



The Adviser's Role in A 408(b)(2) Prudent Process . . . and in the Implementation of Decisions

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Plan Expenses: Prohibited Transactions

Under ERISA §408(b)(2), the prohibited transaction rules permit:

“Contracting or **making reasonable arrangements** with a party in interest for . . . services necessary for the establishment or operation of the plan, **if no more than reasonable compensation is paid therefor.**”

Reasonable Contract or Arrangement

The 408(b)(2) regulation provides that an arrangement for services between a “covered plan” and a “covered service provider” is not reasonable . . . unless certain disclosure are made.

- Consequence of failure
- covered provider.
 - plan sponsor (responsible plan fiduciary).
 - Prohibited transaction
 - Fiduciary

408(b)(2): Prohibited Transaction Issues

The failure to provide the disclosures results in the arrangement becoming a prohibited transaction for the adviser (or other covered service provider).

The failure to receive the disclosures will also result in a prohibited transaction for the plan fiduciaries unless they take specified steps.

See Drinker Biddle bulletin, “ERISA Service Provider Disclosures: What Plan Sponsors Need to Do Now,” <http://www.drinkerbiddle.com/resources/publications/2012/ERISAServiceProviderDisclosuresWhatPlanSponsorsNeedtoDoNow?Section=Publications>.

408(b)(2): Prohibited Transaction Issues

The steps are:

- Determine if any “covered” service providers failed to deliver the disclosures.
- Determine if the disclosures were “adequate.
- Request in writing that any missing or inadequate disclosures be made.
- If the covered service provider refuses to provide the disclosures or does not provide them in 90 days, terminate the service provider and report to the DOL.

Prohibited Transaction

The preamble to the final regulation explains the DOL view:

“The Department does not believe that responsible plan fiduciaries should be entitled to relief . . . absent a reasonable belief that disclosures required to be provided to the covered plan are complete . . .

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.”

Note: Checklist approach to compliance.

Fiduciary Duty

The preamble to the proposed 408(b)(2) regulation explained the DOL's position that:

“Section 404(a) of ERISA requires that the responsible plan fiduciary engage in an objective process designed to elicit information necessary **to assess:**

- **the reasonableness of the compensation or fees** to be paid for services;
- *the qualifications of the service provider; and*
- *the quality of the services that will be provided.”*

Evaluation of Providers

The preamble continued:

“Although the steps taken by a responsible plan fiduciary may vary depending on the facts and circumstances, solicitation of bids among service providers is a means by which the responsible plan fiduciary can obtain information relevant to the decision-making process.”

Also, see Tussey v. ABB: “market data.”

Evaluation of Providers

The preamble also explained:

“Further, a fiduciary need not necessarily select the lowest-cost service provider, so long as the compensation or fees paid to the service provider are determined to be reasonable in light of the particular facts and circumstances.”

Understanding Disclosures

In the preamble to the final regulation, the DOL explained:

“If responsible plan fiduciaries need assistance in understanding any information furnished by the service provider, as a matter of prudence, they should request assistance, either from the service provider or elsewhere.”

“ . . . [I]f a plan fiduciary needs particular information to make an informed decision when selecting or monitoring a plan service provider, then ERISA section 404’s duty of prudence requires that fiduciary to request such information.”



Reader's Guide and Benchmark Group

WHAT IS THIS REPORT?

This Fiduciary Benchmarks Fees, Plan Design, and Participant Success Measures Report provides comprehensive "apples-to-apples" comparisons of a plan's fees, design, and participant success measures to those of a Benchmark Group of **37** similar plans.

Note: Your report does not include performance evaluations of the plan's investment options. This important information is beyond the scope of this report.

WHY IS IT IMPORTANT?

Department of Labor regulations under ERISA and, specifically, section 408(b)(2) require that all fees be "reasonable" for services being provided. The information in this report can help in working with service providers to meet this requirement and improve the plan.

HOW WAS THIS REPORT BUILT?

We used a four-step process to build the report:

1. We identified **37** similar plans for comparison (Benchmark Group).
2. We summarized fees being paid for the plan based on the information provided by the plan sponsor and the plan's service providers.
3. We examined the plan's design and associated complexity.
4. We examined **10** participant success measures that indicate how well plan participants are preparing for retirement.

HOW WAS THE BENCHMARK GROUP DETERMINED?

We considered **9** relevant sort factors to identify the **37** similar plans that comprise the Benchmark Group.

Benchmark Group Sort Factors	This Plan	Benchmark Group
Plan Assets	\$50,000,000	\$40mm - \$60mm
Number of Participants	775	565 to 1055
Last Year You Bid or Reviewed Your Plan	2011	Last 3 years
Company Industry	Computer and Electronic Product Manufacturing	All
Plan Type	401(k)	Defined Contribution
Uses Auto-Enrollment	For New Hires	24%
Has Employer Match	Yes	78%
% of Plan Assets in Index Funds	10%	0% to 55%
% of Plan Assets in Managed Accounts	5%	0% to 5%

THIS PLAN'S SERVICE PROVIDERS

Service Providers Used Across the Benchmark Group		
Service Provider Type	% of Benchmark Group Using Service Provider Type	This Plan's Specific Service Providers
Recordkeeper	100%	Yamane Plan Services
Advisor / Consultant	78%	ACME Consulting
Third-Party Administrator	0%	None
Other Service Providers	11%	None

HOW IS THIS REPORT BEST USED?

FBI Reports are a key element in an annual plan review process. Maximum value is achieved when the plan's sponsor, its advisor or consultant, recordkeeper and other plan service providers participate.



Service Providers' Fee Disclosure

This page summarizes the fees paid to the plan's primary service providers. It's important to consider plan services when assessing whether fees are reasonable. Please note that self directed account and participant level activity fees are not included in the information below.

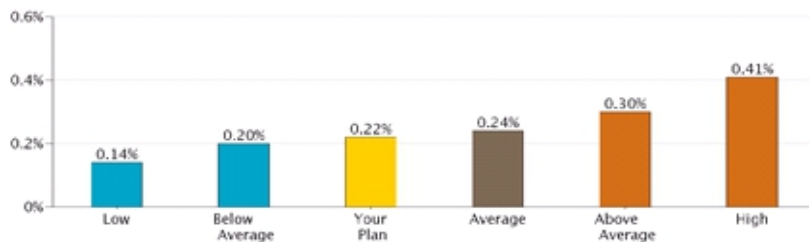
RECORDKEEPER

Disclosure of Recordkeeper Fees

Investment Fees
Managed Account Fees
Other Fees
ERISA Spending Account Credit
Total Fees

Plan Fee in Dollars	% of Total Fee
\$123,100	77%
\$2,250	1%
\$35,000	22%
\$(50,000)	-
\$110,350	100%

Recordkeeper's Fees vs. Benchmark Group in percent



HOW DO THE PLAN FEES COMPARE

to the average in the Benchmark Group?

- this plan's recordkeeper fees are approximately **0.22%** per year
- this is **0.02%** less per year
- this is equal to **\$10,000** less per year
- this is **\$13** less per participant per year

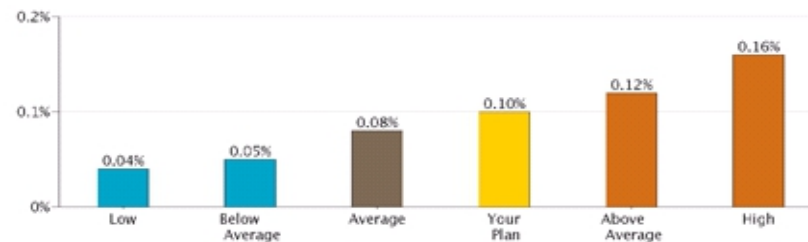
ADVISOR/CONSULTANT

Disclosure of Advisor/Consultant Fees

Investment Fees
Commissions
Finders' Fees
Other Fees
Total Fees

Plan Fee in Dollars	% of Total Fee
-	0%
-	0%
-	0%
\$50,000	100%
\$50,000	100%

Advisor/Consultant's Fees vs. Benchmark Group in percent



HOW DO THE PLAN FEES COMPARE

to the average in the Benchmark Group?

- this plan's advisor/consultant fees are approximately **0.10%** per year
- this is **0.02%** more per year
- this is equal to **\$10,000** more per year
- this is **\$13** more per participant per year

408(b)(2): Reasonable Compensation

Issues for “unreasonable” compensation:

- Committee minutes, reports, emails, etc.
- ERISA recapture accounts.
- Share classes and revenue sharing.

Duty to Monitor

“Finally, although this proposal looks to disclosures made at the time a service contract or arrangement is entered into or renewed, **responsible plan fiduciaries must continue to monitor service arrangements and the performance of service providers .**”

Preamble to the DOL’s proposed regulation under ERISA §408(b)(2).

Subsequent Disclosures

- Change to disclosed information:
 - Within 60 days of covered service provider being informed of change.
 - Annually for investment disclosures.

The Adviser Value

The value of an adviser's services may be measured in at least three ways:

- The quantity, or range, of services.
- The nature of the services.
- The “quality” of the services.

The key is to have “measurable” definitions.

The Adviser Value

Plan-level services:

- 3(38) discretionary investment manager
- 3(21) non-discretionary fiduciary advisor
- Investment policy statement
- Attending committee meetings
- Plan design consulting
- Plan success consulting

continued . . .

The Adviser Value

Continued . . .

- Fiduciary education
- Fee and expense analysis/benchmarking (408(b)(2))
- Assistance with 404a-5 compliance
- Vendor oversight and problem resolution
- Vendor search/RFP

The Adviser Value

Participant services:

- 3(38) discretionary investment management
- 3(21) non-discretionary fiduciary advice
- Asset allocation models
- One-on-one meetings
- Investment education
- Enrollment meetings
- Retirement education meetings
- Facilitate participant success data and communication

The Hierarchy of Value

What are the “results” for:

- Investment services.
- Expense and cost services.
- Risk management services.

What is the value of participant services?

- Participation results.
- Deferral results.
- Investing results.
- Retirement readiness results.
- Retirement security results.

Common Adviser Services

The following are common—or perhaps “average”—adviser services:

- Attend committee meetings and provide reports.
- Assist in selection, monitoring, removal and replacement of core investments (DIAs).

continued . . .

See, for example, Fee Benchmarker™ by Ann Schleck & Co. LLC, www.annschleck.com.

Common Adviser Services

Continued . . .

- Assist in selection of investment criteria and development of customized IPS.
- Conduct employee enrollment and education meetings.
- Assist in analysis of costs and compensation.
- Advice on plan design.
- Coordination with providers.

Above Average Services

The following are less common, but valuable, services:

- 3(38) investment management: Plans or participants
- Participant investment advice
- Consulting and accountability for outcomes:
 - participation
 - deferral rates
 - participant investing
 - retirement readiness
- Planning meetings with pre-retirees.
- Fiduciary training and risk management.

Note: The greatest differences are in participant services.

Hierarchy of Values

Plan-level investment selection and monitoring:

- 3(38) investment management.
- 3(21) investment advice.
- Non-fiduciary investment.
- Detriment: Conflicts of interest.

Hierarchy of Values

Participant-level investing:

- One-on-one meetings.
- 3(38) investment management (individualized).
- Portfolios, including TDFs and asset allocation strategies.
- 3(21) investment advice (individualized).
- Investment education.
- Detriment: Conflicts of interest.

Hierarchy of Values

Participant savings:

- One-on-one meetings.
- Gap analysis and projections.
- Meetings with pre-retirees.

Hierarchy of Values

Plan risk management:

- Benchmarking and analysis at least every three years of:
 - costs
 - compensation of service providers
- Share class disclosure and evaluation every three years.
- Detailed investment reports consistent with IPS.
- Committee meetings.

Hierarchy of Values

Plan success metrics: Above average results for participants for:

- Retirement readiness.
- Participation.
- Deferral rates.
- Portfolio investing.
- Retirement income.

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