

Update on Fee Disclosures Requirements for Plan Sponsors and Participants

This update is intended for Plan Sponsors to make certain that you are familiar with the Department of Labor's fee disclosure requirements under §408(b)(2), pertaining to service provider fees, and §404(a)(5), pertaining to participant fee disclosures.

The information contained in this Hot Topics is an update on two very important plan fiduciary issues concerning fee disclosures that will require action on your part this year. With the release of final regulations under ERISA §408(b)(2) the Department of Labor has set the deadlines by which certain fee disclosure notices must be provided to both plan fiduciaries and plan participants and beneficiaries. You can find additional information on both sets of disclosures on our website, www.trombinopension.com, by clicking on the "Newsletter" link. Our April, 2012 newsletter describes the service provider disclosures, and our October, 2011 newsletter describes the participant fee disclosures. Below I will briefly describe each set of disclosures. Please note, with the release of the final §408(b)(2) regulations, the compliance deadlines for the participant disclosures were delayed until August 30, 2012, as discussed below. Please disregard the compliance deadline dates indicated in the October, 2011 newsletter.

Service Provider Disclosures - §408(b)(2)

In February of this year the Department of Labor ("DOL") published final regulations regarding service provider fee disclosures under ERISA §408(b)(2). The new regulations are effective for July 1, 2012, and describe the information that a service provider must disclose to the responsible plan fiduciary with respect to the service provider's services and fees. Please visit our website, www.trombinopension.com and click on the "Newsletter" link on the left side of the page to see our latest newsletter, *The Final Fee Disclosure Regulations Have Arrived*, for an overview of the requirements of the regulations.

In general, ERISA prohibits a service provider from entering into a transaction with a plan that is covered under ERISA. §408(b)(2) provides an exception to this rule if an arrangement or contract is made with a service provider for services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid for those services. It is the duty of the plan fiduciary to determine if the fees being paid to service providers are reasonable. To assist plan fiduciaries in making this determination, the DOL published the §408(b)(2) regulations which define the types of service providers covered under the regulations ("covered service providers"), and describes the type of information that must be disclosed.

Each of your service providers must determine if they are a covered service provider under the regulations and if so, must ensure that you have the required information no later than July 1, 2012. Since the services that Trombino Pension Administrators, Inc. provides are administrative in nature, we are considered covered service providers only if we receive some type of indirect compensation. Indirect compensation is compensation that is not paid directly by the plan sponsor, or is not paid directly from the Plan. For most of our clients, our fees are billed on an invoice and the invoice is paid either directly by the client, or the client directs the invoice to be paid from plan assets. If we receive no other compensation, we are not a covered service provider.

In some instances, we are paid indirect compensation from the plan's recordkeeper or custodian, which we generally use to offset the client's administrative fees. For those plans we are considered to be a covered service provider.

Prior to the release of the new regulations, Trombino Pension Administrators, Inc. described our services and fees to our clients in the form of an Engagement Letter. We have revised our Engagement Letter into our new, *Third Party Administrator Service Agreement* ("Agreement"), to comply with the new §408(b)(2) regulations. Sometime over the

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next several months you can expect to receive the new Agreement, which we will ask you to sign and return to us. Those clients for whom we are considered to be covered service providers will receive the Agreement prior to July 1, 2012. Others may receive their Agreement later in the year. (Some clients for whom our current Engagement Letter already meets the requirements of the new regulations may not receive a new Agreement.)

Participant Fee Disclosures - §404(a)(5)

The participant fee disclosure requirements for §404(a)(5) apply to plans in which the participants have the ability to direct some or all of the investments in their account. If the plan investments are directed by the Trustee(s), then these rules do not apply.

For an overview of the participant fee disclosure requirements please visit our website at www.trombinopension.com and click the “Newsletter” link on the left side of the page and read the October, 2011 newsletter, *Participant Fee Disclosure Requirements for Individual Account Plans*. (Please note, the deadline for complying with the participant fee disclosure rules has been delayed to August 30, 2012. Please disregard the compliance deadline dates indicated in the October newsletter.)

Under the participant fee disclosure regulations, plan fiduciaries have the responsibility to provide certain fee, expense, plan and investment-related information to participants and beneficiaries under individual account plans, to ensure that the participants have the information necessary to make informed decisions with regards to their investments in the plan. Once again, if your plan’s investments are all “pooled” or otherwise directed by the plan’s Trustee(s), these rules are not applicable to your plan.

As indicated above, more detailed information regarding the notice requirements can be found in our October, 2011 newsletter. The purpose of this letter is to first, make certain that you are aware of your responsibilities with respect to the participant fee disclosure, and second, to encourage you to watch for and read all of the information that is provided to you from your service providers with respect to this issue.

The regulations require an annual notice as well as quarterly notices. The initial annual notice for calendar year plans must be provided no later than August 30, 2012. The disclosure must be provided to *all* participants of the plan, as well as beneficiaries that may have an account balance. The notice must be provided once each year thereafter. The notice must also be provided to any new participant on or before the date on which the participant can first direct their investments. The information required to be reported on a quarterly basis will, in most cases, be provided by the plan’s recordkeeper on the participants’ quarterly asset statements.

While the requirement to provide the fee disclosure notices to the plan participants and beneficiaries is the plan fiduciary’s responsibility, the plan’s service providers should be providing the investment and fee/expense information to the fiduciary who must then provide the information to the plan participants. Due to the nature of the information to be provided, the majority of the information will be coming from the plan’s recordkeeper and/or asset custodian.

How that information will be provided to the plan fiduciary varies greatly from service provider to service provider and recordkeeper to recordkeeper, which is why we cannot stress strongly enough for you to be looking for, asking about, and studying how the disclosure information will be provided to you so that you are prepared to distribute the notice to the participants in a timely fashion.

Over the past several weeks many of our recordkeeper partners have provided samples of their disclosure documents. The information required by the regulations, particularly the investment related information, is extensive, and in many cases the samples that we saw were upwards of 20 pages or more in length. Couple that with the DOL’s onerous rules for disclosing the information electronically, and plan fiduciaries may be looking at a considerable delivery cost.

In almost all cases, some action by the plan fiduciary will be required to assist in the completion of the finished notice. Some recordkeepers are intending that their disclosures will be complete, with limited action required by the

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plan fiduciary. Other recordkeepers are merely providing a template, which will require significant input and maintenance by the plan fiduciary. Plans with investments not on a recordkeeping platform, such as open brokerage windows, or employer stock, will have additional disclosure requirements.

Wherever possible, Trombino Pension Administrator, Inc. is attempting to coordinate with our recordkeeper partners to be able to assist you in complying with the participant fee disclosure regulations. Some of the recordkeepers are able to incorporate information such as our processing fees for loans and distributions into their disclosures. Other recordkeepers are providing information pertaining to their services only, so we may need to provide a supplement for the disclosure to describe our fees, if applicable.

If you have not received information from your plan's recordkeeper on this matter we encourage you to contact us or the recordkeeper directly to ensure that you are on their correspondence list. Please respond timely to any requests made by the recordkeeper for information or any other actions on your part that are required to ensure your participant fee disclosures are prepared in time for you to distribute to your participants.

Please do not hesitate to contact Trombino Pension Administrators, Inc. if you have any questions or would like to discuss any of the information presented above.

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