

Fee Disclosure Readiness Alert

The Department of Labor (DOL) has been concerned for some time that plan fiduciaries may not always be sufficiently informed regarding the fees that they are paying under 401(k) plans. In the DOL's view it is necessary for a plan fiduciary to consider plan fees, from a reasonability standpoint, in order to make prudent decisions with regard to the funding and operation of plans subject to ERISA. DOL has similar concerns about the degree to which participants are informed about plan expenses that are paid from plan assets. Accordingly, as you may be aware, DOL has created three separate initiatives to address the fee transparency gaps.

First, Form 5500 final regulations were issued including expanded, more detailed disclosures regarding fees, compensation and conflicts of interest with regard to plan service providers (Schedule C reporting). These new requirements are effective for 2009 reporting years (generally in 2010). This represents "back end" reporting following each plan year.

Second, new proposed ERISA Section 408(b)(2) regulations, when finalized, will require disclosure of service provider fees, compensation and potential conflicts of interest, to the *responsible plan fiduciary*, before a contract or arrangement is signed or entered into.

Finally, the DOL released proposed participant disclosure requirements which will require enhanced disclosure of plan information, investment alternatives offered, and related fees and expenses charged to participant accounts. These regulations will require the fund performance, as well as fees and expenses information, to be provided in a comparative chart format.

ING fully supports the DOL's fee transparency efforts as a means to assist plan fiduciaries and participants in making prudent decisions regarding their retirement plans. ING already has in place a number of tools that we can apply to the new requirements and position us well to respond to the required DOL changes when the final rules are released. As the new Form 5500 regulations are final, we are working diligently to make the system and procedural changes necessary to support these new requirements for the 2009 reporting year. As stated above, the proposed ERISA section 408(b)(2) regulations, as well as the proposed participant disclosure regulations, have not yet been finalized. The DOL has solicited and received many comments on these proposed regulations; there are many questions that remain unanswered at this point. DOL is working to address these issues with the objective of finalizing these regulations as soon as possible. We are following this important matter very closely and are assessing the necessary changes to our systems and processes based on what we do know about these upcoming requirements. We, along with all other practitioners in the retirement plans industry, are waiting for final regulations before completing this effort. We will keep you informed as to the finalization of these rules and ING's plans to support these requirements.

Please contact your ING representative if you have questions as the fee transparency effort continues to unfold.

IRS Circular 230 Disclosure

Any tax discussion contained in this communication was not intended or written to be used, and cannot be used by the recipient or any other person, for the purpose of avoiding any Internal Revenue Code penalties that may be imposed on such person. Any tax discussion contained in this communication was written to support the promotion or marketing of the transactions or matter discussed herein. Any taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

This information is provided as general guidance. It is not intended to be legal or tax advice. Employers should contact their legal and/or tax advisors regarding the facts and circumstances around their own retirement plans and the applicability of the issues discussed in this communication.



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