

By **Marcia S. Wagner**

Managing Director, The Wagner Law Group

Over the last 12 months there has been a great deal written about the new rules issued by the U.S. Department of Labor (DOL) which will require separate fee disclosures to plan sponsors and to participants in 2012. These mandatory disclosures will raise awareness of the plan’s fees and expenses, which in turn may invite scrutiny of the plan’s investments and services.

Some advisors may be concerned that the in-your-face nature of these fee disclosures will put them on the hot seat, forcing them to justify their own fees and making it more difficult to recommend investments and plan services to their clients. But smart retirement plan advisors will be thinking about the rules strategically, capitalizing on their potential value to showcase their value proposition, justify their fees ahead of time and ultimately grow their retirement plan business.

Think strategically about justifying your fees ahead of time.

THREE THINGS YOU CAN DO NOW

1 PROVIDE PLAN SPONSOR PROTECTION

408(b)(2) clearly places the burden of creating the required fee disclosures on the plan’s service providers. But it also places a heavy burden on plan sponsors, which are subject to an ongoing duty to protect the plan and its participants against unreasonable fees. Thus, as part of this general

fiduciary duty, plan sponsors will need to review any and all fee disclosures, and they will be held accountable for any misuse of plan assets. To meet their ongoing fiduciary duties, plan sponsors will also need to gather competitive pricing information from time to time.

Adding value

Retirement plan advisors can help clients determine the reasonableness of plan fees by engaging a qualified benchmarking service provider to objectively see where their plan

DOL REGULATION	OVERVIEW	EFFECTIVE DATE*
PLAN FEES DISCLOSURE 408(b)(2)	Requires service providers to make comprehensive fee disclosures to their plan sponsor clients before entering into a service arrangement.	No later than July 1, 2012, and to all new plan clients thereafter
PARTICIPANT DISCLOSURE 404(a)	Requires the plan (plan sponsors) to deliver quarterly and annual notices to participants with side-by-side comparisons of the plan’s investment options, including performance and benchmark information, as well as detailed information concerning the plan’s fees and expenses.	Initial notices need to be delivered by August 30, 2012, for calendar year plans

*As of 2/2/12.

The key word is “reasonableness”—plan sponsors should never hire a provider simply because it is the cheapest.

falls vs. industry peers regarding fees, or running an informal benchmark of the plan using generally available pricing information. As needed, they can help them submit a request for proposal (“RFP”) to potential providers for a change. The key word is “reasonableness”—plan sponsors should never hire a provider simply because it is the cheapest, and fees should always be evaluated in light of the services provided. If a plan sponsor does not understand or appreciate its responsibilities, advisors should remind them of their fiduciary duty to protect the plan from unreasonable fees. 408(b)(2) will be turning up the heat on plan sponsors, and smart advisors will help protect their clients by creating a paper trail that shows the plan sponsor reviewed the fees, benchmarked the plan as needed, and made any changes necessary to avoid potential litigation.

2 IMPROVE FINANCIAL LITERACY OF PARTICIPANTS

The Participant Disclosure Rules impose a new fiduciary duty on plan sponsors, requiring the delivery of a wealth of information to participants. The required disclosures must provide a side-by-side comparison of the plan’s investment options, including performance and benchmark information, as well as detailed information concerning the plan’s fees and expenses. But perhaps the most difficult obligation imposed on the plan sponsor is the fiduciary requirement that these disclosures be written in a manner calculated to be understood by the average plan participant.

Unfortunately, if the average participant in your client’s plan is financially illiterate, there is a good chance that these disclosures will not be understood.


Adding value

To help plan sponsors avoid a fiduciary violation of the Participant Disclosure Rules, advisors should:

- Warn their clients of this average plan participant standard.
- Talk with clients about increasing (or beginning) participant education meetings to ensure a plan’s participants are financially literate. By delivering even a minimal level of financial education, plan sponsors will find it much easier to say that their disclosures are now calculated to be understood by the average plan participant.

Smart retirement plan advisors should reach out to clients now.

3 BE PROACTIVE NOW

Plan sponsors will need help navigating the DOL’s required fee disclosures and what it means for them and their plan participants. Instead of passively waiting to see how clients will react, smart retirement plan advisors should reach out to clients now to begin the discussions around benchmarking plans or setting up participant education meetings. By highlighting the fact that they can help them deal with the serious consequences of the 408(b)(2) Regulations and the Participant Disclosure Rules, advisors can show their ultimate value. 

WE WANT TO HEAR FROM YOU

- Have you started discussions with clients about fee disclosure?
- What advice do you have for your peers?

Send us an email at blackrockDC@blackrock.com.

For more information, access our advisor Fiduciary Toolkit at www.blackrock.com/dcedge. It features seven guides and videos by ERISA attorney Marcia Wagner on topics such as fiduciary status, plan fees, investment duties, due diligence, investment menu, fiduciary liability and rollover assets.