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DOL Warns Retirement Plan Sponsors about the "Information Gap"

The U.S. Department of Labor (the "DOL") has issued an unusual warning to individuals that select and oversee vendors for retirement plans. The warning came as part of the DOL's announcement of the change to the vendor fee disclosure rule found in Section 408(b)(2) of the Employee Retirement Income Security Act ("ERISA"). Here is a summary of the warning.

> *To the extent that pension plan fiduciaries are unable to obtain relevant compensation information, or unable to use it to choose among service providers in a manner that upholds their fiduciary duty, a failure exists in the market for services for employee benefit plans*.

The DOL's advisory council expanded on the warning in a report it produced on the subject of vendor compensation.

> *The market for retirement plan services is characterized by acute information asymmetry. The information costs of plan service providers are far lower than their clients'. Vendors are specialists in the design of their products, services, and compensation arrangements, and are continually engaged in marketing to plan sponsors. Plan sponsors often lack this degree of specialization.*

Gauging the Impact of the Information Gap

While trying to help plan sponsors understand the impact of their competency disadvantage with their vendors, the DOL has observed that even very large, relatively sophisticated plan sponsors shop for services only periodically, generally once every three to five years. Smaller, less sophisticated plan sponsors face still higher information costs. As a result, vendors are able to maintain an information advantage over their clients.

The DOL summarized its opinion of the practical impact on plan fiduciaries as follows:

> *Vendors have a strong incentive to use their information advantage for their benefit and are able to distort market outcomes in their own favor. Consequenlty, vendors can reap excess profit by concealing indirect compensation (and attendant conflicts of interest) from clients, thereby making their prices appear lower and their product quality higher. Current ERISA rules hold plan sponsors rather than vendors accountable for evaluating the cost and qualityof plan services*.

The Stakes are High

While many plan sponsors focus hard on hiring the top performing investment managers, significant amounts of retirement savings are being lost due to unnecessary fees.

Accountants are expected to know how to interpret financial statements. Likewise, retirement plan fiduciaries are required to know how to interpret their plans' expense and cost data and to take appropriate action as needed.

How do You Close the Information Gap?

Several effective methods for closing the information gap are available. Roland|Criss can show you where to start.

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