

# Prepare for Upcoming Service Provider Fee Disclosures

*The fee disclosures have arrived; what are you going to do with them?*

By Mary B. Andersen, CEBS, ERPA

*Mary B. Andersen is president and founder of ERISA Diagnostics Inc., an employee benefits consulting firm that provides services related to Forms 5500, plan documents, summary plan descriptions and compliance/operational reviews. Andersen has more than 25 years of benefits consulting and administration experience. She is a CEBS fellow and member of the charter class. She has also achieved the enrolled retirement plan agent (ERPA) designation. Andersen is the contributing editor of the Pension Plan Fix-It Handbook.*

Verisight and RSM McGladrey have issued a report, “2011/2012 Compensation, Retirement and Benefits Trends Report,” which states that: “The vast majority (61 percent) of plan sponsors claim to be either unprepared to respond to the new regulations, or they don’t know if they are prepared.”

The question that arises from this report is: What do you do with the information you receive? This article will address this question. A related article on page 4 provides a useful guide to help you understand the various disclosures you may receive. You may also want to refer to our September 2010 newsletter, p. 4, in which we discussed the interim final regulation in some detail.

## History of Fee Disclosures

Before we delve into the answer to the above question, let’s take a quick recap of fee disclosures.

ERISA Section 406(a)(1)(c) provides that furnishing goods, services or facilities between a plan and a party in interest is a prohibited transaction. Code Section 4975 imposes excise taxes on prohibited transactions and disqualified persons. ERISA defines a party in interest as anyone providing services to a plan. Engaging in a prohibited transaction is not a good thing — it could result in civil and financial penalties. ERISA Section 408(b)(2) provides relief from the prohibited transaction rules.

In July 2010, DOL’s Employee Benefits Security Administration (EBSA) published an interim final rule enhancing required disclosure from certain pension plan service providers to plan fiduciaries as part of a “reasonable” contract or arrangement for services according to ERISA Section 408(b)(2) with an effective date of July 16, 2011.

In February 2011, the DOL announced its intention to delay the Section 408(b)(2) regulation’s effective date until Jan. 1, 2012, and published a proposal to formally delay the effective date of the Section 408(b)(2) regulation to that date.

At the same time, the DOL was working on participant fee disclosure requirements and, based on comments received, decided to postpone the effective date from July 16, 2011, to April 1, 2012. (See box, p. 6.)

Final regulations anticipated by the end of 2011 have not yet been issued at this writing.

## What Do You Do Next?

Once the fee disclosures are made, the plan fiduciary is on the hook to evaluate the information.

You’ve likely heard this before: ERISA is a process statute, meaning you must have a documented process to demonstrate compliance. Here are some tips for your next steps.

First, develop a review process. Review items could include the following:

- Identify your covered service providers.

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CONTRIBUTING EDITOR: **MARY B. ANDERSEN**  
ERISADIAGNOSTICS INC.  
EXTON, PA

DIRECTOR OF PUBLISHING: **LUIS HERNANDEZ**

ASSOCIATE PUBLISHER: **GWEN COFIELD**

SENIOR MANAGING EDITOR: **JOHN F. IEKEL**

EDITOR: **JAMES PROESCHOLDT**

DESKTOP PUBLISHING SPECIALIST: **SHAWNE HICKS**

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