

Where's the Fee?

As fiduciaries, plan sponsors have the responsibility to ensure that only reasonable fees are imposed on their plan for services provided. Essential to this duty is the ability to obtain fee information from service providers which proves to be a daunting task with service arrangements and provider compensation methods becoming increasingly complex. In 2012, the Department of Labor (DOL) published a final regulation introducing 408(b)(2) disclosures as part of a [3-pronged regulatory initiative](#). These disclosures call for service providers expecting to receive more than \$1,000 from an ERISA covered plan to afford plan sponsors specific information regarding both direct and indirect compensation received from the plan as well as a description of the services provided.¹ Service providers were given the flexibility to determine how they would present the fee information to fiduciaries in order to satisfy their disclosure obligation.²

Since the initial 408(b)(2) regulation went into effect, it has been tedious for many plan sponsors to locate and comprehend these disclosures as they are often hidden amongst multiple, extensive documents. The Department of Labor is taking action to rectify this issue and assist plan sponsors in acquiring the information they need to fulfill their fiduciary duty. On March 11th, 2014, the DOL requested comments on a long-awaited proposed rulemaking that would require service providers to equip plan sponsors with a guide to assist them in locating 408(b)(2) disclosure information if it is concealed in lengthy or multiple documents.³ This practice was strongly encouraged by the DOL's Employee Benefits Security Administration, EBSA, who included a sample guide as an appendix to the 2012 regulation.¹ Assistant Secretary of Labor for Employee Benefits Security, Phyllis Borzi, commented "The department's recent fee disclosure rules were a good first step in bringing transparency to the 401(k) industry and disclosing potential conflicts of interest. However, some employers, particularly small businesses, may be having a hard time locating the required fee disclosures when they are embedded in lengthy or complex documents. Much like a roadmap, a guide can help employers locate fee information, which will help

¹ U.S. Department of Labor, Employee Benefits Security Administration. (Feb. 2012). *Final regulation relating to service provider disclosures under section 408(b)(2)*. <<http://www.dol.gov/ebsa/newsroom/fs408b2finalreg.html>>

² U.S. Department of Labor, Employee Benefits Security Administration. (March 2014). *Proposed regulation to require a guide to assist plan fiduciaries in reviewing 408(b)(2) disclosures*. <[http://www.dol.gov/ebsa/newsroom/fs408\(b\)\(2\)disclosures.html](http://www.dol.gov/ebsa/newsroom/fs408(b)(2)disclosures.html)>

³ Trupo, M. U.S. Department of Labor, Employee Benefits Security Administration. (March 2014). *US labor department proposes that service providers give employers a guide for 401(k) fee disclosures*. <<http://www.dol.gov/opa/media/press/ebsa/EBSA20140361.htm>>

them better understand the fees they are being charged by financial services providers."⁴ If the 408(b)(2) disclosure regulation is amended to require a guide, the Department of Labor requests the guide contain directions to find a description of all services to be provided, all related direct or indirect compensation that will be received, as well as required investment disclosures.⁵

The comment period for the proposed rulemaking is open until June 9th, 2014. Comments can be emailed to the Department of Labor directly at e-ORI@dol.gov or submitted using the Federal eRulemaking portal at www.regulations.gov. The DOL is also conducting focus group sessions with fiduciaries of small pension plans. They intend to evaluate current practices regarding 408(b)(2) disclosures and gauge the need for a guide or summary as a means of assisting plan fiduciaries in locating and understanding fee disclosures.⁵

⁴ Trupo, M. U.S. Department of Labor, Employee Benefits Security Administration. (March 2014). *US labor department proposes that service providers give employers a guide for 401(k) fee disclosures*. <<http://www.dol.gov/opa/media/press/ebsa/EBSA20140361.htm>>

⁵ U.S. Department of Labor, Employee Benefits Security Administration. (March 2014). *Proposed regulation to require a guide to assist plan fiduciaries in reviewing 408(b)(2) disclosures*. <[http://www.dol.gov/ebsa/newsroom/fs408\(b\)\(2\)disclosures.html](http://www.dol.gov/ebsa/newsroom/fs408(b)(2)disclosures.html)>