

The PRS Report

YOU ARE RESPONSIBLE...

WHAT FEES ARE PAID BY YOUR PLAN?

INSIDE THIS ISSUE:

YOU ARE RESPONSIBLE... WHAT FEES ARE PAID BY YOUR PLAN?

As a plan sponsor and fiduciary, the Employee Retirement Income Security Act (ERISA) requires that you enter into and monitor service arrangements with the Plan's service providers such that they are "reasonable" and that only "reasonable" compensation is paid for the necessary services. How can you, as a plan sponsor and fiduciary, measure this?

The Department of Labor's Employee Benefits Security Administration (EBSA) has issued regulations and guidelines under ERISA Section 408(b)(2) which require the disclosure of fees to plan sponsors by the plan's covered service providers (CSP) so that the fees will become more transparent and easier to evaluate. The initial disclosure to plan sponsors by the CSPs for existing contracts or agreements is due by **July 1, 2012**. Here is a brief summary.

Who must provide the fee disclosure?

Generally, you can expect to receive disclosure notices from the types of CSP listed below. Only if the CSP's fees total or are reasonably expected to total \$1,000 or more would a disclosure be required.

- ERISA fiduciaries or registered investment advisors (RIA)
- Providers of recordkeeping services or brokerage services for Participant-directed defined contribution plans (for example 401(k) plans)
- Services for which indirect compensation is paid. Such



YOU ARE RESPONSIBLE...

WHAT FEES ARE PAID BY YOUR PLAN? (cont.)

services would include accounting, legal, consulting, and third party administration. Indirect compensation is compensation received by a source other than the plan itself, the plan sponsor, the CSP, or affiliate of the CSP. Examples of indirect compensation are 12b-1 fees or finders fees.

Note: Pension Review Services (PRS) generally is not a covered service provider for our clients' plans. PRS generally does not receive indirect compensation. If we do receive indirect compensation for a particular plan, we will provide a fee disclosure to the plan sponsor.



What information is to be provided?

The fee disclosure statement needs to include the following types of information:

- Status: Who is the CSP and what makes the entity a CSP.
- Service: What are the services provided pursuant to the agreement or contract.
- Compensation:
 - ◊ All direct compensation received or expected to be received from the plan
 - ◊ Indirect compensation received or expected to be received
 - ◊ Any fees to be received if the contract or agreement is terminated
 - ◊ How the compensation is to be received (billed to the plan, from the accounts directly, taken from the investment income...)

What if a disclosure is not provided?

If a disclosure is not provided by the CSP, essentially the contract or arrangement between the Plan and the CSP would be a prohibited transaction, for which correction is necessary. However, the plan fiduciaries will be exempt from the ramification of the prohibited transaction if the following conditions are met:

- A request is made in writing to the CSP for the required information.
- If the information requested is not provided within 90 days of the request, the failure to disclose is reported to the Department of Labor. The following is a link to a model

YOU ARE RESPONSIBLE...

WHAT FEES ARE PAID BY YOUR PLAN? (cont.)

fee disclosure failure notice:

<http://www.dol.gov/ebsa/DelinquentServiceProviderDisclosureNotice.doc>.

- Final regulations require that the services with the CSP be terminated if the disclosure is not made within 90 days of the request.

What should be done with the information in the disclosure?

The Plan Sponsor is obligated to review and analyze the information to determine if the fees are reasonable for the services provided and if the arrangement should continue in the best interests of the Plan and participants. The fees do not have to be the lowest of those surveyed. What needs to be considered is the value of the services provided for the fees charged.

In addition, the information will then be used to provide the fee disclosures that you, as the plan sponsor, must provide to participants in plans which provide for self-directed accounts. But that is a topic for another newsletter...stay tuned!



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