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AUGUST 2008

New Rules for Disclosure of Plan Fees to Participants

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The Department of Labor (DOL) recently released proposed rules for disclosure of plan fees to participants. These regulations have been widely anticipated and are intended to provide participants with pertinent fee information to assist in their investment decisions.

The DOL is currently soliciting comments to these proposed regulations through September 8, 2008. Their intent is for the final regulations to be effective for plan years beginning on or after January 1, 2009.

The proposed regulations cover three areas of Plan related disclosure – general plan information, administrative expenses and individual expenses.

General Plan Information

- Explanation of how participants and beneficiaries may give investment instructions.
- Any limitations on such instructions, including any restrictions on transfers among investment options.
- Any plan provisions relating to the exercise of voting, tender and similar rights, as well as any restrictions on such rights.
- Listing of designated investment alternatives offered under the plan.
- Listing of managers of each designated investment alternative.

Administrative expenses

- Explanation of any fees or expenses for plan administrative services (e.g. recordkeeping, legal) that are charged to the plan and applied to individual accounts. This disclosure must address the methodology for allocating those fees across accounts.
- Summary of administrative expenses charged to the participant must be disclosed quarterly to participants (in actual dollar terms) for the previous quarter.

Individual Expenses

- Explanation of fees and expenses that may be charged to an individual account for a service provided (e.g. loans, QDRO processing, advice).
- Summary of individual expenses charged to the participant must be disclosed quarterly to participants (in actual dollar terms) for the previous quarter.

Investment-related disclosures must be made on or before a participant's eligibility (and at least annually thereafter) and must include the following:

- The name of the investment, its investment category, website address and whether the investment is actively or passively managed.
- Average annual total returns over the past one, five and ten year periods (including a statement that past returns are not indicative of future results).
- Index benchmark returns for the past one, five and ten year periods.
- The amount and description of each investment related fee (e.g. sales loads, redemption fees, account fees).
- Total annual operating expenses expressed as a percentage of assets (expense ratio). Also required to be included is a statement that fees and expenses are only one factor to be considered when evaluating investment choices.

The proposed regulations state that the investment-related fee information described above should be furnished in a chart or table format to facilitate comparisons of the information provided. The chart must also include the name, address and telephone number of the fiduciary (or person named to act on their behalf) to contact for information available on request. Finally, a statement must be included that states that more current information related to fees and performance may be available at the website address provided.

If voting, tender or similar rights are passed through to participants, the participant or beneficiary must be provided with that information subsequent to investment.

Upon request, the plan must provide either at the time of eligibility or annually the following:

- Prospectuses.
- Financial statements.
- The value of a share of each investment option and the date of valuation.
- An asset list for each investment option including the value of each holding as a percentage of the investment option.

The DOL hopes to have final regulations in place by year end, but that may prove to be an ambitious goal. Legislation that was introduced earlier this year in the House of Representatives was different in several aspects to this DOL proposal. While fee legislation may not be passed this year, it is considered more likely in 2009. Given the challenges that would face providers and plan sponsors in adopting these proposed regulations, if the DOL does finalize them this fall their effective date could be pushed well into 2009.

In the meantime, plan sponsors should consider opening a dialogue with their recordkeeper regarding steps that the recordkeeper is currently taking in anticipation of complying with the final regulations. With greater disclosure of fees, plan sponsors will also need to consider how they will evaluate these fees on an ongoing basis to ensure they are reasonable relative to the services provided.

For more information about the DOL Proposed Rules, please contact Steve Spencer at sspencer@dimeoschneider.com or 312-853-1000.

Inflows