



AMERICAN BENEFITS COUNCIL

March 27, 2012

FAQS REGARDING PARTICIPANT AND SERVICE PROVIDER FEE DISCLOSURE: A NEED FOR TRANSITION RELIEF

Background

The Department of Labor has received a number of interpretative questions from service providers, trade groups, participant groups, and plan sponsors regarding the service provider and participant fee disclosure regulations. These regulations are effective July 1 and August 30, respectively. We understand that the Department intends to issue further guidance in the form of “Frequently Asked Questions” soon, which will be released in batches as they are completed.

Service providers and plan sponsors have been preparing for these rules for over a year, and have had to make decisions based on their best interpretation of the regulations. Some plan sponsors, working with their service providers, will mail notices to participants very soon. Significant costs have been incurred already to meet the regulatory deadlines. It is virtually certain that some of the FAQs released by the Department will be inconsistent with how the regulation has been interpreted. It may be impossible or exceedingly difficult to reverse course in time for the deadlines, and it would be unnecessarily expensive and confusing to participants to send a second mailing to make minor changes in the disclosure. It is vital that transition relief be provided.

Proposal

The Council recommends that the Department state in the FAQ guidance that a service provider or plan administrator would be viewed as meeting the requirements of the 408b-2 and 404a-5 regulations, respectively, if for the transition period, the service provider or plan administrator relied (a) on a reasonable and good faith interpretation of the regulations or (b) on the regulations as interpreted by the FAQs. The transition period would begin on the date that the regulations are effective and would end on the date that is 12 months after the issuance of the FAQs. After such transition period, this special rule would expire and the FAQs would (a) have the force and effect normally accorded FAQs and (b) apply to disclosures due under the rules after the expiration of the transition period.