

Temporary Enforcement Policy on CAA Compensation Disclosures

The Consolidated Appropriations Act of 2021 (CAA) created new requirements for brokers and consultants to disclose any direct or indirect compensation they may receive for referral of services to ERISA-covered group health plan sponsors. The requirements began on Dec. 27, 2021.

On Dec. 30, 2021, the U.S. Department of Labor (DOL) announced a temporary enforcement policy for these new requirements in [Field Assistance Bulletin No. 2021-03](#). According to the DOL, a person will not be treated as having failed to make required disclosures to a responsible plan fiduciary **as long as the person made disclosures in accordance with a good faith, reasonable interpretation of the law.**

Guidance on Good Faith and Reasonable Interpretations

The Field Assistance Bulletin provides guidance in the form of eight questions and answers, highlights of which include the following:

- The new requirements apply to two categories of covered service providers—providers of brokerage services and consulting services. The fact that a service provider does not call itself a “consultant” or charge a “consulting” fee is not dispositive as to whether the requirements apply. Providers who reasonably expect to receive indirect compensation from third parties should be prepared to explain how a conclusion that they are not covered service providers is a reasonable, good faith interpretation of the law.
- In attempting to comply with the new requirements, covered service providers can look to prior Departmental guidance developed for service providers of pension plans.

The guidance also addresses how covered service providers should disclose compensation amounts that cannot be known in advance.

Covered Plans

For purposes of the new disclosure requirements, covered plans include the following:

- Insured and self-insured group health plans, including grandfathered plans, regardless of size
- Limited scope dental and vision plans

Qualified small employer health reimbursement arrangements (HRAs) are not covered.

A person will not be treated as failing to make the required disclosures as long as they were made with a good faith, reasonable interpretation of the law.