BLACKROCK

June 10, 2014

Via e-mail to e-ORI@dol.gov

Office of Regulations and Interpretations
Employee Benefits Security Administration, Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Amendment Relating to Reasonable Contract or Arrangement Under Section 408(b)(2) – Fee Disclosure (RIN 1210-AB53)

Ladies and Gentlemen:

BlackRock[1] is pleased to offer its comments on the Department of Labor's (the "Department") proposed amendment to the final regulation[2] under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), requiring that certain service providers to pension plans disclose information about the services they provide and their compensation.[3] This amendment would require "covered service providers" to furnish a guide to assist plan fiduciaries in reviewing the disclosures required by the final regulation under Section 408(b)(2) of ERISA.

BlackRock supports the Department's efforts to increase transparency and assist plan fiduciaries' understanding of fees paid by plans and their sponsors. Although not required, we decided to include a guide that is substantially similar to the Department's proposed guide as part of our implementation of the Section 408(b)(2) disclosures. However, BlackRock urges the Department to review the effectiveness of new ERISA disclosure and reporting requirements more broadly, including evaluating the results of its proposed focus groups, before making any decision regarding the need for, and the contents of, a guide. If it requires "covered service providers" to furnish a guide, the Department should adopt a flexible approach and permit "covered service providers" to determine the best structure and manner for completing a guide.

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[1] BlackRock is one of the world's leading investment management firms, managing approximately $4.4 trillion (as of March 31, 2014) on behalf of individual and institutional clients, including governments, pension funds and corporations.
[2] *See* 29 C.F.R. 2550.408b-2.
[3] *See* 79 Fed. Reg. 13949 (March 12, 2014).

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I. The Department Should Conduct Additional Research and Analysis Before Issuing a Rule Requiring a Guide to Section 408(b)(2) Disclosures

On March 12, 2014, the Department separately published notice of its intent to conduct focus groups for purposes of "Evaluating the Effectiveness of the 408(b)(2) Disclosure Requirements."[4] The focus groups are intended to explore current practices and the effect of the Department's regulation and to gather information regarding the need for a guide, summary or similar tool to navigate and understand disclosures. The outcome of this initiative may show that plan sponsors have no need for a guide from asset management firms, such as Blackrock, where fees are generally set out in a straight forward manner in investment management agreements, participation agreements or fund disclosure documents. Further, the focus groups may show that there are other aspects of the Section 408(b)(2) regulation that the Department should address in the rule making. We note that BlackRock received and has continued to receive almost no comments or questions from plan sponsors or plan fiduciaries with respect to its Section 408(b)(2) disclosure.

In addition to the proposed focus groups, we urge the Department to "step back" and complete additional analysis to determine whether the disclosures to plan fiduciaries and plan participants and beneficiaries and plan reporting requirements, when viewed together, have the intended effects (*e.g.,* improving access to plan information, enhancing transparency of services and fees, assisting the plan fiduciary in selecting and negotiating fees for services and enabling plan participants to make better investment decisions, etc.). The review should be completed before the Department issues additional regulation and should take into account that the costs of the increased administrative burden will likely ultimately be borne by plan sponsors and participants and beneficiaries in the form of higher fees for services. The Department may learn that Section 408(b)(2) disclosure and other required reporting and disclosure have imposed significant administrative burdens and costs on plan sponsors and service providers to generate information in different formats, without creating material increases in transparency or providing plan sponsors or participants with additional information that affords them a meaningful ability to reduce overall costs or to make more informed decisions.

We believe that this comprehensive review of the disclosure and reporting landscape is needed at this time and that the Department may find that different aspects of the Section 408(b)(2) disclosure requirements (as well as Form 5500 reporting and participant disclosures) should be eliminated or revised. One example of the type of analysis the Department should conduct would be to examine whether it is helpful or confusing to a plan sponsor when a collective fund trustee provides the disclosure described in 29 C.F.R. 2550.404a-5(h)(5) and (d)(1) with respect to collective funds that are designated investment options in the plan sponsor's defined contribution plan.[5] Plan participant disclosures required by 29 C.F.R. 2550.404a-5 are generally compiled and distributed by record keepers. However, to ensure compliance with 29 C.F.R. 408b-2(c)(1)(iv)(E), trustees of collective funds, as fiduciaries, send the portion of required participant disclosures relating to fund performance and fees directly to plan fiduciaries. The information may not reflect all fees or actual performance, as it will not reflect additional fees that may be imposed by the

[4] *See* 79 Fed. Reg. 14085 (March 12, 2014).
[5] *See* 29 C.F.R. 408b-2(c)(1)(iv)(E)(2)(3).

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record keeper or plan sponsor. Further, investment managers of registered investment companies ("mutual funds") do not need to provide disclosure under Section 408(b)(2) because these vehicles are not subject to ERISA. The plan sponsor would not receive the type of disclosure it receives for collective funds with respect to mutual funds available for investment under its defined contribution plan. Thus, the collective fund fee and performance information required by 29 C.F.R. 408b-2(c)(1)(iv)(E), is at best duplicative and may be confusing because it may not reflect all fees and will not be provided for all products.

II. The Department Should Permit a Flexible Approach to the Structure of the Guide

If the Department concludes, after analyzing the focus groups' input, that the benefits of a guide clearly outweigh the costs, BlackRock urges the Department to adopt a flexible approach to the structure of the guide and the means (*e.g.*, section references, page numbers or summaries; web based, electronic or paper) "covered service providers" are permitted to use to convey a better understanding of services provided and fees charged for those services. A "covered service provider" should be permitted to determine how it will present required information in a guide as long as it incorporates all the disclosure required by the final Section 408(b)(2) regulation. Different services providers may earn different types of fees which, in their reasonable judgment, are most clearly disclosed by using a combination of section references and summary descriptions. While we agree that the Department should not require a summary in all cases, we urge the Department to permit the use of a summary as part of a guide instead of a "pointer" where necessary or where, in the service provider's judgment, the summary will provide better disclosure. In addition, a "one size fits all", or other approach with limited options, may not be workable for certain "covered service providers" or may only be workable with a major investment in technology and at significant cost. Web-based approaches, in particular, would likely require significant and costly enhancements to technology and for some types of mandates (such as individually negotiated investment management agreements) may not be viable.

To illustrate, BlackRock negotiates its investment management agreements with plans. For these individually negotiated documents, it may be difficult to use page numbers because the pagination will vary from client to client, but it may be possible to point to section names, which are more standardized across documents. Some documents, such as offering memoranda for private plan assets funds, may have section names, but those sections are not numbered. In other cases, the best -- or possibly the only -- means to provide disclosure may be to provide a summary. For example, BlackRock includes a summary of soft dollar payments with its disclosure guide. There is no page number or section of another document to which BlackRock can point that would provide information regarding the soft dollar compensation it receives. For certain products, BlackRock includes its Section 408(b)(2) disclosure guide as a hard copy appendix to other contract documents, rather than a separate document. In our view, this is the best way to ensure that clear and complete disclosure is provided to plan sponsors in a timely manner.

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III. The Department Should Not Require Annual Updates to Guides

The Department is proposing that disclosure guides be updated on an annual basis if there have been changes to an arrangement over the course of the year. As drafted, the proposed rule preserves the flexibility to provide an updated guide at the time of a change in the arrangement or on another periodic basis. We believe that flexibility on timing should be preserved and that the Department should not require that an updated guide be provided at any specific time during the year.[6] Tracking changes can be difficult and time consuming and, for BlackRock, it is simpler to provide an updated guide at the time of a change in services or compensation and within the time specified for providing disclosure of renewals or changes in 29 C.F.R. 408b-2(c)(1)(v).

IV. Clarify that the Guide is Required Only for New Clients or Changes to Arrangements After the Effective Date

We interpret the proposed rule to apply the guide requirement only with respect to new contracts and clients or changes to existing contracts after the effective date of the final rule. If it adopts a guide requirement, BlackRock asks that the Department clarify that our interpretation is consistent with the Department's intended transition rule. It was an enormous undertaking to provide disclosure to existing clients by July 2012. BlackRock provided a guide to existing clients at that time and all new clients thereafter and used its best efforts to include all required information. It would be burdensome and redundant – and we do not think it is the Department's intent – for BlackRock (and other firms that voluntarily provided a guide) to be required to send new guides to existing clients if the final rule requires the use of a guide with somewhat different requirements from what we originally included under the 2012 amendments to the Section 408(b)(2) regulations. Particularly for covered service providers who furnished a guide in good faith in 2012, the requirement to provide a new guide would be punitive and the cost would far outweigh any marginal benefit.

BlackRock supports increased transparency of fees paid by plans and their sponsors, but urges the Department to ensure that any mandated disclosure is meaningful and helpful to plans and their sponsors and that the costs do not outweigh the benefits.

Respectfully submitted,

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Head of U.S. Retirement Group

[6] *See* 79 Fed. Reg. at 13952.

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