

408(B)(2) PLAN SPONSOR SOLUTIONS TRANSCRIPT

Part B: What is the Most Critical Aspect of 408(b)(2)?

Date of Webinar: May 16, 2012

Webinar Panel: Moderator: Edward M. Lynch, Jr., Founder and Chief Executive Officer of Fiduciary Planned Governance, LLC. ("Ed")

Panelists: Mary Rosen, Associate Regional Director of the Department of Labor EBSA in Boston. ("Mary")

Louis S. Harvey, Founder and Chief Executive Officer of DALBAR, Inc. ("Lou")



Question 1:

What is the most critical aspect of the 408(b)(2) regulation?

Dallas, Inc. | Federal Reserve Plaza | 600 Atlantic Ave, FL 30 | Boston, MA 02210 | 617.723.6400 | www.dalbar.com

3

Ed:

So what I'm hearing you say is that there are multiple steps that would be involved in actually complying with the regulation.

But let's try to do something here, let's see we could reduce it to see if you could identify the most critical aspect of the regulation.

What we have done is to provide some pointers that say maybe, among these items, can you identify any one that would be considered most critical?

That would be for example, beating the fee benchmark, reporting service providers who fail to disclose, having a prudent process to determine if services are reasonable, finding discrepancies in the disclosures, finding an arrangement with a lower fee, or improving the quality of the designated investments.

And though the answer could possibly be all of the above, if you had to select one Mary, what would you say it is?

- Most critical aspect of 408(b)(2) for plan sponsors is...

- Beating the a fee benchmark
- Reporting service providers who fail to disclose
- A prudent process to determine if services are reasonable
- Finding discrepancies in disclosures
- Finding an arrangement with a lower fee
- Improving the quality of the designated investments

4

Mary:

Well from the point of view from the plan sponsor, I'd say that the duty, the responsibility, of the plan sponsor is to, after receiving the information, engage in a prudent process to determine that the services are reasonable and the compensation is reasonable.

So once the information is provided and disclosed by the service provider, it then becomes the responsibility of the plan sponsor to make sure that they're meeting the terms of the exemption that require that the services are necessary, that the compensation is reasonable, and that the contract is reasonable.

He goes through this by engaging in a prudent process as he would in determining anything, [this is] similar to when a fiduciary is looking at an investment. He goes through the process of selecting a service provider and a process of selecting the best candidate based on comparison and based on looking at certain factors.

This is the same type of prudent analysis that would be required.

Ed:

So a prudent process...

Lou, could you give us some sense of what a prudent process, with regard to 408(b)(2) regulation, might look like?

Prudent Process

1. Start with a number and determine where the plan is

- Action Zone... Need to make changes
- Comfort Zone... Document reasonableness
- Disclosure Zone... Detective work... is it all there?

2. Value “necessity” and “reasonableness”

- Success
- Ability to meet needs
- Protection from liability

2. Document and act on results

- Establish that evaluation was performed
- Obtain additional information (if needed)
- Make changes (if needed)

5

Lou:

Sure, over the years, what we’ve done in looking at this side of the business is develop the prudent process, which is described on this screen.

The first one is a quickie, the idea of that first is start with the number and determine where the plan is, and to really put the plan into one of three different categories to help the plan sponsor figure out where they need to focus attention.

The second step is, once they’ve gotten that idea of where to go, the evaluation process takes place.

That evaluation process puts some economic dollar value on the ability of the plan to achieve the retirement of the employees, the ability to meet the employees and the plan sponsor’s needs, and to protect both parties from liability.

So the second step in determining reasonableness is taking those three factors and attributing some economic value to them.

The third step, which I should apologize is also marked number two, is to document and act on the results—there are several actions that need to be taken, so we won’t go into them specifically right now.

Quick Check on Your Plan Fees

Retirement plan fee disclosure regulations require plan sponsors to evaluate fees and take action if they are unreasonable. Here is a quick way to check if fees are in the ballpark...

Simply find your plan's fee zone on this chart!

Instruction Guide

Fee zones indicate the appropriate course for plan sponsors to take.

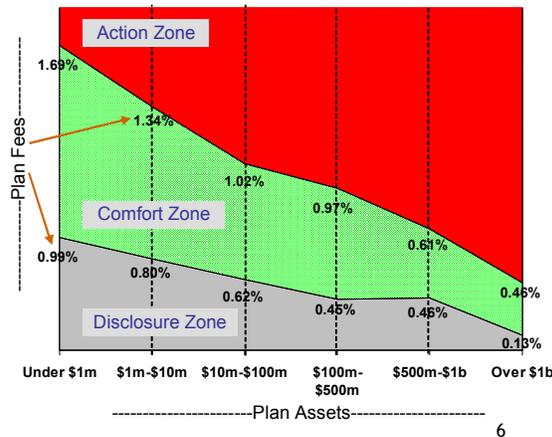
To find your fee zone you must know what your total plan fees are as a percentage of plan assets and then locate where fees are on the chart.

Action Zone
Potentially excessive fee:
May require a change.

Comfort Zone
Normal range:
Should verify service level

Disclosure Zone
Potentially undisclosed fees:
Double check fee disclosure

For more information on fee disclosure please contact:



Let's take a look at the first step in the prudent process here. This is a quick check.

We developed some statistics that determine where the probable fee ranges are, which are illustrated on the chart.

The action zone, if your fees are in that range, and by the way you see that the fees range depending on the size of the plan, but if you're in that red zone, in the action zone, it means you're probably going to have to do something with your fee structure or at least make sense of why it should be out of the ordinary.

The green zone, the comfort zone, really goes back to what Mary was saying, making sure you have a prudent process in place to evaluate that comfort zone range.

The third, the disclosure zone, that's the "too good to be true zone," meaning that if the fees are down there, it's likely that you don't have some information about the fees that are being paid.

Ed:

So, Lou, let me just ask you this question.

First of all, in terms of the zones that you've identified, these numbers that we're seeing, for whether it's the action zone, comfort zone, or disclosure zone, are drawn from some resource. There's a significant statistical analysis that's actually behind these, and I'll mention for our callers that that information is available as part of this presentation, which will be made available to you, but it's much too detailed to get into now.

If you could Lou, explain to us in fairly straightforward terms how these numbers are derived and then what, for example, in this disclosure zone one might have to be thinking about if they find the fees in the particular plan or information they're receiving from the service providers falls into that zone.

Lou:

Sure, the zones are developed based on a scattergram, meaning you look for where most plans are in their fees and then who's outside of the norm, and then based on our calculations, we determine where that line is.

So, the action zones are generally the few plans that are above those lines. And the same thing on the disclosure zone, meaning there are very few plans in the disclosure zone, and therefore they're suspect.

The answer to your second question, what's going on in the disclosure zone? Well it might mean that we don't have the 408(b)(2) disclosure from all the service providers so you're missing something. It might mean that the service providers' service disclosures didn't include all of the costs. (there is a lot of discretions about what kinds of costs you're going to need to include). So it generally means that there's probably something missing or it could be that the plan sponsor negotiated, if you'll excuse the expression, a hell of a deal.

Ed:

So, what we're saying is that this first analysis is sort of a quick health check up that simply says do I need to look further? And if I find myself in the action zone that would indicate to me that I would have to look at my plan in the aggregate, but also probably at each of the service providers independently to determine where the excess fees are coming from.

And if I'm in the disclosure zone, I should be going back and looking at all the information I have to determine first, do I have all of the disclosures that I need, and then again, individually looking at each of the parties, the service providers to the plan, to determine which of those may be throwing the total number off.

But if I'm in the comfort zone, does that mean I'm done, that I can stop right there?

Lou:

No, because when you're in the comfort zone, what it means is that you need to document the fact that you have gone through this process.

Regardless of where you end up, you need to have the prudent process executed to ensure that you've done the job, meaning that you could be in the comfort zone and what you really find, once you've done the prudent process, is that you have two offsetting conditions. One does have to go through it.

The comfort zone really means that it's the lowest degree of anxiety. You could almost look at it as a risk demographic, meaning that the action zone in general is considered to be where the plan sponsor would be at the highest risk. The comfort zone is arguably the lowest risk. The disclosure zone, because you're missing information that our friends at the Department of Labor are going to hold you accountable for, is an issue.