Service Provider Disclosure
What Plan Sponsors Need to Know

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In a Nutshell

Unless a Covered Service Provider (CSP) provides timely and very specific information to the Responsible Plan Fiduciary (RPF), the contract with the service provider will be deemed an ERISA prohibited transaction under the new regulations. If a CSP does not fulfill its obligation to provide these disclosures, the RPF will be required to terminate its relationship with the CSP.

Background

The Department of Labor issued interim final regulations regarding Section 408(b)(2) of ERISA, which will become effective later this year. These regulations pertain to retirement plan fee disclosure and are designed to ensure that sponsors of retirement plans receive complete information about fees associated with their plans. This allows a complete fulfillment of fiduciary responsibility to plan participants.

The 408(b)(2) regulations, issued on July 15, 2010 became effective on July 16, 2011. These regulations were issued in the form of interim final regulations in order to allow for possible changes after the date they were effective. On February 2, 2012, the regulations were amended and the revised effective date was extended to July 1, 2012 when all CSPs will be required to give their first set of initial disclosures.

Significant Consequences for Non-Compliance

Unless the disclosure requirements are complied with, the arrangements between the CSPs and the plans they service are treated as non-exempt prohibited transactions under ERISA and Section 4975 of the Code. This means that the arrangements may be rescinded, the compensation paid to the service provider in connection with the arrangement may be returned and excise taxes imposed on the parties involved in the arrangement.

New Terms to Learn

Covered Service Providers Defined
A CSP falls into any one of three categories as provided below:

1. Fiduciary/Registered Investment Advisor. Any service provider acting as an ERISA fiduciary to a plan, a fiduciary to an investment product that holds plan assets, or a Registered Investment Advisor (RIA).

2. Platform recordkeeping or brokerage service provider. Any service provider providing recordkeeping services or brokerage services to an individual-account plan.

3. Specified indirect compensation recipients. Those who provide at least one of the following services expect to receive some indirect or related party compensation for those services: accounting, auditing, actuarial, appraisal, banking, consulting, custodial, insurance, investment advisory, legal, recordkeeping, securities or other investment brokerage, third party administration, or valuation services.

Covered Plan Defined
Under the regulations all employee pension benefit plans
subject to Title I of ERISA are subject to the disclosure requirements. The following plans are not subject to Title I and therefore not covered plans:

- Simplified Employee Pension (SEP)
- Simple Retirement Account (SIMPLE IRA)
- Individual Retirement Account (IRA)
- Frozen 403(b) contracts
- Plans with owners and spouses of owners only

**Responsible Plan Fiduciary Defined**
The “Responsible Plan Fiduciary” is the primary individual or group that has the authority to enter into contracts with a CSP. If an employer is not certain who is the “Responsible Plan Fiduciary,” the employer should review any CSP agreements and any related corporate actions to determine who signed these contracts or service agreements.

**Designated Investment Alternative Defined**
A Designated Investment Alternative is any investment alternative the plan designates into which participants may direct the investment of their individual account assets. For example, if the plan designates 10 identified mutual funds into which participants may direct their investments, each of the 10 funds is a designated investment alternative. The term does not include a brokerage window, a self-directed brokerage account or similar arrangements permitting participants to select investments beyond the designated investment alternatives.

**What Must Be Disclosed?**
The following information is required to be disclosed by all CSPs:

1. **Description of the services to be provided.**
The description of services should be clear and understandable. The disclosure should describe all of the services provided for the fees charged and should present sufficient detail to the fiduciary; allowing them to make an informed judgment and to identify any potential conflicts of interest.

2. **Status as a Fiduciary.** The status of a service provider is determined by the actual functions, authority, and responsibilities they perform for the plan. Notwithstanding their actual status, the service provider must state, affirmatively, in writing, whether or not they will be performing services as an ERISA fiduciary or a Registered Investment Advisor.

3. **Disclosure of all direct or indirect compensation received.** A CSP is required to disclose comprehensive information about direct and indirect compensation that it is expected to receive for services provided to the plan. The regulations also require an explanation regarding the manner in which the compensation will be received; that is, whether the plan will be billed or the compensation will be deducted directly from the plan’s accounts.

- Direct compensation is compensation received directly from the covered plan or directly from participant accounts. This includes compensation that is initially paid by the sponsor and reimbursed by the plan later.

- Indirect compensation is compensation received from any source other than the covered plan, plan sponsor, the CSP, or an affiliate. The CSP must also identify the services being provided in exchange for the compensation. In addition, the CSP must identify the arrangement between the payer of the compensation and the CSP. By analyzing this information, the Responsible Plan Fiduciary should be able to identify any conflicts of interest.

4. **Any related party compensation** if set on a transaction basis, or charged directly against plan’s investment and reflected in net value of investment.

5. **Any termination compensation, including how any prepaid amounts will be calculated or refunded.** If, for instance, the service provider charges in advance of the
period of service, the method used to calculate a refund, if any, must be described.

Additional Information to Be Disclosed by Recordkeepers

In addition to the information provided above, Recordkeepers must also provide the following additional information:

1. Description of all compensation for recordkeeping services.

2. If no explicit compensation for recordkeeping services is disclosed, a reasonable good faith estimate of recordkeeping service costs along with a detailed description of the services provided and methodology and assumptions used in preparing the cost estimate. This rule was directed at bundled providers and is intended to help responsible fiduciaries evaluate the cost of services being rendered to their plans when the cost has not otherwise been apparent.

3. Description of manner of receipt (e.g., billed or deducted).

Investment Disclosures

The CSP is required to provide the following detailed information for each Designated Investment Alternative available in the plan must be provided. It is anticipated that the platform recordkeeper will provide investment disclosures by passing on the required investment disclosures to the Responsible Plan Fiduciary.

The CSP is required to provide the Responsible Plan Fiduciary with a statement that the covered service provider is making no representations as to the completeness or accuracy of such materials. This will ensure that the Responsible Plan Fiduciary understands that these materials are merely being passed through and that the CSP is not vouching for their completeness or accuracy.

**Investment Disclosures:**

1. **Description of any compensation.** A description of any compensation that will be charged directly against an investment, such as commissions, sales loads, sales charges, deferred sales charges, redemption fees, surrender charges, exchange fees, accounts fees, and purchase fees; and that is not included in the annual operating expenses of the investment.

2. **Description of annual operating expenses.** The percentage charged and a description of the annual operating expenses (e.g., expense ratio) and any ongoing expenses in addition to annual operating expenses (e.g., wrap fees, mortality and expense fees).

3. **Description of any other ongoing expenses.** Any other information or data that is within the control of the CSP that is required for the plan administrator to comply with the participant disclosure regulations.

Once the disclosures have been made by the CSP, the burden of this regulation shifts to the Responsible Plan Fiduciary to evaluate the information and to make a determination as to whether or not the contract services and fees are fair and reasonable in light of the services rendered.

Severe Consequence for Not Providing Timely Disclosure Updates

Any changes to information previously disclosed must be made as soon as practicable, but not later than 60 days from the date the CSP knows of such changes. The DOL made an exception for changes to investment information, which is subject to an annual update. Other information needed by the Responsible Plan Fiduciary must be furnished reasonably in advance of the date upon which such Responsible Plan Fiduciary or covered plan administrator state that it must comply with the applicable reporting or disclosure requirements.

If the required disclosures are not provided after requesting
them in writing, the regulation mandates that the Responsible Plan Fiduciary to notify the DOL and terminate the services of the provider that does not make the disclosures.

What to Expect From Sentinel Benefits & Financial Group

Sentinel Benefits & Financial Group is a proponent of these regulations and believes that in the long run, plan participants will benefit from more cost effective retirement programs that will better prepare them for retirement. We do believe that in the short term, however, these regulations will create confusion for both plan sponsors and participants, which may cause participants to reduce their savings rates or choose to stop participating altogether. In any regard, you can count on our firm’s commitment to not only comply with these new regulations, but to also help our clients navigate the heightened level of responsibility these regulations will create for them.

Sentinel Benefits & Financial Group May Act in Several Distinct Capacities

Our firm acts in various capacities for our many clients. For some, we may act solely as the recordkeeper while for others we may also provide investment advisory or brokerage services.

To better help you understand Sentinel Benefits & Financial Group vis-à-vis these new regulations, we have provided a list of our business entities and the potential role they may have with your plan:

- **Sentinel Benefits Group, Inc.** is a third party administration firm that provides, among other things, recordkeeping services to nearly 1,000 clients. As a recordkeeper, Sentinel Benefits Group may be a CSP, but is not a fiduciary to a plan it serves.

- **Sentinel Pension Advisors, Inc.** is a Registered Investment Advisor that provides investment advisory services to a retirement plan in either or both a non-discretionary [3(21)] or discretionary [3(38)] manner. Sentinel Pension Advisors may be a CSP and would be a fiduciary to a plan it serves.

- **Sentinel Securities, Inc.** is a Broker-Dealer that provides investment brokerage services to plans and individuals. Sentinel Securities may be a CSP, but would not be a fiduciary to a plan it serves.

- **Sentinel Insurance Agency, Inc.** is a licensed insurance brokerage firm and may receive commissions from retirement plans it services. Sentinel Insurance Agency may be a CSP, but would not be a fiduciary to a plan it serves.

As a Responsible Plan Fiduciary you can expect to receive a disclosure from each of our entities with which your plan has a relationship. The disclosures you receive will be tailored to your plan and the specific services we provide.

Our practice is to provide a detailed contract for services we provide to our clients with some exceptions. When we act as an investment advisor, we provide both a written contract and our Form ADV. When we act as a commissioned broker, we typically work without a written agreement.

We expect to send these disclosures or post them to the plan sponsor website shortly before July 1, 2012.

What Should You Do to Comply With the Fee Disclosure Regulations?

As a fiduciary for your plan, you will need to review and understand the disclosures you will receive. The regulations make it your responsibility to ascertain whether or not the fees and expenses that your plan is paying are fair and reasonable in light of the services you receive.

The following is a short list of items to consider when preparing for fee disclosure:

- Determine who in your company is the Responsible Plan Fiduciary.

- Determine which plans are covered plans and who are
covered service providers for these plans.

- Inventory any service agreements you have received. If you can’t find them, you may want to ask now and not wait until after July 1, the effective date of the disclosure rules.

- Establish procedures to track receipt of disclosures and evaluate the completeness of the information contained therein.

- Establish processes to request additional information, if necessary.

- Review your plan’s investment line-up to be sure it is in good shape for participant disclosure that will occur in October, 2012.

- Determine how you will evaluate the information that will be disclosed. Many are considering benchmarking their plans. There is a whole new crop of industrious people working feverishly to create companies to provide benchmarking services. Here is what you should know: The databases needed to fairly benchmark retirement plans are not yet populated with enough information to draw immediate conclusions about price fairness. In time, they may be. However, in the short term you should not reach conclusions based solely on a benchmark survey you receive. If you are truly concerned about your fees, you should engage a professional to request alternative proposals. In that way, you will be able to ascertain what the current pricing for your plan should be and perhaps negotiate a better price with your current provider.

- Document, in writing, trustee meetings, benchmarking, and provider reviews.

What Is Next?

The Department of Labor has linked the effective date of these regulations to the regulations under section 404(a)(5) which require the disclosure of information to participants. The disclosures to participants are due 60 days from the date these disclosures are provided to employers. Sentinel will be preparing another analysis similar to this one on the subject of the participant disclosure requirements.