

Should You Rely on Your B/D or RIA to Disclose Your Fees?

By Tom Kmak

On April 1, 2012, the Department of Labor's new and impactful "reasonable agreement" rule pertaining to ERISA Section 408(b)(2) will take effect. For the first time in our industry's history service providers will be *required* to provide the responsible plan fiduciary full disclosure of the compensation they receive from the plan. They will also be *required* to outline the services they provide to the plan and their fiduciary status when providing those services.

The premise for the new 408(b)(2) is straight forward: A plan sponsor can't evaluate whether an agreement is reasonable without knowing the price and value of what a service provider intends to deliver. This is especially true in the retirement industry where the quantity and quality of many services vary dramatically

While there are numerous nuances to this important new rule, this article won't revisit those nuances and the associated technical requirements. There are many fine law firms that specialize in that type of work and there have been many articles already written on this subject. Instead, this article will review an issue that will likely exist in the mind of many plan fiduciaries:

Should I rely on my BD or RIA to provide my clients with the necessary disclosures regarding my fees and services?

The answer to this question is quite simply, "it depends." First, note that there is no model form of disclosure for the **408(b)(2)** regulation. This makes sense because there are numerous service models that exist in the industry, so the DOL dismissed the idea of a standard disclosure form. Therefore, not all BDs and RIAs are approaching this subject in the same manner; Fiduciary Benchmarks has seen a multitude of presentation styles from firms that are attempting to find the best way to comply with this regulation:

- Some are using simple disclosures with minimal plan detail on services.
- Some are amending contracts.
- Some are using multi-page disclosures designed to provide the fiduciary with an easy-to-understand illustrations of the fees, services, and fiduciary status that apply to the specific plan.

The next thing you should do is take a look at the disclosure being made by your BD or RIA and ask yourself the following questions:

- Are all the fees being paid to me from the plan clear to my client, including indirect compensation being paid by investment managers for the valuable services I provide?
- Are the exact services I'm delivering for this fee clear to my client?
- Is the fiduciary duty I'm assuming (if any) as the advisor for the plan clear to my client?

If the answer is “yes” to all of these questions you probably have a disclosure that complies with the regulation and will allow your client to understand what you’re responsible for delivering and what you’re being paid. If the answer is “no” to any of these questions you should probably notify your BD or RIA that they may not be putting your best foot forward in terms of how they are providing these important disclosures.

Keep in mind, however, that the 408(b)(2) disclosures only represent the start of an information chain that provides you with a golden opportunity to build trust with your client by proactively reviewing the fees you and other service providers are being paid. Why? We believe the industry is about halfway through an information chain that will affect almost every plan, and almost every service provider:

- The desire for increased transparency led to these **408(B)(2)** disclosures (as well as others).
- These **408(b)(2)** disclosures will lead to the question of “are these fees reasonable?”
- The question of reasonableness can be answered only by looking at the value provided.

The service provider that understands and acts on this chain will not only protect their current revenue streams, but they’ll also protect their plan sponsors and the associated participants by helping them document the fiduciary process that was followed for determining fee reasonableness *by the service provider*.

This is an important point to note: The law doesn’t really apply to “total plan fees.” Instead, it applies to reasonable fees for contracts, which of course exist at the service provider level.

This last step is incredibly important.

You can either let your client figure out whether the fees the plan is paying are reasonable, or you can help them answer this question by proactively benchmarking the plan or issuing an RFI or RFP. Just keep in mind that if you are not proactive, you run the risk of allowing another advisor to step in and address the reasonableness question for your client. While that’s not likely, we would note that over 30 percent of the plans we benchmark are for prospects.

In addition, you should “train” your client to think not just fees but fees *and* value. A good advisor can add incredible value by providing services that help the responsible plan fiduciary fulfill his duty under ERISA. An example would be the careful monitoring of the investment options chosen for the plan (including the fees for those investment options). Or an advisor can increase the retirement readiness of participants by helping the plan sponsor structure plan design provisions such as auto-enrollment, auto-escalation and/or re-enrolling all participants into a QDIA. These provisions can literally add millions of dollars in projected retirement account balances to participants.

In other words, it’s not only legally required to show fees and value, it’s simply good business. To put this whole exercise in perspective, would you ever buy a house without walking through it? Or would you buy a car without looking at the options on the window sticker or taking a test drive? Or would you help choose a college for your son or daughter without taking a visit to understand what value you’re getting for what you’re paying? The answer is: of course not!

For almost all Americans, the most expensive thing they will ever purchase is retirement. The **408(b)(2)** disclosures of “what you’re getting for what you’re paying” is only the first step in a necessary and helpful information chain. The *really* important next steps will occur when you help the plan sponsor determine the reasonableness of those fees in light of the quantity and quality of the services being provided, which includes the important services you provide! And that’s where disclosure stops and the reasonableness/value analysis begins. Regardless of the form of the disclosure from your BD or RIA, ask yourself this one simple question:

“How will my client know if the fees I’m charging are reasonable?”

Because that is the question that must be answered.

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