

Fact Sheet



U.S. Department of Labor
Employee Benefits Security Administration
July 15, 2010

Interim Final Regulation Relating to Improved Fee Disclosure for Pension Plans

The Employee Retirement Income Security Act (ERISA) requires plan fiduciaries, when selecting and monitoring service providers and plan investments, to act prudently and solely in the interest of the plan's participants and beneficiaries. Responsible plan fiduciaries also must ensure that arrangements with their service providers are "reasonable" and that only "reasonable" compensation is paid for services. Fundamental to the ability of fiduciaries to discharge these obligations is obtaining information sufficient to enable them to make informed decisions about the services, the costs, and the service providers.

This interim final rule represents a significant step toward ensuring that pension plan fiduciaries are provided the information they need to assess both the reasonableness of the compensation to be paid for plan services and potential conflicts of interest that may affect the performance of those services.

Background

- ▶ The Employee Benefits Security Administration (EBSA) is responsible for administering and enforcing the fiduciary, reporting, and disclosure provisions of Title I of the ERISA.
- ▶ The agency oversees approximately 708,000 private pension plans, including 483,000 participant-directed individual account plans such as 401(k)-type plans.
- ▶ In recent years, the way services are provided to employee benefit plans and the way service providers are compensated (e.g., through revenue sharing and other arrangements) have become increasingly complex.
- ▶ Many of these changes may have improved efficiency and reduced the costs of administrative services and benefits for plans and their participants. However, the complexity resulting from these changes also has made it more difficult for many plan sponsors and fiduciaries to understand how and how much service providers are compensated.
- ▶ Although the Department has issued considerable guidance relating to the obligations of plan fiduciaries in selecting and monitoring service providers, this interim final rule establishes, for the first time, a specific disclosure obligation for plan service providers – a disclosure obligation designed to ensure that ERISA plan fiduciaries are provided the information they need to make better decisions when selecting and monitoring service providers for their plans.
- ▶ The Department published a notice of proposed rulemaking and related class exemption in December 2007 and held a public hearing on March 31 and April 1, 2008.

Overview of Interim Final Service Provider Disclosure Regulation

- ▶ The interim final regulation applies only to defined contribution and defined benefit pension plans and focuses on the disclosure of the direct and indirect compensation certain service providers receive.
- ▶ The interim final regulation applies to plan service providers that expect to receive at least \$1,000 in compensation in connection with their services and that provide:
 - ▲ certain fiduciary or registered investment advisory services;
 - ▲ recordkeeping or brokerage services to a participant-directed individual account plan in connection with the investment options made available under the plan; or

- ▶ certain other services for which indirect compensation is received.
- ▶ The rule focuses on service providers and compensation arrangements that are most likely to raise questions for plan fiduciaries with respect to the amount of compensation being received by a service provider for plan-related services and potential conflicts of interests that might compromise the quality of those services.
- ▶ The interim final regulation also includes a class exemption from the prohibited transaction provisions of ERISA for a plan fiduciary who enters into a contract without knowing that the service provider has failed to comply with its disclosure obligations.

Disclosure Requirements

Disclosure of Services and Compensation

- ▶ Information required to be disclosed by plan service providers must be furnished in writing to the plan fiduciary. The rule does not require a formal written contract delineating the disclosure obligations.
- ▶ Information that must be disclosed includes a description of the services to be provided and all direct and indirect compensation to be received by the service provider, its affiliates or subcontractors. Direct compensation is compensation received directly from the plan. Indirect compensation generally is compensation received from any source other than the plan sponsor, the covered service provider, an affiliate, or subcontractor.
- ▶ Because certain services and costs are so significant or present the potential for conflicts of interest, information concerning those services and costs must be disclosed without regard to whether services are furnished as part of a bundle or package. For example, service providers must disclose whether they are providing recordkeeping services and the compensation attributable to such services, even when no explicit charge for recordkeeping is identified as part of the service contract.
- ▶ Service providers must disclose whether they are providing any services as a fiduciary to the plan.
- ▶ Information also must be disclosed about plan investments and investment options. These disclosure obligations are placed on the fiduciaries to investment vehicles that hold plan assets and on recordkeepers and brokers who, through a platform or other mechanism, facilitate the investment in various options by participants in individual account plans, such as 401(k) plans.

Ongoing Disclosure Obligations

- ▶ Changes: A service provider generally must disclose a change to the initial information required to be disclosed as soon as practicable, but no later than 60 days from the date on which the covered service provider is informed of such change.
- ▶ Reporting and Disclosure Requirements: Service providers also must, upon request, disclose compensation or other information related to their service arrangements that is requested by the responsible plan fiduciary or plan administrator in order to comply with ERISA's reporting and disclosure requirements.

Benefits of Interim Final Regulation

- ▶ The Department estimates that the rule will be economically significant. The non-discounted costs for the first year are estimated to be approximately \$153 million.
- ▶ The first year costs are attributable to reviewing and analyzing the regulation, conducting a compliance review to ensure that service providers comply with the regulation, and preparing any new disclosures required by the regulation. Costs in the second and subsequent years are expected to fall to an estimated \$37 million.
- ▶ The Department estimates that benefits would result from reduced time and cost for fiduciaries to obtain compensation information needed to fulfill their fiduciary duties, the discouragement of

harmful conflicts of interest, reduced information gaps, improved decision-making by fiduciaries about plan services, enhanced value for plan participants, and increased ability to redress abuses committed by service providers.

Public Notice and Comment on the Interim Final Regulation

The interim final regulation will be published in the Federal Register on July 16, 2010. The Department invites public comments from interested persons on the regulation by August 30, 2010, and specifically requests input on the feasibility and cost effectiveness of requiring plan service providers furnish to plan fiduciaries a summary disclosure statement as part of the regulation. Public comments can be submitted electronically by email to e-ORI@dol.gov or by using the Federal eRulemaking portal at www.regulations.gov. Persons interested in submitting comments on paper should send or deliver their comments to: Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N-5655, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, DC 20210, Attention: 408(b)(2) Interim Final Rule. All comments will be available to the public, without charge, online at www.regulations.gov and www.dol.gov/ebsa, and at the EBSA Public Disclosure Room.

Effective Date

The final regulation is effective for contracts or arrangements between plans and service providers as of July 16, 2011.

Contact Information

For questions about the regulation, contact EBSA's Office of Regulations and Interpretations at (202) 693-8500.