

“What keeps you up at night?”

Saul Ewing
Labor, Employment and
Employee Benefits
Practice:

Harriet E. Cooperman
Co-Chair

Robert L. Duston
Co-Chair

DOL finalizes fee disclosure regulations – triggers disclosure to retirement plan participants; Treasury issues guidance on pension annuities

By Dan S. Brandenburg and Joanne G. Jacobson

SUMMARY

The Department of Labor (DOL), the Treasury Department and the Internal Revenue Service took action to increase transparency of fees for both retirement plan sponsors and plan participants and broaden the distribution options for 401(k) savers.

On Friday, February 3, 2012, the Department of Labor (DOL), the Treasury Department and the Internal Revenue Service took action to increase transparency of fees for both retirement plan sponsors and plan participants and broaden the distribution options for 401(k) savers. The DOL released final regulations that require disclosure of service provider fees to plan administrators. This is intended to help plan fiduciaries determine whether or not fees charged are reasonable and identify potential conflicts of interest. The regulations become effective July 1, 2012. The issuance of the final regulations triggers the deadline for fee disclosure to plan participants. As a result, for calendar year plans, the initial annual disclosure of “plan-level” and “investment-level” information must be furnished to participants no later than August 30, 2012 and the first quarterly statements must be provided no later than November 14, 2012.

Finally, Treasury and the IRS released guidance, including proposed regulations, which are intended to encourage lifetime income distribution alternatives in retirement plans so that retired participants do not outlive their 401(k) plan benefits. This Alert is intended to make you aware that the guidance was issued and provide you with the highlights. We intend to issue Alerts with more information on these topics at a later date.

FEE DISCLOSURE TO PLAN FIDUCIARIES

Covered Plans. Benefit plans affected by the rule include all ERISA-covered retirement plans, with the exception of pre-2009 403(b) annuity contracts or custodial accounts that meet certain requirements.

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Covered Providers. The service providers covered by the rule include Registered Investment Advisors, certain broker-dealers, third party administrators and other service providers receiving \$1,000 or more in direct or indirect compensation from plan assets.

Method of Disclosure. The DOL provided a Sample Guide in the regulations, but there is no prescribed manner of providing the required disclosures other than it must be in writing.

Disclosures Required. Direct and indirect compensation must be disclosed, and indirect compensation paid by third parties to the service provider must include a description of the arrangement between the third party payor and the service provider. A provider must disclose investment-related services; it must disclose the total annual operating expenses of a designated investment alternative and other information. It may comply by providing the materials provided by the designated investment alternative issuer if the issuer meets certain qualifications.

Timing. A service provider must notify a plan fiduciary of changes to investment-related information annually and has 60 days to notify a plan fiduciary of any other changes to information previously disclosed.

Failure to Comply. Should the plan fiduciary request information that the service provider fails to disclose within 90 days, the fiduciary must terminate the arrangement as expeditiously as possible.

LIFETIME INCOME INITIATIVES FROM QUALIFIED DEFINED CONTRIBUTION AND DEFINED BENEFIT PLANS

Partial Annuity Options. The proposed regulation makes it simpler for defined benefit plans to offer combinations of lifetime income and lump sum payment.

Longevity Annuities. Another proposed regulation makes it easier for retirees to purchase annuities with their 401(k) assets that begin long after normal retirement age. These annuities are intended to prevent retirees from outliving their account balances at retirement by allowing them to purchase an annuity that only starts paying out if the participant or spouse is alive at a later age. The expectation is that the purchase price will be significantly lower than an immediate annuity.

This Alert was written by Dan S. Brandenburg and Joanne G. Jacobson, members of the firm's Labor, Employment and Employee Benefits Practice. Dan can be reached at 202.295.6644 or dbrandenburg@saul.com. Joanne can be reached at 202.295.6616 or jjacobson@saul.com. This publication has been prepared by the Labor, Employment and Employee Benefits Practice for information purposes only.

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