

DOL PUBLISHES PROPOSED RULE ON 408(B)(2) GUIDE REQUIREMENT

On March 12th, 2014, the Department of Labor (DOL) released a proposed rule making changes to the service provider fee and disclosure rules contained in ERISA Sect. 408(b)(2) ("Proposed Rule"). Following are highlights of the Proposed Rule.

Guide Requirement: A guide would be required as part of the initial disclosure if the initial disclosure document either exceeds a specified number of pages (the exact number yet to be determined - DOL is seeking comment on this question), or cross references another document, such as a service agreement or prospectus.

Locating Relevant Information: The guide would need to identify the document and page number or other sufficiently specific locator, such as a section number, where the relevant information can be found. If the disclosure is provided electronically, an electronic link to the page or section (not just to the document itself) could be used in place of a descriptive reference. In either case, the standard is that the locator method must enable the plan fiduciary to quickly and easily find the relevant information.

Information Requiring a Guide Reference: The guide requirement applies to all principal data elements in the 408(b)(2) disclosure, which are identified as follows:

- Description of services and acknowledgement of fiduciary status
- Description of all direct and indirect compensation
- Description of compensation paid among related parties
- Compensation paid in connection with termination of the agreement
- Compensation paid for record keeping services
- Investment related compensation

Separate Document Requirement: While the guide must be delivered with the initial disclosure, it must be contained in a separate document from the disclosure. The DOL believes this will make it easier for plan fiduciaries to recognize and use the guide as intended, but is seeking comment on this rule.

Notification of Changes: At least annually, plan fiduciaries must be provided with notification of any changes to any of the information requiring a guide reference (see above).

Identification of Contact: The guide must identify the person or entity to whom the plan fiduciary can ask questions about the disclosure and it must include contact information for that person or entity.

Effective Date: This is a proposed rule, meaning the DOL will seek comments and review those comments before publishing a final rule. The final rule would be effective 12 months after it's published.

Providing Comment: Comments on the Proposed Rule can be submitted to ORI@dol.gov. They are due by June 11th, 2014, but the comment period may be extended because the DOL will be conducting a survey to confirm the need for the Proposed Rule, as well as its contents, and may seek comment on the survey results as part of this regulatory initiative. One of the questions the DOL is seeking comment on is whether a summary of the disclosure should be permitted instead of a guide.

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