Sponsor Fee Disclosure

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NOBLE DAVIS CONSULTING, INC

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Sponsor fee disclosure requires service providers to outline their fees to the plan so that you can decide if they are reasonable

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For many years, the Department of Labor has been concerned over the way the retirement plan industry discloses fees to plan sponsors. New guidance has finally been released and is currently considered an interim final regulation, which means that although the comments are invited, the regulations are essential in their final form, but may be modified after additional comments are received. One of the many duties of a plan fiduciary is that the fiduciary must made sure than any fees charged to the plan are reasonable. With revenue sharing, sub transfer agent fees, TPA allowances and other payments that are often made between service providers, the plan sponsor wasn't always able to identify all the fees being charged or to ascertain their reasonableness. The new service provider disclosure rules aim to change all of that.

These new regulations are currently set to take place for plan years beginning on or after January 1, 2012. The rules will require that certain service providers give information about the fees and payments they expect to receive, including any payments they may receive on behalf of the plan from another service provider. This will allow for fee transparency to the plan sponsor.

More about Sponsor Fee Disclosure

The regulations require that "covered service providers" make certain fee disclosures in writing to fiduciaries of a "covered plan" within certain timeframes. A "covered plan" is any defined contributions or defined benefit plan that is not exempt from ERISA (most qualified plans). A "covered service provider" falls into one of three categories:

- Someone providing investment advice to the plan or acting as a fiduciary to the plan
- Recordkeepers or brokers providing services to a covered plan if investment alternative are made available through an arrangement connected to the recordkeeper or broker
- Anyone who provides services and receives indirect compensation. Indirect compensation is money that is paid to a service provider that comes from a source other than the plan sponsor or the plan assets. We often refer to these payments as revenue sharing and we have always reported these payments clearly on your invoice to directly offset your plan fees.

There are initial requirements that necessitate disclosures be given to a plan sponsor prior to entering into a contract. These initial disclosures must say what services will be provided and what the fees will be. They must also disclose if the fees will be direct compensation (paid directly from the plan assets) or indirect compensation (paid from any source other than the plan assets or the plan sponsor). Initial disclosures must identify any affiliate or subcontractors that will be paid in connection with the services provided and list all fees that will apply if services are terminated. For existing contracts, the disclosure must be made prior to the effective date of the regulation, which is currently January 1, 2012. These disclosures must also be made as often as there are any changes to the arrangement.

An investment disclosure must also be made for each designated investment alternative that includes all of the applicable investment fees such as sales charges, redemption fees, sales loads, deferred sales charges, surrender charges, exchange fees, account fees, purchase fees, annual operating expense, and any ongoing fees such as wrap fees.

If any of these administrative or investment fees are not disclosed, the fees become a prohibited transaction and the service provider must reimburse their fees to the plan and pay a 15% excise tax on the amount in question.