

We are writing in response to the Department's Proposed Information Collection Request Submitted for Public Comment; Evaluating the Effectiveness of the 408(b)(2) Disclosure Requirements.

Specifically, we are commenting on the questions to be posed to the responsible plan fiduciaries (RPFs) for small pension plans.

In that regard, we request three changes.

With regard to number (2), the RPFs should also be asked about the types and status of service providers hired by the plan. In our experience, small plan sponsors, and their plan fiduciaries, commonly do not understand the roles of their providers. And, in that regard, they do not understand the status of their advisers (and other providers) as fiduciaries or not. As a result, we recommend that the RPFs be asked whether their service providers are fiduciaries and, if they respond in the affirmative, why they believe they are fiduciaries. In the same vein, they should be asked whether they received a disclosure that the service provider is a fiduciary.

With regard to number (3), we recommend that the RPFs be asked about indirect compensation. In our experience, RPFs of small plans often do not understand the forms of indirect compensation or even that it exists. In addition, they may not understand that indirect payments are considered to be compensation. As a result, they may not understand that disclosures were made and that they need to be evaluated.

As a part of number (3), we also recommend that you ask whether the disclosures were made as percentages or in ranges and whether that form of disclosure was helpful or detrimental. For example, we have seen some disclosures in very broad ranges. In those cases, it appears that the disclosures are of limited value to responsible plan fiduciaries, since some points in the range may be reasonable, but others may not.

Finally, with regard to number (8), we find the question about paying for a guide to be curious. We are not aware of anyone suggesting that payments be made to obtain guides. On the other hand, if the question is whether a relatively minor cost could, from their perspective, reasonably be incurred by their plans, then we recommend that the question be phrased in that way.

Thank you for the opportunity to make these comments.

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