



Service Provider Fee Disclosure: What Accountants Must Know

The U.S. Department of Labor (DOL) recently issued final fee disclosure regulations for ERISA retirement plans. This article highlights a critical observation regarding the application of the service provider disclosure rules to accountants, and provides an overview of the rules and some next steps for you.

An Overview of the Rule

The DOL wants plan sponsors (or other fiduciaries) who select plan service providers to have adequate information to evaluate whether plan services and fees are reasonable. Plan sponsors must review information received from a plan's various service providers and remove any service providers who do not comply or fail to provide complete information. Further, plan sponsors must report to the DOL any service providers who have failed, or refused, to provide the required information.

Accountants as Covered Service Providers

Service providers that receive Indirect Compensation **and** provide banking, consulting, custodial, insurance, investment advisory, recordkeeping, **accounting, auditing**, actuarial, appraisal, legal, or valuation services are also CSPs.

Indirect Compensation

Indirect compensation is compensation from any source other than the plan or plan sponsor, and includes payments such as insurance commissions, 12b-1 fees or other fees from mutual funds, referral and finder's fees, overrides or *revenue sharing*, and also meals and other gratuities over a de minimis amount.

In our experience, most accountants will not be considered CSPs because their fees for services to retirement plans are generally paid directly by the plan sponsor. In order to be a CSP, an accountant must provide accounting or auditing services to a retirement plan and receive Indirect Compensation.

Here's a scenario that may, however, cause an accountant to be a CSP. Certain plan sponsors have recordkeepers establish an account to hold excess revenue sharing (a form of Indirect Compensation). Accountants that are

compensated from such a source of Indirect Compensation for a plan audit or accounting work would be subject to the disclosure obligations as a CSP.

Disclosures

Among other things, CSPs must disclose, in writing, to plan sponsors prior to July 1, 2012:

- Compensation received (direct and indirect)
- Manner of receipt of compensation (e.g. bill the plan or from participant accounts)
- Describe services provided to the plan

Penalties

Failure to comply may result in a prohibited transaction under ERISA and the Internal Revenue Code (IRC). Consequences for prohibited transactions include the disgorgement of fees, fines under ERISA, and penalties under the IRC.

Next Steps

Accountants that provide services to retirement plans should:

- Identify all ERISA plan clients
- Monitor method of payment for services
- Determine your status as a CSP & obligations

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