



# After 408(b)(2): Benchmarking Reasonableness

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April 27, 2012

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# Plan Expenses under ERISA

The fiduciary responsibility rule in ERISA §404(a)(1)(A) provides:

“A fiduciary shall discharge his duties . . . for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan. . . .”

# 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.**”

Also, see DOL Advisory Opinions 97-15A and 97-16A.

# 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 the 408(b)(2) regulation is satisfied.

Effective date: July 1, 2012 for both new and existing arrangements.

Consequence of failure -- covered provider.  
-- plan sponsor.

# Covered Service Provider

The primary types of covered service providers are:

- Recordkeepers
- Investment advisers (RIAs)
- Broker-dealers (“financial advisers”)
- Third party administrators (with indirect compensation)

# Disclosures

The following disclosures must be made:

- Services
- Status
- Compensation (vs. Cost)
  - Direct
  - Indirect

# Disclosures

The regulation does not require that the disclosures be made in any particular format.

As a result, multiple documents may be used.

But, in the future, a “guide” may be required.

# Disclosure of Compensation

“Compensation” may be described or estimated as a monetary amount, formula, percentage of assets, or a per capita charge or, if the compensation cannot reasonably be expressed in such terms, by any other reasonable method.

**Any description or estimate must contain sufficient information to permit evaluation of the reasonableness of the compensation.**



# Recordkeeper Disclosures

Under 408(b)(2), recordkeepers must disclose:

- All revenue sharing they receive; and
- Their charges for recordkeeping.

The difference between those two amounts should be (1) their direct charges and (2) credits or use of proprietary investments.

# Fiduciary Duties

The preamble to the regulation notes:

*The availability of information sufficient to enable the plan fiduciary to make informed decisions about the costs of recordkeeping is fundamental to a responsible plan fiduciary's ability to satisfy its ERISA obligations.*

# Expenses: Issues

The fiduciary concerns—post July 1:

- Is the compensation reasonable?
- Are the costs reasonable?
- Are the services adequate/appropriate?
- Are the conflicts manageable?

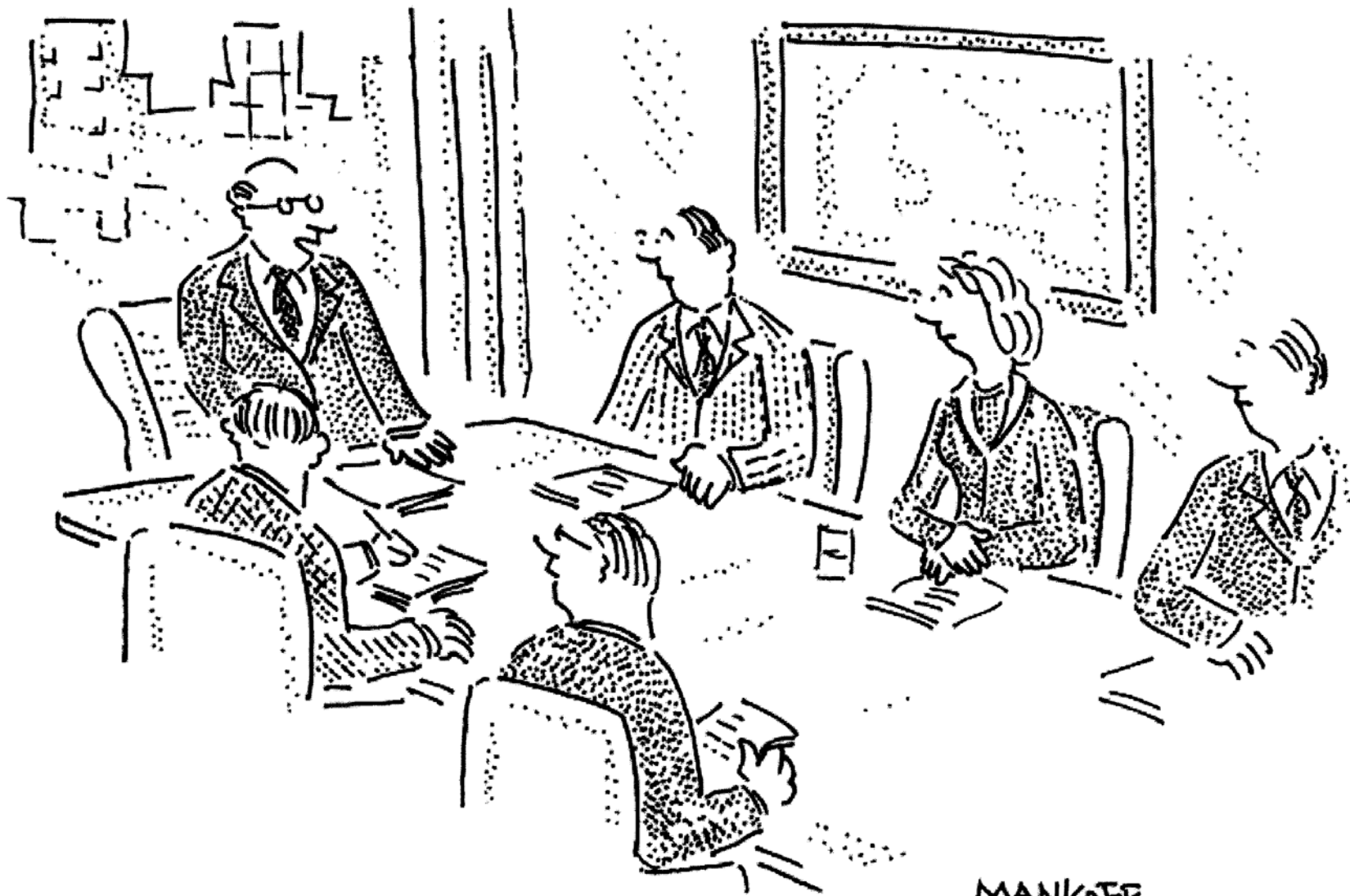
Plan committees must engage in a prudent process to evaluate these issues.

# Risk Management

## Considerations:

- Allocate costs to compensation.
- Calculate dollar amounts.
- Benchmark.
- Consider quality and quantity.
- Negotiate costs and compensation.

Note: Benchmarking (against appropriate peer groups) is a fundamental part of a prudent process.



MANKOFF

*"Let's never forget that the public's desire for transparency has to be balanced by our need for concealment."*



## 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 31 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 31 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 31 similar plans that comprise the Benchmark Group.

Benchmark Group Sort Factors	This Plan	Benchmark Group
Plan Assets	\$207,510,439	\$100mm - \$340mm
Number of Participants	6,359	1675 to 7640
Last Year You Bid or Reviewed Your Plan	2009	Last 3 years
Company Industry	Manufacturing	All
Plan Type	401(k)	Defined Contribution
Uses Auto-Enrollment	For New Hires	29%
Has Employer Match	Yes	77%
% of Plan Assets in Index Funds	14%	0% to 45%
% of Plan Assets in Managed Accounts	0%	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%	Recordkeeping, Inc.
Advisor / Consultant	85%	Acme Consulting
Third-Party Administrator	3%	None
Other Service Providers	13%	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.



## Plan Fees Summary

This page provides an overall summary of the plan's fees, with comparisons to the Benchmark Group. 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.

### FEES

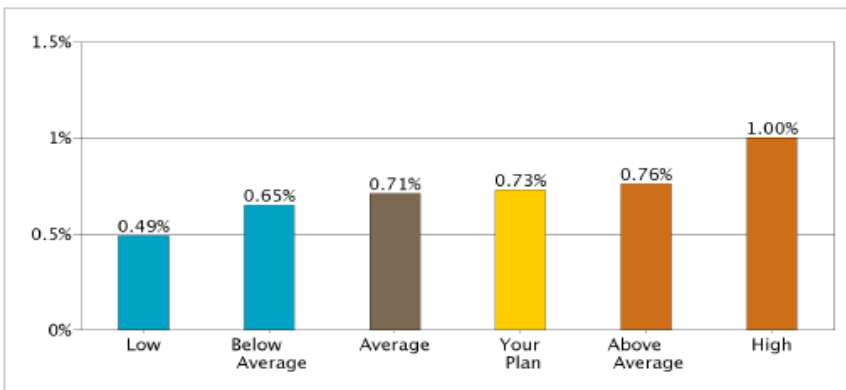
#### Distribution of Total Plan Fees by Source

	Plan Fee in Dollars	% of Total Fee
Investment Fees	\$1,233,902	68%
Commissions	-	0%
Finders' Fees	-	0%
Managed Account Fees	-	0%
Other Fees	\$583,720	32%
ERISA Spending Account Credit	\$(301,756)	-
<b>Grand Total</b>	<b>\$1,515,866</b>	<b>100%</b>

#### Distribution of Total Plan Fees by Service Provider

	Plan Fee in Dollars	% of Total Fee
Recordkeeper	\$508,720	34%
Advisor/Consultant	\$75,000	5%
Investment Managers	\$882,172	58%
Managed Accounts Provider	-	0%
Other Service Providers & Fees	\$49,974	3%
<b>Grand Total</b>	<b>\$1,515,866</b>	<b>100%</b>

Total Plan Fees vs. Benchmark Group in percent



#### HOW DO THE PLAN FEES COMPARE

to the average in the Benchmark Group?

- this plan's fees are approximately **0.73%** per year
- this is **0.02%** more per year
- this is equal to **\$41,502** more per year
- this is **\$7** more per participant per year



## 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.

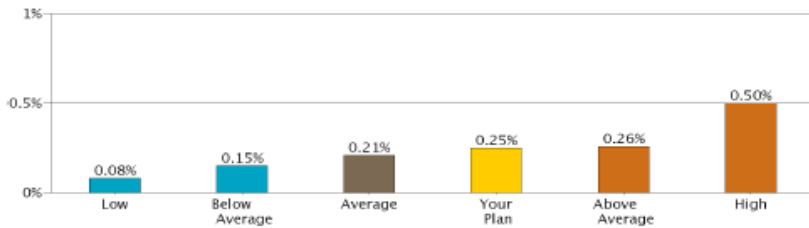
### RECORDKEEPER

Disclosure of Recordkeeper Fees

Investment Fees	-	0%
Managed Account Fees	-	0%
Other Fees	\$508,720	100%
ERISA Spending Account Credit	-	-
<b>Total Fees</b>	<b>\$508,720</b>	<b>100%</b>

Plan Fee in Dollars	% of Total Fee
-	0%
-	0%
\$508,720	100%
-	-
\$508,720	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 **0.25%** per year
- this is **0.04%** more per year
- this is equal to **\$83,004** more per year
- this is **\$13** more per participant per year

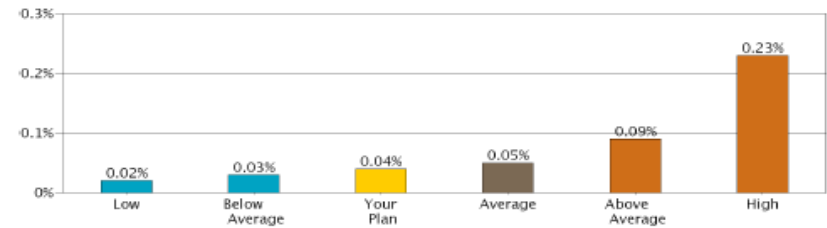
### ADVISOR/CONSULTANT

Disclosure of Advisor/Consultant Fees

Investment Fees	-	0%
Commissions	-	0%
Finders' Fees	-	0%
Other Fees	\$75,000	100%
<b>Total Fees</b>	<b>\$75,000</b>	<b>100%</b>

Plan Fee in Dollars	% of Total Fee
-	0%
-	0%
-	0%
\$75,000	100%
\$75,000	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 **0.04%** per year
- this is **0.01%** less per year
- this is equal to **\$20,751** less per year
- this is **\$3** less per participant per year





# Service Providers' Fee Disclosure

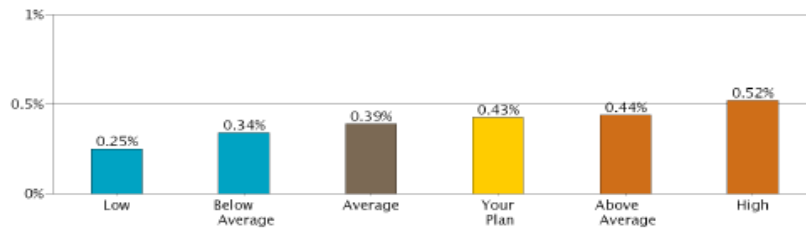
This page summarizes the fees paid to the plan's primary service providers. It's important to consider plan services when assessing whether fees are reasonable. Please note that self directed account and participant level activity fees are not included in the information below.

## INVESTMENT MANAGERS

### Disclosure of Investment Manager Fees

	Plan Fee in Dollars	% of Total Fee
Investment Fees	\$882,172	100%
Total Fees	\$882,172	100%

Investment Manager's Fees vs. Benchmark Group in percent



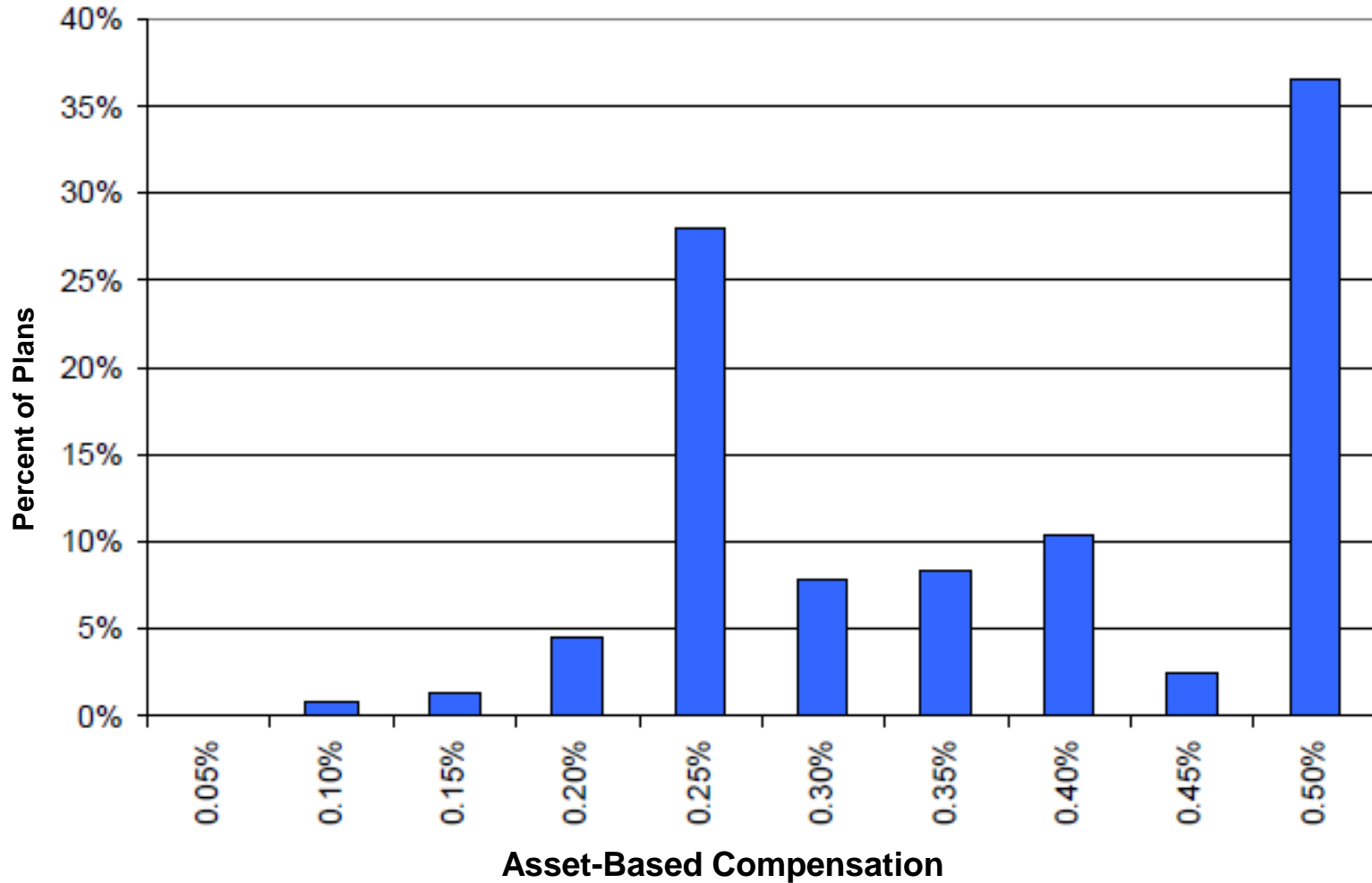
### HOW DO THE PLAN FEES COMPARE

to the average in the Benchmark Group?

- this plan's investment manager fees are approximately **0.43%** per year
- this is **0.04%** more per year
- this is equal to **\$83,004** more per year
- this is **\$13** more per participant per year

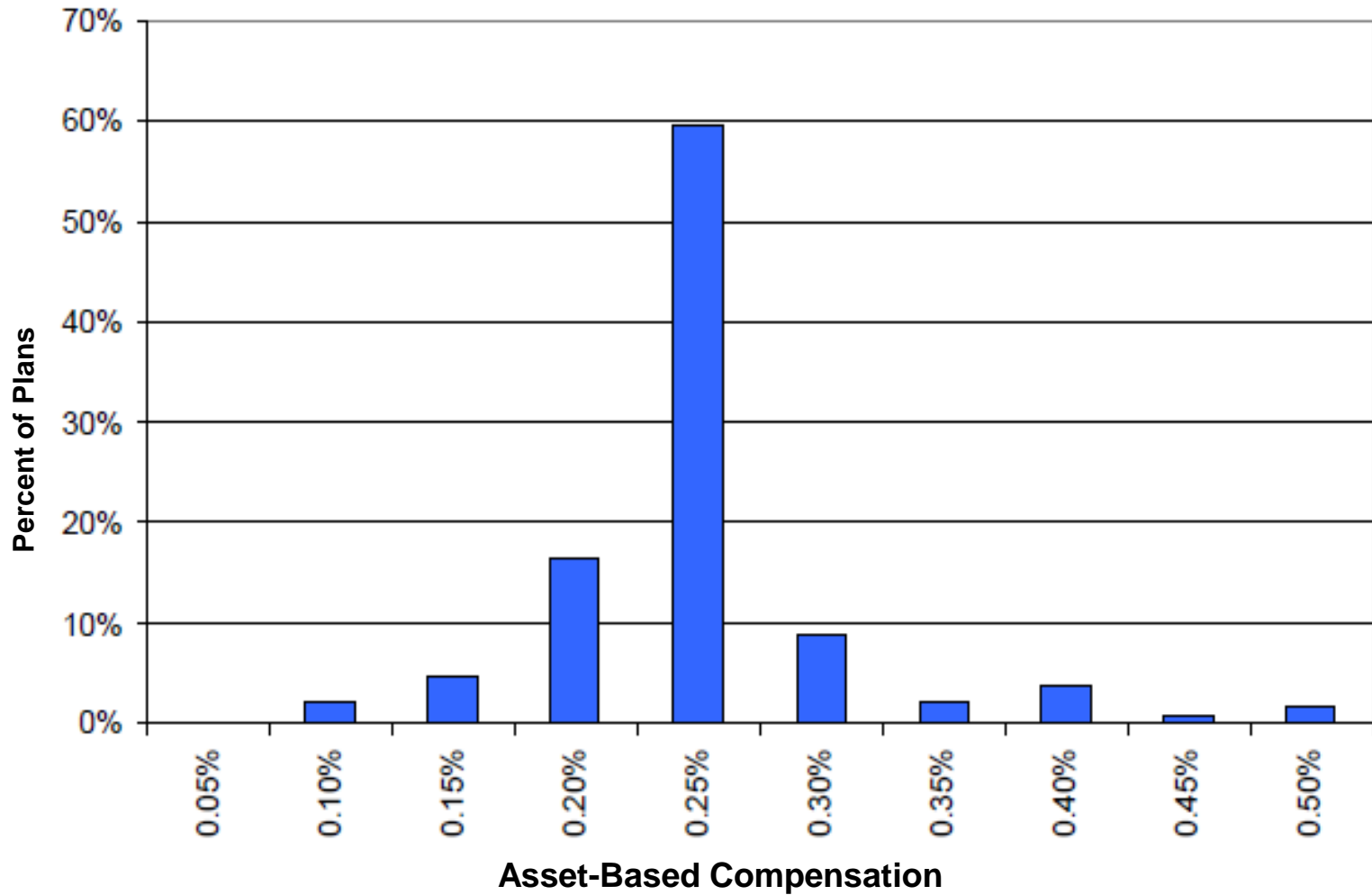
# Adviser Commissions

Plan Size: \$1M - \$3M



# Adviser Compensation

Plan Size: \$10M - \$15M



# What's Next?

- Continued focus on costs and compensation.
- Benchmarking advisers.
  - Lower fees.
  - Fixed fees.
  - Per service fees.
  - Focused advisers.
- Recordkeepers
  - Independent.
  - Bundled.
- Investments.
  - Low-cost funds.
  - Indexed funds.
  - Institutional funds.
  - Collective trusts.

# Evaluation of Disclosures

Probable effect for:

- participation.
- deferral rates.
- participant investing.
- benefit adequacy.

# Participant Disclosures

DOL regulation 2550.404a-5 imposes duties on fiduciaries for disclosures in participant-directed individual account plans. However, the “burden” is likely to fall on recordkeepers.

The regulation is not “applicable” until after the effective date for 408(b)(2), that is, August 30, 2012.

# Disclosures to Participants

The regulation requires disclosure of:

- Plan-related information
- Administrative expenses
- Individual expenses
- Investment-related expenses and information

# Timing of Disclosures

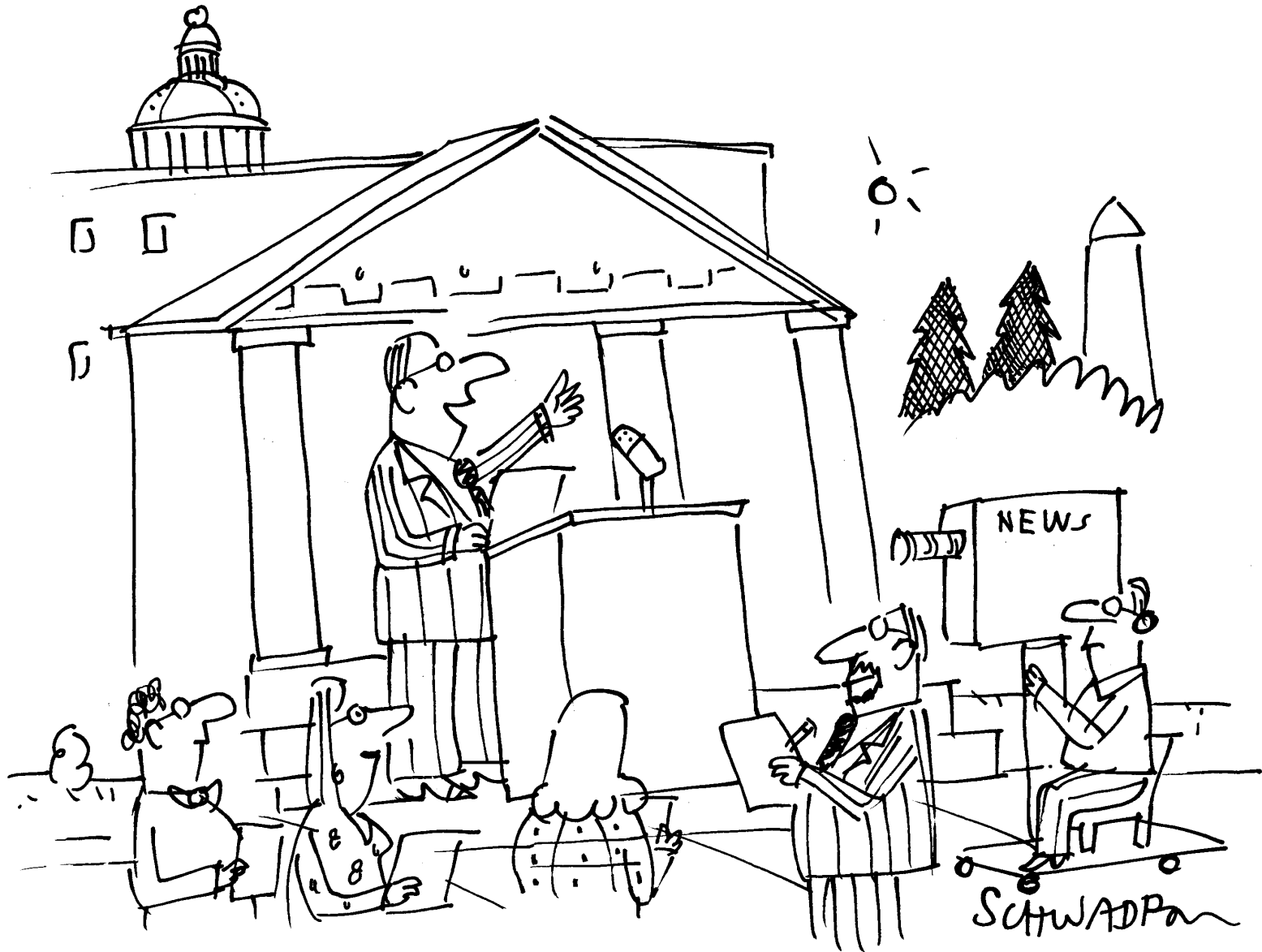
The disclosures must be provided:

- On or before the date on which a “**participant**” or beneficiary can first direct investments.
- At least annually thereafter.
- Quarterly statements regarding administrative and individual expenses.
- Website disclosures.



# Consequences of Participant Disclosures

- Expenses paid from plan:
  - Accounting fees.
  - Investment advisers fees.
  
- Expenses paid from investments.
  
- Expenses paid from expense recapture or forfeiture accounts.
  
- Expenses paid by plan sponsor.



"ANOTHER ADVANTAGE OF INCREASED REGULATIONS IS CREATING THOUSANDS OF JOBS FOR LAWYERS."

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