



**Jeff Kunkel, ERPA, QPA, QKA**  
Vice President, Compliance,  
Documents, Transition, and  
Testing Manager



## Department of Labor Issues Plan Sponsor Level Fee Disclosure Rules

### Background

Under ERISA rules, the furnishing of goods between a plan and a party-in-interest is a prohibited transaction unless an exemption is satisfied. The service relationship between a retirement plan and a service provider would be a prohibited transaction because any person providing services to a plan (e.g., a recordkeeper, trustee, etc.) is defined as a party-in-interest. Therefore, the arrangement between a plan and a service provider must satisfy the prohibited transaction exemption.

Under the old rules, a service contract or arrangement between a plan and a party-in-interest satisfied the prohibited transaction exemption if:

- The contract or arrangement is reasonable
- The services are necessary for the establishment or operation of the plan
- No more than reasonable compensation is paid

The only requirement for a contract or arrangement to satisfy the “reasonable” standard was that the plan be allowed to terminate the contract or arrangement without penalty on reasonably short notice.

### New Rules

On February 3, 2012, the Department of Labor (DOL) issued final rules that made changes to what is considered a “reasonable” contract or arrangement. Under the new rules a “covered service provider” is required to disclose specific information on what type of services are being provided to the plan and the cost associated with those services. If the disclosures are not provided, the contract or arrangement is considered unreasonable and a prohibited transaction exists.

The new rules define a “Covered Service Provider” as a service provider who enters into a contract or arrangement with the plan and reasonably expects to receive \$1,000 or more of direct or indirect compensation from the plan for providing services to the plan under the contract or arrangement. The services provided by a covered service provider may include recordkeeping, investment management, brokerage services, fiduciary services or other types of services in which the provider receives indirect compensation.

This information must be provided to the individual(s) who is responsible for determining whether the plan will

*continued...*

enter into, extend or renew a contract, or arrangement with a service provider. This individual is defined as the “Responsible Plan Fiduciary” under the regulations. Typically, this is the owner of the company sponsoring the plan or the designated plan administrator.

The Responsible Plan Fiduciary should review the information provided to assess the reasonableness of the costs compared to the services being provided and to determine whether any conflicts of interest exist. As recordkeeper, American Trust is a “covered service provider” under the new rules and is responsible for providing disclosure of fees and services to the plan sponsor. The purpose of this newsletter is to inform you of the new disclosure requirements, as well as what American Trust is doing to ensure compliance with the requirements.

## **Disclosure Requirements**

The new rules require that the following information be disclosed to the Responsible Plan Fiduciary:

### *Services Provided*

A description of the services to be provided to the plan under the contract or arrangement, as well as who will be providing the services.

American Trust has always provided a description of our services within the Service Agreement/Fee Disclosure Document. We have made updates within our revised Service Agreement/Fee Disclosure Document to provide more detailed information on the services provided and clearly identify who is providing the service.

### *Status*

A service provider who is or reasonably expects to act in the capacity of a fiduciary to the plan must disclose their status as a fiduciary to the plan. A fiduciary generally is any person who has discretionary control over the management of the plan or the plan’s assets. A fiduciary also

includes any service provider who is acting in the capacity as a registered investment advisor registered under the Investment Advisers Act of 1940 or any State law.

American Trust does serve as a fiduciary to the plan in our role as Discretionary Trustee and Investment Manager. The Service Agreement/Fee Disclosure Document has been updated to include this disclosure.

### *Compensation*

The new rules require the covered service provider to disclose comprehensive information about the compensation that will be received in connection with the services provided to the plan. A description of all direct and indirect compensation, either in aggregate or broken down by service, which will be paid to the covered service provider, an affiliate or subcontractor for services provided to the plan, must be disclosed to the responsible plan fiduciary.

*The rules define two forms of compensation:*

Direct Compensation is compensation that is received directly from the plan. This would include any type of plan expense that is paid directly from the assets of the plan. For example, an asset management fee that is charged to the plan participant accounts.

Indirect Compensation is compensation that is received from any source other than the plan, the plan sponsor, the covered service provider, or an affiliate. An example of indirect compensation would be a situation where a recordkeeping company is reimbursed by a mutual fund company for using their mutual funds on their recordkeeping platform. These fees are commonly known as 12b-1 fees within the industry.

American Trust has made updates to the Service Agreement/Fee Disclosure document to identify all compensation being paid for services provided to the plan and to whom the compensation is being paid. In addition, fund expense information must be disclosed under the new

rules. Please refer to the “Investment Disclosure” section below for additional information on what needs to be disclosed and how American Trust is ensuring that you receive this information.

#### *Recordkeeping*

The new rules require the service provider to identify the specific cost of providing recordkeeping services to the covered plan. In addition, the service provider must include a detailed explanation of the recordkeeping services that will be provided to the plan. If the cost of recordkeeping services is offset or rebated against other compensation received by the service provider, the service provider must furnish a reasonable and good faith estimate of the cost to the plan for the recordkeeping services.

American Trust has updated the Service Agreement to clearly identify the type of recordkeeping services provided and the cost associated with those services. In addition, we have broken out our cost associated with providing Compliance Services to your plan. These costs are specific to the number of participants in your plan, and not the amount of assets. As a result, we have restructured our fees to reflect the Recordkeeping and Compliance Services fees based on the number of participants in your plan with an account balance.

#### *Manner of Receipt of Compensation*

The rules require that the contract or arrangement disclose the manner in which the service provider will be paid for their services. The contract or arrangement should identify whether the plan sponsor will be billed for the services or whether the fees will be charged to the plan and deducted from participant accounts.

American Trust has updated the Service Agreement to provide options which allow you to identify whether you want a specific fee charged to the plan or billed to the plan sponsor.

#### *Timing of Disclosure*

The rules require that each Responsible Plan Fiduciary who currently has a contract or arrangement with a ser-

vice provider be provided an initial disclosure of fees and services by July 1, 2012. For any contract or arrangement entered into, extended or renewed after July 1, 2012, the responsible plan fiduciary must be provided disclosure reasonably in advance of the effective date of such contract or arrangement. If there is a change to any of the information within the disclosure, the updates must be provided to the Responsible Plan Fiduciary within 60 days of the effective date of the change.

American Trust is providing you with an updated Service Agreement/Fee Disclosure document prior to the July 1, 2012, deadline in order to ensure compliance with the new disclosure rules.

#### *Investment Disclosure*

The Responsible Plan Fiduciary must be provided with certain information on any Designated Investment Alternative (DIA) under the plan. A DIA is defined as any investment alternative designated by the plan into which participants may direct the investment of assets in their account. This does not include brokerage windows, self-directed accounts, or similar arrangements that enable participants to select investments beyond those designated by the plan. The following information must be provided on each DIA:

1. A description of any compensation that will be charged directly against an investment that is not included in the annual operating expense of the investment. This includes commissions, sales loads, sales charges, deferred sales charges, redemption fees, surrender charges, exchange fees, accounts fees, and purchase fees.
2. Descriptions of the annual operating expense (e.g., expense ratio) if the return on the investment is not fixed and any ongoing expenses in addition to the annual operating expenses (e.g., wrap fees, mortality and expense fees).
3. Any other information or data about the DIA that is available to the covered service provider and is required to be provided to the plan participants under the partici-

*continued...*

pant-level disclosures. These items include:

- The name of each DIA and the type or category of investment
- The average annual return for each DIA over the previous one-, five-, and ten- year periods (or, if shorter, over the life of the fund)
- A comparison of the returns of each DIA to an appropriate benchmark over a one-, five- and ten-year period
- Fee and expense information on each DIA
- A web site which directs participants to additional information

American Trust will be providing you updated fund fact sheets on the investments provided in our core line up. In addition, we will be providing you a link to a web site in which the fund information will be made available to you in electronic format.

Expenses associated with any self-directed brokerage accounts are disclosed in the Self Directed Account Addendum to the Service Agreement.

#### *Summary/Guide to Fee Disclosures*

The DOL rules do not require that the fee disclosures be provided in any specific format or contained within one agreement or arrangement. They understand that in certain situations the disclosures may be provided in multiple documents/agreements which may be difficult for the responsible plan fiduciary to search through to find the pertinent information. As such, they have provided a sample of a summary/guide that can be used by service providers that will enable the responsible plan fiduciary to easily find the important fee disclosure information.

The DOL has indicated that the summary/guide page is not a requirement of the regulations at this time. However, they intend to make it a requirement in the near future and are urging service providers to voluntarily provide the summary/guide page to the responsible plan

fiduciary with the fee disclosures.

American Trust has prepared a Guide to Services and Compensation page to assist you in easily identifying the specific services provided to your plan by American Trust and the fees associated with those services.

#### *Action and Next Steps*

The DOL's goal in the sponsor-level fee disclosure rules is to ensure that the responsible plan fiduciary has enough information on the services being provided to the plan and the cost of those services to assess the reasonableness of the fees compared to the services being provided. If the responsible plan fiduciary does not receive the required disclosures from each covered service provider, a prohibited transaction has occurred. Therefore, the responsible plan fiduciary should review the information provided by the covered service providers to ensure that all of the disclosure requirements have been satisfied. If the covered service provider fails to disclose the required information, the responsible plan fiduciary should request the disclosures. If, upon request, the covered service provider again fails to provide the required disclosures, the responsible plan fiduciary should report the failure to the Department of Labor.