
An Industry Awaits Fee Transparency Rule with Trepidation

By Editor Test *Wed, Apr 20, 2011*

"This new ERISA 408(b)(2) disclosure has a bite to it," writes Louis Harvey of Dalbar in DSG Dimensions. ERISA attorney Fred Reish (left) estimates that 401(k) fee transparency rule would be effective "April 1 to July 1, 2012."

When rule 408(b)(2) goes into effect, will it achieve the Labor Department's goal of greater fee transparency in employer-sponsored plans and higher account balances for participants?

Or will it become a 'Tower of Babel,' as one writer put it, creating a burden for plan sponsors and providers and perhaps scaring participants from saving?

Whatever the consequences, a final amended version of the rule may not go into effect until the middle of next year, not long before a presidential election when the country will determine, among other things, whether it likes a reform-minded administration or wants a return to light financial regulation.

Fred Reish (above), the ERISA legal expert, alerted his LinkedIn followers and others on April 14 that "the amendments to the 408(b)(2) regulation have been fully drafted at the Department of Labor. They are being reviewed by senior officials at the Employee Benefit Security Administration (which is the pension and welfare part of the DOL).

"It would be reasonable to expect that the amendments to the regulation would be fully reviewed and approved by the end of this month, and then sent to the Office of Management and Budget (OMB) for its review.

"It ordinarily takes the OMB 60 to 100 days to approve regulations, so it would be reasonable to assume that the amendments would be published in mid- to late July (but, of course, things always seem to go slower at the government than we would think).

"While we will not be able to see the amendments during the review process, there is a rumor that they will include an extension of time for compliance. Right now, the amendments are effective January 1, 2012.

"Since the probable purpose of the rumored extension (if true) is the late issuance of these amendments, it is reasonable to assume that the new effective date would be somewhere in the range of April 1 to July 1, 2012. But, that's just a guess. I will do further articles like this as we hear credible information about the amendments."

Reish did not comment on the merits of 408(b)(2), but Louis S. Harvey, president of DALBAR, Inc., called it a potential "Tower of Babel" that could backfire. His [comments](#) were published recently in Volume 16, No. 1 of *DSG Dimensions*, the periodical of Diversified Services Group.

"Unlike the mountain of disclosures that exist today this new ERISA 408(b)(2) disclosure has a bite to it," Harvey wrote. "No, this is not a warning label and is not a description of a privacy policy or showing past

performance. This is about compensation and will therefore get the attention of plan sponsors.

“Exposure to the unmasked dollars and cents of a service provider’s pay is certain to raise questions in high cost plans. The new regulation applies to all fiduciaries, record keepers, brokerage services and anyone receiving indirect compensation (compensation that originated from the plan but is paid by a third party such as a record keeper or mutual fund). Compensation anticipated to be less than \$1,000 is excluded.”

“The DoL estimates the total first year cost of implementing the disclosures will be \$153 million with ongoing costs of \$37 million per year. These estimates do not include the economic dislocation that the disclosure will cause but disruption is acknowledged by the DoL.

“The DoL explains that the disclosures will cause ‘the discouragement of harmful conflicts of interest, reduced information gaps, improved decision-making by fiduciaries about plan services, enhanced value for plan participants, and increased ability to redress abuses committed by service providers.’”

At the LIMRA Retirement Industry conference in Las Vegas last week, a John Hancock retirement executive expressed concern about 408(b)(2) possibly backfiring.

“I worry about all the noise over fee disclosure and fiduciary responsibility,” said Arthur E. Creel, executive vice president, sales and marketing, John Hancock Financial Services. “They’re important, but that noise can scare people away from doing the right thing. There are lots of unintended consequences of regulatory change. You could end up with less saving rather than more.”

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