PLAN SPONSORS RUN RISK OF MISSING THE POINT OF 408(b)(2) . . .
AVOIDING A PROHIBITED TRANSACTION

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Much has been written over the past months dealing with the new 408(b)(2) regulation which goes into effect on July 1. Much of it has been from the perspective of plan vendors, not plan sponsors. Consequently, many sponsors are running a real risk of a prohibited transaction by missing two simple but **very critical** points of this regulation:

1. uncovering ***conflicts of interest with current plan vendors*** (that may cause fees to be unreasonable now or in the future)
2. completion of an ***analysis <u>by the plan sponsor</u> DOCUMENTING*** that current fees ARE reasonable

Covered service providers simply provide the required information. It is **the PLAN SPONSOR/FIDUCIARY who has the LEGAL DUTY to receive the information, insure its completeness and perform a reasonableness analysis to complete compliance with the regulation**. **FAILURE TO DO SO PROPERLY WILL RESULT IN THE PLAN ENTERING A PROHIBITED TRANSACTION AND THE POTENTIAL FOR CLAIMS OF BREACH OF FIDUCIARY DUTY.**

Most plan fiduciaries will not:

- understand the disclosures (investment lingo)
- know if there is missing information
- know when to ask for more information
- be able to ask the "right" questions (and know the answers they *should* hear)
- know how all the information fits together
- know how to actually determine if the fees are, in-fact, reasonable

Sponsors may look to their current vendors for compliance assistance. **This is a mistake.** How can you rely upon conflicted vendors to tell you their own fees are reasonable? Do plan sponsors even realize their current vendors are conflicted and may be part of the problem?

THE POSITIVE IMPACT A PROPERLY COMPLETED, UNBIASED FEE ASSESSMENT CAN HAVE ON PARTICIPANT ACCOUNTS IS HUGE AND CAN NOT BE IGNORED! When fiduciaries do not have the requisite skills or resources to complete an important task, they have a **legal duty to seek assistance**. Fiduciaries can not let this crucial opportunity be diluted (or lost completely) by relying upon conflicted advice.

An **independent, unbiased report** will be critical in best serving the sole interests of plan participants which is THE over-riding duty of every plan fiduciary.