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Subject: **Department of Labor Issues Regulations Addressing Fee Disclosure Requirements for Qualified Plans**

Major References: [*Final Interim Regulations Revising ERISA Reg. § 2550.408b-2 \(29 CFR Part 2550\)*](#)

Prior AALU Washington Reports: 10-59, 08-12

MDRT Information Retrieval Index Nos.: 2400.00, 5400.00, 5900.00

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The Department of Labor (DOL) has issued interim final regulations (approximately 150 pages) under ERISA section 408(b)(2) generally requiring that service providers to employee pension benefit plans disclose the necessary information to assist plan fiduciaries in assessing the reasonableness of contracts or arrangements and the fees associated with such relationships. In order to give service providers sufficient time to re-negotiate and amend their contracts with their clients and to make changes to their business practices necessary to satisfy the new rules, the effective date for compliance is July 16, 2011, which is twelve months following publication in the Federal Register. These rules will apply not only to new contracts, but also to contracts entered into prior to July 16, 2011. AALU will conduct a thorough review of the new regulations and will provide a more detailed analysis in a future Washington Report.

ERISA section 408(b)(2) provides a statutory exemption from the prohibited transaction rules for contracts and reasonable arrangements with parties-in-interest for office space, or legal, accounting or other

services necessary for the establishment or operation of an employee benefit plan, so long as the fees and compensation paid to the service providers are reasonable.

Proposed regulations were issued on December 13, 2007 (72 Fed. Reg. 70,988), along with a proposed class exemption from the restrictions of ERISA section 406(a)(1)(C). (See our Bulletin No. 08-12 regarding these proposed regulations.) The release of the interim final regulations puts to rest the thought that the DOL would delay issuing final regulations because of current fee disclosure legislation being considered by Congress. (The proposed legislation and the possibility of delay in issuance of the regulations was addressed in our Bulletin No. 10-59.)

Although the final regulations are very similar to the proposed regulations they include a number of changes as a result of comments received by the DOL. Those differences are:

(1) Unlike the proposed regulations, the final rule does not require a formal written contract or arrangement delineating the disclosure obligations, even though the disclosures must be made in writing. The final rule focuses instead on the substance of the disclosure that must be provided.

(2) The final rules are applicable only to pension plans. Welfare plans will be subject to rules issued in the future.

(3) The final rule modifies the categories of service providers that must comply with the disclosure rules.

(4) The final rule, unlike the proposed regulations, does not contain specific narrative conflict of interest disclosure provisions, but rather relies on full disclosure of (a) the circumstances under which the covered service provider will be receiving compensation from parties other than the plan or plan sponsor, (b) the identification of such parties and (c) the compensation that is expected to be received.

(5) The final rule includes a new provision requiring that certain providers of multiple services disclose separately the cost to the covered plan of recordkeeping services.

(6) The exemptive relief for plan sponsors or other responsible plan fiduciaries, originally proposed as a separate exemption, is now incorporated in the final rule.

Any AALU member who wishes to obtain a copy of the DOL final interim rule revising ERISA § 2550.408b-2(c) may do so through the following means: (1) use hyperlink above next to “Major References,” (2) log onto the AALU website at www.aalu.org and enter the *Member Portal* with your last name and birth date and select *Current Washington Report* for linkage to source material or (3) email Anthony Raglani at raglani@aalu.org and include a reference to this *Washington Report*.

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