WEINLANDER FITZHUGH
Certified Public Accountants & Advisors

Insights and Resources

As a member of the RSM US Alliance, we would like to share the following with you:

Retirement Report Q2 2021

LOCALLY OWNED. NATIONALLY AFFILIATED. GLOBALLY CONNECTED.

An independently owned member
RSM US Alliance

RSM

Weinlander Fitzhugh is a proud member of the RSM US Alliance, a premier affiliation of independent accounting and consulting firms in the United States. RSM US Alliance provides our firm with access to resources of RSM US LLP, the leading provider of audit, tax and consulting services focused on the middle market. RSM US LLP is a licensed CPA firm and the U.S. member of RSM International, a global network of independent audit, tax and consulting firms with more than 43,000 people in over 120 countries.

Our membership in RSM US Alliance has elevated our capabilities in the marketplace, helping to differentiate our firm from the competition while allowing us to maintain our independence and entrepreneurial culture. We have access to a valuable peer network of like-sized firms as well as a broad range of tools, expertise and technical resources.

Bay City Office
1600 Center Ave.
Bay City, MI 48708
(989) 893-5577

Clare Office
601 Beech St.
Clare, MI 48617
(989) 386-3481

Gladwin Office
1312 W. Cedar Ave.
Gladwin, MI 48624
(989) 426-8482

West Branch Office
108 N. Third St.
West Branch, MI 48661
(989) 345-3404

ARE YOU MEETING YOUR FIDUCIARY RESPONSIBILITIES?

RETIREMENT REPORT

News and updates for plan sponsors and fiduciaries of defined contribution plans

In this issue

PARTIAL PLAN TERMINATIONS, 2020 AND COVID-19

COVID-19 has caused a massive number of reductions in force and layoffs nationwide. A consequence of these reductions is the potential for an employer's qualified plan to experience a partial plan termination. A partial plan termination requires the full vesting of affected participants.

Laid-off and furloughed employees

Before determining whether there is a partial plan termination, it is important to note the difference between laid-off employees and furloughed employees; these two terms are often used interchangeably but whether an employee is considered laid off or furloughed can have an impact on whether there is a partial plan termination.

A laid-off employee is a worker who has either lost or left their job because their employer has moved, closed or downsized, or because there is insufficient work. Layoffs are not usually related to employees' performance or conduct. A laid-off employee is considered a terminated employee; however, it is possible for a laid-off employee to be rehired.

A furlough, however, is a mandatory leave of absence in which an employee is expected to return to work—in other words, furloughed employees are not considered terminated from employment. Furloughed employees are still considered active; they are just not on the work schedule.

Consult an attorney for additional guidance if there is any question about how an employee should be categorized, especially to find out if state-specific laws apply.

What is a partial plan termination?

A partial plan termination typically occurs when more than 20% of a plan's participants are laid off in a particular year. The occurrence of a partial plan termination is determined by a facts and circumstances test. Although the IRS views a 20% reduction in participants as a significant percentage, there have been instances where courts found partial terminations to have occurred with lower turnover rates. Therefore, the specific facts and circumstance of each situation are crucial for understanding whether a partial plan termination has occurred.

To determine if the reduction in participants meets the 20% threshold, the sponsor must look at the span of the entire plan year and the turnover of participants during that time. The turnover rate is calculated by dividing the total number of employer-initiated terminations by the number of participants at the end of the plan year, then adding any new participants who entered the plan during the year.

A facts and circumstances analysis should be implemented if it is found that the employer's average turnover rate over the past two or three years is higher than the 20% threshold. This would encourage an employer to rebut an assumption of partial plan termination. In other words, if the employer normally would have a higher turnover rate specific to its business needs, the 20% threshold would not result in a partial plan termination.

What are the implications of a partial plan termination?

A partial plan termination affects vesting. If the plan did, in fact, meet the partial plan termination threshold, all participants who terminated during the plan year, regardless of whether the terminations were employer-initiated, must be fully vested in their accounts. This may mean restoring balances to terminated participants who were previously forfeited.

Existing plan forfeitures may be used to restore balances. However, if the plan forfeitures are not sufficient, the plan sponsor may have to consider additional contributions to make these participants' accounts whole. This, of course, can have significant financial implications for the employer.

Examples

Company A has 10 employees. Company A let go of four of its 10 employees (i.e., 40%) during the year. Since 40% is greater than the 20% required for a partial plan termination, Company A has a partial plan termination.

XYZ Company has 275 employees. Due to a gap in projects, the company furloughed 57 employees for approximately 30 days. All employees were expected to return to work at the end of the 30 days. XYZ Company does not have a partial plan termination because the furloughed employees were expected to return to work at a later date.

Acme Corporation has 50 employees. During the course of the year, 12 employees, or 24%, voluntarily terminated employment with the company. Generally speaking, Acme does not have a partial plan termination because voluntary terminations do not count in determining whether a partial plan termination occurred.

Partial plan terminations and COVID-19

One crucial question that has been weighing on plan sponsors' minds is whether any relief will be granted from the partial plan termination rules for reductions due to COVID-19.

Recently, the IRS provided relief through a Q&A format on its website:

Q: Are employees who participated in a business's qualified retirement plan, then laid off because of COVID-19 and rehired by the end of 2020, treated as having an employer-initiated severance from employment for purposes of determining whether a partial termination of the plan occurred?

A: Generally, no. Subject to the facts and circumstances of each case, participating employees generally are not treated as having an employer-initiated severance from employment for purposes of calculating the turnover rate (defined in Revenue Ruling 2007-43, 2007-28 IRB) used to help determine whether a partial termination has occurred during an applicable period, if they're rehired by the end of that period. That means participating employees terminated due to the COVID-19 pandemic and rehired by the end of 2020 generally would not be treated as having an employer-initiated severance from employment for purposes of determining whether a partial termination of the retirement plan occurred during the 2020 plan year.[1]

Summary

To summarize, if employees were terminated due to COVID-19 but rehired by the end of 2020, they are not to be counted in determining the turnover rate. The Consolidated Appropriations

1 https://www.irs.gov/newsroom/coronavirus-related-relief-for-retirement-plans-and-iras-questions-and-answers

Act, 2021, which was signed into law Dec. 27, 2020, provides a temporary rule preventing partial plan termination. The bill allows defined contribution retirement plan sponsors to avoid the partial plan termination rules if the active participant count as of March 31, 2021, is 80% of the active participant count on March 13, 2020. This will hopefully help some plans avoid partial plan terminations. If you have questions regarding this update or the rules regarding partial plan terminations, please contact your financial professional.

2021 SAVER'S CREDIT

You may be eligible for a valuable incentive, which could reduce your federal income tax liability for contributing to your company's 401(k) plan. If you qualify, you may receive a retirement savings contributions credit, also known as the Saver's Credit, of up to $1,000 ($2,000 for married couples filing jointly) if you made eligible contributions to a retirement savings plan. The deduction is claimed in the form of a nonrefundable tax credit, ranging from 10% to 50% of your annual contribution.

Remember, when you contribute a portion of each paycheck into the plan on a pretax basis, you are reducing the amount of your income subject to federal taxation. And, those assets grow tax-deferred until you receive a distribution. If you qualify for the Saver's Credit, you may even further reduce your taxes. What is nice about the Saver's Credit is that it is an actual tax credit—not merely a tax deduction. If you're not sure how the two differ, a tax deduction simply subtracts the value from your taxable income, and you pay taxes on the remaining taxable income. A tax credit, on the other hand, actually gives you the entire dollar value back or subtracts the value from the taxes you owe—making it far more valuable monetarily than a deduction. In the case of the Saver's Credit, it is nonrefundable, meaning it can only be subtracted from the taxes you owe, possibly down to zero, but it can't provide you with a tax refund.

Your eligibility depends on your adjusted gross income (AGI) as reported on your annual Form 1040 filing, your tax filing status and your retirement contributions.

For the 2021 tax year, your adjusted gross income must be $33,000 or less to qualify for the credit if your filing status is single or married filing separately. To qualify for the credit, you must be age 18 or older and cannot be a full-time student or claimed as a dependent on someone else's tax return.

Use this chart to calculate your credit for the tax year 2021. First, determine your AGI—your total income minus all qualified deductions. Then refer to the chart below to see how much you can claim as a tax credit if you qualify.

Filing status/adjusted gross income for 2021

AMOUNT OF CREDIT	MARRIED FILING JOINTLY	HEAD OF HOUSEHOLD	SINGLE/ OTHERS*
50% of amount deferred	AGI no more than $39,500	$0 to $29,625	$0 to $19,750
20% of amount deferred	$39,501 to $43,000	$29,626 to $32,250	$19,751 to $21,500
10% of amount deferred	$43,001 to $66,000	$32,251 to $49,500	$21,501 to $33,000
0% of amount deferred	More than $66,000	More than $49,500	More than $33,000

Sources: IRS Form 8880; https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-savings-contributions-savers-credit
*Single, married filing separately or qualifying widow(er)

Retirement savings eligible for the credit

The Saver's Credit can be taken for your contributions (or your spouse's, if filing jointly) to a traditional or Roth IRA; your 401(k), SIMPLE IRA, SARSEP, 403(b), 501(c)(18) or governmental 457(b) plan; or your voluntary after-tax employee contributions to your qualified retirement and 403(b) plans. Contributions for purposes of the Saver's Credit are capped at $2,000 per individual.

Rollover contributions (money that you moved from another retirement plan or individual retirement account) aren't eligible for the Saver's Credit. Also, your eligible contributions may be reduced by any recent distributions you received from a retirement plan or IRA.

For example:

- A single employee whose AGI is $18,000 defers $2,000 to their retirement plan will qualify for a tax credit equal to 50% of total contribution. That's a tax savings of $1,000.
- A married couple, filing jointly, with a combined AGI of $40,000 each contributes $1,000 to their respective company plans, for a total contribution of $2,000. They will receive a 20% credit reducing their tax bill by $400.

Consult Form 8880, Credit for Qualified Retirement Savings Contributions, for more information. Please consult with your tax advisor before taking any action based on the information provided herein.

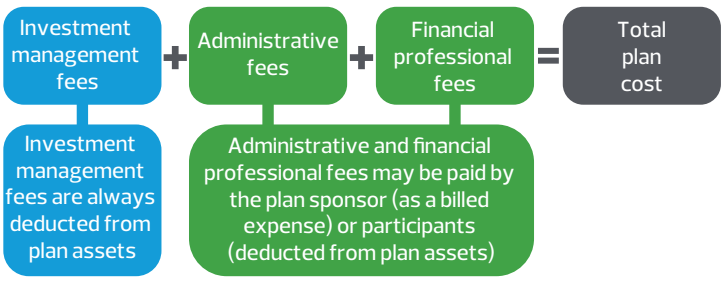
UNDERSTANDING REVENUE SHARING

As many plan fiduciaries can attest, retirement plan fees can be extremely complex and difficult to understand. This is due in large part to the lack of transparency surrounding plan fees and services as well as the complicated and varying methods in which service providers are compensated. A plan sponsor has a fiduciary duty to ensure that only reasonable expenses are paid by the plan. Thus, it is imperative for a plan sponsor to be able to identify all plan-related fees in order to properly monitor and manage them.

Common plan services and fees

Let's start with understanding common services and their fees related to an employer-sponsored retirement plan:

- Investment fees include the cost of investment management and other investment-related activities. These fees are typically charged as a percentage of assets that are commonly disclosed in mutual fund prospectuses and required plan fee disclosures. Actively managed investments typically have higher investment expenses than passively managed (i.e., index) investments. Plan participants pay investment fees.
- Plan administrative fees cover general management like record-keeping, compliance testing, account statements, required notices and trustee services. These fees also cover any additional services the plan may have access to, like customer service representatives, employee education and website account access. The plan sponsor has the option to pay these fees or pass all or a portion of the fees on to plan participants.
- Individual service fees are typically transactional or when additional services are utilized. These fees are charged to participant accounts for actions such as taking a loan, making a withdrawal or receiving individual investment advice.
- Other fees commonly charged to an employer-sponsored retirement plan are for professional services such as advisor, consulting and plan audit fees. These fees may be paid by the employer but can be paid from participant accounts as well.



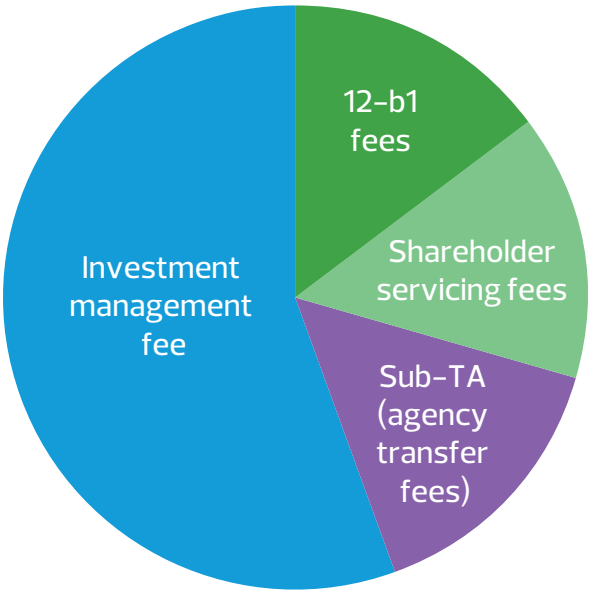
What is revenue sharing?

Revenue sharing within an employer-sponsored retirement plan is a method of collecting fees through a fund's investment expense, then paying a portion of the collected expense to other plan service providers. Since revenue sharing is collected through the investment expense, the investment options' overall return is net any revenue sharing fees.

Revenue sharing can be difficult to identify because it is often not clearly disclosed in readily understandable terms. Types of revenue sharing include the following:

- 12b-1 fees are distribution fees paid out of a fund's assets that are often used to pay commissions and marketing expenses as well as other administrative services.
- Sub-TA and shareholder servicing fees are administrative fees shared by the mutual fund with the record-keeper to handle participant record-keeping services.

The graph below illustrates how 12b-1, Sub-TA and shareholder servicing fees can be included in a fund's overall investment expense. The investment management fee is paid to the investment manager, thus not considered revenue sharing.



Common issues with revenue sharing

For plan sponsors, there has been a steady shift away from using revenue sharing to pay plan fees. According to the 2019 Deloitte Defined Contribution Benchmarking Survey Report, only 33% of plan sponsors surveyed said they're using revenue sharing to cover all of the record-keeping and administrative expenses in 2019—a significant drop from 50% in 2015.

With increasing focus from the Department of Labor (DOL) over the last several years on plan fees and mounting litigation

surrounding plan fees, it isn't surprising that plan sponsors and plan participants want to gain a better understanding of the fees they're paying. Notably, plan sponsors want to avoid some of the pitfalls related to using revenue sharing to pay plan fees, including:

- **Lack of fee transparency**: Plan fees paid through revenue sharing are often perceived as a hidden cost by plan participants and plan sponsors. Plan participants may think they don't pay any plan fees because they don't see an itemized cost for record-keeping and administrative services listed on their retirement plan statements.
- **Inequality of fee payments**: Some funds pay more in revenue sharing than others. Thus, participants with similar account balances may not pay equal fees due to their specific investment choices and asset allocation. Some record-keeping providers have the ability to level the amount of revenue sharing across all investments to ameliorate this situation, but many plans still either do not take advantage of this or do not have the option to level revenue sharing.
- **Harder to manage costs**: The lack of fee transparency surrounding revenue sharing simply makes it harder to monitor and manage plan fees as plan assets grow. The old adage "out of sight, out of mind" is relevant here, as plan sponsors can easily lose track of fee amounts. Moreover, revenue sharing can be complex; consequently, it isn't something plan sponsors can easily identify.

	MARY		BRENT	
	Balance	Revenue share	Balance	Revenue share
Growth fund	$20,000	0.25%	$10,000	0.25%
Index fund	$5,000	0.00%	$35,000	0.00%
International fund	$25,000	0.35%	$5,000	0.35%
	Total balance	Total revenue share	Total balance	Total revenue share
	$50,000	$137.50	$50,000	$42.50

Plan sponsors have alternative options

As aforementioned, fewer plans are using revenue sharing to pay fees. Alternatively, plan sponsors have multiple options in structuring the payment of plan fees to avoid issues commonly associated with using revenue sharing. None of the options below collect fees through revenue sharing, so fees are separately, and thus easily, distinguishable from investment expenses.

Plan sponsors should discuss with their advisor and service providers how to best structure their fees based on their circumstances and options available to their plan. Maintaining an ongoing dialogue on plan fees also helps plan sponsors fulfill their fiduciary responsibilities to their plan participants.

Fees can be collected by the following methods:

- **Plan sponsor paid**: Fees are invoiced to the plan sponsor, and the company directly pays each service provider. This option, certainly the most transparent, reduces fiduciary risk to the plan sponsor; however, not all companies can afford to pay all plan fees. If the plan sponsor does decide to pay plan fees through a corporate bank account, they are tax deductible. Note: Plan sponsors cannot pay both investment fees and individual service fees.
- **Participant paid**: Plan fees can still be paid through plan assets without using revenue sharing: Fees can be either deducted from participant accounts as a dollar amount, percentage of assets or a combination of both. With this method, fees are not hidden inside the investment expense; instead, fees are line-itemed out as a separate fee on participant statements and fee disclosures, making them easier to identify and manage.
- **Both plan sponsor and participant paid**: Plan sponsors have the option to share plan costs with plan participants. Often, paying just a portion of the plan fees is more affordable for plan sponsors and helps reduce the amount of fees coming out of plan participant accounts.

PLAN DOCUMENTS: SAVE OR PURGE?

Many Employee Retirement Income Security Act (ERISA) plan sponsors are unclear about the primary fiduciary responsibility for plan document retention (i.e., which documents may be purged, and when). Most plan sponsors assume a "reasonable" amount of time for retaining documents prior to purging them. Unfortunately, what plan sponsors consider "reasonable" may not comply with IRS rules.

The purpose of this communication is to underscore the importance of plan record retention so that you do not fall prey to the fiduciary breach described below.

Recently, a random IRS 401(k) plan investigation shed an uncomfortable light on the issue of plan document retention. When pressed to produce specific documents that were not readily available, the plan administrator decided to contact the plan's service provider. The plan administrator was informed that the third-party administrator (TPA) purges its files after each plan restatement and expects the plan sponsor to meet any document retention obligations under IRS or ERISA. This is actually standard procedure for many TPAs.

Depending on the document category, the IRS has varying standards for how long documents need to be kept. For example, proposed DOL regulations issued in 1980 stated that participant benefit records must be retained "as long as a possibility exists that they might be relevant to a determination of the benefit entitlements of a participant or beneficiary." While the regulations were never finalized, the DOL has taken the position

that those record-retention obligations became applicable upon the department's initial issuance of proposed regulations under section 209—on Feb. 9, 1970—because employers were thereafter put on notice of the obligations. As such, plan sponsors should consider whether benefit plan records must be maintained indefinitely.

Record-retention rules are accessible in both the DOL regulations and ERISA statutes. Statutes of limitations on plan sponsor liability for administrative functions concerning retirement plans also are codified.

Due to the length of regulations on this topic, we urge you to review the AICPA plan advisory for a thorough list of document retention regulations.

ARE YOUR RETIREMENT PLAN'S EXPENSES REASONABLE?

A guide to the retirement plan service provider fee disclosure regulations

Current law prohibits a plan from paying a party in interest to provide services to a retirement plan, unless payments qualify under an exemption to the law. The exemption allows a service provider to be paid by the plan for services rendered to the plan if the following conditions are satisfied:

- The contract or arrangement is reasonable
- The services are necessary for the establishment or operation of the plan
- The plan pays no more than reasonable compensation for the services

This exemption has existed since the ERISA first became effective, but there was very little formal guidance on how a plan could demonstrate compliance with these three conditions.

In response to concerns raised from numerous fronts with respect to the fees associated with plan investments and the implications of revenue-sharing arrangements with service providers, the DOL issued final regulations in 2012 that provided more guidance on both when a contract is considered reasonable and what information must be provided to assist plan management in determining whether the compensation is reasonable.[2] Rules issued under ERISA section 408(b)(2) required compliance by July 1, 2012.

An arrangement with a "covered service provider" will not be a "reasonable contract or arrangement" unless the provider provides plan management with specific written information regarding services and "direct or indirect compensation."

To apply these rules, several questions must be answered.

Which plans are subject to the rules?

Basically, if your retirement plan files the Form 5500 series, it is subject to these rules. The breadth of application of this rule is important to recognize because defined contribution plans that allow for participant investment direction are required to provide information about investment fees to plan participants. The "reasonable contract or arrangement" exemption standard applies to all retirement plans,[3] not just participant-directed arrangements. There is a limited exemption for 403(b) plans that were frozen before Jan. 1, 2009.

Who are "covered service providers"?

This question is a bit more difficult to answer than one would expect. Best practices probably dictate that plan management should pay attention to all service providers to the plan:

- Are they doing what is necessary to maintain the plan?
- Is their compensation appropriate for the services rendered?

When it comes to strict compliance with the disclosure requirements of the regulations, however, a smaller group of service providers is involved.

First, there has to be a reasonable expectation that the service provider will receive at least $1,000 of "direct or indirect" compensation. This $1,000 cut-off applies for the term of the contract; it is not an annual limit. It can't be avoided by writing daily contracts for less than $1,000 per day. The DOL already anticipated that method of eliminating coverage.

Only certain service providers whose compensation exceeds this limit will need to provide these detailed fee disclosures to plan management. These are:

- **Fiduciaries and registered investment advisers**. Any service provider that acts as an ERISA fiduciary, or as an investment adviser registered under state law or the Investment Advisers Act of 1940 is subject to these fee disclosure standards. Just a reminder: A "fiduciary" is someone who has discretionary authority over plan assets. A person can be a fiduciary if they have discretionary authority over only a portion of the plan's assets. For example, an investment manager who has discretionary investment authority over a target date arrangement that has been specifically designed for the plan is a fiduciary with respect to those assets in the target date investment arrangement.

2 The DOL has provided some informal guidance on the types of expenses that can be paid by the plan in Advisery Opinion 2001- 01A and Field Assistance Bulletin 2003-3.

3 Currently these rules do not apply to welfare plans, but it is likely that similar guidance will be issued for such plans in the future.

- **Certain providers of record-keeping or brokerage services**. Not all providers of administrative, record-keeping or brokerage services qualify as covered service providers. For example, a brokerage firm or mutual fund company that offers an administrative platform for a section 401(k) plan would be considered a covered service provider. Similarly, a plan administration/record-keeping firm that has a relationship with one or more investment platforms and makes such investments available to their clients would be considered a covered service provider with respect to those clients.
- **Service providers who receive indirect compensation**. Plans may engage many other service providers, such as actuaries, auditors, tax return preparers, consultants, appraisers, attorneys, compliance firms, independent TPAs, etc. Arrangements with such service providers are subject to the general rules with respect to their contracts, but they are not subject to the detailed fee disclosure standards unless the service provider or their affiliates or subcontractors can "reasonably expect" to receive "indirect compensation." It is not clear what "reasonably expect" means. However, if past practice has been to pay such fees from indirect sources or an affirmative decision has been made for the current year to use such funds, it would seem appropriate that such facts would lead to a "reasonable" expectation. The service provider may not always recognize the source of the funds with which they were paid, but plan management should have access to such information.

  The regulations provide that "indirect compensation" is simply any compensation for services provided to the plan that is received from a source other than the plan, the plan sponsor, the covered service provider or their affiliate or subcontractor.

EXAMPLES:

- An actuarial firm, which is not related to or affiliated with any other service provider to the plan that provides actuarial services to a plan and is paid directly by the sponsor of the plan for those services would not be subject to the new disclosure requirements.
- A record-keeper to the plan that is compensated by revenue-sharing arrangements arising from investment options under the plan would be receiving indirect compensation, making its arrangement with the plan subject to these new disclosure standards.

To help assess whether service fees are reasonable, the plan sponsor may wish to consider requesting detailed fee disclosure information from all service providers with which they have arrangements.

For more information on what might be considered indirect compensation see page 24 of the 2020 Form 5500 Instructions.

Note, however, there are some fundamental differences between what must be reported on Schedule C of Form 5500 and what must be disclosed to the plan fiduciary under the section 408(b)(2) guidelines.

What disclosures should plan management be receiving from service providers?

Fee information seems to be the most critical component in determining whether the fees are reasonable and, historically, it has been the most difficult item to accumulate when services providers are compensated from indirect sources. The regulatory requirements address more than just fees.

The following items of information must be disclosed in writing by a covered service provider to the responsible fiduciary.

- A description of the services to be provided. The guidance does not provide any explanation as to what is required for this point. However, plan management should look at this in light of what is required of the service provider and what management is expecting to receive. For some services, this is obvious—the auditor performs the annual plan audit. But for other service providers, more detail should be requested.

  For example, the plan's TPA or record-keeper may also perform the various compliance tests for the plan. Does the description of services specify which compliance tests are performed and when? Are the tests done only for compliance purposes after year-end or are they also done for planning purposes at some time during the year? This kind of detail is helpful to plan management as they strive to assess the reasonableness of the fees being charged .
- Where applicable, a statement of the service provider's status as an ERISA fiduciary or registered investment adviser. Covered service providers who are a fiduciary with respect to the plan must disclose this status, as well as the status of their affiliates or subcontractors. Likewise, registered investment advisers must disclose that fact.
- The compensation to be received. The arrangement must disclose all compensation the service provider will receive in connection with the contract or arrangement, whether direct or indirect. For this purpose, direct compensation is that received from the plan. (Note, to the extent the compensation is solely paid by the plan sponsor, the arrangement is not subject to these regulations.) Indirect compensation is compensation from any source other than the covered plan or the plan sponsor. It is usually fees paid among covered service providers and their affiliates and subcontractors, such as commissions, soft dollars, finder's fees, Rule 12b-1 fees and other incentive pay based on placing or retaining business. For a good listing of the types of such fees that may be involved, the Investment Company Institute has prepared a Sample Glossary of Investment-Related Terms for Disclosures to Retirement Plan Participants.

The regulations specify that the description of compensation to be received under the arrangement include:

- All direct compensation to be received. This can be reported in total or by service.
- All indirect compensation to be received. This disclosure should include a description of the service and the entity paying such compensation.
- Any compensation received from an affiliate or subcontractor if set on a transaction basis, or charged directly against plan's investment and reflected in net value of investment.
- Any compensation or refund due upon termination of the arrangement.
- A description of the manner of receipt of such compensation: billed, deducted from participant accounts, paid from revenue-sharing funds, etc.
- Additional disclosures are required with respect to compensation paid to record-keepers as part of a bundled service agreement. In such situations, the disclosure must include a description of all compensation to be received and a "good faith" estimate of the cost of the record-keeping services. In providing such an estimate, they are to describe how they arrived at the estimate.

Similarly, additional disclosures are required with respect to designated investment alternatives made available by a record-keeper or broker-covered service provider. These must include a description of:

- Any compensation (e.g., charges, fees, loads) that will be charged directly against amounts invested.
- A description of annual operating expenses (e.g., expense ratio) if the return is not fixed.
- A description of any other ongoing expenses (e.g., wrap fees, mortality and expense fees).

When must the disclosures be provided?

Disclosures must be made "reasonably in advance" of the effective date of the contract or arrangement. Disclosure must again be provided when the contract or arrangement is extended or renewed. If there is a change in any of the information required to be disclosed, other than investment-related information, the covered service provider must report such a change to the plan fiduciary as soon as practicable, but generally not later than 60 days after the covered service provider is informed of the change. The covered service provider must disclose changes in investment-related information at least annually.

How must the disclosures be provided?

The disclosures must be provided in writing. For this purpose, electronic communication is acceptable as long as such electronic information is readily accessible to plan management and they have received clear notification on how to gain such access.

The regulations do not specify a form for these disclosures. But the DOL has developed a Sample Guide to Initial Disclosures illustrating the fee disclosures for a bundled service provider.

The sample is fairly short because it includes multiple links to information on the vendor's web page and cross references existing service agreements. It is important to remember that upon receiving this information, plan management has to do more than file it away as "received." Plan management must now assess the provided information for "reasonableness."

How does plan management evaluate whether the arrangement is "reasonable?"

This is the tough part. If you look at the DOL Sample Guide to Initial Disclosures, you can see that the requirements do not require the covered service provider to provide a single figure or set of figures demonstrating the specific cost of each service for the contract term.

It remains up to plan management to evaluate the total cost for each service, compare that cost to the marketplace and assess whether the fee being paid is reasonable for the services provided. This process does not require that all service providers be the lowest cost provider. Plan management must assess the quality of the services they receive with the cost, including the cost of change.

This is a complicated new standard. What if there is an error in our efforts to comply?

The government recognized that this is a lengthy and complicated new standard. As such, relief is granted as long as plan management can demonstrate they have made a good faith effort to comply. So what does that mean?

Plan management needs to have a procedure in place to identify covered service providers and to solicit the required information. A procedure must also be in place to assess the information provided. Where there is a simple error in the information provided, no adverse consequences will arise as long as plan management obtains the corrected information within 30 days of the identification of the error. Where a covered service provider fails to provide required information or plan management does not believe they have provided sufficient information, plan management must have procedures in place to follow up with that service provider to obtain the required information. The covered service provider is to respond to any such requests within 90 days. To the extent the covered service provider fails to respond to such request, plan management must have procedures in place to assess the termination of the arrangement with such service provider and to notify the DOL of such failure.

What are the practical steps to implement this process?

Plan management should consider the following steps with respect to the contracts with service providers:

1. Identify all service providers to the plan.
2. Distinguish "covered service providers" from other service providers.
3. Inform "covered service providers" of their status and inquire as to when management can expect to receive the required disclosures.
4. Institute a control procedure to confirm that all required disclosures have been received, reviewed for completeness and provided to plan fiduciaries for evaluation of the "reasonableness" of the contract.
   a. Review all service provider disclosures to ensure the required information has been received.
   b. Where information is missing or unclear, follow up in writing with the service provider.
   c. In the event of a failure to receive the required information, implement a procedure to follow up with the supervisor of the person contacted in 4.b. above.
   d. If information is not received, notify the DOL and commence termination of the arrangement.
5. Develop a tool for estimating/accumulating the cost of each required service or investment based upon the information provided. It is likely that at this point plan management might conclude they do not have sufficient information. In that case, request in writing any additional information necessary to determine the estimated cost.
6. Analyze the disclosures and consider whether the fees charged are reasonable for the level of service desired. Consider the use of benchmarks, requests for proposal, engaging a professional services firm to conduct such inquiry, discuss fees with industry peers, etc.
7. Establish ongoing processes to monitor and analyze the annual fee disclosures or periodic revisions to demonstrate that the level of charges continues to be reasonable.
8. Document the review process and decisions made by the plan administrator or other fiduciary during the review.
9. Retain such documentation with other plan matters.

+1 800 274 3978
rsmus.com

NL-NT-WMS-ALL-0321