

# READINESS ASSESSMENT FOR ERISA 408(B)(2) PLAN FIDUCIARY FEE DISCLOSURES

February 2012

## INTRODUCTION

Before July 1, 2012 Covered Service Providers<sup>1</sup> ("CSP") are required to make certain disclosures to Covered Plans<sup>2</sup>. CSPs include record keepers, broker/dealers and RIAs among others. See CSP Determinator at [www.ERISAFeeDisclosure.com](http://www.ERISAFeeDisclosure.com) for details.

A failure to make these disclosures completely and accurately exposes the CSP. One of the largest concerns for a CSP is becoming exposed to the filing of a Delinquent Service Provider Disclosure ("DSPD") notice to the US Department of Labor ("DoL") and IRS, by one or more ERISA Responsible Plan Fiduciaries<sup>3</sup> ("Plan Fiduciaries"). Plan Fiduciaries will be on the lookout to detect incompleteness and inaccuracies as they begin to understand that each CSP is required to disclose the identity and amount of payments made to and received from other CSPs.

Plan Fiduciaries have an incentive to file DSPD notices when inconsistencies are found, since by doing so the Plan Fiduciary protects themselves by avoiding personal liability for a breach of fiduciary duty. DSPD notices can result in a CSP having to defend itself multiple times against the threat of excise taxes and disgorgement of previously earned compensation as well as the possible loss of business.

The purpose of this Readiness Assessment Worksheet is to help the CSP detect areas of exposure to the DSPD notices in time to take actions and avoid possible filings against the CSP.

**Since the lead time to prepare for these disclosures, is long, it is critical for CSPs take action now to prepare disclosures in time to meet the deadline.**

## SUMMARY OF REQUIRED DISCLOSURES

CSPs are required to disclose the following to each Plan Fiduciary by the deadline date:

- A description of the services provided to the Covered Plan.
- The status of the CSP as a fiduciary or not.
- An estimate of direct and indirect compensation received or paid to other CSPs.
- An estimate of the cost of record keeping services (if record keeping is provided).
- Manner of receipt/payment of compensation (billing versus deduction from plan assets).
- An estimate of investment fees and expenses (if designated investments are provided).

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<sup>1</sup> A "Covered Service Provider" is a service provider that enters into a contract or arrangement (whether written or not) with a Covered Plan and reasonably expects \$1,000 or more in compensation to be received in connection with providing one or more of the services described.

<sup>2</sup> A "Covered Plan" is an employee pension benefit plan within the meaning of ERISA section 3(2)(A) (and not described in section 4(b)) of ERISA, except that the term "Covered Plan" shall not include a "simplified employee pension" described in section 408(k) of the Internal Revenue Code of 1986 (the Code), a "simple retirement account" described in section 408(p) of the Code, an individual retirement account described in section 408(a) of the Code, or an individual retirement annuity described in section 408(b) of the Code.

<sup>3</sup> An "ERISA Responsible Plan Fiduciary" is a fiduciary with authority to cause the Covered Plan to enter into, or extend or renew, the contract or arrangement.

## READINESS ASSESSMENT WORKSHEET – DATE \_\_\_\_\_

FIRM (CSP): _____	Don't Know	Number of Covered Plans	
		Known to You	Information Available
Plans requiring 408(b)(2) Disclosures			
Identity of Plan Fiduciary			
Benchmarks for fees and expenses			
Plans from which you receive direct payments			
Plans for which you receive payments from CSPs			
Plans for which you make payments to CSPs			
Plans for which you act as a fiduciary on the basis of:			
A written or verbal agreement with the Plan Fiduciary to act as a fiduciary			
Providing services (such as investment advice) for which ERISA requires a fiduciary			
Providing services as an RIA/IAR			
Plans for which the following services are provided:			
Investment selection and monitoring			
Vendor selection and monitoring			
Brokerage services for plan designated investments			
Plan sponsor communications			
Plan administration			
Other plan sponsor services			
Manage participant accounts			
Participant communications			
Record keeping			
Participant administration			
Management of designated plan investments			
Investment products used as designated plan investments			
Other services			

**Please contact DALBAR ([info@DALBAR.com](mailto:info@DALBAR.com)) if you have difficulty completing this Readiness Assessment Worksheet or if you have questions regarding its use.**