Fee Disclosure Deadline for 401K Plan Sponsors Extended to July 1, 2012

Posted At : January 20, 2012 3:59 PM | Posted By : information@mcb-cpa.com
Related Categories: Employee Benefit Plans, Featured Events, Employee Benefits Due Dates

The U.S. Department of Labor's (DOL) Employee Benefits Security Administration (EBSA) enacted two new regulations that are intended to reduce costs and assign fiduciary responsibilities in 401k plans. These new regulations were originally scheduled to become effective July 2011 and then were extended to April 1, 2012. The DOL just released another extension for compliance of 401k plan sponsors to **July 1, 2012.**

The EBSA amended the effective date of Service Provider Fee Disclosure Requirements under Employee Retirement Income Security Act (ERISA) § 408(b)(2) to **July 1, 2012**. *This is the regulation that requires all plan providers who receive compensation greater than $1,000 to provide reports to the plan sponsor indicating the amount of compensation, the services provided and whether or not the provider is serving as a plan fiduciary.*

Covered service providers include the following:

- Persons who provide services as an ERISA fiduciary or under the Investment Advisors Act of 1940;
- Persons who provide certain recordkeeping or brokerage services and make available investment options to be offered by the plan; and
- Persons who receive or may receive indirect compensation for the following services: accounting, auditing, actuarial, appraisal, banking, consulting, custodial, insurance, investment advisory (plan or participants), legal, recordkeeping, brokerage, TPA, or valuation.

Covered service providers not in compliance as of July 1, 2012 will be in violation of ERISA's prohibited transaction rules and subject to penalties under the Internal Revenue Code.

Direct compensation is compensation received directly from the covered plan. Indirect compensation generally is compensation received from any source other than the plan sponsor, the covered service provider, an affiliate, or subcontractor. Therefore if the plan accounting, audit, recordkeeping or other services are paid directly by the plan, plan sponsor, the covered service provider, an affiliate, or subcontractor, then the disclosure requirements of 408(b)(2) would not apply to the service provider.

EBSA also announced that in the near future it intends to publish for public comment a separate proposal that would require service providers, in addition to providing the required fee and investment expense information, to furnish a guide or similar tool to assist plan fiduciaries in identifying and locating the potentially complex information that must be disclosed and which may be located in multiple documents.

The effective date of the final rule works in conjunction with the compliance date of EBSA's participant-level disclosure regulation at 29 CFR § 2550.404a-5 *which requires plan administrators to provide participants in participant-directed individual account plans information about plan and investment costs.* Plan administrators for calendar year plans now must make the initial annual disclosure of "plan-level" and "investment-level" information (including associated fees and expenses) to participants **no later than August 30, 2012**, and the first quarterly statement (for fees incurred July through September) must be furnished no later than November 14, 2012.

Click here to view the DOL's sample 401K Plan Fee Disclosure Form that organizations may use for compliance with these new regulations. If you have questions or concerns regarding 401K plan fee disclosure of fiduciary requirements, please contact MCB Employee Benefit Plan Practice Leader, Greg Askey at 703.218.3600. MCB is a member of the AICPA Employee Benefit Plan Audit Quality Control Center.