



Northern Trust

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

Re: Proposed Amendment to Section 408(b)(2) Disclosure Regulation

Dear Sir or Madam:

Northern Trust Corporation (“Northern Trust”) appreciates this opportunity to comment on the Department of Labor’s proposed amendment to the final regulation under section 408(b)(2) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) (the “Regulation”). Northern Trust, a multi-bank holding company, is a leading provider of investment management, asset and fund administration, banking solutions and trust, custody and related services for corporations, employee benefit plans, institutions, and affluent individuals worldwide. As of March 31, 2014, Northern Trust had assets under custody of US\$5.8 trillion and assets under investment management of US\$ 915.4 billion. Retirement plans subject to ERISA are a large and important part of Northern Trust’s business.

The proposed rule would apply to service providers who are required by the Regulation to furnish ERISA plan fiduciaries with written disclosures regarding the services they provide and the compensation they receive. Under the proposed rule, if the disclosures are contained in multiple documents or exceed a specified number of pages, the covered service providers would be required to furnish the plan fiduciary with a guide that would specifically identify the document and page or other sufficiently specific locator, such as a section, that enables the responsible plan fiduciary to find quickly and easily the information that is required to be disclosed under the Regulation.

Although Northern Trust generally shares the concerns raised in the letter submitted by the American Bankers Association, of which we are member, we would like to emphasize our concern that requiring the guide in the context of large retirement plans would create significant—and we believe unnecessary—burdens on service providers such as Northern Trust and its affiliates, with little or no benefit to the plans or their fiduciaries or beneficiaries.



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In the Supplementary Information published with the proposed rule, the Department of Labor stated there was anecdotal evidence that small-plan fiduciaries have difficulty understanding the disclosures they receive from service providers. Northern Trust, which focuses on the large-plan market, has received a number of inquiries from plan fiduciaries regarding the disclosures we provided, but the inquiries almost always relate to questions about the information that was included in the disclosure; inquiries regarding the location of information within the materials are extremely rare, despite the fact that the disclosures are not contained in a single document. Plan fiduciaries who have questions about their disclosures can contact any of several Northern Trust employees who are dedicated to serving their accounts, and they will receive individualized answers to their specific questions in a timely manner. This is a far more helpful, efficient and cost effective way to assist fiduciaries in understanding their disclosures than providing a guide to every responsible plan fiduciary, whether they need it or not. Again, a guide that tells the fiduciary where to find information will be of no help to the fiduciary who is able to find the information but simply has questions about its content, which is almost always the case based on our experience with the relatively small number of inquiries we have received.

In addition to our concern that there is no evidence that a guide is necessary (or would even be helpful) in the context of large plans, we are concerned that preparing the guide for clients who sponsor very large plans would be particularly burdensome and costly. Fiduciaries for large plans are often committees whose members include senior personnel with extensive experience in vendor selection and vendor management. In addition, many clients utilize a competitive process to select the plan trustee and other service providers, and that process always includes a thorough review of the service provider's compensation. Fees are often heavily negotiated, and "custom" fee arrangements are the norm rather than the exception. As a result, standardized disclosure is not possible, and the "road map" approach of referring to other documents (such as individually negotiated trust agreements, fee schedules or service level descriptions) can be a clear and understandable way to provide the disclosures to the responsible fiduciary in a cost effective manner.

The "road map" form of disclosure is also an effective way to disclose information for services that are outside of the primary trust or custody agreement, such as securities lending or transition management services. Those services are typically provided under a separate agreement and fee schedule, either of which may also be heavily negotiated or customized to meet the client's needs. In those cases, a guide would likely be of minimal usefulness as it would need to refer to multiple pages or sections of multiple documents in order to capture, for example, a description of the services to be provided. Northern Trust believes that the "road map" is already clear and understandable in its references to other documents, and attempting to create a customized guide



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with references to specific pages or sections of multiple documents for every responsible plan fiduciary, including sophisticated fiduciaries that have no difficulty understanding their agreements and compensation arrangements, would be difficult, costly and unnecessary. We have estimated that preparing a guide to the disclosures we use for investment management services would take three hours per client, and a similar guide would need to be prepared for the disclosures we use for trust and custody services. We believe that the costs of compliance for the proposed rule are significantly higher than the Department's estimates, with little or no benefit to the fiduciaries of the plans for which we provide services.

While this letter has focused on the difficulties the proposed rule would cause for providers to large plans, we agree with the American Bankers Association and the other commentators that the proposed rule is premature for both large and small plans. Northern Trust serves both large and small plans and, as noted above, has received extremely few inquiries from any plan fiduciaries requesting assistance in locating the information described in the 408(b)(2) disclosures.

Again, we appreciate the opportunity to comment on the proposed rule, and urge you to consider our comments in your deliberations.

Sincerely,

Gerald P. Cleary  
Senior Vice President