

5 fee disclosure steps for plan sponsors

The July 1 deadline for 408(b)(2) disclosures for plan sponsors is now on the horizon; here are five ways to properly communicate, explain fees and meet participant deadlines

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The impending deadlines for plan sponsors to begin officially disclosing fees in the 401(k) space are approaching rapidly. America's major retirement plan providers say they've been working on disclosure arrangements for years – evidenced by a litany of white papers and preparation guides available online. But are plan sponsors ready to meet the letter of the law for the July 1 [408\(b\)\(2\)](#) deadline to receive disclosure from all covered service providers,

and where do you go to make sure you're taking the right approach?

[See also: [Fee disclosure communication guide](#)]

We spoke with several experts and have put together the following checklist >>

1. Know who is providing services to the plan (who is a covered service provider), including a recordkeeper, advisor, lawyer or auditor.

Andy Miller, assistant director of retirement and investor services at the Principal, says 408(b)(2) necessitates clarity on all the various parties involved, from third-party administrators to law firms. “We’re getting a lot of questions from financial professionals on these issues,” he notes. “But we as a company began getting this disclosure information together in November so I feel that for the most part, people are ready.”

Want the official version? [EBSA's Fact Sheet](#) is succinct on its statements on the scope of service providers, and the timing:

- Information required to be disclosed by a covered service provider must be furnished in writing to a responsible plan fiduciary for the covered plan. The rule does not require a formal written contract delineating the disclosure obligations.
- CSPs must describe the services to be provided and all direct and indirect compensation to be received by a CSP, its affiliates, or subcontractors.
- "Direct compensation" is compensation received directly from the covered plan. "Indirect compensation" generally is compensation received from any source other than the plan sponsor, the CSP, an affiliate, or subcontractor.
- In order to enable a responsible plan fiduciary to assess potential conflicts of interest, CSPs who disclose "indirect compensation" also must describe the arrangement between the payer and CSP pursuant to which indirect compensation is paid. CSPs must identify the sources for indirect compensation, plus services to which such compensation relates.
- Compensation disclosures by CSPs will include allocations of compensation made among related parties (i.e., among a CSP's affiliates or subcontractors) when such allocations occur as a result of charges made against a plan's investment or are set on a transaction basis.
- CSPs must disclose whether they are providing recordkeeping services and the compensation attributable to such services, even when no explicit charge for recordkeeping is identified as part of the service "package" or contract.



• **2. Review your fees and services, document actions and decisions and keep in your fiduciary file.**

- “This is critical,” Miller says. “You have to look at questions such as, ‘are these fees reasonable for the services provided?’”
- Attorney Ary Rosenbaum, as part of [a look at major misconceptions plan sponsors have about the regulations](#), noted: “Too many plan sponsors think that the fee disclosure form they get from their provider is a form they need to put in the back of the drawer. It doesn’t; it actually adds greater weight to the fiduciary responsibility.”
- A [useful overview of fees and documentation](#) has been collected by The Standard in its Plan Sponsor Fee Disclosure, which offers the following requirement suggestions:
 - • Be provided in writing, but do not have to be in a written agreement
 - • Include a description of the services provided
 - • State whether services will be provided as a fiduciary, or as a registered investment advisor, if applicable
 - • Describe the direct compensation the service provider expects to receive (in either dollar amount or as a formula) and the manner of receipt (billed or deducted from plan accounts or investments)

- • Include description from recordkeepers of various fees associated with the investment options, a requirement that may be satisfied by using fund prospectuses
- • Describe the indirect compensation the service provider expects to receive, the payer of the indirect compensation and the arrangement between the payer and the service provider
- • Describe any termination service charges
- • Reveal if service providers are providing recordkeeping services to the plan and the compensation attributable to such services, even if no explicit charge is identified for recordkeeping



3: Determine who you need to provide disclosure to

Then assess:

1. **How to communicate with each participant**
2. **Do you meet electronic delivery rules or will you do hard-copy mailings?**

Jim Douglas, an ERISA attorney with Transamerica Retirement Services, suggests paying careful attention to the [DOL's Technical Release 2011-03R](#), the most recent statement on electronic filing, but he also urges caution before embarking on a full electronic route.

“You definitely have to be able to show that the recipient has evident access to the details of the plan, be that an active e-mail account or access to a company intranet site,” he says. “You also need affirmative consent, so you’ve got to ask people which form they would prefer, or both.”

Douglas also suggests these upcoming transitional months may be a good educational opportunity for plan sponsor clients.

“In this day and age, many people are open to receiving these kinds of details in an e-mail, so ask them, ‘did you know this information is available through e-mail, which could be more easy for you?’”



4. Understand how participants are paying fees:

Investment expense, deduction, asset charge or participant-level fees, such as loans

“These can also be tricky,” Miller notes. “Clarifying if those are per-head fees or asset-based fees will be important, as they’ll need to be reported on a quarterly basis. The individual participant-level fees, like loans from their accounts, also need to be made available.”

This is a portion where, depending on your company affiliation, a site such as the [Principal’s Participant Disclosure Regulation Resource Center](#) can provide specific information. Miller mentions that the Principal have already ramped up their summary of fees with an online disclosure landing page where plan sponsors can find all that data, as well as [videos and white papers](#); other providers such as [Vanguard](#) and [Securian](#) have equally detailed information.



5. Know your deadline for participant disclosure

July 1: Deadline for plan sponsors to receive fee disclosure data from all covered service providers.

August 30: All 401(k) plan sponsors must disclose most plan facts and investment fees.

November 14: All 401(k) plan sponsors issue their first quarterly fee disclosure showing the fees deducted from individual participant accounts for the third quarter.

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