

CLIENT BULLETIN

Upcoming 2012 Compliance Dates For Pension Plans

With no new pension laws that require amendments to qualified plans, the list of new compliance items for 2012 is short.

- Service Provider Fee Disclosures (*aka* "408(b)(2) disclosures") [Benefit News Briefs 2010-81](#); [Benefit News Briefs 2011-44](#)
- Participant Fee Disclosures (*aka* "404(c) disclosures") [Benefit News Briefs 2010-75](#); [Special Bulletin 2011-07](#); [Benefit News Briefs 2011-44](#)
- Determination Letter Filings for Multiple Employer Plans like District Council Pension Plans

We will take a look at each of these three compliance deadlines for pension plans.

Service Provider Fee Disclosure

This regulation requires that certain "covered service providers" to *ERISA* covered *defined contribution* and *defined benefit* pension plans disclose their direct and indirect compensation. The disclosures will assist plan fiduciaries in assessing the "reasonableness" of contracts or arrangements with their covered service providers, including the reasonableness of the service providers' compensation and potential conflicts of interest that may affect the service providers' performance. The final regulation is effective for contracts or arrangements between plans and service providers as of July 16, 2011.

The effective date of the service provider fee disclosure 408(b)(2) service provider fee disclosures is April 1, 2012. By that date, covered service providers must provide the required initial disclosures to pension plans. Covered service providers must also provide initial disclosures with regard to an arrangement with a covered plan entered into, extended or renewed after April 1, 2012 within a *reasonable time* prior to entering into, extending or renewing the arrangement.

The regulation is available by "[clicking here](#)." A brief summary on covered service providers follows.

Summary On Covered Service Providers

The regulation applies to "covered service providers." A covered service provider is one which expects to receive *at least \$1,000 in compensation* for their services *and* that *provide any of the following services*:

- certain **fiduciary or registered investment advisory services**;
- **recordkeeping or brokerage services** to a participant-directed individual account plan in connection with the investment options made available under the plan; or
- "**certain other services**" for which indirect compensation is received.

Such "certain other services" include *accounting, auditing, actuarial, appraisal, banking, consulting* (i.e., consulting related to the development or implementation of investment policies or objectives, or the selection or monitoring of service providers or plan investments), *custodial, insurance, investment advisory* (for plan or participants), *legal, recordkeeping, securities* or other *investment brokerage, third party administration, or valuation services* provided to the covered plan, **for which the covered service provider**, an affiliate or a subcontractor **reasonably expects to receive indirect compensation**. "Indirect" compensation is compensation received from any source other than the covered plan, the plan sponsor, the covered service provider, an affiliate or a subcontractor.

Plan service providers who do NOT perform one of the enumerated services or do NOT receive any indirect compensation do NOT have any disclosures to make, although it is not uncommon for pension plans to ask all of their service providers to sign a statement that they do not perform such services or do not receive indirect compensation, etc.

See [Benefit News Briefs 2010-81](#) for detailed information on the required disclosures a Plan should receive.

Participant Fee Disclosure

The participant fee disclosure regulations apply to **defined contribution** plans for plan years beginning after October 31, 2011. However, the deadline for the plan administrator of a covered plan to provide the *initial annual* plan, expense, or investment disclosures to participants is now 60 days after the later of:

- April 1, 2012, or
- The date the regulations apply (i.e., plan years beginning after October 31, 2011).

Sixty days after April 1, 2012 is May 31, 2012. Thus, for calendar year plans, that means the deadline is May 31, 2012.

The deadline to provide the *first quarterly expense disclosure* under the participant fee disclosure regulations is the 45th day of the quarter following the quarter in which the plan must provide the initial disclosures. For calendar year plans that would be August 14, 2012.

The rule requires a plan administrator to provide to each participant or beneficiary certain *plan-related* information such as:

- General Plan Information
- Administrative Expenses Information
- Individual Expenses Information
- Statements of Actual Charges or Deductions

and certain *investment-related* information such as:

- Performance Data
- Benchmark Information
- Fee and Expense Information
- Internet Website Address
- Glossary
- Comparative Format Requirement For Investment Related Information

See [Benefit News Briefs 2010-75](#) for detailed information about the participant fee disclosure requirements.

EGTRRA Determination Letter Program

Under the current remedial amendment and determination letter system, every individually designed qualified pension plan has a regular, five-year remedial amendment cycle. The next multiemployer pension plans filing Cycle begins February 1, 2014 and ends January 31, 2015. However, multiple employer plans, such as District Council Plans, have a filing Cycle that begins February 1, 2012 and ends January 31, 2013. The required changes are reflected in the IRS 2011 Cumulative List which generally reflects law changes under the:

- *Pension Protection Act of 2006 (PPA);*
- *U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007;*
- *Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act);*
- *Worker, Retiree, and Employer Recovery Act of 2008 (WRERA);*
- *Small Business Jobs Act of 2010 (SBJA);* and
- *Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA 2010).*

The 2011 Cumulative List is available at <http://www.irs.gov/pub/irs-drop/n-11-97.pdf>. It is worthy of note that the Determination Letter program filing fee is now \$2,500, up from the previous \$1,000 fee.

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