Fee Disclosures Under ERISA Section 408(b)(2)

A Business and Compliance Strategy for Advisors

Overview

Financial advisors serving the 401(k) plan market should be aware of the new fee disclosure requirements under ERISA Section 408(b)(2). The primary requirement is the upfront "Fee Notice" which service providers must deliver to plan clients, spelling out the various types of direct or indirect compensation payable to the provider.

- With respect to existing plan clients, advisors are required to furnish a written Fee Notice no later than July 1, 2012, although advisors may choose to deliver this notice to plan clients right now.
- Given the specificity and the detailed nature of the required disclosures, advisors should strongly consider developing a model notice for use with all plan clients that is tailored to meeting the Fee Notice requirement.
- In light of the severity of the potential penalties for failing to deliver Fee Notices properly, RIAs and broker-dealers who provide advisory services to ERISA plans should adopt written policies and maintain procedures designed to ensure compliance.
- Although the new 408(b)(2) regulations on their face may appear to be a matter which concerns plan service providers only, these rules are intended to assist plan sponsors discharge their fiduciary duty under ERISA to monitor the plan's services and fees.
- This fiduciary duty is procedural in nature, requiring plan sponsors to gather and understand the relevant fee information so as to make informed decisions. Advisors can help plan sponsors properly evaluate the information disclosed in the required Fee Notices from the plan's key providers.
- As advisors provide this valuable service for plan clients, they can also make sure the plan client evaluates the advisor's own Fee Notice in the proper context.

Introduction

Financial advisors serving the 401(k) plan market should now be aware of the looming deadline for complying with the new fee disclosure requirements under Section 408(b)(2) of the Employee Retirement Income Security Act of 1974 (ERISA). Although final regulations were issued on an interim basis by the U.S. Department of Labor (DOL) on July 16, 2010, these rules do not become effective until July 1, 2012 (Effective Date), giving financial advisors almost two years to develop a transition strategy for the new regulatory regime.

The primary requirement for advisors under the ERISA Section 408(b)(2) regulations is the upfront written notice (Fee Notice) which must be provided to plan clients, spelling out the various types of direct or indirect compensation that the advisor expects to receive for its plan-related services. With respect to existing plan clients, advisors are required to furnish this written notice no later than the Effective Date in 2012, but advisors may choose to deliver this notice to plan clients anytime prior to this date.

Reaction to ERISA Section 408(b)(2) Regulations

As advisors react to the new fee disclosure requirements, they should refrain from sending mixed messages to their plan clients, be it deliberately or inadvertently. Given that the Department of Labor has confirmed that there will be no further extensions of the July 1, 2012 Effective Date, advisors no longer have the luxury of conducting their business as if it were still in the distant future. Other advisors may have expressed skepticism over the usefulness of the new fee disclosures. For both groups of advisors, the moment to broach the subject with their clients is at hand, and the importance of compliance should not be minimized. The Fee Notice requirement has arrived on the heels of newly enhanced fee reporting requirements for plan sponsors under which initial disclosures by sponsors are now due by August 30, 2012. Beginning with the 2009 plan year, detailed information concerning the direct and indirect compensation paid to a large plan's service providers must be reported on Schedule C of Form 5500.[1] Some advisors, as well as plan sponsors, have greeted this enhanced reporting requirement on Form 5500 with skepticism, and they remain unconvinced of the value of the required fee disclosures under ERISA Section 408(b)(2).

However, advisors should recognize the value of the new Fee Notice as a fiduciary tool, and they should be searching for effective ways of educating plan fiduciaries on the importance of understanding the disclosures in the mandatory Fee Notice. The nearly two-year delay between the issuance of the interim 408(b)(2) regulations and the Effective Date represented a tremendous opportunity for advisors to prepare their clients for the DOL's expansion and reinforcement of ERISA's fee-related fiduciary duties. Although these new disclosure rules will undoubtedly create additional work for advisors, the mandated disclosures should be viewed as an opportunity for advisors to add value, since many plan fiduciaries will need assistance interpreting the new disclosures. Advisors who fail to act during this period, or dismiss the usefulness of the ERISA Section 408(b)(2) fee disclosures, will be at risk and may lose plan clients who become confused or feel uncertain about their advisory relationships once they receive the mandated disclosures.

Overview of ERISA Section 408(b)(2) Regulations

Background on Original 408(b)(2) Regulations

ERISA Section 408(b)(2) enables advisors and other service providers to a plan to receive compensation directly or indirectly from the plan. Ordinarily, the use of plan assets (such as the assets held in the accounts of 401(k) plan participants) to pay a provider's fees would constitute a prohibited transaction. However, ERISA Section 408(b)(2) provides a prohibited transaction exemption permitting the payment of service fees from plan assets as long as the services are necessary for plan operation and the fees are reasonable. In addition, the services must be rendered under a reasonable contract or arrangement (Reasonable Arrangement). Under the DOL's original 408(b)(2) regulations, which established the requirement for a Reasonable Arrangement, only one substantive condition applied.[2] To qualify as a Reasonable Arrangement, the service contract or arrangement merely needed to give the plan the ability to terminate it, without penalty and on reasonably short notice.

[1]Schedule C must be included in the Form 5500 annual reports for large plans, which generally covers plans with 100 or more employees. [2]The original 408(b)(2) regulations were issued in 1977.

General Requirement Under New 408(b)(2) Regulations

Under the new 408(b)(2) regulations, the DOL kept the existing requirement and added a further condition. To be deemed a Reasonable Arrangement, the service provider must also disclose certain information in a written Fee Notice reasonably in advance of the date the service contract or arrangement is entered into (or the date of extension or renewal, as applicable). Under the interim rules, changes to information furnished by service providers were required to be disclosed within 60 days of the date on which the service provider was informed of the change, unless extraordinary circumstances beyond the service provider's control made this impossible, in which case, the new information had to be disclosed "as soon as practicable." The final regulation leaves this rule intact, but creates an exception for disclosures by both fiduciaries managing "look through" investment products as well as recordkeeping platforms. Disclosure of any changes to the investment information required for these providers must now be made at least annually, thereby relaxing the 60-day rule. This eliminates the need to make frequent, or even non-stop, notifications with regard to minor modifications of investment information relating to designated investment alternatives and other investment products. Additionally, the provider must respond to a plan client's request to furnish any other fee-related information that is required by the plan client in order to comply with any of the client's reporting and disclosure obligations under ERISA reasonably in advance of the reporting or disclosure deadline cited by the client.

Penalties

If a service provider fails to provide the specific information required by the regulation, the provider is subject to substantial excise tax penalties by the IRS.[3] This direct penalty on the advisor also applies if false or insufficient statements are provided. The provider could potentially be forced to reimburse the plan for any service fees wrongfully paid by the plan in violation of ERISA's prohibited transaction rules, and the provider could also be subject to a 20% civil penalty by the DOL.

Covered Advisors

Regardless of whether an advisor is associated with a registered investment adviser ("RIA") or a broker-dealer, it is generally safe to assume that an advisor with ERISA retirement plan clients will be covered by the new 408(b)(2) regulations.[4] Nevertheless, it is worth reviewing the various advisory services that will trigger the Fee Notice requirement. Based on the type of advisory activity, as discussed further below, additional disclosure items may be required. The following types of advisory services are covered under the Fee Notice rule:

(1) Fiduciary Services–the provider is furnishing services as an ERISA fiduciary, a RIA, or both a RIA and an ERISA fiduciary;

(2) Services as Platform Provider–the provider is furnishing recordkeeping or brokerage services to a 401(k) plan, or another type of defined contribution plan with participant-directed investments, and making a platform of investment options available to participants ("Platform Provider"); or

(3) Advisory Services for Indirect Compensation–the provider is furnishing investment advisory services to the plan sponsor or participants for indirect compensation (i.e., compensation payable from any source other than the plan, plan sponsor, or the provider's affiliates and subcontractors).[5] Indirect compensation may include payments from the plan's investment funds, such as 12b-1 fees and shareholder servicing fees, and revenue-sharing payments from the managers of the plan's investment funds.

Required Content for 408(b)(2) Fee Disclosures

The firm does not expect to receive compensation for its advisory services from any sources other than the Plan or, if applicable, the Plan's sponsor.

- Services–a description of the services to be provided;
- Fiduciary Status–if applicable, the Fee Notice must include a statement that services will be provided as (1) an ERISA fiduciary, (2) a RIA, or (3) as both an ERISA fiduciary and RIA;

[3]Section 4975(a) of the Internal Revenue Code imposes a "first tier" excise tax equal to 15% of the amount involved in the prohibited transaction. Section 4975(b) imposes an additional "second tier" excise tax equal to 100% of the amount involved if the prohibited transaction is not corrected. [4]A registered investment adviser is an investment adviser registered under the Investment Advisers Act of 1940, as amended, or any state law. [5]Providers of accounting, legal, valuation, administrative and certain other services are also viewed as key service providers that are subject to the new 408(b)(2) regulations.

- Direct Compensation–a description of the total direct compensation reasonably expected from the plan for its services;[6]

- Indirect Compensation–(1) a description of all indirect compensation reasonably expected to be paid to the provider, its affiliates or subcontractors, (2) identification of the related services, (3) the payer of such compensation and (4) a description of the arrangement between the payer of the indirect compensation and the service provider pursuant to which the indirect compensation will be paid;

- Compensation Among Related Parties–if any compensation will be paid among the provider, its affiliates or subcontractors and such compensation is transaction-based (e.g., commission) or charged directly against the net value of the plan's investment (e.g., 12b-1 fee), the Fee Notice must include (1) a description of such compensation, (2) identification of the related services, (3) the payer of such compensation, and (4) the recipients of such compensation (i.e., provider, affiliate or subcontractor);

- Compensation Upon Termination–a description of any compensation reasonably expected upon termination of the service contract or arrangement and how prepaid amounts will be calculated and refunded;

- Manner of Receipt–a description of how the compensation will be received (e.g., invoice, deducted directly from plan accounts); and

- Platform Provider's Fee Disclosures for Investment Options–if the provider is a Platform Provider, the Fee Notice must include the following information for each of the plan's investment options: (1) any sales charge or redemption fee, (2) where the return is not fixed, the annual operating expenses, or (3) any additional ongoing expenses, such as a wrap-fee or a mortality and expense fee. If the investment product is a designated investment alternative, the latter two categories do not apply and the fiduciary must instead disclose the investment's total annual operating expenses expressed as a percentage of the average net asset value for the year (which must also be disclosed under the participant-level disclosure rules).

The final rule also requires fiduciaries of a designated investment alternative to disclose any other information relating to the investment that is within the control of, or reasonably available to, the service provider. The DOL does not view this requirement as a mandate to obtain or prepare new information not under the service provider's control and has indicated that in the case of a recordkeeping platform offering mutual fund investments, the new requirement could be satisfied by passing through the prospectuses of such funds.

Developing a Model Fee Notice for Advisors

Model Notice

The new 408(b)(2) regulations do not require fee disclosures to be made to plan clients in any particular format. The DOL has given advisors the flexibility to use existing documentation from different sources to satisfy the disclosure requirement (e.g., a RIA's Form ADV Part II, fund prospectuses), so long as the various documents, collectively, contain all of the required information.[7] However, given the specificity and the detailed nature of the required disclosures, many advisors will not be able to rely solely on existing documentation and they should strongly consider developing a model notice for use with all plan clients that is tailored to meeting the Fee Notice requirement.

Level of Detail Required in Fee Notice

In principle, the Fee Notice must contain sufficient information to permit a fiduciary's evaluation of the reasonableness of the compensation. According to the DOL, if the Fee Notice "lacks sufficient detail to enable the responsible plan fiduciary to determine whether the compensation to be received for such services is reasonable, the responsible plan fiduciary must request additional information."[8]

[6]Direct compensation can also be disclosed on a service-by-service basis, instead of on a total compensation basis. [7]Although it is not required under the DOL's current regulations under ERISA Section 408(b)(2), the DOL is considering the feasibility of requiring providers to furnish a summary disclosure statement regarding services and fees. Such a statement would serve as a guide to enable plan fiduciaries to locate compensation information disclosed in multiple, complex documents. [8]Preamble to interim final regulations under ERISA Section 408(b)(2), 75 FR 41600 (July 16, 2010).

In addition to this general principle, the new 408(b)(2) regulations include lists of specific informational items which must be included in the Fee Notice (e.g., detailed rules concerning compensation payable among related parties). Advisory firms should ensure their model notices adequately cover the comprehensive service and fee information required under ERISA Section 408(b)(2), and the firm's legal and compliance functions should consult with ERISA counsel, as necessary, when developing the "template" for the model notice.

Description or Estimate of Indirect Compensation

The required Fee Notice must include a description of any indirect compensation payable to the provider or an estimate of the monetary amount. The description may be expressed as a formula, percentage of plan assets, or a per capita charge. If the compensation cannot reasonably be expressed in this manner, it can be expressed by any other reasonable method, such as a range of basis points. The DOL has indicated that "disclosure of expected compensation in the form of known ranges can be a 'reasonable' method"of disclosure. However, the DOL also indicated that, whenever possible, more specific rather than less specific compensation information is preferred.[8½] The payer of the indirect compensation must also be identified, and the payer's relationship with the service provider explained so that the plan fiduciary can analyze why the payer is compensating the provider. For example, if a broker-dealer provides advisory services to a 401(k) plan, the required Fee Notice would need to disclose the identity of any investment funds in the plan menu paying 12b-1 fees (and any other similar fees) to the firm and the amount of such fees.

If a provider of advisory services receives indirect compensation from multiple sources, the provider generally would be required to separately disclose the indirect compensation payable from each source as well as the identity of the payer. For example, an advisor might receive (1) 12b-1 fees from the plan's investment funds, (2) revenue-sharing payments based on the plan's total assets from the plan's administrative service provider, and (3) a wrap-fee that is invoiced directly to the client, which is offset by the 12b-1 fees and the revenue-sharing payment. Even though the plan client pays a wrap-fee, the Fee Notice would need to include the required information concerning the 12b-1 fees and the revenue-sharing payments.

Written Policies and Procedures for Advisors

Given the legal significance of Fee Notices (and the severity of the potential penalties for failing to deliver them properly), RIAs and broker-dealers who provide advisory services to ERISA plans should adopt written policies and maintain procedures designed to ensure compliance with ERISA Section 408(b)(2) and the new regulations.

New Plan Clients

A process for delivering Fee Notices to new plan clients should be incorporated into the firm's intake process for new clients. An advisor's compliance policies should include guidelines for ensuring that delivery of the Fee Notice is made "reasonably in advance" of the date on which plan services commence. It may also be beneficial for the advisor to maintain records of whether and when Fee Notices were actually delivered.

Updates to Delivered Fee Notices

Since most advisors (not including recordkeeping platforms and fiduciaries managing look-through investments) must disclose any changes to the information contained in the Fee Notice within 60 days after the change, the firm's compliance policies should address how the firm will track changes as they occur, and how the changes will be communicated in a timely manner to the plan client. To the extent any Fee Notices include descriptions of product-based fees (e.g., 12b-1 fees), the firm would need to develop a process for monitoring any changes in such fees (e.g., monthly review of applicable fund fees).

Responding to Fee-Related Inquiries

An advisor's compliance policies should designate a responsible individual for responding to fee-related inquiries by the required deadline, or reasonably in advance of a plan reporting deadline cited in a written request made by a plan client. The firm should also consider including contact information for such individual in its standard Fee Notice.

[8½] Preamble to final 408(b)(2) regulations, 77 FR 5632 at 5645 (February 3, 2012).

Correction of Fee Notice Errors

The new 408(b)(2) regulations include procedural rules which allow a provider to cure defects discovered in its Fee Notice, and they should be reflected in the advisor's compliance policies. Correction must be made as soon as practicable, but not later than 30 days upon discovery of an informational error or omission, including errors or omissions that occur in connection with disclosure updates of previously provided information.

Developing a Model Fee Notice for Advisors

Fiduciary Status of RIAs

The DOL has affirmed its belief that plan sponsors should know whether an advisor will be providing services to the plan as an ERISA fiduciary or as a RIA.[9] Although it is possible for RIAs to provide advisory services to plan clients in a nonfiduciary capacity for ERISA purposes, RIAs will typically provide "investment advice" to plans as ERISA fiduciaries. Thus, the Fee Notice typically will need to identify the RIA's status as a fiduciary under both the Investment Advisers Act of 1940, as amended (Advisers Act) and under ERISA.

Fee Notice and Client Agreement

RIAs are generally required to enter into written agreements with their clients, as contemplated under the Advisers Act.[10] The client agreements of many RIAs already include specific contractual provisions concerning the scope and nature of services to be provided to the plan and plan participants and the related fees. The firm's Form ADV Part II typically also describes its advisory services and fees. As discussed above, this type of existing documentation is unlikely to satisfy all the specific requirements for a Fee Notice. However, RIAs may wish to consider integrating the various informational items otherwise required in the Fee Notice into the RIA's client agreement, or attaching the Fee Notice as a schedule to the client agreement. Although the DOL ultimately decided against a proposed requirement that would have required providers to contractually agree to provide fee disclosures, the DOL continues to encourage (but not require) providers to incorporate fee disclosure provisions into their client agreements.

Wrap-Fees and Indirect Compensation

With respect to RIAs charging wrap-fees for plan services, any indirect compensation received by the firm would need to be disclosed in the Fee Notice even if the wrap-fee is fully offset by any indirect compensation received. For example, if a "dual registrant" firm is providing advisory services to a 401(k) plan, the firm might charge a uniform wrap-fee based on the plan's total assets, subject to reduction for the various 12b-1 fees payable from the investment funds in the plan menu.[11] Ordinarily, the firm might simply disclose in its client agreement that the wrap-fee will be offset by any fees received from the funds (without disclosing the individual 12b-1 fees). However, this level of disclosure would be insufficient for purposes of the new 408(b)(2) regulations. Specific descriptions or estimates of the various 12b-1 fees payable from the plan's funds would need to be disclosed in the Fee Notice. The Fee Notice would also need to identify the individual funds paying the 12b-1 fees to the RIA.

Special Considerations for Broker-Dealers

Client Agreement Is Not Required

Many broker-dealers do not require (and may not permit) their registered representatives to enter into written agreements with plan sponsors. Although the DOL encourages providers to spell out their Fee Notice obligations contractually, the DOL deliberately decided against requiring fee provisions in client agreements.[12] However, if a broker-dealer does not enter into written agreements with plan sponsors, it will still need to include a description of plan services along with the other required items in its Fee Notice.

Disclosure of Nonfiduciary Status Is Not Required

Broker-dealers typically provide advisory services to ERISA plans in a nonfiduciary capacity.[13] The DOL has clarified that the Fee Notices of nonfiduciary advisors do not need to include a statement that their advisory services will be nonfiduciary in nature.[14] But if asked, nonfiduciary advisors should be prepared to discuss their advisory status (e.g., provide general background information concerning a broker's duty of suitability, which applies uniformly to both plan and non-plan clients).

[9]Preamble to interim final regulations under ERISA Section 408(b)(2), 75 FR 41600 (July 16, 2010). [10]See Section 205(a) of the Advisers Act. [11]An advisory firm is a "dual registrant" if the firm is registered under the Advisers Act, and as a broker-dealer registered under the Securities Exchange Act of 1934, as amended. [12]Client agreements and contractual disclosure provisions had initially been required under the proposed 408(b)(2) regulations, but the DOL removed this requirement for the interim final regulations on the grounds that it would have resulted in unnecessary burdens for providers. [13]If a broker-dealer were to serve a plan client in a fiduciary capacity, it would not be able to receive variable compensation from the plan's various investment funds (e.g., different rates of 12b-1 fees from different funds). [14]Preamble to interim final regulations under ERISA Section 408(b)(2), 75 FR 41600 (July 16, 2010).

Nonfiduciary advisors may also wish to emphasize the importance of an individual advisor's expertise in ERISA fiduciary matters and experience in advising retirement plans. Regardless of whether an advisor is a fiduciary or not, an advisor who specializes in retirement plans will be considerably more valuable to a plan sponsor than an advisor who "dabbles" in the retirement plan market.

Broker-Dealer Platforms

If the broker-dealer furnishing advisory services to the plan client also provides the platform of investment options for the plan, the plan sponsor must receive additional fee disclosures for the plan's menu options (e.g., annual operating expenses). Since the new 408(b)(2) regulations permit the use of different documents to satisfy the fee disclosure requirement, the provider may wish to "pass through" the funds' prospectuses or fact cards to meet this requirement, rather than attempting to include this information in Fee Notices. The interim rules required such disclosure materials to be regulated by a State or Federal agency. The final regulation retains this concept but redirects its focus to the issuer of the investment that furnishes the pass-through materials by requiring the institution, not the materials, to be regulated.

The ability to comply with the disclosure rules by passing through materials of investment issuers is limited to issuers that are either a mutual fund, insurance company, an issuer of a publicly traded security or a financial institution supervised by a Federal or State agency. In addition, the issuer may not be an affiliate of the service provider making the disclosure. The final rule indicates that it is possible to meet the disclosure obligations by furnishing information replicated from the issuer's disclosure materials.

Discussing Fees and the New Disclosure Rules with Plan Clients

It is critical for advisors to discuss the new Fee Notice requirement with existing plan clients in advance of the Effective Date. When presenting this information to plan sponsors, advisors may wish to consider communicating the following "talking" points:

1. Ensuring the reasonableness of plan fees has emerged as a fundamental fiduciary duty.

Plan sponsors have always been held responsible for evaluating the cost and quality of plan services under Section 404 of ERISA. However, in recent years, 401(k) fees in particular have come under heightened scrutiny from Congress, regulators and the courts. The DOL in particular has been promoting the importance of monitoring the plan's fees.[15] Like the related duty of prudence under ERISA, ensuring the reasonableness of the plan's fees is largely a procedural responsibility. The essence of a plan sponsor's compliance with this duty is gathering and understanding relevant information about the plan's services and fees so that it can make informed decisions.

2. The plan's key providers must provide Fee Notices in accordance with new DOL rules.

Although plan sponsors have always been responsible for monitoring the plan's fees, providers generally were not required to disclose their compensation. However, as of July 1, 2012, a plan's key providers must deliver a required Fee Notice in accordance with the new 408(b)(2) regulations.[16] Responsible plan fiduciaries must decide whether the Fee Notice includes enough information about the services to determine whether the cost of such services to the plan is reasonable.[17] If more information is required, the sponsor must request it.

3. Fee Notices of plan's various providers should be evaluated in the proper context.

A plan sponsor should view the various Fee Notices of its providers as a fiduciary tool, and make every effort to understand the fee disclosures so that it can make informed decisions for the benefit of plan participants. Service decisions should never be based on fees alone, and the automatic selection of the cheapest provider could trigger a fiduciary breach. The selection of a provider should always consider the scope and quality of the services provided. The advisor should offer to assist the plan sponsor in its evaluation of the information disclosed in the required Fee Notices from the plan's key providers.

[15]In addition to the DOL's current ongoing regulatory project addressing plan fees, the DOL has issued various publications concerning the importance of monitoring plan fees (e.g., Tips For Selecting And Monitoring Service Providers For Your Employee Benefit Plan, 401(k) Plan Fees Disclosure Tool). [16]Providers of investment advisory, accounting, legal, valuation, administrative and certain other services are viewed as key service providers that are subject to the new 408(b)(2) regulations. [17]Preamble to interim final regulations under ERISA Section 408(b)(2), 75 FR 41600 (July 16, 2010).

4. Special consideration should be given to any indirect compensation arrangement.

Plan sponsors should pay careful attention to any compensation flowing from one provider to another, which can be either harmful or beneficial. According to the DOL, harmful arrangements generally involve service providers that “strike deals that profit one another at the plan’s expense,” and beneficial arrangements generally involve providers that “leverage their respective comparative advantages” to deliver “the best value” for the plan.[18] Indirect compensation arrangements arise because of the increasingly specialized nature of various types of plan services, encouraging alliances and informal partnerships among different types of providers. Plan sponsors should review the nature of the providers’ combined service arrangement to determine whether it is genuinely beneficial for the plan.

5. Advisor’s compensation also needs to be evaluated in the proper context.

When reviewing the advisor’s own Fee Notice, the plan sponsor should take into account the scope and nature of the advisor’s services. The advisor should be prepared to discuss the various advisory services provided for the benefit of the plan sponsor as well as participants. As with any other service provider, the plan sponsor should never select an advisor simply because it is the cheapest. To the extent the advisor receives any indirect compensation through the plan’s investment or administrative service providers, the advisor should be prepared to demonstrate that the arrangement allows the various providers to combine and leverage the best of their respective services for the benefit of the plan.

Conclusion

Although the new 408(b)(2) regulations on their face may appear to be a topic of concern for plan service providers only, these rules are intended to assist plan sponsors discharge their fiduciary duty under ERISA to monitor the plan’s services and fees. This fiduciary duty is procedural in nature, requiring plan sponsors to gather and understand the relevant information so as to make informed decisions. Advisors can help plan sponsors properly evaluate the information disclosed in the required Fee Notices from the plan’s key providers. As advisors provide this valuable service for plan clients, they can also make sure the plan client evaluates the advisor’s own Fee Notice in the proper context.

[18]Preamble to interim final regulations under ERISA Section 408(b)(2), 75 FR 41600 (July 16, 2010).

About the Author

Marcia S. Wagner is a specialist in pension and employee benefits law and is the principal of The Wagner Law Group, a Professional Corporation, in Boston, Massachusetts, which she founded approximately 14 years ago. A summa cum laude and Phi Beta Kappa graduate of Cornell University and a graduate of Harvard Law School, she has practiced in Boston for over 20 years. Ms. Wagner is recognized as an expert in a variety of employee benefits issues and executive compensation matters, including qualified and nonqualified retirement plans, “rabbi” trusts, all forms of deferred compensation, and welfare benefit arrangements. She is a member of the Employee Benefits Committee of the American Bar Association, Taxation Section, and a member of the Pension Liaison Committee for the IRS Key District Office in Brooklyn, New York. Ms. Wagner is a frequent lecturer and author in the ERISA/employee benefits area and has authored a Bureau of National Affairs Tax Management Portfolio, entitled “Plan Disqualification and ERISA Litigation,” for which she has received the BNA 1994 Distinguished Author Commendation, and has also authored, among other books and articles, the following: BNA Tax Management Portfolio: “ERISA Litigation, Procedure, Preemption and Other Title I Issues,” and BNA Tax Management Portfolio: “EPCRS—Plan Correction and Disqualification.”

Ms. Wagner has been listed as a “Massachusetts Super Lawyer” by Boston Magazine, Who’s Who Among Executive and Professional Women—Honors Edition by both Empire Who’s Who and Manchester’s Who’s Who, and has been selected to be listed in The Best Lawyers in America for 2003 through 2010, and has an AV peer review rating, as very high to preeminent legal ability and integrity, by LexisNexis Martindale-Hubbell. In addition to being selected to the Super Lawyers list this year, Ms. Wagner will also appear on the following top lists: MA Super Lawyers—Boston Magazine—top 100 overall lawyers and top 50 female lawyers; and New England Super Lawyers—top 100 overall lawyers and top 50 female lawyers. Ms. Wagner has been appointed to the IRS TE/GE Advisory Committee, and was inducted as a Fellow of the American College of Employee Benefits Counsel. For the past three years, 401k Wire has listed Ms. Wagner as one of its 100 Most Influential Persons in the 401(k) industry.

Ms. Wagner currently lives in Belmont, Massachusetts, with her husband and four children.

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