Retirement Plan Disclosure Rules

Big Impact for Small and Mid-sized Businesses with Participant-Directed Retirement Plans

Retirement plan sponsors, as fiduciaries under ERISA, are required to prudently monitor the plan's fees and other compensation to ensure the services received are helpful and necessary and the resulting fees and other compensation are reasonable in light of the services provided. Regulations introduced in 2012 by the Department of Labor (DOL) could create traps for the unaware or unenlightened business owner sponsoring a 401(K), profit sharing or other ERISA-covered plan that provides participant-directed investments. (These rules do not apply to IRAs, SEPs or SIMPLE IRAs.)

In an effort to improve fee and expense transparency for the spectrum of investments that exist within retirement plans, the DOL has created two new regulations. The first requires covered service providers to deliver a written disclosure to a responsible plan fiduciary so the fiduciary may determine if a reasonable contract or arrangement under Section 408(b)(2) of ERISA exists. This disclosure is sometimes referred to either as the 408(b)(2) or service provider disclosure. The second requires plan sponsors to provide plan-related and investment-related information at least annually – and in some cases quarterly – to their participants to enable a better comparison of the plan's investment options. This disclosure is sometimes referred to either as the 404(a)(5) or participant fee disclosure.

Key Components to Know

1. Receipt of disclosures from covered service providers. Each covered service provider must furnish disclosures to plan sponsors regarding the services they provide and the compensation they receive for those services. For some businesses it

may mean they receive one disclosure; for others, it could be two or more disclosures from different service providers. Covered service providers are typically those providing third-party administration, record keeping, brokerage, or investment services to the plan.

2. Review of service provider disclosures and preparation of participant fee disclosures. Plan sponsors, as plan fiduciaries, have a legal duty to review and understand the disclosures, report to the DOL those entities that don't comply, and take the disclosures into account as they evaluate and possibly replace providers.

3. Provide participants with appropriate disclosures. Plan sponsors must ensure that their plan participants receive a separate disclosure regarding plan-level fees and other investment-related information, like expense ratios and benchmarking investment performance.

Compliance with these Regulations Will Require Attention and Action

You are busy running your business and may be asking, "**Why should I care about the new DOL fee disclosure requirements?**" Compliance with these disclosure rules is among the conditions for a service arrangement to be reasonable. Price is not the only factor in determining what is reasonable; it is also important to review the level and quality of services you receive.

In the DOL's view, failure to satisfy all the requirements of these regulations, which includes determining if the fees or other compensation are reasonable for the services provided and making appropriate disclosures to plan participants, can result in penalties. Under ERISA, these penalties may include holding the fiduciary liable for any losses to the plan resulting from the violation and other actions a court may deem appropriate, like removal of the fiduciary.

Being aware of what needs to be done is the first step, but you should also ensure you have appropriate processes in place and identify the personnel who will be responsible for meeting these new DOL regulations and their ongoing requirements. ■