

DOL issues reprieve on new 5500 forms

Labor's guidance also eases required reporting of service providers' expenses

By **Doug Halonen**

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WASHINGTON — Defined contribution plans and service providers won welcome relief from the Department of Labor on new fee and compensation reporting requirements.

The reporting rules apply to annual 5500 forms for plan years that begin on or after Jan. 1, 2009. While the rules affect both defined contribution and defined benefit plans, the most controversial provisions concern new fee and compensation requirements that primarily affect DC plans. The DOL has been trying to stave off fee-disclosure legislation sought by Rep. George Miller (D-Calif.).

Key changes contained in a 40-question FAQ issued by the DOL July 14 give plan sponsors a one-year pass on the new reporting obligations if their service providers can't make changes to their record-keeping and information management systems in time for the 2009 plan year.

In addition, the guidance makes clear that service providers to investment funds don't have to disclose normal operating expenses.

The guidance also allows sponsors to report much of the required information as a formula in basis points instead of in actual dollar figures.

"It (the new guidance) is very helpful," said Jan Jacobson, retirement policy legal counsel for the American Benefits Council, a Washington-based group that represents plan sponsors and service providers.

"They kept in all the information the plan sponsors really need to know, and they simplified and shortened the information that's much less important," added Melanie Nussdorf, a partner at the law firm Steptoe & Johnson LLP, Washington.

Easing compliance burden

The agency's annual report regulations, adopted by the DOL last November, were larded with ambiguous requirements that ERISA attorneys said could have made compliance enormously burdensome for plan sponsors and service providers.

The DOL's new guidance eases that burden.

"The FAQs were a huge improvement," said Jason Bortz, an ERISA attorney at the law firm Davis & Harman LLP, Washington.

"It was just incredibly difficult to understand what kind of information service providers were supposed to give (under the rule), and read literally, the final 5500 release required way too much information for anybody to possibly digest."

Under a literal reading of the rule, for instance, Mr. Bortz said that if a mutual fund hired a printer to print a prospectus, the fund would have been required to disclose how much was paid to the printer.

Also, a real estate investment fund would have been required to report the compensation of employees who mowed lawns and collected rent for the fund if the rule was read literally, Mr. Bortz said.

"What they (DOL) want disclosed now is expenses other than ordinary operating expenses — what you pay investment

advisers and what you pay in brokerage fees," Mr. Bortz said.

Mutual funds also won key relief. According to ERISA attorneys, the guidance allows plan sponsors to report most investment-related fees in the form of basis points of assets under management instead of specific dollar figures.

This allows mutual funds to rely on existing figures they already have provided in prospectuses rather than having to generate new figures.

"The DOL clarified that it did not mean to duplicate the Securities and Exchange Commission-mandated mutual fund disclosures by requiring mutual funds to disclose every payment made by a mutual fund to every service provider," added A. Richard "Brick" Susko, an ERISA attorney for Cleary Gottlieb Steen & Hamilton LLP, New York.

"That would have required the tabulation of millions of transactions," Mr. Susko continued. "Instead, the DOL focused on the major items, such as asset management fees paid to mutual fund managers and fees for shareholder level services, and generally focused on formulaic disclosure of those fees rather than numerical quantification."

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