

## **EBSA Puts Out Provider Fee Disclosure Proposal**

**December 12, 2007 (PLANSPONSOR.com) – Federal regulators on Wednesday issued the second of a three-part disclosure rule package – proposed mandates for detailed disclosures from service providers to plan fiduciaries.**

The announcement from the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) said the disclosures mandated in the latest proposal focus on direct and indirect service provider compensation and a provider's potential conflicts of interest.

Bradford P. Campbell, assistant Labor Department secretary for EBSA, explained during a Wednesday conference call with reporters that regulators opted to tie the new fiduciary disclosure requirement to the 408(b)(2) provision regarding prohibited plan transactions with parties in interest and that fiduciaries only pay reasonable plan fees.

He said the new disclosures will be considered when the agency judges whether the fees are reasonable. "We're helping to define what reasonable means so it's clear when that duty is being met," Campbell said during the conference call. "In order for them to carry out their duty under the law, fiduciaries need this information to do their job."

The EBSA proposal includes mandates that:

- ❖ The terms of a plan's contract with a provider must require that the provider disclose information regarding all services to be performed and all compensation that will be received either directly from the plan or indirectly from parties other than the plan or plan sponsor. The proposal includes a definition of compensation or fees as well as rules for bundled service providers and for estimating the amount of prospective compensation. Fees can be expressed in dollar terms or through an estimate.
- ❖ Service providers must also disclose information about relationships or interests that may raise conflicts of interest for the provider in performing plan services. Specifically, providers must describe any participation or interest of the service provider in transactions to be entered into by the plan pursuant to the contract, any material relationships with other parties that may create conflicts of interest, any compensation the service provider may receive that it can affect without prior approval by an independent fiduciary, and any policies or procedures in place to address potential conflicts of interest.
- ❖ There will be ongoing disclosure obligations relating to material change in information already disclosed within 30 days of such change, compensation, or other information related to the contract or arrangements that is requested by the responsible plan fiduciary or plan administrator to comply with ERISA's reporting and disclosure requirements.

The new disclosures affect fiduciary service providers; providers of banking, consulting, custodial, insurance, investment advisory or management services; recordkeeping, securities brokerage, or third party administration services; or

providers who receive indirect compensation for accounting, actuarial, appraisal, auditing, legal, or valuation services. "That's where we have seen the type of conduct you have to be concerned about," Campbell said of the final group.

In an instance where the plan is not aware that a provider is not complying with the law, the department is proposing a class exemption to give the fiduciary protection.

The proposal comes after EBSA's release of the latest Form 5500 focusing on plan disclosures (See [DoL Releases Advance Copies of Revised Form 5500](#)), and a third regulatory piece governing plan disclosures to participants will follow, Campbell said. The plan-to-participant disclosure piece is expected in the next several months.

Campbell said the DoL decided to break its disclosure mandates into three pieces in recognition that different retirement plan actors have varying information needs. "We're trying to target these disclosures where they are needed and not unduly burden the fiduciary and the provider when they are not," he declared.

Responding to a question about a fee disclosure bill by U.S. Representative George Miller (D-California) (See [PD2007: CA Democrat Seen as Important Pension Player](#)), Campbell contended that EBSA's three-part rule package "cover(s) the waterfront" of fee issues

He said it would be best for Congress to hold off any action until lawmakers see the end rulemaking product. "In our view, that means letting us complete our work and that Congress keep that in mind when they judge whether further (fee disclosure) action is necessary," the DoL official said.

The EBSA proposal is available for public comment starting Thursday and lasting for 60 days. Campbell indicated regulators will take a few months after that to promulgate the final rule and the federal Office of Management and Budget will take a few additional months to process the new regulation before it is released in final form.