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Retirement Plan Management: Another Layer of Disclosure Required for Defined Contribution & Defined Benefit Plans

By William Small
Principal
Highland Capital Advisors

It is no surprise to healthcare employers that the operation of qualified retirement plans have become both more simple, and more complicated. Simplification has come through products, technologies and changes to regulations that support easier design, implementation and maintenance.

More complicated through increased demands on employers, plan sponsors and staff to measure and manage the direct and indirect expenses of the Plan. Some of these changes stem from regulation, some from new legislation and some from changed behaviors in the marketplace by decision makers and vendors.

2009 – Year of the Audit

For many retirement plan sponsors, 2009 was the "year of the audit" as most 403(b) plans with over 100 participants became subject to an annual plan audit and IRS tax filing for the first time. Concurrently, many such plans became subject to the provisions of ERISA, the watershed retirement plan law originally passed in 1974.

2010 – Year of Disclosure

Recently released final regulation under §408(b)(2) from the Department of Labor make 2010 the "year of disclosure" which layers an additional level of obligation upon plan sponsors and their management. The new regulation was released on July 15, 2010, with an effective date that will apply to existing service arrangements as of July 16, 2011. In other words, your current plan compensation must be accounted for beginning next July. The long lead time is reflective of the depth and detail of the new regulation and is intended to accommodate the costs and burden of transition to a new disclosure scheme.

Because the new regulation is interim as well as final, additional requirements may be added prior to the effective date.

The new regulation applies to both defined contribution and defined benefit plans, although some provisions only apply to those which provide participant direction of investment accounts. The new regulation focuses on the disclosure of direct and indirect compensation received by certain service providers that expect to receive at least $1,000 in compensation and that provide:

- Fiduciary or registered investment advisory services;
- Recordkeeping services;
- Brokerage services; or
- Certain other services for which indirect compensation is received.

Disclosure Requirements

Plan service providers are required to provide information in writing to the plan fiduciary (usually the plan sponsor). The rule does not require a written contract delineating the vendor's disclosure obligations, but we think best (or at least adequate) business practices suggest you require it of your providers.

Information that must be disclosed in the vendor's written disclosure includes:

- A description of the services to be provided;
- All direct or indirect compensation to be received by the service provider, its affiliates or subcontractors;
- Detail on "bundled" arrangements where compensation is internal and not explicitly spelled out (as in the case of an insurance company or mutual fund with internal payments to funds, administrators, brokers, etc.);
- Service provider disclosure as to whether they are providing any services as a fiduciary to the plan; and

- Disclosure about plan investments. This obligation is placed upon both fiduciaries and on recordkeepers and brokers who facilitate the investment in plan options through administration platforms or other pooled mechanisms.

Impact & Action

There are significant differences between the New Schedule C to the Form 5500 Annual Report and supporting audit. First, there is no de minimis exemption for plans with fewer than 100 participants; second, the new regulation expands the obligations of plan sponsors dealing with vendor contract provisions and "reasonableness" of such provisions. The primary purpose of the regulation is to ensure that plan fiduciaries are provided with the information they need to prudently select and monitor service providers. This is part of a broader initiative by the DOL to increase the transparency of fee arrangements.

Noncompliance under the regulation may result in a violation of ERISA and an excise tax imposed under IRS code. Brokers, auditors and bundled service providers are scrambling to deal with this new regulation.

Stepping back from the tactical elements of these requirements, the net effect to most sponsors is a disruption of the mud at the bottom of the retirement plan pond. The time has come for every responsible sponsor to understand the nuanced issues surrounding fees, types of investment providers, etc. that have been ignored by many for far too long.

As consultants and advisors, Highland is helping plan sponsor clients deal with the new regulation. Key issues: a) how to gather and collate the required data; b) development of policy and process to determine what is "reasonable" compensation for services provided; and c) implementation procedures to conform with all requirements – driven by both ERISA and IRS regulations and by professional best practices.

For a complimentary analysis of your organization's risk profile and remediation options, give the author a call.

William Small is a principal with Highland Capital Advisors, an SEC-registered consulting and advisory firm serving institutional employers and investors from offices in Seattle, Portland and San Francisco. He can be reached at (800) 717-6180 or bsmall@hcportfolios.com.