



408 (b)(2) Legislation FAQ's

Who does this affect?

All retirement plan fiduciaries including plan sponsors and investment committees associated with those plans.

When does it go into effect?

January 1, 2009

What is it?

New legislation that will require fiduciaries to understand ALL fees and expenses associated with their retirement plan. This will now include all sub-TA fees and credits paid between vendors, the funds within the vendor's platforms, and the investment advisors/brokers that sell these products. The Fiduciary (Plan Sponsor) must also be able to assess whether these fees and costs are competitive in the marketplace.

Why are they enacting these changes?

There has historically been a lot of misinformation and lack of disclosure about expenses and compensation associated with retirement plans. The DOL felt it was time to make sure that all of the players involved provided full disclosures about the true costs and compensation being paid in the plans that they were selling and servicing.

Doesn't this only affect my investment advisor / broker?

Not unless he/she is willing to be a "Named Fiduciary" of your plan. This is a very different role than someone who says that they will be a "Co-Fiduciary" of your plan. Make sure that you know the difference. Very few investment advisors will take on the role of Named Fiduciary. If your advisor will not assume this responsibility then the liability to understand and comply with this legislation falls upon the plan sponsor.



I already get a disclosure of fees from my vendor. What else is there to have to know? How will this be any different?

Not only do you now have to know how much they are charging you (and/or your employees) in the form of direct fees and fund expenses, you will also need to know how much they are being paid from the funds that they host on their platform and how much they are paying to any other companies who are in any way associated with your plan. And don't forget – you will have to be able to ascertain whether any/all of these are “reasonable” relative to the marketplace.

What should I be doing right now to get ready to be in compliance?

Ask your broker/advisor if he/she is the “Named Fiduciary” of your retirement plan. Remember – this is different than a “Co-Fiduciary”. If they are the Named Fiduciary – then they should be talking to you about this legislation and how they are planning on ensuring that you are well versed on the inner expenses of your plan. If they are NOT the Named Fiduciary, then you have two distinct choices:

- A. Stock up on heavily caffeinated beverages and be prepared to read through a large amount of vendor disclosure/disclaimer forms and financial reports and then sign your life away when they present you with the stack of papers to sign that say that they will not assume fiduciary liability for your plan.
- B. Engage with an investment advisor that will take on the role of the Named Fiduciary of your plan and ensure that all of your fees and expenses are reasonable within the marketplace. FYI - Northgate Benefits is one of the few firms that will assume this role as part of their normal retirement plan services.



There are 10 requirements for compliance review. Here is a very brief primer on the different requirements:

- 1. All contracts with service providers must be in writing.**
- 2. Services and Compensation – There are 4 disclosures**
 - A.** Services To Be Provided
 - B.** For Each Service, the Direct and Indirect Compensation To Be Received By The Service Provider. The Named Fiduciary must be able to understand all fees and judge if these fees are reasonable and competitive
 - C.** The Method For Calculating and Repaying Any Prepaid Compensation in case the contract terminates early
 - D.** The Manner of Receipt of the Compensation
- 3. Fiduciary Status** - Service Provider will need to disclose in writing if they are an ERISA Fiduciary. This becomes very problematic for most Brokers and their Clearing Houses because most of them get different amounts of compensation for selling different investment choices within a retirement plan. Going forward most service providers will look to LIMIT the extent to which they serve in a Fiduciary Capacity
- 4. Financial or Other Interest.** This has limited application for most retirement plans because it pertains to individual brokerage accounts
- 5. Other Relationships or Arrangements.** Service providers are required to disclose any “material financial, referral or other relationship”.
- 6. Ability to Affect Own Compensation.** This will be very problematic for vendor direct plans. If Fidelity “recommends” Fidelity funds and the involved representative gets compensated more for having Fidelity funds in the plan versus outside funds – this compensation will now have to be disclosed.
- 7. Policies To Address Conflicts of Interest.**
- 8. Material Changes.** There is a requirement to provide a 30 Day Notice to the plan Fiduciary for any changes that impact the fees associated with the plan. Within that 30 day window, the Named Fiduciary will have to determine whether or not those expenses are reasonable.
- 9. Reporting Assistance**
- 10. Actual Disclosure**

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