

DOL Issues Temporary Enforcement Policy and Clarifications regarding Required Group Health Plan Disclosures under the CAA

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PRACTICES Employee Benefits and Executive Compensation

In a recent Field Assistance Bulletin No. 2021-03 (the “**FAB**”), the DOL announced its temporary enforcement policy (the “**Enforcement Policy**”), as well as certain clarifications, regarding the new required group health plan service provider disclosures under Section 408(b)(2)(B) of ERISA (the “**Disclosure Requirement**”). The Disclosure Requirement, which was implemented by the Consolidated Appropriations Act of 2021 (the “**CAA**”), requires certain persons or entities that provide brokerage or consulting services to group health plans (each, a “**Service Provider**”) to disclose specified information to a responsible plan fiduciary about the direct and indirect compensation the Service Provider expects to receive in connection with its services to the plan.

With respect to the Enforcement Policy, the FAB provides that, pending further guidance, the DOL will not treat a Service Provider as having failed to make required disclosures to a responsible plan fiduciary under the Disclosure Requirement as long as the Service Provider made disclosures in accordance with a good faith, reasonable interpretation of the Disclosure Requirement based on the facts of the particular situation. The conditional relief provided under the Disclosure Requirement to responsible plan fiduciaries in connection with disclosure failures by Service Providers will also be interpreted and applied by the DOL according to the same “good faith, reasonable interpretation” standard.

The FAB also contains a number of clarifying FAQs in furtherance of the Enforcement Policy, including those that confirm the following:

- In attempting to comply with the Disclosure Requirement, Service Providers may look to prior DOL guidance developed for similar disclosure requirements that apply to pension plans under Section 408 of ERISA.
- The Disclosure Requirement applies to both insured and self-insured group health plans, regardless of size, including grandfathered health plans under the Affordable Care Act.
- Limited scope dental and vision plans that are “excepted benefits” under Part 7 of ERISA are covered plans subject to the Disclosure Requirement.
- Pending further guidance, the DOL will take the view that disclosures of Service Provider compensation according to a “range” may be reasonable when the occurrence of future events or other features of the Service Provider’s arrangement with the group health plan could result in varying compensation to the Service Provider.

The FAB is available [here](#).