



REID AND RIEGE, P.C.

COUNSELLORS AT LAW

EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION ALERT

DEADLINE FOR PARTICIPANT FEE DISCLOSURES IMPENDING

August 2012

Participant Fee Disclosure Deadline

August 30, 2012 (or, if later, 60 days after the first day of the first plan year that begins after October 31, 2011), *is the deadline* for each plan sponsor of a participant-directed individual account plan (“Participant-Directed Plan”) to furnish participants with detailed information regarding certain plan-level and investment-level disclosures of fees and expenses. Part II of the attachment to our March 2012 Client Alert entitled *DOL Revises Fee Disclosure Regulations, Extends Compliance Deadlines* (the “March Alert”) contains an explanation of the information that is required to be disclosed. A copy of the March Alert can be found [here](#).

In addition to the distribution of initial plan-level and investment-level disclosures that are due by August 30, 2012, for a calendar year plan each sponsor of a Participant-Directed Plan must also furnish participants with a quarterly statement regarding certain expenses incurred over the preceding plan year quarter. The first quarterly statement subject to the new disclosure rules is due 45 days after the end of the quarter that includes the deadline for the initial plan-level and investment-level disclosure. Therefore, the initial quarterly statement subject to the new disclosure rules for a calendar year plan is due no later than November 14, 2012. For details regarding the information that must be included in the quarterly statement, see Part II of the attachment to the March Alert.

What A Plan Sponsor Should Do Now

The sponsor of a Participant-Directed Plan should communicate with plan service providers to determine which parties will be responsible for preparing the required fee disclosures and to establish the methods to be used for distributing such information to plan participants. For details regarding the acceptable methods of distribution, including electronic distribution, please consult our May 2012 Client Alert, *Updated Guidance on Electronic Delivery of Certain Participant Disclosures*, available [here](#).

A plan sponsor that offers participants the opportunity to invest through a “brokerage window” should be aware of recent Department of Labor (“DOL”) authority in this area. A brokerage window is an investment option that allows plan participants to invest in equities, bonds, mutual funds, exchange traded funds and other types of investments outside of the plan’s regular designated investment alternatives. The DOL has noted that a plan fiduciary must act prudently in selecting the provider of a brokerage window. In addition, questions as to whether the plan’s fiduciaries have acted prudently arise when a plan offers only a brokerage window, without designating any investment alternatives. Additional DOL guidance is anticipated.

Service Provider Fee Disclosures

July 1, 2012, was the deadline for retirement plan service providers to furnish plan sponsors with certain new fee disclosures required by the DOL. (See Part I of our March Alert for an explanation of the required disclosures.) In order to avoid engaging in a prohibited transaction under ERISA, if a service provider has failed to provide such information to the plan sponsor, the plan sponsor must *immediately* advise the service provider by written notice of such failure and request the required information. If the service provider does not comply with the written request within 90 days, the plan sponsor must notify the DOL of such failure within 30 days of either the service provider's refusal to furnish the information requested in the written notice or 90 days after the written request was made – whichever is earlier.

In addition to alerting the DOL, the plan sponsor has a duty, consistent with its fiduciary obligations under ERISA, to evaluate whether or not to continue its contract or arrangement with a service provider who fails to provide the requested information. Further, if the requested information concerns fees relating to *future* services and it is not provided shortly after the 90-day period following the written request, the plan sponsor has a legal obligation to terminate the contract or arrangement as soon as possible.

What A Plan Sponsor Should Do Now

In light of the July 1, 2012, deadline, a plan sponsor should take steps to ensure that the required fee disclosure information it has received is adequate, thorough, and in compliance with the DOL's requirements. If it is not, or if the plan sponsor has yet to receive any information from its service provider, the plan sponsor should act as described above.

If you have any questions concerning the DOL regulations regarding service provider fee disclosures or Participant-Directed Plan disclosures, please contact us.

Note from the Editor This edition of the Employee Benefits and Executive Compensation Alert highlights DOL guidance on participant-directed individual account plan disclosures and service provider fee disclosures. The Alert was written by Devin M. Karas, a member of the Employee Benefits & Pension Practice Area at Reid and Riege, P.C., One Financial Plaza, Hartford, CT 06103. The Practice Area works closely with clients to design and draft tax-qualified and nonqualified retirement plans, and counsels on compliance with the complex and changing rules governing such plans. For information or additional copies of this Alert, or to be placed on our mailing list, please contact Devin (tel. 860-240-1063)(e-mail dkaras@rrlawpc.com), another member of the Practice Area: John J. Jacobson, Chairman (tel. 860-240-1006) (e-mail jjacobson@rrlawpc.com), John V. Galiette (tel. 860-240-1009) (e-mail jgaliette@rrlawpc.com), Ronald J. Koniuta (tel. 860-240-1034) (e-mail rkoniuta@rrlawpc.com) or Erik M. Sharp (tel. 860-240-1074) (e-mail esharp@rrlawpc.com), or the Reid and Riege attorney with whom you regularly work. For other information regarding Reid and Riege, P.C., please visit our web site at www.rrlawpc.com.

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