



Employer Update

DOL Fee Disclosure Regulations: What Plan Sponsors Need to Know

Retirement plan fees and their impact on the retirement savings of plan participants is a topic that has received a lot of attention over the last several years. It is no secret that the fee and expense structures of retirement plans, defined contribution plans in particular, have become increasingly complex. The following two-part overview is intended to (1) make employer-sponsors of defined contribution plans and defined benefit plans covered by the Employee Retirement Income Security Act of 1974 ("ERISA") aware of their fiduciary obligations to understand the fees charged by the service providers engaged to perform plan administrative and investment services and (2) inform defined contribution plan sponsors, what must be communicated to plan participants charged with the responsibility of managing the investment of their plan accounts.

Background

The U.S. Department of Labor's ("DOL") Employee Benefits Security Administration ("EBSA") is responsible for administering and enforcing the fiduciary, reporting and disclosure provisions of Title I of ERISA. EBSA first proposed rules dealing with the disclosure of fees and various sources of revenue associated with retirement plans and their underlying investments in 2006 and 2007. These proposals dealt with three areas. The first was related to the enhanced reporting of plan fees and expenses on Schedule C of the Form 5500 Annual Report. The second was aimed at providing retirement plan sponsors (fiduciaries) with information sufficient to determine whether or not the fees associated with the administration of sponsored retirement plans are "reasonable." This reasonableness determination is essential in order to avoid plan fiduciaries' engaging in a prohibited transaction, as defined by ERISA, when hiring service providers to handle the administration of a retirement plan covered by ERISA. The third proposal was aimed at providing the individual participants in "participant-directed" defined contribution plans, such as 401(k) plans, with information sufficient to make educated investment decisions by understanding the impact of plan administrative and investment-related expenses on the value of their account balances under the plan.

Fiduciary Duties Under ERISA

Generally, under ERISA, a fiduciary is anyone with discretionary authority or control over plan management, plan administration or plan assets. ERISA imposes five main duties on fiduciaries:

- Loyalty to plan participants and beneficiaries;
- Prudence;
- Understand and follow plan documents;
- Diversify investments; and
- Pay only reasonable expenses.

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A fiduciary's failure to understand and meet these responsibilities can result in a breach of fiduciary duties under ERISA. In the event of a breach, fiduciaries face excise taxes, possible penalties and potential personal liabilities for resulting plan and participant losses. For this reason, it is essential that plan sponsors understand their fiduciary obligations and take the necessary steps to ensure compliance. The following information regarding the new fee disclosure rules is an important part of satisfying a plan sponsor's fiduciary obligations.

Part One

Service Provider Disclosures to Plan Fiduciaries – The Interim Final Rule – ERISA Section 408(b)(2)

As surprising as it may seem, without ERISA Section 408(b)(2), contracts/arrangements between plans and service providers would be deemed prohibited transactions subjecting plan sponsors to excise taxes and penalties. Thankfully, ERISA Section 408(b)(2) exempts plan service provider contracts/arrangements from being treated as prohibited transactions as long as:

- Services are necessary;
- Contract is reasonable; and
- Compensation received by the service provider is reasonable.

Often, when a plan sponsor hires a recordkeeper, third party administrator or financial advisor, the sponsor has a less than complete understanding of the services that will be provided and the associated cost to the sponsor, plan or participants for those services. The new service provider disclosure regulations are designed to make sure that even though fee and service arrangements can be complex, plan fiduciaries have complete and accurate information about the services provided to plans and the applicable compensation and revenue sharing arrangements that exist. This information is necessary to enable plan fiduciaries to act prudently, solely in the interest of plan participants and beneficiaries, and for the exclusive purpose of providing benefits promised under the plan while making sure the plan pays only reasonable expenses, as required by ERISA.

What is New?

The 408(b)(2) Interim Final Regulations (the "Regulations") impose new fee disclosure requirements that must be met in order for a service arrangement to be deemed "reasonable" for purposes of the prohibited transaction exemption. It is essentially a fourth requirement for the prohibited transaction exemption covering service provider arrangements. The Regulations focus on service providers and fee arrangements most likely to cause questions regarding the amount of compensation received for the retained services and potential conflicts of interest that may impact the quality of those services. It is important to note that the Regulations were issued as "interim final regulations" which means that the DOL will be issuing additional guidance. Informal comments regarding the Regulations indicate the additional guidance may focus on the format of the disclosures including the possible requirement of a summary document or "roadmap" to assist plan sponsors understanding of information disclosed. It is possible this additional guidance will be issued some time before the end of 2011.

Types of Plans Covered

The Regulations apply to any "employee pension benefit plan" under ERISA Section 3(2)(A), which are defined contribution plans (401(k), profit sharing, money purchase, ERISA 403(b), ESOPs) and defined benefit pension plans. Plans not subject to the new regulations include governmental plans, non-electing church plans, foreign plans, non-qualified plans, IRAs, SEPs, SIMPLE IRAs and health & welfare plans.

Who Must Make the Required Disclosures?

Fees must be disclosed to plan sponsors by Covered Service Providers ("CSP"). A CSP is a service provider who enters into a contract or arrangement with a plan and reasonably expects to receive at least \$1,000 (directly or indirectly) as compensation for certain categories of "Covered Services." The Covered Services can be provided by the CSP directly, or by an affiliate or subcontractor.

What are "Covered Services"?

The Regulations define "Covered Services" to include certain fiduciary or registered investment advisory services, recordkeeping or brokerage services provided to a participant directed defined contribution plan if one or more investment alternatives

will be made available (e.g., through a platform or similar mechanism) in connection with such recordkeeping services or brokerage services, and certain other services where the service providers reasonably expect to receive indirect compensation in connection with their services (e.g., consulting, legal, actuarial, appraisal, custodial, auditing).

What Must be Disclosed?

A CSP must make the following **initial** disclosures:

- Description of services;
- Status as a fiduciary (where applicable) an affirmative “fiduciary status” disclosure is required if the CSP, an affiliate or subcontractor reasonably expects to provide services as a fiduciary under ERISA or as a registered investment advisor;
- Compensation (four sub-categories);
- Additional disclosures for recordkeeping services (where applicable); and
- Manner of receipt of compensation.

Compensation Disclosures

A CSP must disclose the manner in which the CSP (and its affiliates and its subcontractors) will receive compensation, such as whether the CSP will bill the plan or deduct its compensation directly from the plan’s accounts or investments. Compensation includes anything of monetary value such as gifts, awards and trips unless the aggregate value is \$250 or less during the term of the contract. The Regulations count all compensation the CSP or an affiliate or subcontractor reasonably expects to receive during the contract term including direct compensation (payments directly from plan assets), indirect compensation (compensation received from any source other than the plan), compensation paid among related parties and compensation for contract termination.

Related Party Compensation

Related party compensation is compensation paid among the CSP, its affiliate, or its subcontractor if the compensation: (1) is set on a transaction basis (e.g., commissions, soft dollars, finder’s fees or other similar incentive compensation based on business placed or retained); or (2) is charged directly against the covered plan’s investment and reflected in the net value of the investment (e.g., 12b-1 fees). DOL intends that these disclosures will enable plan fiduciaries to better assess the reasonableness of the compensation paid for services and to assess actual or potential conflicts of interest that may impact the quality of services to the plan.

CSPs who are “bundled” service providers and allocate compensation among related parties (i.e., the CSP, its affiliates and its subcontractors) need not disclose any allocation of payments among the related parties because the payments are not considered indirect compensation.

However, the CSP must disclose the service for which the CSP will receive the compensation, identify the payers and recipients of the compensation, as well as the status of the payer as affiliate or subcontractor (where applicable). Related party compensation disclosures may result in duplicate reporting.

Recordkeeping Disclosures

The purpose of this separate disclosure requirement for recordkeeping services is to prevent a CSP from disclosing a de minimis amount of direct or indirect compensation for recordkeeping services when that amount has no relationship to the actual cost of the services. This requirement reflects the DOL’s belief that meaningful disclosure of recordkeeping service costs is fundamental to the responsible plan fiduciary’s ability to determine the reasonableness of those costs.

For purposes of the Regulations recordkeeping services include services related to plan administration and monitoring of plan and participant transactions and the maintenance of covered plan and participant accounts, records and statements. Participant transactions include enrollment, payroll deductions and contributions, offering designated investment alternatives and other covered plan investments, loans, withdrawals and distributions.

Without regard to any other CSP disclosure requirements, if a CSP will provide recordkeeping services to a covered plan, the CSP must disclose: (1) compensation information; and (2) if applicable, cost estimate information.

This category of disclosures applies only to a recordkeeper who is a CSP and includes platform recordkeepers, recordkeepers who receive indirect compensation and other CSPs who may provide recordkeeping services.

The CSP must provide to the covered plan a description of all direct and indirect compensation the recordkeeper, an affiliate, or a subcontractor reasonably expects to receive in connection with the recordkeeping services. This requires separate disclosure of compensation for recordkeeping services apart from any other services the CSP, its affiliates and its subcontractors may provide.

If the CSP reasonably expects to provide recordkeeping services, in whole or in part, without “explicit compensation” for such services, or when the recordkeeper offsets or rebates recordkeeping compensation based on other compensation the CSP, an affiliate or a subcontractor receives, the CSP must provide a reasonable and good faith estimate of the cost to the plan of the recordkeeping services. This includes an explanation of the methodology and assumptions used to prepare the estimate and a detailed explanation of the recordkeeping services to be provided to the plan. The estimate must take into account, as applicable, the rates the recordkeeper, an affiliate, or a subcontractor would charge to, or be paid by, third parties, or the prevailing market rates charged, for similar recordkeeping services for a similar plan with a similar number of participants.

“Platform Recordkeeper” Additional Disclosures

A CSP providing platform recordkeeping/brokerage services must disclose investment information with respect to each designated investment alternative for which the CSP will provide recordkeeping or brokerage services pursuant to the contract with the plan.

The CSP must disclose for each investment vehicle or alternative:

- A description of any compensation that will be charged directly against the amount invested in connection with the acquisition, sale, transfer of, or withdrawal from the investment vehicle (e.g., sales loads, sales charges, deferred sales charges, redemption fees, surrender charges, exchange fees, account fees and purchase fees);
- A description of the annual operating expenses (e.g., expense ratio) if the return is not fixed; and
- A description of any ongoing expenses in addition to annual operating expenses (e.g., wrap fees, mortality and expense fees).

This information must be separately disclosed for each investment vehicle or alternative and may not be aggregated. A CSP which provides platform recordkeeping or brokerage services to the plan may satisfy the investment information disclosure requirement by giving the responsible plan fiduciary current disclosure materials (such as the prospectus) of the issuer of the designated investment alternative provided:

- The issuer is not an affiliate;
- The disclosure materials are regulated by a state or federal agency; and
- The CSP does not know the materials are incomplete or inaccurate.

Manner of Disclosure

Under the regulation, a service provider must make required disclosures **in writing** (may also be electronic). The DOL “prefers” disclosure in terms of a monetary amount, formula, percentage of plan assets or per capita charge, however the Regulations permit a CSP to express a description or an estimate of compensation as:

- A monetary amount (e.g., \$1,500 per month),
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- A per capita charge for each participant, a formula (e.g., \$X plus \$Y per participant), or
- A percentage of plan assets (e.g., 10 basis points).

If the CSP cannot reasonably express the compensation under the above options, CSP may use any other reasonable method. However, any description or estimate must contain sufficient information to permit the responsible plan fiduciary to evaluate the reasonableness of the compensation. Disclosure need not be in a single document, and the Regulations do not require any specific format. However, as mentioned, the DOL may issue further guidance in this regard.

Timing of Disclosure

At the time the Regulations were issued in July of 2010, the DOL specified that CSPs were required to issue disclosures to existing plan sponsor clients not later than July 16, 2011. For new service arrangements entered into, renewed or extended on and after July 16, 2011, disclosures are required reasonably in advance of the effective date of the new, renewed or extended contract or service arrangement. On July 19, 2011, the DOL issued a final rule extending the effective date from July 16, 2011 to April 1, 2012.

Once initial disclosures are made, any material changes to the information initially provided must be communicated in writing to the plan sponsor as soon as possible, but no later than 60 days from the date the CSP is informed of or is aware of the change.

Plan sponsors may make a written request for additional disclosures from CSPs in order to comply with ERISA's reporting and disclosure requirements (e.g., to complete 5500 Schedule C). In such a case, the CSP is required to respond with the requested information within 30 days or, if disclosure is not possible within 30 days due to extraordinary circumstances beyond the control of the CSP, the information must be provided as soon as possible.

CSP Failure to Disclose or Errors in Disclosure

The Regulations provide some protection for plan sponsors in cases where a CSP fails to disclose required information. In a case where a CSP fails to disclose all or a portion of the required information, the plan sponsor/responsible fiduciary will not be deemed to have entered into a prohibited transaction if the following conditions are met: (1) the sponsor did not know that the CSP failed or would fail to make the required disclosures; (2) upon discovery of the failure, the sponsor requested the missing information from the CSP in writing; and (3) if the CSP fails to respond to the written request within 90 days, the sponsor notifies the DOL as required under the Regulations.

In drafting the Regulations the DOL also recognized that minor, inadvertent errors in the information provided by CSPs may occur. In such a case, the DOL stated that a contract or service arrangement will not be treated as "unreasonable" and thus cause a prohibited transaction to occur solely because a CSP "acting in good faith and with reasonable diligence, makes an error or omission in disclosing the information." In the event this type of error is discovered, the CSP must notify the plan sponsor of the error and provide corrected information as soon as possible, but no later than 30 days from the date the CSP discovers the error or omission.

Action Steps for Plan Sponsors

Now is the critical time to begin preparing for the April 1, 2012 effective date of the 408(b)(2) Regulations. The following action steps are recommended:

- Conduct training for your plan fiduciaries (plan committee, as applicable) regarding the details of the new fee disclosure requirements;
- Inventory all current plan service provider arrangements and related service agreements to identify "covered service providers" required to disclose the required information;
- Inquire with current service provider contacts the provider's proposed schedule for issuance of required disclosures;

- Establish a timeline and process for review and evaluation of all disclosures received to determine compliance with the Regulations (hire experts, outside consultants where needed);
- Comply with DOL reporting requirements for any CSPs who fail to provide the required disclosures;
- Retain all disclosures received and evidence of any reporting to DOL due to service provider failures to provide information; and
- Make and document any fiduciary decisions based on the information received.

What can USI Consulting Group clients expect?

As a CSP, we are committed to providing our clients with the information required under the Regulations by April 1, 2012. We are currently in the process of refining disclosure schedules that will be incorporated into our client service agreements. Please stay tuned for further communications in this regard and don't hesitate to contact your USI representative with any questions.

Part Two

ERISA Section 404 Final Regulations on Participant Fee Disclosure

Background

Several months after issuing the 408 (b) (2) Regulations, EBSA released Final Regulations concerning fiduciary requirements for disclosure in participant-directed individual account plans under ERISA Section 404. These requirements relate to the fiduciary duties of prudence and loyalty to participants and beneficiaries. They reflect the general principle that plan fiduciaries must take steps to make sure that participants and beneficiaries who are responsible for directing the investment of their plan accounts receive adequate information as to their rights and responsibilities on a regular and periodic basis concerning the plan's features, investment options and associated fees and expenses. The Final Regulations are a product of a 2007 DOL request for information and over 100 public comments, 2008 proposed regulations with over 90 public comments, ERISA Advisory Council, GAO and SEC initiatives as well as focus group studies.

While satisfaction of these participant disclosure requirements is the sole responsibility of a plan sponsor, as a practical matter, it is with the assistance of service providers hired by the plan that the relevant information will be gathered and the disclosures will be made. In fact, the Final Regulations specify that plan fiduciaries will not be liable for their good-faith reliance on investment-related information furnished by their service providers. In general, the requirements are as follows:

- Disclosure must be provided to each participant or beneficiary in a "Covered Individual Account Plan" including eligible employees who choose not to participate and beneficiaries who have the right to direct the investment of accounts they inherit (e.g., death benefits, QDRO segregation amounts).

The Final Regulations clarify that a "Covered Individual Account Plan" is any participant-directed individual account plan that provides an individual account for each participant and for benefits based solely on the amount contributed to the account including any income, expenses, gains, losses and any forfeitures which may be allocated to a participant's account. Covered individual account plans include section 401(k), profit sharing, 403(b) and other defined contribution plans. However, individual retirement account and annuity plans such as simplified employee pensions ("SEPs") and simple retirement accounts as defined in the Internal Revenue Code of 1986 are not covered individual account plans.

- Certain disclosures must be made on or before the date a participant or beneficiary can direct investments and annually thereafter, others must be made quarterly
- Initial and annual disclosure must include general "plan-related" information as well as "investment-related" information for the plan's designated investment alternatives

Disclosure of Plan-Related Information

Disclosure of plan-related information must include the following information upon a participant or beneficiary's initial eligibility to direct plan investments and annually thereafter:

- An explanation of the circumstances under which a participant can give investment instructions and any applicable
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limitations or restrictions;

- Information regarding voting, tender or similar rights in connection with a particular plan investment option;
- Identification of designated investment alternatives offered by the plan; and
- A description of self-directed brokerage accounts or similar arrangements that permit access to investment options outside of those designated by the plan.

Initial and annual disclosure must also include information on expenses for general plan administrative services which may be charged against a participant's account but are not otherwise reflected in the total annual operating expenses of any plan designated investment options. Examples include expenses for recordkeeping, accounting and legal services. The basis on which these charges will be allocated must also be disclosed (e.g., pro-rata or per capita).

Any participant-specific transactional charges which may be assessed against the participant's or beneficiary's individual account that do not represent "plan-wide" expenses such as fees for QDRO review, distribution processing, plan loans and investment advice must also be disclosed initially then annually.

Any changes to general plan and fee and expense information must be made at least 30, but no more than 90 days prior to the change, absent unforeseeable circumstances beyond the control of the plan administrator.

Quarterly Disclosures

In addition to the initial and annual general disclosures, **at least quarterly**, participants and beneficiaries must receive information including:

- The dollar amount of the fees actually charged for general plan administrative services for the preceding quarter, whether by share liquidation or dollar amount deduction and a description of the specific services to which the charges relate;
- If applicable, a statement that in addition to the fees deducted from the account, a portion of the plan administrative expenses were paid from the total annual operating expenses of one or more of the plan's designated investment alternatives through either revenue sharing arrangements, 12b-1 fees, sub-transfer agency fees and the like; and
- The dollar amount of the fees actually charged for participant-specific transactions for the preceding quarter whether by share liquidation or dollar amount deduction and a description of the specific services to which the charges relate.

There is no specific disclosure format required by the final regulations although a model comparative chart for information regarding plan investment options is provided. Quarterly participant statements will be the most common method for disclosing the actual fees charged to participant accounts. Except as otherwise noted above, fees may generally be expressed as a monetary amount, formula, percentage of assets or per capita charge.

Disclosure of Investment-Related Information

In addition to the general plan-related information, the Final Regulations require disclosure of investment-related information in connection with each of a plan's designated investment alternatives. Disclosure must be made based on the latest information available. Certain information is required to be provided automatically while other information must be provided upon a participant's or beneficiary's request.

Investment-related information that is required to be provided automatically includes the name of each designated investment alternative and the type or category of each (e.g., money market, balanced fund, large cap growth, etc.). In addition, performance data for designated investment alternatives without fixed returns (e.g., mutual funds) must be provided, stating the average annual total return for one, five and ten calendar year periods (or the life of the fund if less) starting as of the last day of the most recent calendar year. The name and one, five and ten year returns of an appropriate broad-based securities market index comparable to the returns for each non-fixed return designated investment alternative must also be provided. These benchmarks generally may not be administered by an affiliate of the investment issuer, its investment advisor or a principal underwriter unless the index is widely recognized and used. Participants and beneficiaries must also be notified that past performance does not indicate future results.

For designated investment alternatives with a fixed return or where the return is stated for the term of the investment

(e.g., group insurance contracts), the returns must be provided. If the issuer of the fixed-return investment may adjust the fixed or stated return prospectively, then the current rate and minimum guaranteed rate of return must be stated. Where applicable, participants and beneficiaries must be notified that the issuer may adjust the rate of return and a phone number or website address must be provided to enable participants and beneficiaries to obtain the most recent rate of return.

The required disclosure of fee and expense information is based on the nature of the designated investment alternative, whether returns are non-fixed or fixed. Except as specifically provided in the Final Regulations, fees and expenses can be expressed either as a dollar amount, formula, percentage of assets or per capita charge.

Disclosures for Non-Fixed Return investment Alternatives Must Include the Following:

- A description and amount of each “shareholder-type fee” charged directly against a participant or beneficiary’s investment (e.g., commissions, sales loads, deferred sales charges, redemption fees, etc.) which are not included in the total annual operating expenses of the fund and a description of any restriction or limitation that may be applicable to a purchase, transfer or withdrawal of the investment in whole or in part;
- The total annual operating expenses of the fund expressed as a percentage calculated in the manner specified in the Final Regulations (each fund’s “expense ratio”);
- The total annual operating expenses expressed as a dollar amount per \$1,000 invested, assuming no returns and based on the fund’s expense ratio;
- A statement advising participants and beneficiaries that fees and expenses are only one of several important factors to consider before choosing an investment; and
- A statement regarding the cumulative effect of fees and expenses on a participant’s or beneficiary’s account balance together with a reference to the EBSA website where there is an example.

Disclosures for fixed return investment alternatives are required to include the amount and a description of any shareholder-type fees as well as any restrictions or limitations that may be applicable to a transfer or withdrawal of the investment in whole or in part.

Website and Additional Information

For each designated investment alternative, a website address must be provided that is sufficiently specific to allow participants and beneficiaries to access information regarding a fund’s issuer, objectives and goals, a general description of the types of assets held by the fund, the fund’s portfolio turnover rate, performance data updated at least quarterly and fee and expense information. A glossary of investment terms must also be provided to assist participants and beneficiaries in understanding designated investment alternatives or a website address that provides access to such a glossary together with an explanation of the purpose of the address provided. Finally, if a plan allows participants to allocate contributions toward the future purchase of an annuity certain information including but not limited to fee and expense information must be provided.

Comparative Format Required

The investment-related information is required to be provided in a comparative format which prominently displays a date, the name and contact information for the individual who can provide information upon participant or beneficiary request, a statement that more current information may be available on the website of each designated investment alternative and how to obtain paper copies, at no charge, of information required to be provided on a website regarding annuity options or fixed return investments. The Final Regulations include a model comparative chart which, if used, will meet this comparative format requirement. This format is intended to afford participants and beneficiaries the opportunity to make an “apples-to apples” comparison of a plan’s designated investment alternatives.

Information Provided After Initial Investment

Once participants and beneficiaries have received the initial disclosures of investment-related information, subsequent to actual investment in one or more of the plan’s designated investment alternatives, any materials provided to the plan regarding the exercise of voting, tender and similar rights must be provided to participants and beneficiaries if those rights are passed along. Furthermore, participants may request copies of documentation including, but not limited to; prospectuses, summary prospectuses, financial reports of a designated investment alternative to the extent such reports are

provided to the plan, as well as a statement of the value of a share or unit and the applicable valuation date.

ERISA Section 404(c) Protection for Fiduciaries

It is important to note that these required disclosures and disclosures upon request are now part of the regulations under ERISA Section 404(c) that, if followed, provide plan fiduciaries with some insulation from liability in cases where participants and beneficiaries direct the investment of plan accounts. Prior to the issuance of the Final Regulations, compliance with 404(c) was optional. Because of the required disclosure obligations under the Final Regulations, plan sponsors who do not currently seek to comply with the 404(c) regulations may wish to reevaluate 404(c) compliance in light of the fact that the majority of the formerly voluntary aspects of 404(c) are now required disclosures under the Final Regulations. Therefore, plan fiduciaries may now be able to benefit from the fiduciary protection through required compliance with the Final Regulations.

Manner of Disclosure

While the Final Regulations do not specify the manner in which disclosure must be made, current regulations on electronic disclosure may be applied. EBSA recently requested public comments on possible expansion and improvements to the electronic disclosure regulations so future guidance is anticipated. On September 13, 2011, the DOL issued Technical Release 2011-03 which provides temporary guidance for the electronic delivery of required plan, expense and investment information under the Final Regulations.

Initial disclosure requirements may be satisfied by providing the most recent annual disclosure together with any updates for changes which may have occurred since the annual distribution. All disclosure information must be written in a manner calculated to be understood by the average plan participant.

When Must Plan Sponsors Comply?

At the time the Final Regulations were released in October of 2010, the deadline for compliance was the first day of the first plan year beginning on or after November 1, 2011, which was generally January 1, 2012 (the "applicability date") for calendar year plans. The first initial disclosures of plan information and the comparative chart of investment information were required no later than 120 days after the applicability date (April 30, 2012) for calendar year plans. However, as mentioned in Part One regarding the 408(b)(2) Regulations, the DOL released a final rule on July 19, 2011 extending the deadline for compliance with the Final Regulations as well. The DOL's position was that the effective dates for the two sets of regulations should be harmonized to avoid duplication and also to facilitate integration of the two sets of requirements. As a result, under the transition rules, initial disclosures for existing participants and beneficiaries must be provided no later than 60 days after the first plan year beginning on or after November 1, 2011; or if later, 60 days after the effective date of the 408(b)(2) Regulations, which is April 1, 2012. Therefore, the new "applicability date" under the participant disclosure rules for calendar year plans is April 1, 2012. For calendar year plans, this means the first set of initial disclosures must be provided no later than May 31, 2012. The quarterly disclosures of actual fees and expenses actually deducted from participant accounts must be provided no later than 45 days after the end of the quarter in which the initial disclosures are required to be provided. Since the initial disclosures must be provided during the second quarter of 2012, for most plans, this means the first quarterly disclosures must be furnished by August 14, 2012.

Action Steps for Plan Sponsors

Now is the critical time to being preparing for the May 31, 2012 deadline for providing the first set of initial disclosures to participants and beneficiaries under the Final Regulations. The following action steps are recommended:

- Understand how the Final Regulations apply to you and conduct training for your plan fiduciaries (plan committee, as applicable) regarding the details of the new fee disclosure requirements;
- Contact your service providers (recordkeepers, consultants, third party administrators) to determine the level of assistance that you will receive in complying with the Final Regulations as well as the providers' proposed schedule for issuance of required disclosures;
- Prepare to respond to questions from participants and beneficiaries regarding the detailed information contained in the disclosures;
- Establish a timeline and process for drafting, review and distribution of required disclosures both initially and on an ongoing basis; and

- Remember that the Final Regulations do not eliminate a plan sponsor's fiduciary duty to continually monitor plan designated investment options for compliance with the plan's investment policy statement.

How can USI Consulting Group assist?

We act in multiple capacities with our defined contribution plan clients. Whether in a bundled recordkeeping arrangement or in a purely advisory and consulting role, we are prepared to assist our clients with understanding the disclosure requirements, gathering the necessary information, preparing disclosures as well as evaluating information received from other service providers to our clients' plans. Please stay tuned for future communications regarding these important disclosure requirements, and please contact your USI Consulting Group Representative with questions.

Conclusion

The DOL's new fee disclosure regulations applicable to service provider arrangements and information for participants and beneficiaries are detailed and complex. Plan fiduciaries are charged with understanding and complying with the requirements in both areas. Proactive planning and engaging the proper experts will best serve fiduciaries in their efforts to comply. While there is certainly work to be done on the part of plan fiduciaries as well as the many retirement plan service providers, a better understanding of servicing arrangements and their value together with the associated expenses will benefit plan sponsors, participants, beneficiaries and service providers.