The DOL Has Spoken …
What You Need to Know about 408(b)(2)’s Final Rule

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Pioneer is not affiliated with Fred Reish, Drinker Biddle & Reath, Tom Kmak or Fiduciary Benchmarks.
408(b)(2) Disclosures

- The regulation provides that, unless its conditions are satisfied, certain service arrangements with retirement plans are prohibited.
  - Effective date: July 1, 2012 for both new and existing arrangements . . . transition issues.
  - Consequence of failure.
Covered Services and Covered Plans

- The requirements apply to “covered” service providers for “covered” plans:
  - RIAs are covered service providers.
  - Broker-dealers are covered service providers.
  - ERISA-governed tax-qualified plans are covered plans.
Disclosures

A written agreement is not required, but may be used for disclosures. However, the following disclosures must be made in writing:

- Services
- Status
- Compensation

The disclosures must be made to the responsible plan fiduciary (RPF).

The disclosures must be plan specific.
Service Disclosures

Advisers commonly provide the following type of services:

- **Plan level**: Non-discretionary investment advice.
- **Plan level**: Discretionary investment management.
- **Plan level**: fee and expense analysis.
  - provider searches.

continued . . .
Service Disclosures

- **Participant level**: Investment education, including asset allocation models.
- **Participant level**: Non-discretionary investment advice.
- **Participant level**: Discretionary investment management (QDIAs).
Status Disclosures

- A statement that the service provider will provide, or reasonably expects to provide,

  - services as a fiduciary and/or . . .

  - services as an investment adviser registered under either the Investment Advisers Act of 1940 or any State law.

Note: Many RIA agreements fail to affirmatively state that the RIA is an ERISA fiduciary (which raises risk management issues).
Categories of Compensation

- Direct compensation
- Indirect compensation
- Compensation paid among related parties
- Compensation for termination of arrangement
Disclosure of Compensation

- **Indirect compensation**: A description of all indirect compensation that the service provider reasonably expects to receive in connection with the services; including:
  - identification of the services for which the indirect compensation will be received; and
  - identification of the payer of the indirect compensation.

Note: Indirect compensation presents prohibited transaction issues for RIAs.
Disclosure of Compensation

Indirect compensation includes:

– 12b-1 fees, even if they are offset against fees.

– Payments from entities managed by RIAs:
  • mutual funds.
  • separate accounts.
  • collective trusts.
Indirect Compensation

Other forms of indirect “compensation”:

– Conference sponsorships.

– Sponsoring marketing events.

– Gifts, tickets, trips.
Disclosure of Compensation

A description of compensation or cost may be expressed as a monetary amount, formula, percentage of the covered plan’s assets, or a per capita charge for each participant or beneficiary.

If the compensation or cost cannot reasonably be expressed in such terms, by any reasonable method.

Any description or estimate must contain sufficient information to permit evaluation of the reasonableness of the compensation.
Manner of Receipt

A description of the manner in which the compensation will be received, such as whether:

– the plan will be billed; or

– the compensation will be deducted directly from the plan’s account(s) or investments.

Note: Some RIA agreements present deemed custody and ERISA bonding issues.
Follow-Up Disclosure Requirements

- Once a year for changes to investments; 60 days for other changes.

- Before due date for reporting and disclosure requests.

- 30 days for good faith mistakes.
Significant Changes in the Final Regulation

- Effective date.
- Summary and roadmap, or guide.
- Estimate (and methodology).
- Termination, if non-compliance.
Looking Forward

Plan fiduciaries have a duty to prudently evaluate the 408(b)(2) disclosures . . . and to reach “reasoned and informed” decisions.

– Request for proposals (RFPs).

– Benchmarking.
Looking Forward

Since most plan sponsors lack the experience or resources to properly do that task, they will necessarily rely heavily on their advisers to review the disclosures, compare them to proper benchmarks, consider the value of the services, and engage in a prudent process.
The Proper Benchmarking of a DC Plan

Thomas R. Kmak
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Fiduciary Benchmarks, Inc.

February 9, 2012

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Agenda

- **What** is the proper way to benchmark a DC plan?
  - **Why** this is good for your clients?
  - **Why** this is good for you?
  - **How** does the process work?
From Disclosure to Benchmarking...

- Transparency
- Disclosure
- Reasonableness
- Value

NOW. THE NEW FUEL-INJECTED YUGO GV PLUS.
What is Benchmarking?

**Benchmarking** (also "best practice benchmarking" or "process benchmarking") is a process used in management and particularly __________________ in which organizations evaluate various aspects of their processes in relation to __________ usually within their own sector. This then allows organizations to develop plans on how to adopt such best practice, usually with the aim of increasing some aspect of performance. Benchmarking may be a one-off event, but is often treated as a _________________ in which organizations continually seek to challenge their practices.
A 4-step Process

1. Use the **Right Data**
   - *DO NOT* use the Form 5500 since it is out-of-date, inconsistent and contains no value metrics
   - Use data directly from recordkeepers

2. Build an **“Apples-to-Apples”** Comparison Group
   - Assets, Participants, Average Account Balance are among the factors we use to build proper benchmark groups

3. Collect and Examine **Fees by Provider**
   - ERISA section 404(a)(1)(a) and 408(b)(2) requires the examination be held at the provider-level

4. Determine the **“Value Add” by Provider**
   - There are definite differences among providers and examining fees without examining value can be a huge mistake
The Department of Labor (DOL) has stated that fees aren't everything. In effect, it can be reasonable to pay higher fees if a plan is receiving more or higher quality services or is attaining higher participant success measures than similar plans.
• Most of these advisors are RIAs that have received either the AIF® or AIFA® designations from fi360 which indicates they follow the highest standards of fiduciary care for investments.

• For example, we have 6 of the 7 past winners of Advisor of the Year and they are vocal advocates for our service.

• These Broker Dealers average 200 expert retirement plan advisors with a larger number of part-time and casual retirement plan advisors.

• The 1,000 advisors represented here can be added to the 400 advisors already committed to our service giving us an incredible number of retirement plan professionals using our service.

• A number of plan sponsors use our service as an important part of their fiduciary process for making sure fees are reasonable for the services, support and success measures being delivered to the plan.
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- **Why** this is good for your clients?
- **Why** this is good for you?
- **How** does the process work?
Why is Benchmarking Good for Clients?  
The Regulations Emphasize the Legislation

Regulation

- Form 5500 Schedule C changes
- 408(b)(2) regulations for plan sponsor disclosure
- 404(a)(5) regulations for participant disclosure
Why is Benchmarking Good for Clients?  
The Law Requires Fees to be Reasonable

Legislation

ERISA imposes high standards – “the highest known to law” – upon fiduciaries

- Section 404(a) of ERISA provides that fiduciaries must elicit information necessary to assess not only the reasonableness of the fees to be paid for services, **but also the qualifications of the service provider and the quality of the services** that will be provided.
Why is Benchmarking Good for Clients?
Protect Them from Litigation

Litigation

- 30 MAJOR fee cases have been filed in the courts.
- 3 major settlements:
  - $15.2 million
  - $16.5 million
  - $18.5 million
Why is Benchmarking Good for Clients? Avoid Embarrassing Press

Press

“60 Minutes”

Are fees draining your 401(k) retirement savings?

Google Search: 401(k) fees too high 1,200,000 mentions
Why is Benchmarking Good for Clients? Everyone Appreciates a “Fair Deal”

Rob and Bob both work in the software business:

- They are the same age: 25
- They both made 401(k) contributions for the same number of years: 40
- They both retire at the same age: 67
- They both contribute the same amount: $2,000 per year
- Each company has the same matching contribution: 50%
- They are both invested in the same fund earnings: 6.09%
  - Rob is invested in the institutional share class at a .50% fee
  - Bob is invested in the retail share class at a 1.00% fee

So, who will have more money at age 65? Rob or Bob?
Why is Benchmarking Good for Clients? Everyone Appreciates a “Fair Deal”

This example is hypothetical in nature and does not represent an investment in any Pioneer product.
Why is Benchmarking Good for Your Clients?

**PLAN SPONSORS**

- Help shield from fiduciary liability
- Comply with legislation/regulation

**PARTICIPANTS**

- Help them achieve Retirement Readiness
- Void embarrassing press
- High Account Balances
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Why is Benchmarking Good for You?
Grow Your Practice

• Since there is no other service like the FBi Benchmarking service, it makes a great prospecting tool for a value added sales call with any prospect that wants to make sure they are getting a fair deal
• Some BDs are charging a minimum of $3500 for the time and consulting associated with our reports – in effect, you can get paid for prospecting!
• The expense for benchmarking can be paid from plan assets since it is an ERISA qualified plan expense – as such, it will not impact the budget of the client!
• A Retirement Advisor for a large wirehouse closed 5 large plans in 60 days using the FBi benchmarking service!
Why is Benchmarking Good for You?  
**Highlight Your Value Proposition**

- The only thing that is bought purely on price are commodities. **DON’T LET YOUR SERVICE GET COMMODITIZED!**

- Fiduciary Benchmarks consulted dozens of the industry’s best advisors to highlight the services you provide. The result is 30+ fiduciary oversight and best practice areas spread across five areas:
  - Investment Oversight
  - Vendor Management
  - Plan Governance
  - Participant Education Services
  - Fiduciary Status

- Fiduciary Benchmarks has seen service providers that effectively use our reports to clearly demonstrate value add **obtain pricing that is 40% over market!**
Why is Benchmarking Good for You?

Streamline Annual Reviews

- FBI has seen numerous cases where a service provider using an FBI report has completely stopped an RFP process
- This has occurred with plans as small as a few million in assets to as large as $600mm in assets
- Per one CEO: “if the FBI service can save us just one of our large plan per year from going out to bid, it will pay for itself”
Why is Benchmarking Good for You?

Protect Your Clients
Benchmarking Helps Your Practice

**Prospects & Clients**

- Independent Third Party Analysis
- Transparency & Disclosure
- Value Proposition
- “Opens the Door” with Prospects
- “Closes the Door” with Clients

- **Grow Your Practice**
- **Highlight Your Value Proposition**
- **Streamline Your Practice**
- **Protect Your Clients**

- **Grow New Revenues**
- **Defend Existing Revenue**
- **Reduce Expense**
- **Decrease Risk**
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**FBi Process Flow for Pioneer**

**Request Phase**
- Pioneer introduces FA to FBi service
- Pioneer informs FA of RK specific data requirements
- Pioneer /FA complete Report Request
- Pioneer emails completed Report Request to FBi

**Report Phase**
- FBi adds report request to system
- FBi monitors request until data/materials are received
- FBi processes data within 10 business days of receipt
- FBi interacts with FA for questions. FBi updates Pioneer on report status

**Delivery Phase**
- FBi delivers report concurrently to FA/Pioneer via email
- Pioneer offers report review to FA

**Support Phase**
- FBi Advisor Service is available to support FA/Pioneer

**Feedback Phase**
- FBi provides weekly stats on report usage
Plan Sponsors MUST make sure their fees are reasonable under ERISA section 404(a)(1)(a) which is reinforced by DOL Regulation 408(b)(2)

Benchmarking and going to RFP are the only two viable ways to assess fee reasonableness

Benchmarking is a better way to assess fee reasonableness: *takes less time, costs less money, focuses on fees & value*

Our benchmarking service provides an independent opinion of the fees for a plan

We not only examine the fees being paid, but we also examine the value received by the plan thereby making our analysis as comprehensive as possible

In addition, all information is presented in an “actionable intelligence” way that is easy-to-understand and truly informative

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$1,200 per year minimum annual fee per advisor

ERISA Qualified Plan Expense

*Low Price allows Advisor to generate revenue by adding fees for consulting/delivery of reports*
Best Practices – Call To Action

Jamie Axford, AIF®
Senior Vice President,
Director of Business Development

Pioneer Investments

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Best Practices – Call To Action

CALL

Pioneer Investment Only & Retirement Group

1-888-743-4847 (option # 1)