



## Proposed Rules Require Service Providers to Furnish Plan Fiduciaries With 408(b)(2) Fee Disclosure Guide

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The Department of Labor (the “Department”) recently published a proposed amendment to the final rules governing disclosures that must be furnished before plan fiduciaries enter into, extend, or renew retirement plan service contracts or arrangements in order for such contracts or arrangements to be “reasonable,” as required by Section 408(b)(2) of ERISA ([see our recent Blast on Section 408\(b\)\(2\) contractual considerations](#)). These Section 408(b)(2) disclosure rules are designed to help ensure that plan fiduciaries are provided the information they need to assess both the reasonableness of the compensation paid for plan services and potential conflicts of interest that may affect the performance of those services.

Under the proposed amendment, covered service providers would be required to furnish a guide to the responsible plan fiduciary to supplement Section 408(b)(2) disclosures where such disclosures are contained in multiple or lengthy documents. Specifically, the proposed amendment provides that, if certain information that must be disclosed is not contained in a single document, or if the document is in excess of a specified number of pages, the covered service provider must furnish to the responsible plan fiduciary a guide that specifically identifies the document and page or other sufficiently specific locator, such as a section, that enables the responsible plan fiduciary to quickly and easily find the specified information. Thus, under the proposed amendment, covered service providers would no longer be permitted to simply state that required information is contained in a separate service contract or prospectus.

Under the proposed amendment, the guide will need to disclose the location of the following information:

- the description of services to be provided to the covered plan;
- the statement concerning services to be provided as a fiduciary and/or as a registered investment adviser;
- the description of all direct compensation;
- the description of all indirect compensation;
- the description of any compensation that will be paid among related parties;
- the description of any compensation for termination of the contract or arrangement;

- the description of all compensation (and/or a reasonable estimate of the cost to the covered plan) for recordkeeping services;
- for covered service providers that are fiduciaries to vehicles that hold plan assets and recordkeeping or brokerage providers that offer an investment platform in connection with their services, the description of any compensation, annual operating expenses, and ongoing expenses (or, if applicable, total annual operating expenses); and
- the identity of a person or office, including contact information, that the responsible plan fiduciary may use to follow up on the Section 408(b)(2) disclosures.

The proposed rule would require that changes to the information contained in the guide be disclosed to responsible plan fiduciaries at least annually. It does not appear that a new guide would need to be provided in the absence of any changes.

The Department is seeking comments in several areas, including the number of pages that will trigger the guide requirement and the types of locators (page or section) that will enable fiduciaries to quickly and easily find the required information. Remember, these rule changes are only proposed. **No action is required at this time.** At present, the Department envisions that the proposed amendment will be effective 12 months after publication of the final amendment.

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