational discussion of the new Department of Labor (DOL) regulations governing fee disclosures, which provides ideas and suggestions on this topic and should not be construed as legal advice. Advisers, plan sponsors and others should consult their own designated adviser and legal counsel, if applicable, for specific guidance on their particular circumstances.*

The new regulations under the Employee Retirement Income Security Act of 1974 (ERISA), Section 408(b)(2), and ERISA, Section 404(a)(5) make significant changes to the required disclosures to be made to both plan sponsors and plan participants and require all plan service providers to furnish more information about their services, expenses and fees. The comparative chart below outlines the basics of these two regulations.

For a more comprehensive discussion of these regulations, see our Fiduciary Focus series of white papers, located at <http://www.planadvisortools.com/educational-resources>.

	§408(b)(2)	§404(a)(5)
<b>What is it?</b>	The statutory exemption allowing plan service providers to be compensated for their services without engaging in a prohibited transaction.	The disclosure of certain plan and investment-related information, including expense and fee information, to participants in participant-directed individual account plans, such as 401(k) plans.
<b>Purpose</b>	To assist plan fiduciaries in assessing the reasonableness of the compensation paid for services and the conflicts of interest that may affect a service provider's performance of services. Also to assist plan fiduciaries and administrators in obtaining the information they need from service providers to satisfy their reporting and disclosure obligations under ERISA.	To give the estimated 72 million participants covered by 401(k)-type retirement plans greater information regarding the expenses and fees associated with their plans in order to help them better manage their retirement savings.
<b>Effective Date</b>	April 1, 2012	No later than 60 days after the latter of the first day of the first plan year beginning on or after November 1, 2011, or April 1, 2012. For calendar year plans, this means that such initial disclosures must be made by May 31, 2012.  Plan administrators must deliver the initial quarterly disclosure statement to participants no later than 45 days after the end of the quarter. For calendar year plans, this means that such initial quarterly disclosure statements must be made by August 14, 2012.
<b>Who Must Disclose</b>	"Covered service providers" who are defined as those providers who entered into a contract or arrangement with a covered plan, reasonably expecting to receive \$1,000 or more in compensation, direct or indirect, in connection with providing certain services to the plan.	The disclosure obligations fall on the "plan administrator." The plan administrator is the party designated as such in the plan document. Absent any such designation, the employer is the plan administrator.

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<b>Content of Disclosures</b>	<ul style="list-style-type: none"> <li>Describe the services provided.</li> <li>Describe whether the services provided are fiduciary services or services under the Investment Advisers Act of 1940 or any State law, or any other type of covered service.</li> <li>Describe what compensation is being received and how it is being received.</li> <li>Make additional disclosures regarding investment services, discussed in greater detail in our white paper.</li> </ul>	<ul style="list-style-type: none"> <li>Regularly disclose to plan participants the features of the plan that affect the investment of their plan accounts.</li> <li>Regularly disclose to plan participants a wide variety of expenses and fees that are or could be charged to the plan in general and deducted from the plan accounts of all participants.</li> <li>Regularly disclose to plan participants a wide variety of expenses and fees that are or could be charged against their plan accounts, rather than on a plan-wide basis.</li> </ul>
<b>Penalty for Failure to Comply</b>	<p>If a plan engages in a prohibited transaction, the Internal Revenue Code of 1986, as amended, imposes an excise tax of 15% on the amount involved in the prohibited transaction. The excise tax increases to 100% of the amount involved if the prohibited transaction is not corrected.</p> <p>There can also be other consequences, such as lawsuits against the parties who participate in the prohibited transaction.</p>	<p>If the plan administrator fails to provide participants with the information the Regulation requires, the plan administrator will be deemed to have violated its fiduciary duty under ERISA, in the eyes of the DOL.</p> <p>In that event, the plan administrator could be held liable for monetary damages to participants for monetary losses they would have avoided had they received the information the plan administrator is required to provide them.</p>
<b>How to Prepare</b>	<ul style="list-style-type: none"> <li>Evaluate your exposure to the requirements.</li> <li>Evaluate your disclosure obligations.</li> <li>Modify your existing service contracts or implement service contracts.</li> <li>Seek legal advice.</li> </ul>	<ul style="list-style-type: none"> <li>Familiarize yourself with the requirements of the Regulation.</li> <li>Prepare to assist plan administrators, where necessary, with the collection of information they will need to provide to plan participants.</li> <li>Prepare to assist plan administrators, as needed, with answering questions that plan participants will have as a result of this new disclosure requirement.</li> </ul>



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