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RETIREMENT PLAN UPDATE

Quarter 2, 2011

Plan Fees and Fiduciary Responsibility

Did you know?

We recently had all of our employees participate in a full day customer service training seminar that was specifically geared towards our industry.

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Anyone who uses their discretion to manage a retirement plan or manage the assets of a plan is generally a fiduciary. Fiduciaries have five main responsibilities:

- 1) Acting solely in the best interests of the plan participant with the exclusive purpose of providing benefits to them
- 2) Carrying out their duties prudently
- 3) Following the plan documents
- 4) Diversifying the investments in the plan
- 5) Paying only reasonable plan expenses

This article will focus on the reasonable plan expenses.

The big focus from the Department of Labor (DOL) in the past couple of years revolves around how a fiduciary can tell if the fees being charged to the plan are reasonable. Over the years, some service providers began to receive additional fees from investment vehicles (such as mutual funds) that are offered in the plan. The DOL explains that mutual funds often pay brokers and other salespeople for promoting the fund and providing other services. Third party administrators (TPAs) like us also receive revenue sharing payments from mutual funds in exchange for maintaining the individual participant account values which limits their responsibilities to plan level reporting. The changes in fee disclosure regulations will require that

service providers disclose all sources of income related to plan assets. (Note: We have always disclosed and credited all revenue sharing payments that we receive.)

Another current fee issue involves participants suing plan sponsors because plan fiduciaries allowed the service providers to charge "excessive" fees. The charges usually also claim that the fiduciaries imprudently selected service providers that did not disclose their fees or revenue sharing arrangements properly. There have also been suits where participants maintained that the plan sponsor should have invested in a different, less expensive class of mutual fund (retail vs. institutional shares).

How do you protect yourself from fee lawsuits?

- Hold regular plan committee meetings, make decisions and keep minutes of these decisions.
- Ensure that the minutes reflect the factors that were considered in making the decisions.
- Regularly evaluate the relationships with your service providers on a periodic basis. Most committees



evaluate their mutual funds but not their relationships.

- Ask your service providers if your plan is in a minority compared to other plans of its size and any trends you should be aware of. Contact us with any questions!



Participant Fee Disclosure

Generally, in 2012, participants will be required to receive information related to fees that are charged to the plan assets. There are quarterly and annual notice requirements for all qualified retirement plans that allow participants to direct their assets.

The plan must provide a statement of the actual fees charged to a participant's account once per quarter. An annual notice is also required which must be supplied to any participant prior to their entry date and once a year to all employees eligible to participate in the plan (even if they don't have an account balance). The notice must include the following information:

1) Plan-level information

- The amount of general fees that might be charged against the plan assets (i.e. their estimated share of the total fees that may be charged to the plan)
- The amount of individual fees that may be charged specific to an individual choice (i.e. a loan fee)



2) Asset Information

- Names of all investments offered
- Total annual operating expense of each investment (as a percentage and a dollar amount on a \$1,000 investment)
 - Performance and benchmark information for each investment
 - Any fees that are charged directly on the investments such as sales loads and redemption fees
 - A website address for each investment option
- Certain information on request such as a prospectus
- If there is a change to any of the information a new notice must be distributed 30—90 days prior to the change.

These new requirements are obviously quite a change from the standard. Participant statements will need to change, information will need to be gathered and new notices will have to be developed. The Department of Labor thinks that the benefits of participant fee disclosure will far outweigh the additional work (and costs) that will be required to implement the new law.

Form 8955-SSA Forms

For 2009 Forms 5500, the IRS mandated electronic filing. But there was one attachment that couldn't be filed electronically and that was Form SSA. The SSA reports terminated participants who still hold an account balance to the Social Security Administration. But the form contains social security numbers and the electronic 5500 forms are posted to the DOL website. Posting social security numbers was not acceptable. Now, a year and a half after the electronic filing mandate, we finally have a separate Form 8955-SSA to file. The forms are due January 17, 2012 and will need to cover 2009 and 2010 information. We will be working on sending these to you as soon as the form is available on our software.





Plan Sponsor Fee Disclosure

Beginning in 2012, most service providers to qualified retirement plans will have to provide written disclosure of their fees to plan fiduciaries. These disclosures will need to be made before a contract is made, renewed or extended.

What plans are covered?

Most qualified retirement plans are covered.

Who must issue the disclosure?

Anyone who is considered a “covered service provider” is required to issue a disclosure to the plan sponsor. A “covered service provider” is generally defined as the following:

- 1) Investment advisors
- 2) Firms providing recordkeeping services
- 3) Any firm receiving “indirect compensation” (defined as money paid to the service provider that does not come from the plan sponsor or the plan assets, such as revenue sharing or 12b-1 fees)



What must be in the disclosure?

The disclosure must be in writing and describe the services that are provided. All expected fees must also be disclosed—both those that are direct compensation (paid from plan assets) and indirect compensation (paid from a source other than the sponsor or the plan assets). The service provider must also disclose the source of any indirect compensation. Furthermore, if the service provider pays any affiliate or subcontractor, the names of those firms and the dollar amounts involved must also be disclosed.

When must the disclosure be given?

The disclosure must be given prior to the effective date of the law (January 1, 2012) and prior to entering into any contract.

Why is it required?

The purpose of the regulation is to allow the plan sponsor to have sufficient information to determine whether the fees that are being charged are reasonable.

Getting To Know Us...

Meet Karin French...

Karin began her career in Pension Administration way back in 1989 (she was a 7 year old prodigy) and joined the Noble-Davis team in 2000. Born and raised in Cleveland, OH, Karin now resides in Stow and enjoys her commute to Solon as long as it doesn't involve rush hour traffic. For this reason, you will rarely find her in the office prior to 10:00 am. The oldest of three children, Karin enjoys spending time with her nephews, knowing that she can spoil them rotten and then send them back home at the end of the day. When not allocating contributions, preparing 5500 forms, or performing ADP tests, Karin enjoys travelling (whether it be to Columbus, OH or Rome, Italy), reading (something other than the Internal Revenue Code), music, movies, art festivals, theater, yoga, and wine and beer tasting (but only **after** allocating contributions, preparing 5500 forms, or performing ADP tests).



Quarter 2, 2011

celebrating
20 years



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Mark Your Calendar

Stay on top of your retirement plan's mandatory deadlines! Here are some important dates in the upcoming months. (Please note that filing dates are for calendar year plans. Non-calendar year plans must adjust these dates.)

Each Payroll: Remit deferral and loan repayments within 7 business days (small plans) or as soon as possible (large plans)

June 30: Deadline for processing corrective distributions for eligible automatic arrangements (EACA) plans without 10% tax

August 1: Form 5500 due (without extension) or deadline to file extension until October 15

August 1: Form 5330 and excise taxes due on prohibited transactions (such as late deferral deposits)

August 14: Second quarter PPA Statements due for participant directed plans

September 15: Extended deadline for filing of corporate tax re-

turns and contribution deadline for deductibility

September 30: Summary Annual Report due to participants (if Form 5500 not extended)

October 17: Extended deadline for filing Plan's annual Form 5500 filing.

November 14: Third quarter PPA Statements due for participant directed plans

December 2: Deadline for 2012 safe harbor notice to be available for plan participants.

December 15: Extended deadline for distributing Summary Annual Report to participants (if Form 5500 extended)

