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SUBMITTED ELECTRONICALLY

June 10, 2014

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210
ATTN: RIN 1210-AB08; 408(b)(2) Guide

Re: ERISA Section 408(b)(2) Proposed Rule - Comments

Ladies and Gentlemen:

This comment letter responds to the notice of proposed regulation (the "Proposal") published under Section 408(b)(2) of the Employee Retirement Income Security Act of 1974 ("ERISA") by the U.S. Department of Labor (the "Department") in the Federal Register on March 12, 2014. These comments are submitted on behalf of the group of financial service companies for which FMR LLC is the parent corporation (collectively, "Fidelity"). Fidelity companies provide investment management, recordkeeping, brokerage, and directed trustee and custodial services to thousands of retirement plans covering millions of participants.

The Department published a final rule (the "Rule"), which was structured as an amendment to the long-standing regulation under ERISA Section 408(b)(2), in the Federal Register on February 3, 2012. The Rule took effect on July 1, 2012. In developing the Rule, the Department requested comments on whether to include a summary or guide or other formatting requirement in the final rule. We filed a comment letter dated August 30, 2010, which in part expressed our concerns about the increased complexity and cost of compliance efforts already underway as well as the continued need for flexibility in the format of disclosures. Although Fidelity shares the Department's view on the importance of providing clear and meaningful disclosures to assist plan fiduciaries with their responsibilities, as discussed below in detail, we do not feel that the Proposal addresses these concerns.

(1) Regulatory Alternatives

As an initial matter, we question why the Department issued the Proposal in advance of a comprehensive review of plan fiduciary experience from the first year or two of a brand-new disclosure regime.

There is a reference in the Proposal preamble to "anecdotal evidence" suggesting that small plan fiduciaries in particular often have difficulty obtaining required information in an understandable format because of the lack of bargaining power and specialized expertise (79 FR 13951). In complying with the Rule, Fidelity uses the same format in disclosing required information to all of its full-service recordkeeping plan customers, regardless of their size or expertise. As one of the largest record keepers in the industry, Fidelity provided initial 408(b)(2) disclosures for over 21,000 plans by the due date for the final Rule, and thousands more since. Our experience to date suggests that plan sponsors regardless of size had no difficulties understanding the information provided to them or locating information. Further, to the extent our clients had questions Fidelity representatives were available and able to address them. It would be extremely helpful if further details of the Department's anecdotal evidence could be provided to the benefits community well in advance of the Proposal comment deadline.

In the same Federal Register issue that included the Proposal, the Department announced its intention to conduct focus groups with fiduciaries of small pension plans to explore current practices and effects of the Rule. The Department stated that the focus groups may provide information about the need for a guide, summary, or similar tool to help responsible plan fiduciaries navigate and understand the required disclosures. We do not question the expressed intent of such efforts, but such efforts should be completed before the issuance of a proposed rule rather than concurrently. Moreover, if the Department intends for the Proposal to apply to all plans subject to the Rule, the focus groups should include fiduciaries of medium and large plans, as well as small plans.

Moreover, it is worth pointing out that the Department stated its intention to propose a guide or summary requirement in the Rule preamble published on February 3, 2012. The preamble stated that, given the lack of specific suggestions or data on how best to structure such a requirement, and what the real cost of such a requirement would be, the Department was not prepared, at that time, to implement a guide or similar requirement as part of the final rule. It does not yet appear that the information concerns that the Department expressed in the Rule preamble have been addressed. It seems in contradiction to the regulatory process articulated by the Administration for an agency to publish its intent to issue a proposed rule before it has determined that there may be a problem.

In sum, we strongly suggest that the Department issue a Request for Information ("RFI") in place of the Proposal to obtain more comprehensive information. Alternatively, the Department could elect to treat the Proposal as a pre-rule proposal and use the Proposal comments and focus group results to fashion a new proposed rule.

(2) Applicability and Effective Date

The Proposal preamble states that the new Rule revision would require service providers to furnish a guide "along with the initial disclosures required by the rule" (79 FR 139510). The Department should confirm that the guide requirement, if applicable, would only apply to contracts entered into or renewed on or after the effective date. As noted above, plan fiduciaries have not expressed any concerns to us regarding missing information and/or difficulties with understanding the disclosures that were provided. The Department was clear at the time of the Rule's effective date that a guide was not required and the Rule granted service providers flexibility in satisfying the Rule. If the Department ultimately determines it must reduce that flexibility, the new requirements should only apply to new disclosures after the effective date of such requirements. If the Department believes that there are some small plan fiduciaries who have unanswered questions regarding the disclosures received, it could require covered service providers to simply provide contact information to plan fiduciaries.

If the Department ultimately amends the Rule to require service providers to provide a guide, if applicable, to existing plan clients, the Department should clarify that redelivery of initial disclosures is not required for this purpose. Rather, only the guide needs to be provided. Further, the guide provided in such instances should be able to refer to fees and services as set forth in the initial disclosures provided. Otherwise, service providers will essentially need to go through the same considerable and comprehensive effort to provide disclosures to all clients as they did in 2012.

The Proposal also specifically requests comment on whether the amendment to the Rule should require that covered service providers furnish a summary of specified "key" disclosures instead of a guide. The Proposal does not specify what key disclosures would be included in such a summary or describe any other aspects of the summary. Nor does the Proposal state that the Department has collected any information which suggests that such a summary is needed or that its benefits would outweigh its costs. We strongly suggest that the Department conduct an analysis as to whether reconsideration of a summary is warranted and then, if it concludes that reconsideration of such an alternative is warranted, reissue the Proposal accordingly.

Finally, for providers with a substantial client base, the creation and delivery of a guide (or new summary) for each plan will still require the disclosure process to start well in advance of the Rule effective date. Considering the potential need for new disclosure procedures, customization, systems changes, staff training, and vendor and/or client discussions, even good faith efforts to comply with a new regime for both existing and new clients would take at least two years. The Department should recognize that service providers may need to substantially rework their existing disclosure program which could take as long and be as costly as the development work for the Rule.

(3) Comment Deadline

The Proposal preamble states that public comments on the Proposal must be submitted by June 10, 2014. The preamble does not mention the possibility of a public hearing, which would provide another opportunity for obtaining public input. Unless the Department accepts our earlier recommendation to issue an RFI in place of the Proposal or treat it as a pre-rule proposal, we believe that the Department should schedule a public hearing on the Proposal.

In addition, however, the Proposal preamble also states that because the focus group information-gathering work mentioned above will not be completed until after the expiration of the Proposal comment deadline, the Department "may" decide to reopen the Proposal comment period to solicit comments on such results. We respectfully request that the Department confirm that it "will" reopen the Proposal comment period after the focus group results are available, in order to allow the public the ability to supplement their comments after having access to the same information to which the Department will have access in preparing a final Rule amendment.

Further, while we believe that the maximum page number standard should be removed as described further below, if one will be included, we respectfully ask that the Department propose a specific maximum page number requirement for public comment before it attempts to develop a final amendment. We cannot assess the burden and resulting cost of the Proposal without knowing whether a specific page number requirement would require either (1) a major reworking of our disclosure format, or (2) the development of a new guide to supplement our current disclosure templates. We also strongly urge the Department to retain in any guide requirement a choice of locators, including a sufficiently specific locator such as a section number or schedule.

The Proposal would require each covered service provider to identify an office or individual, including contact information, for plan fiduciaries with questions about the fee and service information that they have received. We agree that this addition to the Rule requirements would be helpful without imposing an additional burden on service providers. However, we respectfully ask that the final Rule revisions provide flexibility regarding whether such information must be included in the guide or may be provided to the plan fiduciary in another manner.

(4) The Proposal Requirement

The Proposal would require each "covered service provider" to provide each hiring fiduciary a guide unless the provider has furnished all the required information in a single document that does not exceed an as-of-yet unspecified number of pages. The guide would have to identify the document and page number or other sufficiently specific locator, such as a section

number or schedule, that enables the responsible plan fiduciary to quickly and easily find the information required by the Rule and listed in the Proposal revisions to the Rule.

The Proposal would take an all-or-nothing approach, requiring a guide that lists specific locations for ALL the required information if ANY information is not included in a summary that otherwise includes all the information required by the Rule. Fidelity and other record keepers have created comprehensive documents with the required compensation and service information that may cross-reference one or more items to another document. The Proposal approach would encourage providers to discontinue the comprehensive document altogether if the provider must provide a guide reference for every disclosure item in any event. The Proposal approach should support the use of disclosure statements that may not be completely all-inclusive.

Accordingly, the Proposal should be modified as follows:

1. The conditions under which a guide is required should be narrowed and the maximum page number condition should be eliminated or modified.
2. The guide should only be required to include references to disclosure elements that are not set forth in a concise disclosure document.
3. The guide should not be required to be furnished as a separate document.

Each recommendation is discussed below in further detail:

` 1. The Proposal provides that a guide will be required if all disclosures are not contained in a single document. That standard is unnecessarily strict and will require covered service providers to expend considerable efforts and costs to create a guide or modify their disclosure statements with little benefit to plan fiduciaries. Certain references to other documents for a few items should be permissible without triggering a guide requirement.

First, cross-references to a contract which the plan sponsor or other fiduciary enters into with the covered service provider are appropriate. The responsible plan fiduciary will have reviewed such contracts before executing them and presumably will have retained them. The Department indicates that it has anecdotal evidence that small plan fiduciaries have difficulty obtaining information in an understandable format. However, a contract that the client has signed should be within easy access. If the Department is concerned that the plan fiduciary cannot locate the contract or does need assistance finding the referenced disclosure, it could simply require the covered service provider to provide the contract and/or the specific locator upon request.

The same concept should apply to any separate disclosure (such as a product fact sheet) that service providers have created for certain products or services only utilized by some plans.

Specifically, the separate disclosure should be deemed to satisfy the guide exception without the need to include it in a larger piece which contains the other required disclosure elements. As mentioned above, the service provider could be required to furnish the disclosure upon request if the plan fiduciary would like another copy.

Similarly, it is difficult to understand why the length of a disclosure document would be enough to cause the Department to take the position that a guide must be provided as well. We disagree with any implication that a provider would lengthen the document just to bury information that would be useful to the plan fiduciary and have not seen any studies or reports which reflect that practice. The plan fiduciary should benefit from a disclosure statement that includes all the required information or appropriately cross-references any required information not included in the statement. Service providers whose "single documents" of required disclosures do not incorporate contracts and product documents should simply not be subject to a page number limitation.

Alternatively, the Department should consider excluding from the page number count disclosures that are driven by the number of investment options and/or services the plan fiduciary has chosen these are not within the covered service provider's control. For example, Fidelity's disclosure statement for defined contribution plans includes a chart of all the investment options which the plan fiduciary has directed the plan to offer in order to meet our requirement as a record keeper under Rule Section 2550.408b-2(c)(1)(iv)(G)(2) to provide "a description of the annual operating expenses (e.g. expense ratio) if the return is not fixed" for each option. In addition, paragraph (c)(1)(iv)(G)(3) states that the required disclosures must also include a description of "any ongoing expenses in addition to annual operating expenses (e.g., wrap fees, mortality and expense fees)" for each such designated investment option. The chart's length is determined by the number of designated investment options offered by the plan. This, and similar content driven by the services selected, should be excluded from any maximum page number threshold.

2. If a guide is required for all disclosure items, it should only have to provide a "locator" for the information not provided in the comprehensive statement. Alternatively, if the guide must include a locator for all information, the Department should confirm that the locator provided in the guide could be a reference to the comprehensive statement for any information included in the statement. Otherwise, the Department would essentially be imposing a "source" requirement related to the disclosures which presumably is not the intention nor would it be helpful to plan fiduciaries. For example, Fidelity, like many other record keepers, developed a comprehensive statement which included substantially all of the required disclosures. In order to do so, Fidelity pulled each plan's fees from our client billing system to include in the disclosure statement. If we had to prepare a guide for the plan, it would be nonsensical to have to reference the page/section of the client agreement which includes such fees. Rather, it is a far better plan

fiduciary experience to simply reference the section of the disclosure statement which lists these fees and related services.

Further, there are certain disclosures where the only possible "locator" would be the disclosure statement. For example, indirect compensation that a record keeper receives related to investment options for which it record keeps would only be referenced in the disclosure statement or other service provider produced document. The "source" of the rate of compensation is typically documented in a contract between the record keeper and the investment option's service provider to which the plan fiduciary is not a party. In particular, the good faith estimated cost of record keeping for "bundled" arrangements would only appear in the disclosure statement. The Department should confirm that if a guide is required to include locators for all of the information listed in H(1)(i) through (viii), it is permissible to reference the disclosure statement for information provided in the statement.

3. The Proposal would require the guide to be a separate document. As described above, many service providers have developed comprehensive statements which contain almost all of the information required in H(1)(i) through (viii). To the extent that a guide is required, it would likely simply reference the comprehensive statement and effectively serve as a table of contents. In some instances, it would be more useful to incorporate the guide into the disclosure document rather than create a separate document. To the extent a guide is required, we encourage the Department to permit the covered service provider flexibility in how to furnish the guide instead of mandating that it be a separate document.

Finally, the Proposal preamble states that the Department is "skeptical" that a guide and maximum page number requirement is unreasonably burdensome "in light of advances in technology, such as data tagging, and the standardization of many service agreements and investment and other disclosure documents". The Proposal preamble describes a standardized process that the Department "believes" will allow service providers to use the same locator references for all contracts that include or rely on the same information.

In many cases, however, the required information not included in our disclosure templates is only included in some contracts. Fidelity uses model trust service and investment agreements to begin the contracting process with clients, but these models are then often subject to substantial negotiation and revision. Equally important, there is no computerized or automated method for locating the relevant contract provision. In addition, these items are included in contracts signed by the plan fiduciary, so that the plan fiduciary should have direct knowledge of these provisions. In sum, there is no efficient solution, contrary to the Department's assertion.

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In conclusion, we would be pleased to respond to any comments or questions regarding the comments provided above.

Respectfully,

Douglas O. Kant, Senior Vice President
and Deputy General Counsel

Respectfully,

Krista M. D'Aloia, Vice President and
Associate General Counsel