

Understanding 408(b)(2) Disclosures

Why is this disclosure necessary?

ERISA Section 408(b)(2) requires plan vendors that expect to receive \$1000 or more in compensation, called **Covered Service Providers (CSP)**, to provide plan fiduciaries with the information they need to assess the reasonableness of the total compensation received by the service provider and identify potential conflicts of interest.

This information must be provided in advance of hiring a service provider and any changes made to the disclosure must be provided “as soon as practicable, but no later than 60 days” of when the service provider is notified of the changes (60 Day Rule). Failure to meet the 60 Day Rule can result in a prohibited transaction.

What is in a 408(b)(2) disclosure?

A CSP must provide a 408(b)(2) disclosure to the plan fiduciaries.

The disclosure must include:

- Direct Compensation – compensation received directly from plan assets
- Indirect Compensation, CSP, an affiliate, or subcontractor
- If the CSP is providing recordkeeping services and the compensation attributable to such services (even if no explicit charge for recordkeeping is identified)
- Investments’ annual operating expense (expense ratio)

Service providers may use electronic means to disclose information to plan fiduciaries provided that the covered Service Provider’s disclosure on a website or other electronic medium are readily accessible to the responsible plan fiduciaries and the plan fiduciary has a clear notification on how to access the information.

408(b)(2) Best Practices

A committee should:

1. Identify service providers that expect to receive more than \$1,000 in compensation from plan assets annually.
2. Obtain 408(b)(2) Disclosures from those service providers
3. As a Committee, review and confirm the accuracy of the Service Provider’s 408(b)(2) notice
4. Document the review and continue the process as necessary