

# The U.S. Department of Labor has issued new disclosure regulations effective January 1, 2012.

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The regulations require more detailed information about the fees and expenses that your plan pays. The regulations are aimed at helping you better understand how your service providers are paid, how much they are paid and the services they provide for the fees.

Although the regulations make service providers responsible for providing the disclosures, it is important that you are aware of the changes, know what to expect from your providers, and understand your own responsibilities under the rules.

ADP has always disclosed our fees and supports increased transparency for all service providers because we believe that it benefits the entire retirement plan community, including plan participants.

The questions and answers in this pamphlet summarize many of the important elements of the fee disclosure rules and their implications for you.

## HOW DO THE NEW RULES WORK?

The new rules put an affirmative obligation on your service providers to disclose certain information in order for your service arrangement to be considered reasonable and permissible under ERISA.

Vendors are not permitted to wait for you to ask for the information, and compensation under the contract that does not comply could be considered a prohibited transaction, resulting in severe penalties for the vendor.

## WHAT IS YOUR ROLE?

As a plan sponsor, you must evaluate the information that you receive and determine that the services are necessary and that the fees are reasonable. These are not new requirements, but the information that will be provided to you under the new rules should form the foundation of a solid due diligence process for you to fulfill your fiduciary obligations to the plan. A sound due diligence process will include documenting the process and the decision you make regarding selecting and monitoring service providers and their fees.

Without such a due diligence process you may be subject to potential litigation from unhappy participants or class action attorneys. ADP Retirement Services is available to assist you with your due diligence.

## WHAT IS ADP DOING TO PREPARE FOR THE NEW REGULATION?

For more than 20 years, ADP Retirement Services has assisted employers in navigating the ever-changing regulatory environment. Our ERISA and Compliance team has been working to develop disclosure forms and materials, prepare our systems and modify our procedures to comply with the new rules. We will continue to adapt our materials, systems and procedures as the DOL provides more information and issues the ultimate final rule. Our clients can be confident that we will be ready to provide them with the required disclosures and we will assist them in developing a process to evaluate the information.

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# Vendor to Plan Sponsor Fee Disclosure Q&A for Plan Sponsors



## WHAT PLANS ARE COVERED?

The regulations cover all defined contribution and defined benefit plans that are subject to ERISA. For example, 401(k) plans and ERISA-covered 403(b) plans are covered by the rule. It does not apply to IRAs, SEPs, SIMPLEs, non-ERISA 403(b) plans or 457 plans. Vendors must provide the new disclosures to both existing plans and to new plan arrangements.

## WHO IS REQUIRED TO DISCLOSE THEIR FEES?

The rules identify vendors who are subject to the rules as "covered service providers" (CSPs), and defines the term very broadly so that most persons providing services to a plan for a fee must comply. More specifically, the rules define a CSP as anyone that enters into or renews a services contract arrangement with a covered plan and expects to receive \$1,000 or more in compensation either directly or indirectly from the plan. Amounts you pay directly that are not reimbursed by the plan are not included in the calculation.

In addition to meeting this minimum compensation test, a service provider must also provide services that fall into at least one of the services categories identified in the rule, such as:

1. Providing record keeping or brokerage services that include an investment option platform from which the plan sponsor can select a plan's investments (ADP Retirement Services falls into this category);
2. Serving as a fiduciary directly to the plan (an institutional trustee would fall into this category);
3. Serving as an indirect fiduciary to a plan by managing assets held in certain investment vehicles, including a bank collective investment trust;
4. Providing services as a registered investment adviser; or
5. Providing certain other services for which indirect compensation is expected to be received, including participant investment advice or brokerage services

## WHAT HAS TO BE DISCLOSED?

Some of the important disclosure requirements that you should be aware of include:

- A description of the services that will be provided.
- If the CSP or any of its affiliates or subcontractors expects to serve as a fiduciary, it must expressly say so.
- A description of all direct compensation that is expected to be received. Direct compensation is anything paid directly by the plan.
- A description of all indirect compensation that will be received, the services provided for that compensation and the payer of the compensation. Indirect compensation is anything paid to the CSP by someone other than the plan and can include revenue sharing payments from unaffiliated plan investment providers, e.g., mutual fund companies.
- All direct and indirect compensation expected for recordkeeping services, if applicable. Although this information may be included through disclosure of the items above, the critical change that the DOL made is that if the CSP does not have an explicit charge for recordkeeping services, or is paid indirectly through revenue sharing, it must provide an estimate of the cost of the services. This is intended to help you compare the costs among different providers, if needed.
- Recordkeepers that offer an investment option menu must also provide you with the fees and expense information for all of the investment options used by your plan. The information that has to be provided includes fees charged directly against the investments (e.g., sales loads), annual operating expenses (e.g., expense ratios), and other ongoing expenses (e.g., wrap fees).

## HOW DO DISCLOSURES HAVE TO BE MADE?

The CSP is responsible for making the disclosures to the plan, including disclosures for its affiliates and subcontractors. Through this requirement, one party from the CSP group that provides a package of services must make the disclosure for the entire group.

However, if you have direct relationships with multiple CSPs due to how you arrange for all of the services that you need, you may receive disclosures from multiple parties.

The information has to be provided in writing and may be made through multiple documents. The DOL has not developed a standardized form or mandated that disclosures be made following a particular format.

The DOL appears to be developing a form but it's not clear if they will require that it be used, whether it will be a safe harbor, or a model that can be used voluntarily. It is not likely that any such form would be issued by the DOL before July 2011 at the earliest.

Finally, disclosures can be presented using rates, formulas, or dollar amounts and, when necessary, a narrative description can be used.

## WHEN DO THE REGULATIONS TAKE EFFECT?

The rules are still subject to change because, as noted above, the DOL may develop a model disclosure form, and is also considering the comments it received about the rules from the retirement plan community. Until further notice, the rules become effective on January 1, 2012.

## WHEN DO DISCLOSURES HAVE TO BE MADE?

For existing arrangements, the disclosures would have to be made by the rules effective date. For new plans, the disclosure must be made before a contract is entered into. For all plans, after the initial disclosures are made they must be made again whenever the contract is extended or renewed. Plan sponsors must also be notified of any changes to the disclosed information as soon as possible, but not later than 60 days after the CSP is aware of the change.