408(b)(2) Diagnostic Assessment Compliance Checklist

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October 26, 2012

INTRODUCTION

On February 1, 2012, the Department of Labor's ("DOL") Employee Benefits Security Administration ("EBSA") published a final rule governing service provider fee disclosures that are required for a service contract or arrangement to be reasonable. The rule is effective on July 1, 2012, and it requires all covered service providers ("CSP")[1] to disclose certain information to a responsible plan fiduciary[2] ("RPF") about the services provided for compensation received, including indirect compensation from sources other than the plan. The DOL has determined this information is needed in order for the fiduciary to understand the services, assess the reasonableness of the compensation (direct and indirect) received by a CSP their affiliate or a subcontractor and identify any conflicts of interest that may impact the CSP's performance.[3] According to the Preamble, a RPF is encouraged to broadly interpret and apply the disclosure requirements to all service provider relationships to obtain comprehensive information before making a decision.[4] It is also important to emphasize that compliance with ERISA Section 408(b)(2) is independent of other fiduciary obligations under ERISA Section 404.[5]

This 408(b)(2) Compliance Checklist ("Checklist") was created in order to help facilitate a documented process to support a claim that a service provider's contract or arrangement is reasonable according to ERISA Section 408(b)(2) and the corresponding regulations under 29 C.F.R. 2550.408b-2(c). By completing the Checklist for each CSP an RPF will have the documentation necessary to form a reasonable belief the disclosures are complete. Independent of this form, a decision must be made and should be documented that services provided are necessary for the establishment and operation of the plan and that fees paid from plan assets, directly or indirectly, for services rendered are reasonable.

It is important to remember that a CSP can comply with the disclosure requirements but fail to charge reasonable fees, thus, a separate assessment by the RPF to determine fee reasonableness is necessary and is best addressed by benchmarking the plan against other plans of similar size by plan assets and participant count. The benchmarking database used should be independent of the CSP to avoid a conflict claim. A CSP that provides the benchmarking report to assist in the assessment of fee reasonableness offers a valuable service to the RPF, but the CSP is unable to offer an opinion that can be relied on by the RPF that the CSP's fees are reasonable without engaging in a conflict. In other words, the CSP cannot obtain a benchmarking report prepared by an independent service provider or from a proprietary database and then claim the results prove their fees are reasonable. Instead, the determination of reasonableness must be made by the RPF based on the report prepared by the CSP or a benchmarking report prepared by an independent CSP paid from company

[1] A "covered service provider" is a service provider that enters into a contract or arrangement with the covered plan and reasonably expects $1,000 or more in compensation, direct or indirect, to be received in connection with providing one or more of the services described in paragraphs (c)(1)(iii)(A), (B), or (C) of this section pursuant to the contract or arrangement, regardless of whether such services will be performed, or such compensation received, by the covered service provider, an affiliate, or a subcontractor. 29 CFR § 2550.408b-2(c)(1)(iii)

[2] A "Responsible Plan Fiduciary" is defined in the regulations as a fiduciary with authority to cause the covered plan to enter into, or extend or renew, the contract or arrangement. 29 C.F.R § 2550.408b-2(c)(1)(viii)(E)

[3] 77 FR 5633 (Feb 2, 2012)

[4] "Moreover, the final rule's disclosure requirements should be construed broadly to ensure that responsible plan fiduciaries base their review of a service contract or arrangement on comprehensive information." 77 FR 5634 (Feb 2, 2012)

[5] 29 C.F.R. § 2550.408b-2(c)(1)(i)

assets. By complying with 408(b)(2), a CSP avoids engaging in a prohibited transaction and the RPF avoids liability for paying unreasonable fees.

This checklist should be completed for each CSP, their affiliate or subcontractor providing services to a retirement plan. It is imperative that a RPF engage in a documented process when initiating, extending or renewing an existing CSP relationship.[6] Failure to document the process increases the probability of failing to mount a successful defense if challenged. It is also important to emphasize that compliance with § 408(b)(2) is not a "safe harbor" for all other fiduciary obligations under ERISA § 404.[7] This would include the assessment of any prohibited transactions tied to a conflicted relationship between the RPF and a CSP.[8]

In addition, the final rule exempts the RPF from engaging in a prohibited transaction if the RPF did not know the service provider failed to disclose some of the required information,[9] or if upon discovering the CSP failed to provide the required disclosures, the RPF requested in writing such disclosures.[10] A CSP that receives a written request for required disclosures has 90 days to fulfill the request. If the CSP fails to provide the required disclosures within 90 days the RPF must notify DOL by submitting an online notice within 30 days.[11] See http://www.dol.gov/ebsa/regs/feedisclosurefailurenotice.html A CSP that informs the RPF they will not provide the requested material within the 90 days must be reported to the DOL within 30 days of receiving the CSP's decline to comply. Alternatively, an RFP can mail the notice of failure to the DOL. Notices can be addressed to: U.S. Department of Labor, Employee Benefits Security Administration, Office of Enforcement, P.O. Box 75296, Washington, D.C. 20013.

A CSP that fails to provide the RPF with the required disclosure information by July 1, 2012 must be contacted by the RPF in writing to request the information needed to meet the disclosure requirements. Failure to request the required disclosures causes the RPF to become a participant in the prohibited transaction. A sample request is attached as Exhibit A.

DIRECTIONS

[6] 29 C.F.R. § 2550.408b-2(c)(1)(i)

[7] *See FN 4*

[8] The regulations provide few exceptions for retaining family members or business associates as a service provider to a retirement plan. The regulation states, "[T]hus, a fiduciary may not use the authority, control, or responsibility which makes such person a fiduciary to cause a plan to pay an additional fee to such fiduciary (or to a person in which such fiduciary has an interest which may affect the exercise of such fiduciary's best judgment as a fiduciary) to provide a service. Nor may a fiduciary use such authority, control, or responsibility to cause a plan to enter into a transaction involving plan assets whereby such fiduciary (or a person in which such fiduciary has an interest which may affect the exercise of such fiduciary's best judgment as a fiduciary) will receive consideration from a third party in connection with such transaction. A person in which a fiduciary has an interest which may affect the exercise of such fiduciary's best judgment as a fiduciary includes, for example, a person who is a party in interest by reason of a relationship to such fiduciary described in section 3(14)(E), (F), (G), (H), or (I)." 29 C.F.R. § 2550.408(e)(1)

[9] Paragraph (c)(1)(ix) of the final rule permits a responsible plan fiduciary to avoid engaging in a prohibited transaction when a covered service provider fails to disclose required information. Specifically, the final class exemption exempts a responsible plan fiduciary from the restrictions of ERISA section 406(a)(1)(C) and (D) if, among other things, the fiduciary did not know that the covered service provider failed to make required disclosures and ''reasonably believed'' that such disclosures were made. 77 FR 5646 (Feb 3, 2012); The responsible plan fiduciary did not know that the covered service provider failed or would fail to make required disclosures and reasonably believed that the covered service provider disclosed the information required by paragraph (c)(1)(iv) or (vi) of this section. 29 C.F.R. § 2550.408b-2(c)(1)(ix)(A)

[10] Paragraph (c)(1)(ix)(B) of the regulation requires that, upon discovering that the covered service provider failed to disclose the required information, the responsible plan fiduciary must request in writing that the covered service provider furnish such information. . 77 FR 5647 (Feb 3, 2012); The responsible plan fiduciary, upon discovering that the covered service provider failed to disclose the required information, requests in writing that the covered service provider furnish such information. 29 C.F.R. § 2550.408b-2(c)(1)(ix)(B)

[11] 29 C.F.R. § 2550.408b-2(c)(1)(ix)(C), (D), (E) and (F)

Complete this checklist for each CSP of each covered plan separately. Documents that support your conclusions and validate answers should be attached. This process should be applied to each affiliate or subcontractor to confirm that they are or are not a CSP. A RPF should repeat this process each year and maintain records of all 408(b)(2) analysis for each year for at least six-years.[12]

COMPLETE CHECKLIST FOR EACH COVERED SERVICE PROVIDER

SECTION 1: General

Check the box of the "covered plan" that is being assessed. Only a "covered plan" must meet the disclosure requirements of ERISA § 408(b)(2). Please choose one "covered plan" for this assessment.

- ◯ Defined Benefit Plan
- ◯ Money Purchase Plan
- ◯ Target Plan
- ◯ Stock Bonus
- ◯ Employee Stock Ownership Plan ("ESOP")
- ◯ Profit Sharing
- ◯ 401(k) Plan
- ◯ ERISA 403(b)
- ◯ ESOP with 401(k) ("KSOP")

***NOTE**: Plans that are excluded from the definition of a "covered plan" include 408(k) Simplified Employee Pension ("SEP"), 408(p) SIMPLE IRA or 401(k), 408(a) Individual Retirement Account ("IRA"), 408(b) Individual Retirement Annuity, owner only plan with no employees, non-ERISA 403(b), 457(b), 457(f), Non-Qualified Deferred Compensation Plan, 3(33) Church plan any 3(32) Government Plan or Health & Welfare Plan. Many of the exclusions parallel the exclusions listed in the 2009-2 and 2010-1 Field Assistance Bulletins that deal with annual reporting requirements for 403(b) plans. Although an ERISA 403(b) plan is included, 403(b) annuity contracts or custodial accounts are excluded if (a) they were issued to a current or former employee prior to January 1, 2009, (b) the employer ceased to have any obligation to make contributions to the account, (c) the employer ceased making contributions to the contract or account for periods before January 1, 2009, and (d) all contract or account rights and benefits are enforceable by the owner of the contract or account without employer involvement. 29 C.F.R. § 2550.408b-2(c)(1)(ii)*

(1) Please identify the name of the "covered plan" that this assessment applies to:

_____

(2) Please identify the name of the "covered service provider" that has entered into a contract or arrangement with the covered plan identified above.

_____

***NOTE**: Only service providers that are paid or reasonably expect to receive $1000 over the life of the contract in direct or indirect compensation must be named. Any service provider that is paid from company assets is exempt from the obligation to comply with ERISA § 408(b)(2). In other words, the company is free to pay unreasonable fees or hire a conflicted party e.g., a relative, if payment for such services is paid from the company's assets and not the plan's assets. If the service provider is not paid from plan assets, you do not need to continue this assessment. 29 C.F.R. 2550.408b-2(c)(1)(iii)*

Also, in general terms, a "covered service provider" is one that acts as a fiduciary to the plan for a fee, acts as a registered investment advisor (state of SEC qualified), a provider of recordkeeping or brokerage services or provides services to the plan wherein compensation is paid to the service provider indirectly from plan assets i.e., compensation received from any source other than directly from the covered plan. 29 C.F.R. 2550.408b-2(c)(1)(iii)(A)(1), (2) and (3)

(3) What is the effective date of this engagement with this "covered service provider?"

[12] ERISA § 413

SECTION 2: Assessing Conflicts of Interest

(4) Check the option(s) that best reflect the relationship between the CSP and the RPF or any other plan fiduciary.

Conflicted	Non-Conflicted	N/A	Is the fiduciary's relationship with the Covered Service Provider?
N/A	◯	◯	An arm's length business relationship with no conflicts[13]
			That of a direct or indirect owner of at least 50% of the:
◯	**N/A**	◯	voting power of this CSP[14]
◯	**N/A**	◯	capital interest or profits of this CSP[15]
◯	**N/A**	◯	beneficial interest of this CSP with its employees covered by the plan[16]
◯	**N/A**	◯	beneficial interest of this CSP, an employee organization, whose members are covered by the plan[17]
			That of a relative[18] of a CSP that is:
◯	**N/A**	◯	a person providing services to the plan[19]
◯	**N/A**	◯	a fiduciary to the plan[20]
◯	**N/A**	◯	counsel to the plan[21]
◯	**N/A**	◯	an employee of the employee benefit plan[22]
◯	**N/A**	◯	an employer whose employees are covered by the plan[23]
◯	**N/A**	◯	an employee of an employee organization covered by the plan[24]
			That of a corporation, partnership, or trust or estate of which (or in which) 50% or more:
◯	**N/A**	◯	an owner of 50% or more of the voting power of this CSP [25]
◯	**N/A**	◯	an owner of 50% or more of the capital interest or profits of this CSP [26]
◯	**N/A**	◯	an owner of 50% or more of the beneficial interest of this CSP is owned directly by a fiduciary of the plan [27]

[13] According to 29 C.F.R. § 2550.408b-2(e)(1), **"**Thus, a fiduciary may not use the authority, control, or responsibility which makes such person a fiduciary to cause a plan to pay an additional fee to such fiduciary (or to a person in which such fiduciary has an interest which may affect the exercise of such fiduciary's best judgment as a fiduciary) to provide a service. Nor may a fiduciary use such authority, control, or responsibility to cause a plan to enter into a transaction involving plan assets whereby such fiduciary (or a person in which such fiduciary has an interest which may affect the exercise of such fiduciary's best judgment as a fiduciary) will receive consideration from a third party in connection with such transaction. A person in which a fiduciary has an interest which may affect the exercise of such fiduciary's best judgment as a fiduciary includes, for example, a person who is a party in interest by reason of a relationship to such fiduciary described in section 3(14)(E), (F), (G), (H), or (I)." Emphasis added.

[14] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(E)(i)

[15] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(E)(ii)

[16] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(C) and (E)(iii)

[17] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(D) and (E)(iii)

[18] The term "relative" means a spouse, ancestor, lineal descendant, or spouse of a lineal descendant. ERISA § 3(15)

[19] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(15); 3(14)(F) and (B)

[20] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(15); 3(14)(F) and (A)

[21] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(15); 3(14)(F) and (A)

[22] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(15); 3(14)(F) and (A)

[23] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(15); 3(14)(F) and (C)

[24] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(15); 3(14)(F) and (D)

[25] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(G)(i)

[26] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(G)(ii)

◯	**N/A**	◯	an owner of 50% or more of the beneficial interest of this CSP is owned directly by counsel to the plan [28]
◯	**N/A**	◯	an owner of 50% or more of the beneficial interest of this CSP is owned directly by an employee of the employee benefit plan [29]
◯	**N/A**	◯	an owner of 50% or more of the beneficial interest of this CSP is owned directly by a person providing services to the plan [30]
◯	**N/A**	◯	an owner of 50% or more of the beneficial interest of this CSP is owned directly by an employer whose employees are covered by the plan [31]
◯	**N/A**	◯	an owner of 50% or more of the beneficial interest of this CSP that is an employee of an employee organization covered by the plan[32]
◯	**N/A**	◯	an owner of 50% or more of the beneficial interest of this CSP that is an owner of 50% or more of the voting power of this CSP [33] an owner of 50% or more of the beneficial interest of this CSP that is an owner of 50% or more of the capital interest or profits of this CSP [34]
◯	**N/A**	◯	an owner of 50% or more of the beneficial interest of this CSP that is an owner of 50% or more of the beneficial interest of this CSP with its employees covered by the plan [35]
			That of an employee, officer, director (or an individual having powers or responsibilities similar to those of officers or directors), or a 10 percent or more shareholder directly or indirectly, of a person:
◯	**N/A**	◯	providing services to the plan[36]
◯	**N/A**	◯	that is an employer whose employees are covered by the plan[37]
◯	**N/A**	◯	that is an employee of an employee organization covered by the plan[38]
◯	**N/A**	◯	that is an owner of 50% or more of the voting power of this CSP[39]
◯	**N/A**	◯	that is an owner of 50% or more of the capital interest or profits of this CSP[40]
◯	**N/A**	◯	that is an owner of 50% or more of the beneficial interest of this CSP with its employees covered by the plan[41]
◯	**N/A**	◯	that is an owner of 50% or more of the beneficial interest of this CSP, an employee organization, whose members are covered by the plan[42]
◯	**N/A**	◯	that is an entity that controls at least 50% of the voting power of the CSP[43]
◯	**N/A**	◯	that is an entity that controls at least 50% of the capital interest of the CSP[44]
◯	**N/A**	◯	that is an entity that controls at least 50% of the beneficial interest of an entity [45]

[27] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(G)(iii) and (A)
[28] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(G)(iii) and (A)
[29] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(G)(iii) and (A)
[30] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(G)(iii) and (B)
[31] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(G)(iii) and (C)
[32] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(G)(iii) and (D)
[33] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(G)(iii) and (E)(i)
[34] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(G)(iii) and (E)(ii)
[35] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(G)(iii) and (E)(iii)
[36] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(B) and (H)
[37] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(C) and (H)
[38] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(D) and (H)
[39] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(E)(i) and (H)
[40] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(E)(ii) and (H)
[41] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(E)(iii) and (H)
[42] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(E)(iii) and (H)
[43] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(G)(i) and (H)
[44] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(G)(ii) and (H)

			That of a 10 percent or more (directly or indirectly in capital or profits) partner or joint venturer of a person that is:
◯	**N/A**	◯	providing services to the plan[46]
◯	**N/A**	◯	an employer whose employees are covered by the plan[47]
◯	**N/A**	◯	an employee of an employee organization covered by the plan[48]
◯	**N/A**	◯	an owner of 50% or more of the voting power of this CSP[49]
◯	**N/A**	◯	an owner of 50% or more of the capital interest or profits of this CSP[50]
◯	**N/A**	◯	an owner of 50% or more of the beneficial interest of this CSP with its employees covered by the plan[51]
◯	**N/A**	◯	an owner of 50% or more of the beneficial interest of this CSP, an employee organization, whose members are covered by the plan[52]
◯	**N/A**	◯	Entity that controls at least 50% of the voting power of the CSP[53]
◯	**N/A**	◯	Entity that controls at least 50% of the capital interest of the CSP[54]
◯	**N/A**	◯	Entity that controls at least 50% of the beneficial interest of an entity [55]

***NOTE**: It is a prohibited transaction for a fiduciary to engage in a conflict of interest[56] with a party in interest.[57] A conflict occurs when a fiduciary participates in a transaction between the plan and a party whose interests are adverse to the interests of the plan or the interest of the participants.[58] Although 29 C.F.R. § 2550.408(b)(2) does not specifically require any new disclosure requirements that address conflicts, the introductory summary and section 4(a) of the final regulations states emphatically that such regulations require a service provider to disclose information about potential conflicts of interest. (See 77 FR 5632, 36) This requirement will most likely be overlooked by many that conduct 408(b)(2) compliance reviews in favor of emphasizing a review of the disclosures without analyzing the relationship between CSPs and the plan fiduciaries that may give rise to a prohibited transaction as required. Finally, the only correct answer for this question is "an arm's length business relationship with no conflicts," any other answer means the relationship is conflicted. A conflicted relationship is always prohibited regardless of how reasonable fees are or that all fee disclosure requirements under 408(b)(2) have been met.*

SECTION 3: Compensation and Status

(5) ◯ **YES** ◯ **NO** - Do you expect to pay or does the CSP expect to receive $1000 or more in "direct"[59] compensation during the life of the engagement whether paid to the CSP, its affiliate or subcontractor?

***NOTE**: The RPF should consider the $1000 threshold over the life of the engagement not over the term of the contract. In other words, if the contract renews annually at $995, the CSP does not escape the obligation to meet the fee disclosure obligations unless it is fully anticipated and expected that the engagement will end and not renew. Also, see NOTE under #5.*

(6) ◯ **YES** ◯ **NO** - Do you expect to pay or does the CSP expect to receive $1000 or more of "indirect"[60] compensation during the life of the engagement whether paid to the CSP, its affiliate or subcontractor?

[45] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(G)(iii) and (H)
[46] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(B) and (I)
[47] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(C) and (I)
[48] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(D) and (I)
[49] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(E)(i) and (I)
[50] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(E)(ii) and (I)
[51] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(E)(iii) and (I)
[52] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(E)(iii) and (I)
[53] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(G)(i) and (I)
[54] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(G)(ii) and (I)
[55] 29 C.F.R. § 2550.408b-2(e)(1); ERISA § 3(14)(G)(iii) and (I)
[56] ERISA § 406(b)(2)
[57] ERISA § 3(14)
[58] FN 8
[59] Direct compensation is compensation received directly from the covered plan. 29 C.F.R 2550.408b-2(c)(1)(viii)(B)(1)

***NOTE**: If you answered "NO" to both "4" and "5" you are done with this assessment. If you answer "YES" to either "4" or "5," continue. The $1,000 minimum compensation requirement is the aggregate total compensation paid either directly or indirectly to the "covered service provider" their affiliate or subcontractor. As long as the expected gross amount paid is $1,000 or more regardless of how it is divided between the covered service provider, affiliate or subcontractor the amount must be disclosed. The DOL* cautions CSPs and RPFs against an attempt to structure a contract for ongoing services specifically to avoid the $1,000 threshold.[61] *Furthermore, a service provider that receives "indirect" compensation, regardless of amount, is automatically a CSP that must comply with 408(b)(2).*[62]

(7) Check the box for each of the following services the CSP, an affiliate or subcontractor intends to provide for ***indirect*** compensation:

- ◯ **Accounting**
- ◯ **Actuarial**
- ◯ **Appraisal**
- ◯ **Auditing**
- ◯ **Banking**
- ◯ **Consulting[63] (e.g., IPS design)**
- ◯ **Other:** _____
- ◯ **Custodial**
- ◯ **Insurance**
- ◯ **Investment Advisory (plan or participants)**
- ◯ **Legal**
- ◯ **Recordkeeping**
- ◯ **Valuation**
- ◯ **Not Applicable**

***NOTE:** "Indirect" compensation is compensation received from any source other than the covered plan, the plan sponsor, the covered service provider, an affiliate, or a subcontractor.[64] Indirect compensation includes payment from 12b-1 fees, sub-transfer agency fees, shareholder service fees or any other type of revenue sharing payments. "Direct" compensation means direct compensation paid from the plan.[65] A payment of fees to a service provider made by the plan sponsor from company assets is not consider "direct" compensation for 408(b)(2) purposes.*

Also, for a definition of each term, see the glossary at the end of this 408(b)(2) diagnostic checklist.

(8) Check the appropriate box(es) to identify the **fiduciary service(s)** this CSP will provide:

Service Provided	Service NOT Provided	Fiduciary Services[66]
◯	◯	Discretionary Plan Management - *ERISA § 3(21)(A)(i)*[67]
◯	◯	Investment Advisory - *ERISA § 3(21)(A)(ii)*[68]

[60] Indirect compensation is compensation received from any source other than the covered plan, the plan sponsor, the covered service provider, an affiliate, or a subcontractor. Compensation received from a subcontractor is indirect compensation, unless it is received in connection with services performed under the subcontractor's contract or arrangement described in paragraph (c)(1)(viii)(F) of this section. 29 C.F.R § 2550.408b-2(c)(1)(viii)(B)(2)

[61] "The Department notes that the focus is on whether $1,000 is expected to be received in connection with providing the services specified in the contract, regardless of whether compensation is expected to be received in a particular year or during the stated term of the contract. Some compensation, for example, trailing commissions, may be received after the services have been furnished, but still be ''in connection with'' those services. In response to some expressed concerns, the Department cautions parties against attempting to structure contracts for ongoing services specifically to avoid the $1,000 threshold. In determining compliance with the threshold, the Department will look to the substance, rather than form, of the contract or arrangement between the plan and service provider(s)." FN 13, 77 FR 5634-35 (Feb 3, 2012)

[62] 29 C.F.R. § 2550.408b-2(c)(1)(iii)(C)

[63] Consulting services could include such activities as the development or implementation of investment policies or objectives or the selection or monitoring of service providers or plan investments. This is not a comprehensive list. 29 C.F.R § 2550.408b-2(c)(1)(iii)(C)

[64] 29 C.F.R § 2550.408b-2(c)(1)(viii)(B)(2)

[65] 29 C.F.R § 2550.408b-2(c)(1)(viii)(B)(1)

[66] 29 C.F.R § 2550.408b-2(c)(1)(iii)(A)(1)

[67] Typically this is authority that is reserved for the "named fiduciary" or a person appointed with such authority by the named fiduciary to exercise discretionary control over plan assets.

◯	◯	Discretionary Plan Administration - *ERISA §3(21)(A)(iii)*[69]
◯	◯	Participant Investment Advisory Services - *ERISA § 408(g)*[70]
◯	◯	Investment Manager - *ERISA § 3(38)*[71]
◯	◯	Named Fiduciary - *ERISA § 402(a)*[72]
◯	◯	Plan Administrator - *ERISA § 3(16)*[73]
◯	◯	Directed Trustee - *ERISA § 403(a)*[74]
◯	◯	Discretionary Trustee - *ERISA § 403(a)*[75]
◯	◯	State or SEC Registered RIA/IAR[76]

***NOTE**: A State or SEC registered RIA/IAR that provides investment advisory services would qualify as an ERISA § 3(21)(A)(ii) investment advisor. If the RIA/IAR takes discretionary control over any portion of plan assets, the RIA/IAR could also be considered an investment manager under ERISA § 3(38). Discretionary control over the asset allocation strategy for a QDIA, target fund or risk-based investment also qualifies as investment management services. In addition, an advisor that has the authority to process the deduction of their fee from plan assets without first seeking the approval of the RPF is exercising discretion over plan assets. However, an RIA/IAR may be retained to provide consulting services such as a vendor search, enrollment meetings, evaluating plan provisions and analyzing compliance with ERISA § 404(c), for example, which does not dictate the need for RIA/IAR registration. An advisor that qualifies as a 408(g) participant level fiduciary advisor is qualified by way of an independent audit. A copy of the audit report for an objective independent source should be maintained on file.*

(9) Is the CSP an investment adviser registered under either the:[77]

◯ **YES** ◯ **NO** ◯ **N/A**	Investment Advisers Act of 1940?
◯ **YES** ◯ **NO** ◯ **N/A**	Any State law?

***NOTE**: A CSP that is a registered investment adviser (RIA) may or may not provide fiduciary services. If the CSP is an RIA or Investment Advisor Representative (IAR) of an RIA and provides services as an RIA, regardless of the fiduciary status of those services, the CSP must meet the 408(b)(2) disclosure requirements.*

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[68] A functional definition that has been applied to financial advisors that are and are not registered as an investment advisor by a State or SEC.

[69] Typically this is authority that is reserved for the "named fiduciary" or a person appointed with such authority by the named fiduciary to exercise discretionary control over plan administration. In many cases, a person appointed by the named fiduciary as the "plan administrator" will share this responsibility with the named fiduciary.

[70] A 408(g) participant level fiduciary advisor was added to ERISA under PPA 2006.

[71] *An investment manager under ERISA Section 3(38) is someone that has discretionary control over some portion of plan assets. The definition could apply to an investment in a Bank sponsored Collective Investment Funds; Insurance sponsored Separate Accounts, a Managed or Separately Managed Accounts ("Managed Account"). A Managed Account must meet the definition of a plan asset under 29 CFR 2510.3-101. In general, this regulation requires that no less than 25% of the assets held in the managed account must be invested for qualified retirement plans. If the amount of assets in the portfolio that is held by all retirement plans represents less than 25% of the Managed Account, the Managed Account is not considered a plan asset and, therefore, does not require compliance with Section 408(b)(2) even if the amount paid to the investment manager exceeds $1,000 during the term of the agreement. Mutual Funds are excluded from this definition. [See 3(21)(B) and 401(b)(1)] Furthermore, an investment manager can also provide discretionary asset allocation services for risk-based or target-based portfolios.*

[72] The "named fiduciary" is a role that is required by ERISA. The person appointed to this role has responsible for all plan oversight unless delegated to another fiduciary at the discretion of the named fiduciary or by formal appointment as established in the plan document.

[73] The "plan administrator" is responsible for a variety of administrative oversight responsibilities including such activities as signing the Form 5500, approving all distributions and disseminating certain disclosures to name a few.

[74] Directed Trustee is a person that holds plan assets but has no discretion over the management of plan assets. Typically, this trustee is directed to act by the authority of the named fiduciary.

[75] Discretionary Trustee is a person that specifically appointed by either the plan document or the named fiduciary to exercise investment management discretion over plan assets.

[76] State or SEC registered investment adviser is someone that provides investment advice or discretionary management over plan assets.

[77] 29 C.F.R § 2550.408b-2(c)(1)(iii)(A)(3)

SECTION 4: Fiduciary Services to an Investment Product Holding Plan Assets

DIRECTIONS: This section does not apply to a covered plan that only holds mutual funds as their investment alternatives.

This section of questions only applies to investment contracts, products or entities that hold plan assets. According to the preamble, "Paragraph (c)(1)(iv)(E) of the final rule (previously paragraph (c)(1)(iv)(F) in the interim final rule) requires additional investment disclosures from covered service providers described in paragraph (c)(1)(iii)(A)(2) (providers of fiduciary services to an investment contract, product, or entity that holds plan assets and in which the covered plan has a direct equity investment). The information set forth in paragraphs (c)(1)(iv)(E)(1) through (3) must be furnished for each investment contract, product, or entity for which fiduciary services will be provided pursuant to the contract or arrangement with the covered plan, unless such information is disclosed to the responsible plan fiduciary by a covered service provider providing recordkeeping services or brokerage services (as described in paragraph (c)(1)(iii)(B)).[78]

(10)◯ **YES** ◯ **NO** ◯ **N/A** – Has this CSP been engaged to provide fiduciary services to an investment contract, product or entity that holds plan assets as determined pursuant to ERISA Sections 3(42), 401 and 29 C.F.R. § 2510.3-101 and in which the covered plan has a direct equity investment? [79]

NOTE: *A direct equity investment does not include investments made by the investment contract, product or entity (i.e., investment alternative) in which the covered plan invests. In other words, a direct equity investment is an investment made by a covered retirement plan in the investment alternative, it is not an investment made by the investment alternative.*

If "YES" and if the investment alternative is a managed account or separate account, complete the following (Follow the example below)

Name of Investment	Type of Investment	Investment Style	Is it a DIA*	Plan Assets Held	Total AUM**	Total RPA***
Sample Fund	*Managed Account*	*Large Value*	◯ ***YES*** ◯ ***NO***	*$1,000,000*	*$50,000,000*	*$10,000,000*

*DIA stands for Designated Investment Alternative.
**AUM stands for Assets Under Management. This would be total assets not just the assets the covered plan has invested in this Managed Account.
***RPA stands for Retirement Plan Assets. In other words, what is the total retirement plan assets held by this managed account. This includes all covered plans not just this covered plan.

NOTE*: If the covered plan only offers mutual funds, answer "NO." An investment adviser of a mutual fund is not deemed to be a fiduciary.[80] If the covered plan offers a Bank Collective Fund or Insurance Company Separate Account,[81] the investment adviser of the Collective Fund or the Separate Account is a fiduciary. Thus, you should answer "YES" to this question. If the covered plan offers a "managed account" or "separate account," other than an insurance company separate account, the RPF must determine if the investment holds plan assets. An investment holds plan assets when at least 25% or more of the dollars held by the investment are employee benefit plan assets. If you have engaged an investment adviser that is managing an investment that is not a mutual fund, collective fund or insurance company separate account complete the next issue is to determine if the investment product you hold is a*

[78] 77 FR 5639 (Feb 3, 2012)
[79] 29 C.F.R § 2550.408b-2(c)(1)(iii)(A)(2)
[80] ERISA § 3(21)(B)
[81] ERISA § 3(17)

plan asset. If your analysis proves that retirement plan assets constitute 25% or more of the total portfolio, your investment adviser is a fiduciary.[82] *Thus, answer "YES" to this question. Finally, as soon as the investment does hold employee benefit plan assets that equal or exceed 25% or more of the total investable assets, the investment advisor becomes a fiduciary for 408(b)(2) purposes and must comply with the fee disclosure obligations as soon as practicable but not later than 30 days from the date on which the CSP knows that such investment contract, product, or entity holds plan assets.*[83]

(11) Is the disclosure information relating to the investment contract, product or entity that holds plan assets provided to the RPF by the CSP that:

◯ **YES** ◯ **NO** is a fiduciary
◯ **YES** ◯ **NO** provides recordkeeping services
◯ **YES** ◯ **NO** provides brokerage services

NOTE*: Although the fiduciary to the investment product has the obligation to provide the written disclosures under 408(b)(2), a CSP providing recordkeeping or brokerage services can provide the disclosures in place of the investment fiduciary.*

(12) ◯ **YES** ◯ **NO** ◯ **N/A** – Have you been provided a description of any compensation that will be charged directly against the investment that is not included in the annual operating expense of the investment contract, product or entity that holds plan assets?[84] (**Note**: If additional space is needed, attach a separate page to this report.)

DIRECTIONS: Please check all that apply and add a description that addresses

1. Who receives the compensation,
2. Who is paying the compensation,
3. What services are provided for the compensation,
4. What is the relationship and the arrangement between the payer and recipient, and
5. Why do they receive this compensation?

	Compensation Not Included in the OER*	**Description of the Compensation**
◯ **YES** ◯ **NO** ◯ **N/A**	Commissions	
◯ **YES** ◯ **NO** ◯ **N/A**	Sales Load	
◯ **YES** ◯ **NO** ◯ **N/A**	Deferred sales charge	
◯ **YES** ◯ **NO** ◯ **N/A**	Redemption fees	
◯ **YES** ◯ **NO** ◯ **N/A**	Surrender charges	
◯ **YES** ◯ **NO** ◯ **N/A**	Exchange fees	
◯ **YES** ◯ **NO** ◯ **N/A**	Account fees	
◯ **YES** ◯ **NO** ◯ **N/A**	Purchase fees	
◯ **YES** ◯ **NO** ◯ **N/A**	Other:	

*OER stands for Operating Expense Ratio. The net asset value of the investment is reflected after deduction of the OER. The compensation items listed above represent an add-on cost to the OER. This is sometimes referred to as a wrap fee to cover sales or administrative expenses.

NOTE*: If additional compensation will not be charged against the investment (i.e., compensation that is not already included in the annual operating expense of the investment) this section is "Not Applicable." However, if the investment's annual operating expense is increased to pay additional compensation to a CSP, an affiliate or subcontractor the RPF must be informed. To assist the preparer of*

[82] 29 C.F.R. § 2510.3-101(f)
[83] 29 C.F.R § 2550.408b-2(c)(1)(v)(A)(1)
[84] 29 C.F.R § 2550.408b-2(c)(1)(iv)(E)(1)

this assessment, the following descriptions may be helpful.

1. *Commissions– typically apply to a group or individual annuity contract or a mutual fund. A commission disclosure signed by the RPF reflects the commission paid to the insurance licensed agent. A securities license may also be required to collect commissions. This fee is typically an add on or wrap fee to the contract*
2. *Sales loads – typically applies to the sale of mutual funds with a front end load. The front-end sales load reduces the net amount invested.*
3. *Sales charges – Generic term that could apply to a solicitor paid for an introduction that resulted in the sale of a retirement plan. This term should be broadly applied.*
4. *Deferred Sales Charges – examples where this may apply include:*
    a. *a group annuity contract that is terminated within a certain period of time*
    b. *a mutual fund that pays a 1% finder's fee on deposits that are not held by the investment for at least 13 months*
5. *Redemption fees – examples where this might apply includes:*
    a. *Liquidating an amount from a stable value fund that is greater than contract terms permits,*
    b. *Moving money from a stable value fund to a competing alternative e.g., a money market fund or short-term bond fund,*
    c. *Liquidation of a GIC or CD before the term ends,*
    d. *Fees imposed for market timing. See SEC Rule 22c-1*
    e. *Fees associated with terminating a contract early. The redemption fee could apply to an insurance contract that is completely liquidated before a certain time frame. It could also apply to a contract with a client wherein the plan sponsor was not charged the full cost of implementation under the assumption the contract would last a certain period of time.*
6. *Surrender charges – and redemption fees are virtually synonymous. The terms are used interchangeably among many in the industry. However, surrender charges typically infer an entire liquidation of the assets from the investment. This typically occurs when the RPF chooses to move the plan from one vendor to another.*
7. *Exchange fees – If a participant holds a Self-Directed Brokerage Account (SDBA) that participant might be subject to an exchange fee anytime a particular asset is sold or purchased. Keep in mind it is the responsibility of the SDBA provider to disclose their fees. It could also apply to a plan that holds only proprietary investments where the proprietary fund family imposes an exchange (transfer) fee against a participant that transfers assets between the investments offered.*
8. *Account fees – It would appear this should be broadly applied to any account fee charged against the participant for virtually any reason. An example could include a fee to hold or account for certain types of assets like a SDBA.*

(13) ◯ **YES** ◯ **NO** ◯ **N/A** – For an investment contract, product, or entity that holds plan assets and is identified as a designated investment alternative, has the CSP provided the RPF with the following information necessary to meet the disclosure obligations described in 29 CFR § 2550.404a-5(d)(1):

***NOTE**: This section of the regulations requires the OER to be expressed as a percentage calculated in according with the participant disclosure rules which directly reference the SEC rules. It looks like it requires the description to reflect the dollars per $1000 as in 404a-5.*

	29 CFR § 2550.404a-5(d)(1) Requirements for the investment contract, product or entity that holds plans assets and is a designated investment alternative ("DIA")
◯ **YES** ◯ **NO**	Has the CSP provided the name of the investment?[85]
◯ **YES** ◯ **NO**	Has the CSP provided the type or category of the investment (*e.g.,* money market fund, balanced fund (stocks and bonds), large cap stock fund, employer stock fund, employer securities)?[86]
◯ **YES** ◯ **NO** ◯ **N/A**	Has the CSP provided the average annual total return of the investment for 1-, 5-, and 10-calendar year periods (or for the life of the alternative, if shorter) ending on the date of the most recently completed calendar year? This assumes the investment does not offer a fixed return.[87]
◯ **YES** ◯ **NO** ◯ **N/A**	Has the CSP provided a statement indicating that an investment's past performance is not necessarily an indication of how the investment will perform in the future[88]

[85] 29 CFR § 2550.404a-5(d)(1)(i)(A); 75 FR 64938 (Oct 20, 2010)
[86] 29 CFR § 2550.404a-5(d)(1)(i)(B); 75 FR 64938 (Oct 20, 2010)
[87] 29 CFR § 2550.404a-5(d)(1)(ii)(A); 75 FR 64938 (Oct 20, 2010)
[88] 29 CFR § 2550.404a-5(d)(1)(ii)(A); 75 FR 64938 (Oct 20, 2010)

◯ **YES** ◯ **NO** ◯ **N/A** Has the CSP provided the fixed return or stated return and the term to which the stated return applies, if the investment offers fixed or stated returns? [89]

◯ **YES** ◯ **NO** ◯ **N/A** a. Fixed Return is:

◯ **YES** ◯ **NO** ◯ **N/A** b. Stated Return is:

◯ **YES** ◯ **NO** ◯ **N/A** c. Term of the Stated Return is:

◯ **YES** ◯ **NO** ◯ **N/A** Has the CSP provided the current rate of return and/or the minimum rate guaranteed under the contract if the issuer of the investment reserves the right to adjust the fixed or stated rate of return prospectively during the term of the contract or agreement?[90]

◯ **YES** ◯ **NO** ◯ **N/A** a. Current Rate of Return:

◯ **YES** ◯ **NO** ◯ **N/A** b. Minimum Rate Guaranteed:

◯ **YES** ◯ **NO** ◯ **N/A** Has the CSP provided a statement advising participants and beneficiaries that the issuer may adjust the rate of return prospectively and how to obtain (*e.g.,* telephone or Web site) the most recent rate of return required under this section?[91]

◯ **YES** ◯ **NO** ◯ **N/A** Has the CSP provided the name of an appropriate broad based securities market index and returns for that index over the 1-, 5-, and 10-calendar year periods (or for the life of the alternative, if shorter)? This only applies to DIAs that do not provide a fixed rate of return.[92]

◯ **YES** ◯ **NO** ◯ **N/A** a. Is the benchmark used for this investment widely recognized and used? [93]

◯ **YES** ◯ **NO** ◯ **N/A** b. Is the benchmark administered by an affiliate of the investment issuer, its investment adviser or principal underwriter? [94]

◯ **YES** ◯ **NO** ◯ **N/A** Has the CSP provided the amount of each shareholder-type fee which is not included in the total annual operating expenses of the DIA?[95]

◯ **YES** ◯ **NO** ◯ **N/A** Has the CSP provided a description of each shareholder-type fee which is not included in the total annual operating expenses of the DIA?[96]

◯ **YES** ◯ **NO** ◯ **N/A** Has the CSP provided a description of any restrictions of limitations that may be applicable to a purchase, transfer, or withdrawal of this DIA in whole or in part (such as round trip, equity wash, or other restrictions)?[97]

◯ **YES** ◯ **NO** ◯ **N/A** Has the CSP provided the total annual operating expenses of this DIA expressed as a percentage (*i.e.,* expense ratio)?[98]

◯ **YES** ◯ **NO** ◯ **N/A** Has the CSP calculated the total annual operating expenses of this DIA in accordance with (h)(5)(ii)?[99]

NOTE: *29 C.F.R. 2550.404a-5(h)(5)(ii) requires the CSP to sum the fees described in paragraph (h)(5)(ii)(A) through (C) of*

[89] 29 CFR § 2550.404a-5(d)(1)(ii)(B); 75 FR 64938 (Oct 20, 2010)
[90] 29 CFR § 2550.404a-5(d)(1)(ii)(B); 75 FR 64938 (Oct 20, 2010)
[91] 29 CFR § 2550.404a-5(d)(1)(ii)(B); 75 FR 64938 (Oct 20, 2010)
[92] 29 CFR § 2550.404a-5(d)(1)(iii); 75 FR 64938 (Oct 20, 2010)
[93] 29 CFR § 2550.404a-5(d)(1)(iii); 75 FR 64938 (Oct 20, 2010)
[94] 29 CFR § 2550.404a-5(d)(1)(iii); 75 FR 64938 (Oct 20, 2010)
[95] Shareholder fees charged directly against a participant's or beneficiary's investment include commissions, sales loads, sales charges, deferred sales charges, redemption fees, surrender charges, exchange fees, account fees, and purchase fees, which are not included in the total annual operating expenses of any designated investment alternative. 29 CFR § 2550.404a-5(d)(1)(iv)(A)(1); 75 FR 64938 (Oct 20, 2010)
[96] Shareholder fees charged directly against a participant's or beneficiary's investment include commissions, sales loads, sales charges, deferred sales charges, redemption fees, surrender charges, exchange fees, account fees, and purchase fees, which are not included in the total annual operating expenses of any designated investment alternative. 29 CFR § 2550.404a-5(d)(1)(iv)(A)(1); 75 FR 64938 (Oct 20, 2010)
[97] 29 CFR § 2550.404a-5(d)(1)(iv)(A)(1); 75 FR 64938 (Oct 20, 2010)
[98] 29 CFR § 2550.404a-5(d)(1)(iv)(A)(2); 75 FR 64938 (Oct 20, 2010)
[99] 29 CFR § 2550.404a-5(d)(1)(iv)(A)(2); (h)(5)(ii); 75 FR 64938 (Oct 20, 2010)

this section before waivers and reimbursements, for the DIA's most recently completed fiscal year. The fee must be expressed as a percentage of the DIA's average net asset value for that year. Specifically, this applies to management, distribution, service and any other fees that reduce the DIA's rate of return such as externally negotiated fees, custodial expenses, legal expenses, accounting expenses, transfer agent expenses, recordkeeping fees, administrative fees, separate account expenses, mortality and expense risk fees. These fees are described in the Securities and Exchange Commission Form N–1A and require the exclusion of brokerage costs described in Item 21 of this Form.

◯ **YES** ◯ **NO** ◯ **N/A** Has the CSP provided the RPF with the total annual operating expenses of the investment for a one year period expressed as a dollar amount for a $1,000 investment (assuming no returns and based on the percentage described in paragraph (d)(1)(iv)(A)(*2*))?[100]

◯ **YES** ◯ **NO** ◯ **N/A** Has the CSP provided the RPF with a statement indicating that fees and expenses are only one of several factors that participants and beneficiaries should consider when making investment decisions?[101]

◯ **YES** ◯ **NO** ◯ **N/A** Has the CSP provided the RPF with a statement that the cumulative effect of fees and expenses can substantially reduce the growth of a participant's or beneficiary's retirement account and that participants and beneficiaries can visit the Employee Benefit Security Administration's Web site for an example demonstrating the long-term effect of fees and expenses?[102]

◯ **YES** ◯ **NO** This information is provided to a participant on or before the date on which they can first direct their investments and at least annually thereafter[103]

NOTE: *This information should be provided by the CSP that is responsible for providing disclosures applicable to an investment contract, product or entity that holds plan assets assuming the information is within the control of or is reasonably available to the CSP.[104] This section should be completed <u>for each DIA</u> that qualifies as an investment contract, product or entity that holds plan assets.*

(14) ◯ **YES** ◯ **NO** ◯ **N/A** – Is the investment contract, product, or entity a designated investment alternative?

(15) ◯ **YES** ◯ **NO** ◯ **N/A** – Is the covered plan an individual account plan? [105]

(16) ◯ **YES** ◯ **NO** ◯ **N/A** – Does the covered plan permit participants or beneficiaries to direct the investment of their accounts into any designated investment alternative[106] that is made available through a platform or similar mechanism?

NOTE*:*
a. If you answer "YES" to both # 10 and # 11, your answer to # 12 and #13 should either be "YES" or "NO".

[100] 29 CFR § 2550.404a-5(d)(1)(iv)(A)(3); 75 FR 64938 (Oct 20, 2010)
[101] 29 CFR § 2550.404a-5(d)(1)(iv)(A)(4); 75 FR 64938 (Oct 20, 2010)
[102] 29 CFR § 2550.404a-5(d)(1)(iv)(A)(5); 75 FR 64938 (Oct 20, 2010)
[103] 29 CFR § 2550.404a-5(d)(1); 75 FR 64938 (Oct 20, 2010)
[104] 29 C.F.R § 2550.408b-2(c)(1)(iv)(E)(3)
[105] ERISA Section 3(34) states, "The term "individual account plan" or "defined contribution plan" means a pension plan which provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account."; 29 C.F.R § 2550.408b-2(c)(1)(iii)(B)
[106] A "designated investment alternative" is any investment alternative designated by a fiduciary into which participants and beneficiaries may direct the investment of assets held in, or contributed to, their individual accounts. The term "designated investment alternative" shall not include brokerage windows, self-directed brokerage accounts, or similar plan arrangements that enable participants and beneficiaries to select investments beyond those specifically designated. 29 C.F.R § 2550.408b-2(c)(1)(viii)(C); 29 C.F.R § 2550.408b-2(c)(1)(iii)(B)

b. If you answer "NO" to #11, your answer to #12 and #13 should be "N/A."

(17) ◯ **YES** ◯ **NO** ◯ **N/A** – Will the CSP receive compensation for **Recordkeeping services**?[107]

***NOTE**: Recordkeeping services include services to an individual account plan (ERISA § 3(34)) that permits participants and beneficiaries to direct the investment of their account in one or more designated investment alternatives through a platform or similar mechanism. This question excludes a recordkeeper to a defined benefit plan.*

(18) ◯ **YES** ◯ **NO** ◯ **N/A** – Will the CSP receive compensation for **Brokerage services**?

***NOTE**: Brokerage services include services to an individual account plan (ERISA § 3(34)) that permits participants and beneficiaries to direct the investment of their account in one or more designated investment alternatives through a platform or similar mechanism. This question excludes a recordkeeper or brokerage services to a defined benefit plan or insurance brokerage services. According to the preamble, "The Department does intend that such insurance services are included in this category of covered service providers." 77 FR 5635, FN 14 (Feb 3, 2012) Emphasis added. However, CSP includes insurance brokerage services that are compensated with "indirect" compensation.*

(19) Please describe the "indirect" compensation received, services provided for "indirect" compensation, the payer[108] of the "indirect" compensation and the nature of the arrangement between the payer of "indirect" compensation and the CSP[109]

Requirements	Enter Description or Identification
a. Describe all Indirect Compensation Received	
b. Identify the services provided	
c. Identified the Payer of the indirect compensation	
d. Describe the arrangement between the CSP and the payer of indirect compensation:	

***NOTE**: It is possible the same services can be subsidized by multiple sources or "payers." For example, it is possible for a recordkeeper or an investment advisor to be paid indirect fees from multiple mutual funds via revenue sharing. Each mutual fund or investment alternative can represent a different payer of indirect compensation and must be reflected individually. Therefore, it is possible that if you have fifteen different DIAs you have fifteen different payers that must be identified.*

(20) ◯ **YES** ◯ **NO** Will the CSP an affiliate or subcontractors receive or pay any transaction-based compensation from or to a related party?[110] If so, please complete the following:

Identify Service Rendered	Payer of Transaction Compensation	Recipient of Transaction Comp

[107] 29 C.F.R § 2550.408b-2(c)(1)(iii)(B); (iv)(D)

[108] The covered service provider must describe its arrangement with the payer of indirect compensation so that the responsible plan fiduciary can analyze why the payer, generally an unrelated third party, is compensating the covered service provider in connection with the covered service provider's contract or arrangement with the covered plan. 77 FR 5637 (Feb 3, 2012)

[109] "The covered service provider also must identify the services for which the indirect compensation will be received, and the payer of the indirect compensation. In addition, this paragraph has been modified from the interim final rule to include one more requirement: the covered service provider must identify not only the payer of the indirect compensation, but also describe the arrangement between the payer and the covered service provider, an affiliate, or a subcontractor, as applicable, pursuant to which such indirect compensation is paid." 77 FR 5637 (Feb 3, 2012); 29 C.F.R § 2550.408b-2(c)(1)(iv)(C)(2), "Indirect Compensation"; (D)(1), "Recordkeeping";

[110] 29 C.F.R. § 2550.408b-2(c)(1)(iv)(C)(3)

	◯ Affiliate ◯ Subcontractor	◯ Affiliate ◯ Subcontractor
	◯ Affiliate ◯ Subcontractor	◯ Affiliate ◯ Subcontractor
	◯ Affiliate ◯ Subcontractor	◯ Affiliate ◯ Subcontractor

NOTE: *Transaction based compensation includes commissions, soft dollars, finder's fees or other similar incentive compensation based on business placed or retained. It also includes compensation charged directly against the covered plan's investment and reflected in the net value of the investment (e.g., Rule 12b-1 fees). A "related party" includes a service provider's affiliates and subcontractors but it does not include* compensation received by an employee from his or her employer on account of work performed by the employee. *Finally, regardless of whether this compensation is reported under direct or indirect compensation or whether reported as part of investment disclosures for fiduciary, recordkeeping or brokerage services, you must disclose transaction-based compensation here as pursuant to this paragraph.*[111]

SECTION: Recordkeeping Services

This section must be completed if the CSP is providing recordkeeping services.

(21) ◯ **YES** ◯ **NO** Does the recordkeeper expect to receive, in whole or in part, compensation that is not explicitly charged against plan assets (i.e., indirect compensation)? If yes, please complete the following: [112]

Requirements	Enter Description or Identification
a. Detailed description of all recordkeeping services	
b. Good faith estimate of cost	
c. Explain calculation methodology used	
d. Explain assumptions used in the calculation	

NOTE: *If compensation for recordkeeping services is offset or rebated based on compensation received by the CSP, an affiliate or subcontractor it must be communicated and reflected in this analysis to permit the RPF to confirm receipt of complete information to secure the exemption 408(b)(2) provides. Keep in mind, the DOL believes a separate disclosure and estimated cost for complex arrangements is important for a RPF to make an informed evaluation of recordkeeping costs. Armed with this information, an RPF can compare fees to plans of similar size by number of participants and plan assets to determine fee reasonableness.* [113] *This analysis is greatly assisted when a benchmarking report is available from an independent source. If the CSP Recordkeeper is unable to provide the RPF with understandable estimates, the CSP can provide prevailing market rate information for a similar plan with a similar number of covered participants.*[114] *While the DOL was gracious enough to permit this alternative method to comply, prevailing market rates may not accurately reflect the rates the covered plan is paying. As a best practice, if a RPF cannot obtain reliable estimates using a pricing structure applicable to the plan, look elsewhere for recordkeeping services.*

(22) ◯ **YES** ◯ **NO** ◯ **N/A** – If a good faith estimate is provided, is it based upon the applicable rates charged to other similar plans with similar demographics and services? If yes, please complete the following

[111] 77 FR 5635 (Feb 3, 2012)
[112] 77 FR 5638 (Feb 3, 2012); 29 C.F.R. § 2550.408b-2(c)(1)(iv)(D)
[113] 77 FR 5638 (Feb 3, 2012)
[114] 29 C.F.R § 2550.408b-2(c)(1)(iv)(D)(3);

Data Source:			
Number of Plans in Universe:		***Applicable Range:***	
Describe Service similarities and differences:			
Describe Methodology:			
Calculate and compare prevailing rates:			

(23) ◯ **YES** ◯ **NO** ◯ **N/A** –Has the CSP delivered a written description of the services that will be provided to the covered plan? [115]

Please describe services to be rendered:

NOTE: *The regulations do not require that a CSP disclose the details of every service to the RSF. In fact, it is permissible to aggregate services. Also, the CSP is not required to re-write their contract or bifurcate their fees between those that are rendered as a fiduciary and those that are not. However, it is a good idea to have the fees bifurcated between fiduciary and non-fiduciary to enhance the RSF understanding of the fees they pay for the services rendered.*

(24) ◯ **YES** ◯ **NO** ◯ **N/A** – Has the CSP, an affiliate, or a subcontractor provided written acknowledgement of their intent to deliver services to the covered plan or an investment contract, product or entity that holds plan assets and in which the covered plan has a direct equity investment as a fiduciary?

(25) ◯ **YES** ◯ **NO** ◯ **N/A** – Has the covered service provider, an affiliate, or a subcontractor provided a written statement that it intends to provide services to the covered plan as an investment adviser registered under either the Investment Advisers Act of 1940 or any State law?

Services Provided by*	Date Written Statement Provided	SEC or State RIA

* Enter either CSP, affiliate of subcontractor

[115] ERISA Section 3(34) states, "The term "individual account plan" or "defined contribution plan" means a pension plan which provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account."; 29 C.F.R § 2550.408b-2(c)(1)(iii)(B)

(26) ◯ **YES** ◯ **NO** ◯ **N/A** – Has the CSP provided the RPF with a description of all "**direct"** compensation either it, an affiliate or a subcontractor expects to receive either in the aggregate or by service rendered?

Description of Services	Description of Compensation*

*Description of services can be done as a dollar amount, a percent or a formula

***NOTE**: "Direct" compensation is compensation received directly from the covered plan.*[116]

(27) ◯ **YES** ◯ **NO** ◯ **N/A** –Has the CSP provided the RPF with a description of all "**indirect"** compensation it, an affiliate or a subcontractor expects to receive either in the aggregate or by service rendered?

Description of Services	Identification of Payer of Indirect Compensation

***NOTE:** "Indirect" compensation is compensation received from any source other than the covered plan, the plan sponsor, the covered service provider, an affiliate, or a subcontractor (if the subcontractor receives such compensation in connection with services performed under the subcontractor's contract or arrangement described in paragraph (c)(1)(viii)(F) of this section).*[117]

(28) ◯ **YES** ◯ **NO** ◯ **N/A** – Has the CSP provided the RPF with a description of "any" transaction[118] based compensation it, an affiliate or a subcontractor expects to receive either in the aggregate or by service rendered?

Description of Services	Identification of Payer of Indirect Compensation	Identification of Recipient of Indirect Compensation
		◯ Affiliate ◯ Subcontractor

(29) ◯ **YES** ◯ **NO** ◯ **N/A** – Are services provided by the CSP "necessary for the establishment of the plan"?[119] Typical services that may be provided to establish a plan follow. Identify which services this CSP will provide. Those services that fall under "Settlor"[120] expenses must not be paid from plan assets?

Are you paying this CSP from plan assets for any of the following "Settlor" functions?

◯ **YES** ◯ **NO** In advance of establishing the covered plan or plan changes, the cost for:

[116] 29 C.F.R § 2550.408b-2(c)(1)(viii)(B)(1)

[117] 29 C.F.R § 2550.408b-2(c)(1)(viii)(B)(2)

[118] For example, commissions, soft dollars, finder's fees or other similar incentive compensation based on business placed or retained or is charged directly against the covered plan's investment and reflected in the net value of the investment (e.g., Rule 12b-1 fees).

[119] According to the regulations, a necessary service is defined as a service that is necessary for the establishment or operation of a plan within the meaning of section 408(b)(2) of the Act and Sec. 2550.408b-2(a)(1) if the service is appropriate and helpful to the plan obtaining the service in carrying out the purposes for which the plan is established or maintained. A person providing such a service to a plan (or a person who is a party in interest solely by reason of a relationship to such a service provider described in section 3(14)(F), (G), (H), or (I) of the Act) may furnish goods which are necessary for the establishment or operation of the plan in the course of, and incidental to, the furnishing of such service to the plan. 29 C.F.R. 2550.408b-2(b)

[120] A plan may pay expenses associate with the implementation of a settlor decision. See DOL Advisory Opinion 2001-01A

◯ **YES** ◯ **NO** • Plan design study[121]
◯ **YES** ◯ **NO** • Union Negotiations
◯ **YES** ◯ **NO** • Benefit Studies
◯ **YES** ◯ **NO** • Discrimination Testing
◯ **YES** ◯ **NO** • Actuarial Analysis
◯ **YES** ◯ **NO** • Analysis of Required Amendments
◯ **YES** ◯ **NO** • Cost projections to determine impact on sponsor
◯ **YES** ◯ **NO** Plan Termination decision
◯ **YES** ◯ **NO** Discretionary Amendment e.g., establish a participant loan program
◯ **YES** ◯ **NO** Amendment for Spin-off plan assets
◯ **YES** ◯ **NO** Initial Drafting of Plan Document
◯ **YES** ◯ **NO** Legal for Plan Formation
◯ **YES** ◯ **NO** Initial Plan design proposals and financial projections[122]
◯ **YES** ◯ **NO** Nondiscrimination, other testing re: proposed design

GOVERNMENT IMPOSED AMOUNTS

◯ **YES** ◯ **NO** Audit CAP Sanction[123]
◯ **YES** ◯ **NO** EPCRS – VCP compliance fee[124]
◯ **YES** ◯ **NO** VFCP Closing Costs & Penalties[125]
◯ **YES** ◯ **NO** Plan related penalties, fines[126]

NOTE: When assessing compliance with 408(b)(2) a determination must be made whether the services are necessary for the establishment or operation of a plan. If a service is not necessary, the cost for those services should not be paid from plan assets either "directly" or "indirectly." Furthermore, if the plan does pay for a service that is not necessary or permissible, the RPF has engaged in a prohibitive transaction even if the disclosure requirements have been met. In other words, paying for unnecessary services from plan assets is a prohibited transaction because the cost is unreasonable. In addition, certain identified services may not be paid from plan assets "directly" or "indirectly." Impermissible services that may not be paid from plan assets include "settlor" functions which are viewed as conferring a benefit to the plan sponsor not the plan. ERISA provides that, subject to certain exceptions, the assets of an employee benefit plan shall never inure to the benefit of any employer and shall be held for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the plan.[127] Types of settlor functions that may not be paid from plan assets typically involve business decisions associated with forming, designing or terminating a retirement plan. Ironically, the cost associated with implementing a settlor decision may constitute a reasonable expense to the plan. Reasonable expenses may be directly deducted from a participant's account balance on a pro rata or per capita basis.[128] In addition, certain expenses may be charged directly to the participant that caused the expense to occur e.g., loan processing fee.[129]

(30) ◯ **YES** ◯ **NO** ◯ **N/A –** Does the governing plan document permit the payment of plan expenses for services rendered by this CSP?

(31) ◯ **YES** ◯ **NO** ◯ **N/A** – Are the services provided by the CSP necessary for the operation of the plan? [130]

Permissible Plan Expenses	**Purpose**

[121] See DOL Advisory Opinion 2001-01A; 2001 Hypos, Ex1; DOL/PWBA letter to Kirk F. Maldonado from Elliot I. Daniel (March 2, 1987)
[122] 2001-01A; Hypos, Ex. 1,2,3, 4 & Maldonado letter
[123] IRS Rev. Proc. 2003-44, §13.01
[124] IRS Rev. Proc. 2003-44, §10.01
[125] VFC Program, 67 FR 15062, 15075 3-28-02
[126] Henderson Letter
[127] ERISA 403(c)(1); 404(a)(1)(A)
[128] FAB 2003-03
[129] Rev. Rul. 2004-10
[130] See FN 81

	DRAFTING	
◯ **YES** ◯ **NO**	Operating the Loan Policy	
◯ **YES** ◯ **NO**	Distribution, beneficiary and other administrative forms	
◯ **YES** ◯ **NO**	Required Tax Qualified Amendments[131]	
◯ **YES** ◯ **NO**	Required Termination Amendment[132]	
◯ **YES** ◯ **NO**	Determination letter filing[133]	
◯ **YES** ◯ **NO**	Draft Plan Documents[134]	
◯ **YES** ◯ **NO**	Tax qualification activities[135]	
◯ **YES** ◯ **NO**	Determination letter & User fee[136]	
◯ **YES** ◯ **NO**	Plan Compliance Amendments	
◯ **YES** ◯ **NO**	Plan Re-Design Amendments	
◯ **YES** ◯ **NO**	Implementation of the settlor decisions	
◯ **YES** ◯ **NO**	Implementing a Spin Off	
◯ **YES** ◯ **NO**	Calculate Assets for Transfer	
◯ **YES** ◯ **NO**	Startup fees	
◯ **YES** ◯ **NO**	Communicating plan information to participants	
◯ **YES** ◯ **NO**	Group Enrollment	
◯ **YES** ◯ **NO**	Individual Enrollment	
◯ **YES** ◯ **NO**	Benefit statements	
◯ **YES** ◯ **NO**	Calculating a participants benefit	
◯ **YES** ◯ **NO**	Establishing a loan program	
◯ **YES** ◯ **NO**	PBGC premium and termination fee	
	ADMINISTRATION/RECORDKEEPING	
◯ **YES** ◯ **NO**	Recordkeeping[137]	
◯ **YES** ◯ **NO**	Ongoing Administration[138]	
◯ **YES** ◯ **NO**	Nondiscrimination and other Testing[139]	
◯ **YES** ◯ **NO**	Valuation of Assets[140]	
◯ **YES** ◯ **NO**	Allocation of employer contributions	
◯ **YES** ◯ **NO**	Accounting, Benefit computation	
◯ **YES** ◯ **NO**	Distributions (including Hardships)[141]	
◯ **YES** ◯ **NO**	Loans	
◯ **YES** ◯ **NO**	Determining QDRO qualified status	
◯ **YES** ◯ **NO**	Deduction limit computation	

[131] 2001-01A; Hypos, Ex. 3, 4; 97-03A
[132] 97-03A
[133] excluding IRS user fee
[134] This includes Plan Document also known as an adoption agreement, the plan trust, Summary Plan Description, Summary Annual reports and Investment Policy Statement.
[135] This applies to fees paid to secure initially and maintaining the tax qualified status of the plan including seeking an IRS determination letter.
[136] 2001-01A; 2001Hypos, Ex. 3, 4; 97-03A
[137] FAB 2003-3; DOL "A Look at 401(k) Plan Fees for Employees
[138] 2001 Hypos, Ex. 6
[139] 2001-01A; 2001Hypos, Ex. 3, 4
[140] DOL Guidance for Employees
[141] FAB 2003-3

◯ YES ◯ NO	Actuarial fees	
◯ YES ◯ NO	Legal Fees for Fiduciary Issues[142]	
◯ YES ◯ NO	Required fidelity bond[143]	
◯ YES ◯ NO	Assets purchased to perform administration	
	REPORTING AND DISCLOSURE	
◯ YES ◯ NO	Form 5500[144]	
◯ YES ◯ NO	Required auditor's report[145]	
◯ YES ◯ NO	Form 5300 series determination letters[146]	
◯ YES ◯ NO	SPD, SMMC & SAR[147]	
◯ YES ◯ NO	Benefit Statements	
◯ YES ◯ NO	Investment Education[148]	
◯ YES ◯ NO	Section 404(c) disclosure	
◯ YES ◯ NO	Other communication with plan participants	
	INVESTMENTS	
◯ YES ◯ NO	Trustee fees	
◯ YES ◯ NO	Investment Management fees[149]	
◯ YES ◯ NO	Participant Investment Advice[150]	
◯ YES ◯ NO	Commissions[151]	
◯ YES ◯ NO	Self-direction fees/expenses	
◯ YES ◯ NO	Valuation of trust assets	
◯ YES ◯ NO	Custody (DOL Fee Disclosure form	
◯ YES ◯ NO	Contract Termination Fees[152]	
◯ YES ◯ NO	Product Termination Fees[153]	

SECTION: INVESTMENT MANAGER(S) USED BY THE PLAN OR A PARTICIPANT

A covered plan that offers participants and beneficiaries the option to retain the services of an investment manager as that term is defined under ERISA § 3(38) must complete this section. An investment manager is a bank, insurance company or SEC or State registered investment advisor that is formally appointed by a responsible plan fiduciary to exercise discretionary control over plan assets on behalf of the plan or as selected by a specific participant. See Field Assistance Bulletin 2012-02, Question and Answers 27.

[142] FAB 2003-3 & DOL Guidance for Employees
[143] ERISA 410(b); 412; Henderson & Maldonado Letter
[144] FAB 2003-3
[145] FAB 2003-3; DOL Info. Ltr. To Henderson 7-28-98
[146] excluding user fee
[147] 2001 Hypos, Ex. 2, 5
[148] DOL Guidance for Employees
[149] The DOL may challenge a per capital allocation of fees determined on the basis of the participant's account balance as arbitrary. DOL FAB 2003-3; DOL Guidance for Employees
[150] FAB 2003-3; DOL Guidance for Employees
[151] DOL Guidance for Employees
[152] 29 CFR § 2550.408b-2; Fee Disclosure Form
[153] 29 CFR § 2550.408b-2; Fee Disclosure Form

(32) ◯ **YES** ◯ **NO** – Has the covered plan retained the services of an ERISA § 3(38) Investment Manager for purposes of managing a Designated Investment Alternative ("DIA")? If YES, please identify each Investment Manager that manages a DIA.

Name of the IM	DIA Managed

(33) ◯ **YES** ◯ **NO** – Has the covered plan retained the services of an ERISA § 3(38) Investment Manager for purposes of managing a participant's individual account? If YES, please identify each Investment Manager that the responsible plan fiduciary has approved for use by the participant.

Name of the IM	Date of Approval

NOTE: The RPF for a covered plan that limits participant and beneficiary access to an investment manager(s) selected by the RPF retains the fiduciary obligation to monitor the continued use of the investment manager.

(34) ◯ **YES** ◯ **NO** – Has the covered plan retained the services of an Advisor Network that pre-vets ERISA § 3(38) Investment Managers for purposes of making the Network available to manage participant's individual account? If YES, please identify the Network Provider.

Name of the Advisor Network	Date of Approval

NOTE: According to the final regulations issued under ERISA § 404(c), a RPF that provides participants with a universe or network of investment managers ("IM") or unlimited access to any IM has no liability for the IMs performance or responsibility to monitor the IM.[154] Selecting a pre-vetted universe or network of IMs is similar to offering a Self-Direct Brokerage Account ("SDBA"). Of course, just like a SDBA the RPF does have an obligation to ensure fee disclosure information is provided if a network or universe is offered as is applicable to the SBDA. If a IM network is not offered, skip to the next section.

(35) ◯ **YES** ◯ **NO** – Does the plan administrator or someone appointed by the plan administrator provide a general description of the universe of IMs which is provided to all participants and beneficiaries and is sufficient information to understand how the IM universe works?[155]

[154] Participant P instructs plan fiduciary F to appoint G as his investment manager pursuant to the terms of the plan which provide P total discretion in choosing an investment manager. Through G's imprudence, G incurs losses in managing P's account. G has engaged in a breach of fiduciary duty because G's imprudent management of P's account is not a direct or necessary result of P's exercise of control (the choice of G as manager). Plan fiduciary F has no fiduciary liability for G's imprudence because F has no obligation to advise P (see paragraph (c)(4)) and because F is relieved of co-fiduciary liability for G's actions by reason of section 404(c)(2) (see paragraph (d)(2)(iii)). In addition, F also has no duty to determine the suitability of G as an investment manager because the plan does not designate G as an investment manager. 29 C.F.R. § 2550.404c-1(f)(9)

[155] FAB 2012-02, Q&A 13

(36) ◯ **YES** ◯ **NO** – Are the participants and beneficiaries provided the name and contact information of the person responsible for providing the descriptions? If "YES," please identify the party responsible for providing the description to participants and/or beneficiaries.[156]

Responsible Party	Name	Contact Information: Address, Phone & Email
◯ Plan Administrator		
◯ Appointed 3rd Party		

(37) ◯ **YES** ◯ **NO** – Are the account balance requirements included in the general descriptions? If "YES" please identify the document that provides this information.[157]

Name of Document	Page Description is Found

(38) ◯ **YES** ◯ **NO** – Are any restrictions or limitations applicable to the retention of the IM included in the general descriptions? If "YES" please identify the document that provides this information.[158]

Name of Document	Page Description is Found

(39) ◯ **YES** ◯ **NO** – Are the participants and beneficiaries informed how retaining an IM differs from the plans Designated Investment Alternatives ("DIA")? If "YES" please identify the document that provides this information.[159]

Name of Document	Page Description is Found

(40) ◯ **YES** ◯ **NO** – Have the participants and beneficiaries been provided an explanation of the fees and expenses that may be charged against their individual account on an individual basis rather than a plan-wide basis?[160]

This would include:			Cost is:
◯ **YES** ◯ **NO**	Set-up fee	◯ **$** ◯ **%:**	
◯ **YES** ◯ **NO**	Maintenance fee	◯ **$** ◯ **%:**	
◯ **YES** ◯ **NO**	Fee to close account	◯ **$** ◯ **%:**	
◯ **YES** ◯ **NO**	Inactivity Fee	◯ **$** ◯ **%:**	
◯ **YES** ◯ **NO**	Minimum balance fees	◯ **$** ◯ **%:**	
◯ **YES** ◯ **NO**	Cost per trade	◯ **$** ◯ **%:**	
◯ **YES** ◯ **NO**	Front end load	◯ **$** ◯ **%:**	
◯ **YES** ◯ **NO**	Back-end load	◯ **$** ◯ **%:**	
◯ **YES** ◯ **NO**	Other:	◯ **$** ◯ **%:**	
◯ **YES** ◯ **NO**	Other:	◯ **$** ◯ **%:**	

[156] FAB 2012-02, Q&A 13
[157] FAB 2012-02, Q&A 13
[158] FAB 2012-02, Q&A 13
[159] FAB 2012-02, Q&A 13
[160] FAB 2012-02, Q&A 13; 29 CFR § 2550.404a-5(c)(3)(i)(A)

◯ **YES** ◯ **NO** Other: ◯ **$** ◯ **%:**

(41) ◯ **YES** ◯ **NO** – Have the participants and beneficiaries been provided a general statement that such IM fees mentioned above exist and that they may be charged against the participant or beneficiary's individual account. If "YES" please identify the document that provides this information.[161]

Name of Document	Page Description is Found

(42) ◯ **YES** ◯ **NO** – Have the participants and beneficiaries been provided directions as to how the participant or beneficiary can obtain information about IM network fees in connection with their services or any particular investment they would invest? If "YES" please identify the document that provides this information.[162]

Name of Document	Page Description is Found

(43) ◯ **YES** ◯ **NO** – Have the participants and beneficiaries been advised to query the IM provider about any fees, including undisclosed fees, associated with the purchase or sale of a security before purchasing or selling any security? If "YES" please identify the document that provides this information.[163]

Name of Document	Page Description is Found

(44) ◯ **YES** ◯ **NO** – Have the participants and beneficiaries been provided a statement of the dollar amount of fees and expenses that were actually charged during the preceding quarter against their account by the IM? If "YES" please identify the document that provides this information.[164]

Name of Document	Page Description is Found

(45) ◯ **YES** ◯ **NO** – Does the quarterly IM fee statement include a clear description of the services to which the charges relate? If "YES" please identify the document that provides this information. [165]

Name of Document	Page Description is Found

(46) ◯ **YES** ◯ **NO** – In your opinion, does the general description provided to participants and beneficiaries sufficient information to understand how the IM relationship works? If NO, please explain why.

[161] FAB 2012-02, Q&A 13
[162] FAB 2012-02, Q&A 13
[163] FAB 2012-02, Q&A 13
[164] FAB 2012-02, Q&A 13; 29 CFR § 2550.404a-5(c)(3)(ii)(A)
[165] FAB 2012-02, Q&A 13; 29 CFR § 2550.404a-5(c)(3)(ii)(B)

SECTION: SELF-DIRECTED BROKERAGE ACCOUNT ("SDBA")

DIRECTION: *A covered plan that offers participants and beneficiaries the option to manage their individual account through a brokerage window that offers investment options beyond the core menu of designated investment alternatives must complete this section. An SDBA typically gives a participant access to a virtually limitless menu of mutual funds, ETFs, stocks and bonds. The universe of investment options is dictated by the SDBA provider. This section must be completed for each different SDBA provider that is offered through the plan. In addition, it is important to stress the general disclosures and descriptions pertaining to the SDBA option must be provided to all participants not just those that utilize the SDBA.*[166] *For information pertaining to the questions outlined in this section see Field Assistance Bulletin 2012-02, Question and Answers 13, 14, 27 and 29.*

(47) ◯ **YES** ◯ **NO** – Does the covered plan offer a Self-Directed Brokerage Account ("SDBA") as an investment alternative to participants and beneficiaries? If YES, please identify each SDBA provider that is offered.

Name of SDBA Provider Name	Contact Information

NOTE: *An investment option offered to the plan participants must be offered to the beneficiaries; otherwise, the investment could be construed as a discriminatory benefit, right or feature. Also, if you answer "NO" to the previous two questions there is no reason to proceed. If you answered "YES" to either of the last two questions you must continue to answer the following questions.*

(48) ◯ **YES** ◯ **NO** – Does the plan administrator or someone appointed by the plan administrator provide a general description of the SDBA which is provided to all participants and beneficiaries and is sufficient information to understand how the window, account or arrangement works?[167]

(49) ◯ **YES** ◯ **NO** – Are the participants and beneficiaries provided the name and contact information of the person responsible for providing the descriptions? If "YES," please identify the party responsible for providing the description to participants and/or beneficiaries.[168]

Responsible Party	Name	Contact Information: Address, Phone & Email
◯ Plan Administrator		
◯ Appointed 3rd Party		

(50) ◯ **YES** ◯ **NO** – Does the general description provided to participants and beneficiaries articulate how the participant must give investment instructions? If "YES" please identify the document that provides this information.[169]

Name of Document	Page Description is Found

[166] FAB 2012-02, Q&A 14
[167] FAB 2012-02, Q&A 13
[168] FAB 2012-02, Q&A 13
[169] FAB 2012-02, Q&A 13

(51) ◯ **YES** ◯ **NO** – Are the account balance requirements included in the general descriptions? If "YES" please identify the document that provides this information.[170]

Name of Document	Page Description is Found

(52) ◯ **YES** ◯ **NO** – Are the restrictions or limitations on trading included in the general descriptions? If "YES" please identify the document that provides this information.[171]

Name of Document	Page Description is Found

(53) ◯ **YES** ◯ **NO** – Are the participants and beneficiaries informed how the window, account or arrangement differs from the plans Designated Investment Alternatives ("DIA")? If "YES" please identify the document that provides this information.[172]

Name of Document	Page Description is Found

(54) ◯ **YES** ◯ **NO** – Have the participants and beneficiaries been provided an explanation of the fees and expenses that may be charged against their individual account on an individual basis rather than a plan-wide basis?[173]

This would include:			Cost is:
◯ **YES** ◯ **NO**	Set-up fee to open an SDBA	◯ **$** ◯ **%:**	
◯ **YES** ◯ **NO**	Maintenance fee	◯ **$** ◯ **%:**	
◯ **YES** ◯ **NO**	Fee to close account	◯ **$** ◯ **%:**	
◯ **YES** ◯ **NO**	Inactivity Fee	◯ **$** ◯ **%:**	
◯ **YES** ◯ **NO**	Minimum balance fees	◯ **$** ◯ **%:**	
◯ **YES** ◯ **NO**	Cost per trade	◯ **$** ◯ **%:**	
◯ **YES** ◯ **NO**	Front end load	◯ **$** ◯ **%:**	
◯ **YES** ◯ **NO**	Back-end load	◯ **$** ◯ **%:**	
◯ **YES** ◯ **NO**	Other:	◯ **$** ◯ **%:**	
◯ **YES** ◯ **NO**	Other:	◯ **$** ◯ **%:**	
◯ **YES** ◯ **NO**	Other:	◯ **$** ◯ **%:**	

(55) ◯ **YES** ◯ **NO** – Have the participants and beneficiaries been provided a general statement that such SDBA fees mentioned above exist and that they may be charged against the participant or beneficiary's individual account when purchasing or selling a security. If "YES" please identify the document that provides this information.[174]

[170] FAB 2012-02, Q&A 13
[171] FAB 2012-02, Q&A 13
[172] FAB 2012-02, Q&A 13
[173] FAB 2012-02, Q&A 13; 29 CFR § 2550.404a-5(c)(3)(i)(A)
[174] FAB 2012-02, Q&A 13

Name of Document	Page Description is Found

(56) ◯ **YES** ◯ **NO** – Have the participants and beneficiaries been provided directions as to how the participant or beneficiary can obtain information about SDBA fees in connection with any particular investment? If "YES" please identify the document that provides this information.[175]

Name of Document	Page Description is Found

(57) ◯ **YES** ◯ **NO** – Have the participants and beneficiaries been advised to query the SDBA provider about any fees, including undisclosed fees, associated with the purchase or sale of a security before purchasing or selling any security? If "YES" please identify the document that provides this information.[176]

Name of Document	Page Description is Found

(58) ◯ **YES** ◯ **NO** – Have the participants and beneficiaries been provided a statement of the dollar amount of fees and expenses that were actually charged during the preceding quarter against their SDBA account? If "YES" please identify the document that provides this information.[177]

Name of Document	Page Description is Found

(59) ◯ **YES** ◯ **NO** – Does the quarterly SDBA fee statement include a clear description of the services to which the charges relate? If "YES" please identify the document that provides this information. [178]

Name of Document	Page Description is Found

(60) ◯ **YES** ◯ **NO** – In your opinion, does the general description provided to participants and beneficiaries sufficient information to understand how the window, account or arrangement works? If NO, please explain why.

SECTION: DISCLOSURE ERRORS

(61) ◯ **YES** ◯ **NO** – Based on my assessment, do you believe the CSP acted in good faith and with reasonable diligence when providing fee disclosures according to the regulatory requirements of 408(b)(2)?[179]

[175] FAB 2012-02, Q&A 13
[176] FAB 2012-02, Q&A 13
[177] FAB 2012-02, Q&A 13; 29 CFR § 2550.404a-5(c)(3)(ii)(A)
[178] FAB 2012-02, Q&A 13; 29 CFR § 2550.404a-5(c)(3)(ii)(B)
[179] 29 CFR § 2550.404a-5(c)(3)(vii)

(62) ◯ **YES** ◯ **NO** – In your evaluation, has the CSP alerted the RPF to any disclosure errors or omissions? If YES, please complete the following:

Error or Omission Disclosed	Date Disclosed

(63) ◯ **YES** ◯ **NO** –Based on your assessment, do you believe the CSP corrected the error or omission within 30 days from the date the CSP discovered the error omission? If YES, please describe how you validated your conclusion.

Error or Omission Discovered	Date Discovered	Date Corrected

(64) ◯ **YES** ◯ **NO** –Based on your review have there been any disclosure errors or omissions that have not been addressed by the CSP? If YES, please identify the errors or omissions under each applicable section of the regulations:

408(b)(2) Section	Error or Omission that was not Disclosed but should have been	Date Occurred
(c)(1)(iv)[180]		
(c)(1)(v)(B)[181]		
(c)(1)(vi)[182]		

SECTION: TERMINATION OF CONTRACT OR ARRANGEMENT[183]

This section does not need to be completed if there are no costs associated with terminating a CSP's services to the covered plan. In other words, if the RPF can termination the contract or arrangement on short notice without cost, penalties or surrender charges of any type skip this section.

(65) ◯ **YES** ◯ **NO** – Can the covered plan terminate the services of the CSP on short notice?

a. If YES, please identify the contractual provision or the reason why you believe services can be terminated on short notice:

b. If NO, please identify the contractual provision or the reason why you believe services cannot be terminated on short notice:

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[180] This section deals with the initial disclosure requirements such as services, status, compensation, recordkeeping, investment disclosures-fiduciary services, investment disclosures-recordkeeping and brokerage services and the manner of receipt of compensation.
[181] This section deals with changes that must be reported within 60 days.
[182] This section deals with the timing of reporting obligations tied to the reporting and disclosure obligations of Title 1 of ERISA.
[183] 29 CFR § 2550.404b-2(c)(3); 77 FR 5650 (Feb 3, 2012)

(66) ◯ **YES** ◯ **NO** ◯ **N/A** –Has the CSP provided the RPF with a description of any compensation it, an affiliate or a subcontractor expects to receive in connection with terminating the contract or arrangement? [184] If YES, please describe the amount and terms of the compensation expected upon termination of the contract:

Description of Compensation	Terms applicable to Cessation of the Contract or Arrangement

(67) ◯ **YES** ◯ **NO** ◯ **N/A** –Has the CSP provided the RPF with a description of how prepaid amounts will be calculated and refunded?[185] If YES, please describe how the prepaid amount will be calculated and refunded:

Description of Compensation	Describe how prepaid amounts will be calculated and refunded

(68) ◯ **YES** ◯ **NO** – Are there any restrictions associated with terminating your contract or arrangement with this CSP? If YES, please describe the restriction:

(69) ◯ **YES** ◯ **NO** – Is the covered plan subject to a penalty to terminate the CSPs' contract or arrangement? If YES, please describe the penalty:

(70) ◯ **YES** ◯ **NO** – Is the covered plan subject to a contract provision which reasonably compensates the CSP for loss upon early termination? If YES, please describe the provision and how it is calculated:

(71) ◯ **YES** ◯ **NO** – Is a minimal fee charged at termination to allow for the recoupment of reasonable start-up costs? If YES, please describe the calculation of the charge and the start-up cost to which it applies:

[184] 29 C.F.R § 2550.408b-2(c)(1)(iv)(C)(4); 77 FR 5638
[185] 29 C.F.R § 2550.408b-2(c)(1)(iv)(C)(4); 77 FR 5638

(72) ◯ **YES** ◯ **NO** – Does the termination clause include a provision to cover reasonable foreseeable expenses related to the vacancy and reletting of office space upon early termination of a lease? If YES, please explain:

(73) ◯ **YES** ◯ **NO** – Does the payment of a penalty cover more than the actual loss? If YES, please explain why and how it covers more than the actual loss:

(74) ◯ **YES** ◯ **NO** – Does the termination provision require mitigation of damages? If YES, please explain the provision:

SECTION: EFFECTIVE DATE

(75) ◯ **YES** ◯ **NO** – Is this assessment conducted to determine compliance with 408(b)(2) as of the original effective date of July 1, 2012? [186]

(76) ◯ **YES** ◯ **NO** – Is this assessment conducted to determine compliance with 408(b)(2) after the original effective date of July 1, 2012? [187] If so, as of what date: _____/_____/_____

a. ◯ **YES** ◯ **NO -** Is the assessment due to the establishment of a new CSP relationship?
b. ◯ **YES** ◯ **NO -** Is the assessment due to the continuation of an existing CSP relationship?

SECTION: EXEMPTION ANALYSIS

(77) ◯ **YES** ◯ **NO** ◯ **N/A** – Did the RPF compare the disclosure to the regulations to confirm the disclosures were complete?[188] If YES,

[186] 29 CFR § 2550.404b-2(c)(1)(xii)

[187] 29 CFR § 2550.404b-2(c)(1)(xii)

[188] *The Department does not believe that responsible plan fiduciaries should be entitled to relief provided by the class exemption absent a reasonable belief that disclosures required to be provided to the covered plan are complete. To this end, responsible plan fiduciaries should appropriately review the disclosures made by covered service providers. Fiduciaries should be able to, at a minimum, compare the disclosures they receive from a covered service provider to the requirements of the regulation and form a reasonable belief that the required disclosures have been made*." 77 FR 5647-48 (2-3-12) (Emphasis added)

a. When was this diagnostic analysis completed? _____/_____/_____

b. Who prepared the analysis? _____

(78) In your opinion, did the:

a. ◯ **YES** ◯ **NO** - CSP fail to provide all required disclosures?[189]

b. RPF reasonably believe the CSP disclosed the information required under:

(i) ◯ **YES** ◯ **NO -** The initial disclosure requirements 29 C.F.R. 2550.408b-2(c)(1)(iv)?[190]

(ii) ◯ **YES** ◯ **NO** - ERISA Title 1 Reporting and Disclosure obligations referenced under 29 C.F.R. 2550.408b-2(c)(1)(vi)?[191]

c. ◯ **YES** ◯ **NO** ◯ **N/A** - RPF discover a failure by the CSP to disclose any required information?[192]

d. ◯ **YES** ◯ **NO** ◯ **N/A -** Upon discovering a failure to disclose required information, did the RPF submit a written request to the CSP for the required disclosures?[193] If YES, what information was requested, when was it requested and when was it received?

Information Requested	Date Requested	Date Received
1)		
2)		
3)		

d. ◯ **YES** ◯ **NO** ◯ **N/A** - CSP provide the requested disclosures within 90 days of the date of the written request?

e. ◯ **YES** ◯ **NO** ◯ **N/A** - RFP report the CSP to the DOL for failure to provide the requested materials within 90 days from the date of the request?[194]

f. RFP report the CSP to the DOL within 30 days of the CSP's:

(i) ◯ **YES** ◯ **NO** ◯ **N/A** - Failure to provide the requested materials within 90 days,[195] or

(ii) ◯ **YES** ◯ **NO** ◯ **N/A** - Communication with the RPF that they refuse to provide the requested information?[196]

[189] 29 C.F.R. 2550.408b-2(c)(1)(ix)(A)
[190] 29 C.F.R. 2550.408b-2(c)(1)(ix)(A)
[191] 29 C.F.R. 2550.408b-2(c)(1)(ix)(A)
[192] 29 C.F.R. 2550.408b-2(c)(1)(ix)(B)
[193] 29 C.F.R. 2550.408b-2(c)(1)(ix)(B)
[194] 29 C.F.R. 2550.408b-2(c)(1)(ix)(C) and (E)
[195] 29 C.F.R. 2550.408b-2(c)(1)(ix)(E)(1)
[196] 29 C.F.R. 2550.408b-2(c)(1)(ix)(E)(2)

SECTION: SIGNATURE

Under penalties of perjury and to the best of my knowledge and belief, I attest that this assessment is an accurate, true and complete reflection of the efforts made to comply with the regulatory disclosure requirements necessary to secure a prohibited transaction exemption under ERISA § 408(b)(2).

◯ Based on the documents reviewed, it is my opinion, that this covered service provider has provided the complete fee disclosures within the prescribed time frame that meet the terms as prescribed by 29 C.F.R. 2550.408b-2(c).

◯ Based on the documents reviewed, it is my opinion, that this covered service provider has not provided complete fee disclosures that meet the terms as prescribed by 29 C.F.R. 2550.408b-2(c). It is my opinion that this plan does not meet the fee disclosure requirements according to 29 C.F.R. 2550.408b-2(c). The corrective steps necessary to bring this plan into compliance are as follows:

(1)
(2)
(3)

For the responsible plan fiduciary to reduce or eliminate personal liability for the prohibited transaction that currently exists, the responsible plan fiduciary must request the information identified above from the covered service provider in writing. If the covered service provider fails to provide all the required information stated above within 90 days of the date of the letter, the responsible plan fiduciary must report the covered service provider to the Department of Labor d("DOL") within 30 days. Even if the covered service provider submits the required disclosure information to the responsible plan fiduciary after the 90th day, he/she must still report the covered service provider to the DOL. See Exhibit A and B for instructions.

This assessment has been prepared by:

Sign Name _____ Date _____

Print Name _____

Phone _____ Email _____

SECTION: GLOSSARY OF TERMS

12b-1 Fee SEC Rule 12b-1 was established in 1980 to provide mutual funds the opportunity to assess a maximum annual charge deducted from fund assets to pay for distribution and marketing costs. The amount is typically assessed against fund assets on a percentage. The amount is reported in the fund's prospectus. Although it was intended the 12b-1 fee be paid to a registered broker-dealer or their registered representative, it is often included as part of the revenue sharing amount that is rebated back to the client to offset retirement plan expenses.

Account fees – The term is broadly applied to any account fee charged against the participant for virtually any reason. For example, a fee to hold or account for certain types of assets like a brokerage account.

Active Management: Describes the investment process of an investment manager ("IM"). Active management means the IM is attempting to exploit market opportunities discovered through research. Securities are activity bought and sold activity to achieve expected returns.

Advisory Fee – An advisory fee is not a commission. The fee is charged to the plan as a percentage of assets or a hard dollar fee that can be hourly or project based. Advisors that charge a fee are typically dually registered or registered exclusively through a Registered Investment Advisor. Services to which the fee applies are typically outlined in a client service agreement.

Annual Rate of Return or "ROR": Is the annual rate an investment gains or losses during a particular time frame. The ROR is expressed as a percentage.

Auditing -

Appreciation: Is the increase in value an investment experiences when investment performance is positive.

Asset Allocation: Is the allocation of an investment portfolio among a number of different investment alternatives with varying degrees of risk to minimize the risk of large losses in relationship to the investors tolerance for risk, time horizon and investment goals.

Asset Class: The three most common asset classes are equities (e.g., stocks), fixed income (e.g., bonds), and cash equivalents (e.g., money market funds or stable value investments). All investment options fall under one of these three categories.

Average Annual Total Return: This is the yearly average percentage increase or decrease in an investment's value. It includes dividends, gains or losses.

Back-end Load: A fee imposed by an investment when it is sold or redeemed. It is often applied to investments that have not been held for a minimum period of time. It is often referred to as a "contingent deferred sales charge."

Basis Point – It is one-hundredth of a percentage point. For example, 1 basis point equals .01%.

Exhibit A

LETTER TO A COVERED SERVICE PROVIDER
That has not provided disclosures

Dear [Name of CSP]

It is my understanding that I was to receive the required 408(b)(2) fee disclosures on July 1, 2012. As of the date of this letter, those disclosures have not been received. Please send them as soon as possible or let me know if you have no intention of providing the required disclosures. Of course, if you do not believe you are a CSP and; therefore, are not responsible for providing any disclosures; please let me know the reasons why you believe you are exempt from providing the required disclosures.

If I do not receive the required disclosures from you within 90 days from the date of this letter, I will be forced to report you directly to the Department of Labor ("DOL"). In addition, the DOL has stressed in the regulation that should you fail to provide the required disclosures I must take action to terminate our working relationship as expeditiously as possible. Clearly, it is our preference to avoid this requirement and continue our working relationship, but we do need your help in complying with this legal obligation.

Again, please provide this information as soon as possible or let me know why you believe you are not obligated to comply with this requirement or if you do not intend to comply.

Thank you for your attention to this matter.

Exhibit B

This Exhibit provides an outline of the steps to report a covered service provider ("CSP") to the Department of Labor ("DOL") that declined or failed to respond to a request for information. If, the responsible plan fiduciary ("RPF") fails to report a CSP to the DOL, then the RPF becomes personally liable for the prohibited transaction. Although the preamble and the regulations are silent as to the length of time that may expire before the RPF becomes liable for the prohibited transaction, it seems logical to assume the DOL will be intolerant of a RPF that is remiss in their duties to protect plan participants and beneficiaries on a timely basis. Therefore, to ensure the RPF can rely on the exemption provided by ERISA 408(b)(2), it is recommended the RPF report a CSP as soon as possible. In short, the only way mitigate risk for the RPF is to report a noncompliant CSP to the DOL in a timely manner.[197]

NOTIFICATION TO THE DEPARTMENT OF LABOR[198]

Reporting a Covered Service Provider that fails to provide fee disclosure information

SEND TO:

U.S. Department of Labor
Employee Benefits Security Administration
Office of Enforcement
200 Constitution Ave., NW., Suite 600
Washington, DC 20210

OR OE-DelinquentSPnotice@dol.gov[199]

PLAN INFORMATION REQUIRED:

(Name of the Covered Plan)[200]
(Plan Number)[202]

PLAN SPONSOR INFORMATION REQUIRED:

(Plan sponsor's name, address, and EIN)[201]

RESPONSIBLE PLAN FIDUCIARY INFORMATION REQUIRED:

(Name, address, and telephone number of the responsible plan fiduciary)[203]

COVERED SERVICE PROVIDER INFORMATION REQUIRED:

(Name, address, phone number, and, if known, EIN of the covered service provider)[204]
(A description of the services provided to the covered plan)[205]
(A description of the information that the covered service provider failed to disclose)[206]
(The date on which such information was requested in writing from the covered service provider)[207]
(A statement as to whether the covered service provider continues to provide services to the plan)[208]

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[197] 29 C.F.R. § 2550.408b-2(c)(1)(ix)(C) If the covered service provider fails to comply with such written request within 90 days of the request, then the responsible plan fiduciary notifies the Department of Labor of the covered service provider's failure, in accordance with paragraph (c)(1)(ix)(E) of this section
[198] 29 C.F.R. § 2550.408b-2(c)(1)(ix)(D)
[199] 29 C.F.R. § 2550.408b-2(c)(1)(ix)(F)
[200] 29 C.F.R. § 2550.408b-2(c)(1)(ix)(D)(1)
[201] 29 C.F.R. § 2550.408b-2(c)(1)(ix)(D)(3)
[202] 29 C.F.R. § 2550.408b-2(c)(1)(ix)(D)(2) and Form 5500, Part II, Line 1b
[203] 29 C.F.R. § 2550.408b-2(c)(1)(ix)(D)(4)
[204] 29 C.F.R. § 2550.408b-2(c)(1)(ix)(D)(5)
[205] 29 C.F.R. § 2550.408b-2(c)(1)(ix)(D)(6)
[206] 29 C.F.R. § 2550.408b-2(c)(1)(ix)(D)(7)
[207] 29 C.F.R. § 2550.408b-2(c)(1)(ix)(D)(8)
[208] 29 C.F.R. § 2550.408b-2(c)(1)(ix)(D)(9)