



-OneFiduciary Update-

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Breaking News – Transparency Regulation Postponed

Plan Sponsors are still unprotected from the practice of certain service providers hiding their fees.

In December 2007, the Department of Labor issued a proposed regulation under ERISA Section 408(b)(2). The purpose of this new regulation was mainly to force ERISA plan service providers to disclose their likely total direct and indirect compensation at the beginning of a business relationship. This would have been a very positive step to protect both 401(k) plan sponsors and their plan participants from the negative effects that come from a lack of financial transparency. The final regulations were due to be issued by November 1, 2008 according to a White House letter to all federal agencies.... **This did not happen!!!**

Unfortunately, the word from the Department of Labor is now that *“the 408(b)(2) regulation did not make it through the clearance process to make it into the Federal Register,¹”* and the regulation is now in limbo land.

According to an ASPPA (American Society of Pension Professionals and Actuaries) communication late last week, *“these regulations are left to the Obama Administration to either withdraw, finalize, or leave in proposed state.”* *“In fact, in light of statements made by Senator George Miller regarding Congress’s desire to revisit fee disclosure, it is likely that these regulations will never see the light of day.²”*

While this is disappointing because the regulations closed many of the hidden fee loopholes that currently exist, there are disclosure changes that have been implemented and will affect your 2009 plan year Form 5500 filings. As we understand it, all service providers receiving more than \$5000 in annual compensation will be required to disclose their compensation to plan sponsors, who will in turn report the compensation on Schedule C of Form 5500.

The good news is that Congress and the DOL are not likely to drop the issue of fee disclosure to fiduciaries. So, it would be best practice to discuss this in your plan committee meetings this quarter and request information from your service providers to determine if you will be able to meet the new Form 5500 Schedule C reporting requirements and to be ready for the next set of rules when they come.

While it is not yet required, OneFiduciary would suggest that Plan Sponsors require all service providers to provide written disclosure of **all direct and indirect compensation** they are receiving from the plan and or the plan sponsor. In addition, we would highly suggest that all services be based on a written contract.

For additional information on this topic, feel free to contact **Al Otto** (x105) or **Perry Wilkes** (x107) at (888) 382-8010.

¹ ASPPA 2009 Benefits Conference of the South, January 15-16, 2009, DOL Q&A Presentation, Fil Williams, U.S. Department of Labor - Office of Regulations and Interpretations.

² ASPPA ASAP 09-03