

# Ask Kidder.®

## Regulatory Updates

### 408(b)(2) Fee Disclosure Deadline Extension

Implementation of Section 408(b)(2) of ERISA which will provide plan sponsors and the responsible plan fiduciary with information on fees paid from plan assets to the various service providers for your qualified plan was recently extended from January 1, 2012 to April 1, 2012. The extension was to provide more time for plan providers to comply to the various disclosure requirements. The Department of Labor (DOL) stated that this is the very last extension. As reported in previous newsletters, this regulation defines "reasonable" as it relates to compensation to service providers. Under Section 408(b)(2), the contract or arrangement with a service provider will be exempt from a prohibited transaction under Section 406 of ERISA if 1) the services provided are necessary for the plan's establishment of operations, and 2) compensation received by the service provider from the plan is "reasonable". Being "reasonable" means that a covered service provider is to present the plan sponsor and responsible plan fiduciary with appropriate and timely disclosure of fees. It's not about having the lowest cost, but rather having sufficient and timely information for the appropriate parties to make informed decisions on behalf of the plan and the plan participants. By doing so, those decision makers are in a better position to fulfill their fiduciary responsibilities. As a result, you will be receiving updated fee information and disclosures from covered service providers before the April 1, 2012 deadline.

### 404(a)(5) Participant Disclosure also extended

Regulation Section 404(a)(5) of ERISA (discussed in prior newsletters) will provide plan participants with a consistent format relating to the various plan related expenses (administrative, recordkeeping, loan, legal, audit, fees for investment advice, etc.), investment-related and fund operating expenses that are paid from plan assets and participant accounts, and performance data of the various investment choices. The initial disclosure is required no later than 60 days after the latter of (i) the applicability date of Section 404(a)(5) to the plan, or (ii) the effective date of the section 408(b)(2) regulation. The regulations were effective for plan years beginning on or after November 1, 2011. Bottom line, the deadline extension of Section 408(b)(2) to April 1, 2012 effectively moves the initial disclosure date of Section 404(a)(5) for a calendar year plan to May 31, 2012. A fiscal year plan will be later than that date and depend upon the fiscal year end of the plan.

### Revised Definition of "Fiduciary" withdrawn by DOL

On September 19th, the DOL's Employee Benefits Security Administration (EBSA) withdrew its proposal issued in October 2010 for a new rule defining "fiduciary". They will start over with a new proposal sometime in 2012. The original proposal would have greatly expanded the definition to include many activities of broker-dealers and others involved in the qualified plan market such as ESOP appraisers for private companies. Opposition came from many parts of the industry and Congress, including Barney Frank of Massachusetts (House Financial Services Committee), and Denny Rehberg of Montana (House Committee on Appropriations), who felt the proposed definition went too far. Phyllis Borzi, EBSA Chief and Assistant Secretary of Labor, indicated that they will take the time to get it right in providing protection to businesses and savers. Items to be addressed in the new proposal are to clarify what is fiduciary advice as compared to education, clarify the exemptions relating to commissions on mutual funds, stocks and insurance products, and address concerns relating to fee practices of brokers and advisors.

While the future definition of "fiduciary" is yet to be determined, it is important for plan sponsors and responsible plan fiduciaries to understand the roles of all of their service providers and whether the activity is deemed a "fiduciary" function or a "non-fiduciary" service. Not all plan functions and activities are considered a "fiduciary" activity. Kidder Benefits Consultants, Inc. can provide fiduciary governance support as part of its administrative and compliance package to plans and financial professionals.

### Recent Speaking Engagements

Robert Miller, QPFC and AIF®, Vice President of Kidder, was a speaker at Cambridge Investment Research's Retirement Summit in Boston, Massachusetts on August 17-19, 2011. His topics were (1) "TPA Best Practices" and (2) "What do advisors worry about in today's market?" Cambridge is a national broker dealer/advisory firm.

Keith Gredys, JD, CTFA and AIF®, CEO & President of Kidder, was a featured panelist at the PLANADVISER National Conference in Orlando, Florida on September 12-14, 2011. The topic was "What is a MEP?" MEPS are multiple employer plans that are receiving increased exposure as a potential option for many plan sponsors. They are also receiving increased review at this time by the DOL and members of Congress as to their structure and effectiveness.

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