

# Disclosure Requirements for Service Providers

Historically, the retirement plan marketplace was dominated by high fees and unclear fee structures. In the mid-2000s, fee litigation in the mega-plan space brought attention to the cost and transparency of fees for retirement plans and their service providers. The DOL-issued regulations (effective in 2012) required plan sponsors to better understand the cost associated with retirement plans. These regulations require what is often referred to as “408(b)(2) disclosures” because of the code section under which they originated. Many times, plan sponsors are unaware of this separate disclosure because the disclosure itself is built into the contract between the plan sponsor and the service provider.

**Regardless of where it is located – separate document or the contract – it is important for plan sponsors to:**

Receive the information

Review and analyze the information (and ask questions where necessary)

Document the review

## Analyzing 408(b)(2) Disclosures

Hiring service providers is a fiduciary obligation and hence requires a prudent process. Part of that process should include reviewing the 408(b)(2) disclosure for each service provider. Begin by taking an inventory of all of the service providers to the plan that expect to receive \$1,000 or more in compensation from an ERISA-covered plan during the year; each of these service providers is known as a “covered service provider” under the rules.

Each time a 408(b)(2) is issued, the plan fiduciaries should review and analyze the information to determine if the services are necessary and if the fees are reasonable given the services rendered. Additionally, plan fiduciaries should periodically undertake a review of 408(b)(2) disclosures by doing the following:

1. **Identify** all covered service providers to the plan
2. **Determine** the date the last 408(b)(2) was provided by each service provider
3. **Review** for the three required parts
4. **Evaluate** the needs of the plan and its participants
5. **Analyze** fees in light services provided and in alignment with plan and participant needs
6. **Determine** if the fees are reasonable
7. **Document** the review
8. **Revisit** the above analysis periodically

**Covered service providers are required to disclose the following, initially and every time there is a change in the relationship with the plan:**

Required

1  
SERVICE  
DESCRIPTION

2  
FIDUCIARY  
STATUS

3  
FEES

This information is provided for informational purposes only. It is not intended to provide authoritative guidance or legal advice. You should consult your own attorney or other advisor for guidance on your particular situation.