

RETIREMENT PLAN ADVISORY SERVICES, LLC.

MAY 19 2014 RECD

May 9, 2014

Mr. John J. Canary, Director
Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
US Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Re: Comments on 29 CFR 2550 RIN 1210-AB08 408(b)(2) Guide Amendment Relating to Reasonable Contract or Arrangement Under Section 408(b)(2) – Fee Disclosure

Dear Mr. Canary:

We appreciate the progress that the Department of Labor (DOL) has made on transparency of fees and disclosures under Section 408(b)(2). Specifically, the requirement for plan sponsors and responsible plan fiduciaries (RPF) to determine the reasonableness of fees for plan services, and identify potential conflicts is critical to protect the interest of employees.

Below are our comments on the above noted regulations. These are based on Retirement Plan Advisory Services, LLC (RPAS) experience in providing qualified retirement plan consulting services to broker dealers and other financial institutions. Additionally, RPAS has expanded its service platform to encompass these regulations. RPAS has designed and implemented a comprehensive fee disclosure and service document for financial advisors and other intermediaries to disclose the services performed, the fees charged for those services and their fiduciary status for the plan.

Guide Requirements: Content

Many plans are serviced in an unbundled arrangement. Unbundled means that a third party administrator (TPA), recordkeeper, investment and financial advisor are all providing services from separate entities; there is no cross pollination of information or compliance. Each party would be considered a *covered service provider* (CSP) and required to provide their own 408(b)(2) disclosure document to the responsible plan fiduciary. The regulations seem to anticipate that one service provider has all the information; however, the unbundled arrangement has many service providers which creates significant complexity for the *sample summary guide* to be created.

It has been our experience that the recordkeeper of a qualified plan has reported the investment account commissions paid to the financial advisor to the responsible plan fiduciary as part of the recordkeeper's disclosure documents. The financial advisor interprets these reports as complying with 408(b)(2). As a result, the financial advisor assumes that no further action is required. In fact, that assumption is inaccurate, as neither the fiduciary status nor the services of that financial advisor have been identified in the disclosure document.

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Many fee disclosure documents instruct the responsible plan fiduciary to see the prospectus or the Registered Investment Adviser ADV (2) Part Two Disclosure for the fees being charged. Many of those documents do not disclose fiduciary status nor do they list the services provided. These types of documents are skeletal and provide no information for the responsible plan fiduciary to determine the actual fees, and if they are reasonable. Additional documentation is needed to provide the required information to make such an assessment.

In addition, many plans operate in a balance forward method (including defined benefit plans) and do not have a daily recordkeeping platform. In such circumstances, the participant is not able to direct their investments and the responsible plan fiduciary makes all investment choices. These types of plans do not intend to comply with 404(c) of ERISA. Similarly, if these plans are invested in a brokerage account, the information may change at any time as there are no designated investment alternatives. Rather than a summary document, the fees and commissions paid for the particular investment should be identified prior to the purchase.

Guide Requirements: Format

It will be extraordinarily difficult to administer the provision to allow references to other documents when identifying specific fees, since many documents are not specific to that plan (e.g. a prospectus). Prospectuses are only updated periodically and the reference to investment charges by share class will change with the pagination of the new document. The Covered Service Provider (CSP) will need to know the share class to determine the fees being charged. Normally, the prospectus does not convey the specific plan information in a format that the responsible plan fiduciary can identify and understand with ease.

If a general section titled is referenced in a prospectus, then some standardization may be developed over time, but no such standardization exists today. We believe that the covered service provider's fees can be identified and should not be referenced into a particular guide with the general exception of brokerage accounts, where the fees should be indicated as above.

The DOL's recommendation that fees be indicated on an annual basis is a welcome change. As a result of the 2008-2009 market downturn, fees may have been raised if they were based upon the amount of assets in the plan. It seems that fees may need to now be reduced, as there have been significant positive market adjustments since that time. Having an annual fee review allows the responsible plan fiduciary to exam the service and fee reasonableness on a regular basis. Prior requirements for manual distribution to the responsible plan fiduciary; unless agreed to by the recipient, causes significant hardship for all parties. Allowing for an electronic submission of the data would be helpful to service providers and responsible plan fiduciaries.

If the DOL requires a specific format for reporting, it may become quite cumbersome due to disparate systems, databases and limitations of service providers. We believe a summary of the fees, fiduciary status and services for each covered service provider should be part of the process to allow responsible plan fiduciaries easy access to information.

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We applaud the DOL's continued efforts to provide responsible plan fiduciaries, financial advisors and service providers with requirements that protect plan participants.

We thank you for the opportunity to comment on these proposed changes.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Callahan', with a long horizontal flourish extending to the right.

Michael E. Callahan, FSPA, EA, CPC, RMA
Principal