

408(B)(2) PLAN SPONSOR SOLUTIONS TRANSCRIPT

Part F: How does 408(b)(2) affect plan participants?

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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 5:

How does 408(b)(2) affect plan participants?

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Ed: Okay, let's move on to participants, who at the end of the day, are the people that the department is seeking to protect and most positively impact and, as far as the industry is concerned, they're the ultimate clients that we all serve.

So, how is 408(b)(2) going to affect plan participants?

Again, we've prepared a few areas that we could perhaps select from: facilitating cost-effective and quality services, which means one could see that as a value proposition, providing answers as to why the service provider was selected in the first place, explaining differences in fees, and detailing the services that are funded by the fees that are being paid. Is that an accurate list, is there more that we should include, or is there one or two things that you think are paramount?

- 408(b)(2) serves participants by...

- Facilitating cost effective and quality service
- Providing answers as to why the service provider was selected
- Explaining differences in fees
- Detailing the services that are funded by the fees being paid

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Mary:

I think that it's certainly going to serve participants in the sense that it's going to facilitate cost-effective and quality service.

Following the effective date of the 408(b)(2) regulation, sixty days after the effective date, on August 30, 2012, the plan administrator is required to provide plan participants with certain information on their plan. This involves participants in self-directed plans who select their own investments.

By going through the process of determining that the service providers contracts or arrangements are necessary and reasonable and that the fees are reasonable, the plan sponsors have already gone through the evaluation process. By making this information available to the participants, the participants should be able to rely on the conclusion that the sponsor has reached regarding the determination that these are good service providers.

Hopefully that first bullet point, facilitating cost-effective and quality service will certainly be serving the plan participants.

Ed:

I was going to ask a follow up question, because I think this is a critical component-- cost-effective, very important obviously, quality service.

One of the things, Lou, that you identified some time back in your earlier writing on these disclosure regulations, was something you called a "*race to the bottom*," which was identified as a potential risk associated with these disclosure regulations. Could you speak to that and how it might be appropriate to respond to that concern?

Lou:

Yes, I think it is a really high risk for the industry. Addressing it, calls on the advisor community to play a key role in educating the plan sponsor.

Here's the issue: As you know many plan sponsors, particularly in the smaller plan universe aren't really aware of all the services that are being provided in the plan, it's sort of like a "black box."

Now if you view the plan as a black box, then you're going to try to find the cheapest black box and that will inevitably push the service providers to get cheaper and cheaper, and the way the service providers are going to do that is they're going to eliminate services.

So all of a sudden you won't be able to have enormous meetings anymore or the quality of the presentations at those meetings will decline, etc. So that over time, if one focuses only on fees, then the cost will drive this "*race to the bottom*".

The role that I see for the advisor is to really educate the plan sponsor about the value and the use of those necessary and reasonable services that are being presented so that they become cognizant of what those services are so that we don't have this "*race to the bottom*" and we don't constantly go looking for the lowest-cost solution, whether that be in terms of the investment, record keeping, the administrative services, or whatever aspect of the plan we're talking about.

We need to make sure to maintain the integrity and the value of the quality that's being provided and not simply finding the cheapest out. That means we need to really focus on which is the biggest deal on the list, I'd have to pick number two as the biggest deal.

Basically, what we see happening is that most participants are going to be asking a question, "Why did you do what you did?" I don't think most participants are going to be focusing on, "Why are you paying twenty three basis points for this when somebody else is paying seventeen?" I don't think that's the likely discussion, the likely discussion is "why did you do what you did?"

Therefore I think 408(b)(2) should be providing answers to the plan sponsor so that their Human Resources department and everybody else who's involved will be able to give a coherent answer to the participants. I reduce that coherent answer to the three basic categories we talked about before:

1. We've hired this service provider because we want to have a successful plan;
2. We've hired this service provider because we want to meet the needs of the participants and our own needs;
3. We've hired this service provider so that we are not at risk of engaging in a prohibited transaction or have some other form of liability.

Ed: I

t's often noted that there's a hierarchy in terms of effective decision-making and effective action and that is that information is the lowest level, which simply tells you what is there, or in this case, what something costs. From that, you can gain knowledge, which explains why that's in place, why that's of value and why you've made the choice. Finally, you can achieve wisdom, which is how to use that effectively to create a better life for yourselves, and in this case, for one's beneficiaries. If we step back and look and say well maybe that's the real impact or the real intent of the department with this regulation, which seems to be clearly one of the things they've had in mind from the beginning. Mary, is that fair?

Mary:

I think that's absolutely fair, Ed, yes.