

Management Alert



Department of Labor Issues Proposed Regulation on Guides for Fee Disclosures from Service Providers

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Executive Summary

The Department of Labor (“DOL”) has issued a proposed amendment to the final regulations regarding required disclosure of fee-related information by service providers to plan fiduciaries effective July 1, 2012. This amendment, upon adoption, would require covered service providers to furnish a guide to assist plan fiduciaries in reviewing the disclosures if such disclosures are contained in multiple or lengthy documents.

For a review of the final fee disclosure regulations please see our [Management Alert](#) on this topic.

Guide Requirement

The proposed amendment to the final regulations addresses concerns that service providers may provide lengthy, complicated documents to plan fiduciaries to satisfy their disclosure obligations.

In response, the DOL has proposed that in situations where the disclosed information is not contained in a single document, or if the document is in excess of a specified number of pages, the service provider must provide a guide that directs the reader to specific information. The proposed amendment considers two formats for this guide: directing the reader to a specific page number or directing the reader to a specific section. Under the proposal, service providers may choose either method.

Required Elements

Where a disclosure is sufficiently complicated to warrant a guide, the service provider must disclose the location of:

- the description of services to be provided to the covered plan;
- the statement concerning services to be provided as a fiduciary and/or as a registered investment adviser;

- the description of all direct compensation;
- the description of all indirect compensation;
- the description of any compensation that will be paid among related parties;
- the description of any compensation for termination of the contract or arrangement;
- the description of any compensation, annual operating expenses, and ongoing expenses for the following types of service providers:
 - Services provided as a fiduciary to an investment contract, product, or entity that holds plan assets in which the covered plan has a direct equity investment, or
 - Recordkeeping services or brokerage services provided to an individual account plan that permits participants or beneficiaries to direct the investment of their accounts, if one or more designated investment alternatives will be made available in connection with such recordkeeping services or brokerage services.

The guide must also provide the name and contact information of the service provider's contact individual. This individual will answer questions to the extent the plan fiduciary has any difficulty locating information referenced in the guide or has questions concerning the substance of the disclosures. The guide must be a separate document to ensure that it is brought to the attention of the plan fiduciary.

The information contained in the guide must be disclosed at least annually to plan fiduciaries.

Sample Guide

The DOL previously posted a sample guide to initial disclosures that may be referenced by plan service providers. The sample was published as an appendix to the final 408(b)(2) regulations, effective July 1, 2012, and is an example of what the DOL believes guides to initial disclosures may look like in practice. The sample guide is available at the following address: <http://www.dol.gov/ebsa/pdf/408b2sampleguide.pdf>.

Request for Comments

The DOL has requested comments on several issues prior to finalizing the rule, including:

- The number of pages that will trigger the guide requirement
- Whether such a page number requirement is an appropriate standard
- Suggestions concerning the structure of the guide and whether its requirements are cost-effective
- What types of entities, other than covered service providers, might be involved in the preparation of the guides
- What innovations in the preparation and delivery of disclosures currently exist in the marketplace

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