

Publications

The Changing Landscape of 401(k) Plan Fee Disclosure Rules

PUBLISHED

01/01/2008

SERVICES

It's a beautiful Friday afternoon in April, and a business acquaintance invites you for a round of golf. Will you go? What if the cost of the game has to be reported to your employer, your customers, and the United States Department of Labor (DOL)? If you provide services to an employee benefit plan that is subject to the Employee Retirement Income Security Act of 1974, as amended (ERISA), there are important developments you should be aware of regarding your compensation.

By far the changes with the greatest immediate effect on ERISA plans and plan service providers are the initiatives of DOL regarding:

- reporting of service provider compensation by plan administrators to the government on the plan's Form 5500 Annual Return/Report (the "Form 5500"); and
- disclosure of compensation by service providers to their plan customers.

Before discussing the nuts and bolts of the new disclosure rules, it might be helpful to list a few of the items that will likely have to be reported and/or disclosed under the new rules. (Some of the rules are final and others are only proposed.)

- Meals, entertainment and gifts received by a plan service provider are likely to be treated as "compensation" paid indirectly from the plan to the service provider. Because of this, plan service providers will be asked to disclose to plans, and plans will be asked to report to the government, the value of virtually every lunch, dinner, golf outing, baseball ticket, theater ticket, educational conference, award or trip that the service provider receives if any part of the service provider's eligibility for the outing is attributable to the services provided to the plan or the service provider's position with the plan. Employees of a plan sponsor who work on plan matters may be considered plan service providers.
- Brokers who help plan sponsors locate recordkeepers and investment providers and become the "broker of record" for the plan will be required to have a written agreement with the plan outlining the services provided and disclosing the 12b-1 fees and similar compensation received from the plan's investments.
- Banks providing recordkeeping and directed trustee services for plans that outsource certain functions (i.e., back-office services) will be required to disclose the fees received by the bank's subcontractors.

- Plan recordkeepers may be required to disclose to plan administrators the investment fees paid to advisors to mutual funds that are plan investment alternatives and the brokerage commissions paid by the mutual funds for trades in the mutual fund portfolio.
- Anyone who provides services to a plan and earns float will have to disclose the amount of float attributable to the plan.

From the examples above, it should be clear that the changes to the rules governing disclosure of service provider compensation have the potential to significantly alter how plans pay for and receive services. This article reviews how the current system of service provider compensation developed and the events that have brought attention to service provider compensation in recent years. We then discuss recent actions by the DOL that have significantly expanded the scope of disclosure required in the context of plan fees. Finally, the article offers a few observations on the magnitude of the changes taking place in this area and their possible effect on plan service providers and fiduciaries.

[A Changing LandscapeDownload](#)