

**ERISA 408(b)(2)
SERVICE PROVIDER
FEE DISCLOSURE REGULATION**

INTENT

- The DOL is quoted as saying “the new rules are aimed at assisting plan sponsors in assessing the reasonableness of contracts or arrangements, including the reasonableness of the service providers’ compensation and potential conflicts of interest.”
- Focus is on Service Providers that expect to receive at least \$1,000 in compensation in connection with their services for:
 - ✓ Certain fiduciary or registered advisory services
 - ✓ Recordkeeping or brokerage services to a participant-directed plan regarding investment options
 - ✓ Services for which “Indirect Compensation” is received
- Three-Pronged Regulatory Project
 - ✓ Disclosure to Government - New 2009 IRS Form 5500 Schedule C
 - ✓ Disclosure to plan fiduciaries- 408(b)(2)
 - ✓ Disclosure to plan participants – New rules issued October 14, 2010

“Participants will be able to understand the dramatic effect fees play in the returns they get” - Assistant Secretary of Labor Phyllis Borzi (10/14/10)

“This rule provides uniform disclosures to workers about what they pay for investments options in their retirement plans” – Secretary of Labor Hilda Solis (10/14/10)

GENERAL PRINCIPAL

- Where participants direct the investment of their accounts, plan fiduciaries **MUST** insure that on a regular basis, participants are provided sufficient information about the plan and investment alternatives under the plan.
 - ✓ Investment-related fees and information
 - ✓ Plan-related fees and information

PRIOR/RECENT DOL RULES

- Automatic contribution 401(k) notice
- Blackout notice
- Distribution explanation – 402(f) notice
- Eligible investment advice arrangement notice
- Employer stock diversification notice
- Qualified default investment alternative notice
- Quarterly account benefit & vesting statement
- Safe harbor 401(k) notice

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OVERVIEW

- **Effective July 16, 2011, applies to over 700,000 private “Covered Plans” with 72 million participants and nearly \$3 trillion in assets, including:**
 - ✓ **Defined Benefit/Cash Balance**
 - ✓ **Money Purchase/Target**
 - ✓ **Profit Sharing/401(k)**
 - ✓ **ERISA 403(b)**

- **“Covered Plans” does not include:**
 - ✓ **SEP& SIMPLE IRA**
 - ✓ **Non-Qualified**
 - ✓ **Owner-Only**
 - ✓ **Welfare Benefit**

- **Onus on Service Provider to satisfy requirements**
 - ✓ **Written contract not required**
 - ✓ **Disclosures that must be in writing are for covered services, fiduciary status and compensation**

- **Not a Participant Disclosure Regulation**

- **Employer paid fees not included**

- **Bundled provider’s “For Free” services are included**
 - ✓ **Recordkeeping fees must be disclosed separate from other bundled services**

WHO MUST PROVIDE REQUIRED DISCLOSURE?

- **Covered Service Providers Include:**

✓ Accounting	✓ Registered Investment Advisory
✓ Actuarial	✓ Legal
✓ Appraisal	✓ Payroll Deduction/Contribution Submission
✓ Auditing	✓ Plan Fiduciary
✓ Banking	✓ Recordkeeping
✓ Consulting	✓ Third Party Administration
✓ Custodial	✓ Valuation
✓ Insurance	

WHO MUST RECEIVE REQUIRED DISCLOSURE?

- **Responsible plan fiduciaries, i.e. persons involved in the decision-making process of engaging Covered Service Providers**

EXEMPTIONS

- **Certain fees where “expected” annual total does not exceed \$1,000**

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CATEGORIES OF COMPENSATION

- **Direct Compensation:**
 - ✓ Fees paid or expected to be paid from plan assets to Covered Service Provider
 - ✓ Includes fees for loans, distributions, QDROs...
 - ✓ Can be disclosed be in dollars, formula, % of assets or per capita

- **Indirect Compensation:**
 - ✓ Compensation received from any source other than covered plan, plan sponsor, Covered Service Provider, affiliates or subcontractors
 - Conference sponsorships
 - Gifts, tickets, trips, etc...
 - Sponsorship of marketing events
 - Subsidies from providers for investments, e.g. revenue sharing & Sub-TA fees

- **Compensation paid among related parties**

- **Compensation for termination arrangements**