

## 408(b)(2) Preparedness Checklist

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- First, determine covered services and covered service providers under 408(b)(2).**
  - Compile list of covered plans**, where covered plans are any pension plan, including: 401(k); defined benefit; profit sharing; cash balance; money purchase; target benefit; stock bonus; multi-employer; ESOP and some 403(b) plans.
  - Determine which service providers are covered**, where a covered service provider is one that enters into an arrangement with a plan and reasonably expects to receive \$1,000 or more in compensation, direct or indirect, in connection with the services described in the regulation.
  
- Second, establish procedures to track receipt of disclosures and evaluate the completeness of the information contained therein.**
  - To determine whether disclosures are complete, ask whether there is enough information to meet reporting requirements under one of the following:
    - Is there enough detail to report on Form 5500, and Schedule C if more than 100 employees?
    - Is there enough information to provide complete participant-level disclosures?
  - Have all of the following areas of disclosure been assessed?
    - Services to be provided to the plan under the contract;
    - Direct and indirect compensation to be received by the service provider and its affiliates;
    - Statement as to whether any services may give rise to fiduciary status under ERISA or the Advisers Act of 1940; and
    - Method for calculating and repaying any prepaid compensation or surrender penalties in the event that the contract is terminated.
  
- Third, establish processes to request additional information, if necessary.**
  - Determine if additional information is necessary. Additional information is necessary upon immediate discovery of a defect in the required 408(b)(2) disclosures (see four areas of disclosure required in step two).
  - If additional information is necessary, comply with the safe harbor provisions when requesting the additional information from service providers:
    - Did you enter the service contract reasonably believing the disclosure requirements were met?



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- If yes, did you make a written request to the service provider for additional information needed to cure the defect?
- If yes, did you notify the DOL of uncooperative service providers within 30 days of either of the following dates: (1) the date of the service provider's refusal to provide requested information or (2) 90 days after the date of the written request by the plan sponsor to the service provider?
- Fourth, develop and/or utilize methods for evaluating or benchmarking the disclosed fees vis-à-vis the services disclosed.**
  - Identify third-party tools to benchmark fees and services for each covered service provider identified in step 1 above.
  - For each service provider, assess each of the following:
    - Service provider's qualifications compared to other service providers;
    - Service provider's quality of services compared to other service providers; and
    - Service provider's costs in light of services compared to other service providers.
- Fifth, continually document, with prudence, the above-referenced evaluation.**
  - Prepare a written record of the process you followed in reviewing potential service providers. The written record should include the following:
    - Steps you took to evaluate each service provider;
    - Specific reasons for your selection of a particular provider; and
    - Specific reasons for not choosing particular providers.
  - Receive a commitment from your service provider(s) to regularly provide you with information regarding the services they provide.
  - Continually review and document review of the following:
    - Performance of your service provider(s) to ensure that they are providing the services in a manner and at a cost consistent with the agreements;
    - Plan participant comments or any complaints about the services provided; and
    - Whether there have been any changes in the information you received from the service provider prior to hiring

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