



Filed Electronically

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Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

Attention: RIN 1210-AB08; 408(b)(2) Guide

Ladies and Gentlemen:

Great-West Financial (“Great-West”) appreciates this opportunity to comment on the Proposed Amendment to the final regulation under section 408(b)(2) of the Employee Retirement Income Security Act of 1974 (“ERISA”), regarding the addition of a guide to the disclosures required to be provided to a plan fiduciary by a Covered Service Provider.

Great-West currently serves more than 30,000 retirement plans, representing approximately 4.9 million retirement plan participants. The majority of these participants are in ERISA-covered defined contribution plans, but Great-West serves all different types and sizes of retirement plans. For example, we serve more roughly 23,000 401(k) plans, 3,600 403(b) plans, 1,100 457 plans, 960 401(a) plans, and 1,500 other retirement plans. Many of these plans, mostly in the 457 and 403(b) categories, are not covered by ERISA because they are governmental plans or because they fall under some other exemption; however, Great-West provides many of the same types of services to these plans as to ERISA plans, including providing 408(b)(2) disclosures.

Great-West has long had a practice of providing detailed information to plan fiduciaries in fee schedules and services agreements up front, and in periodic reports during the relationship. In response to the 408(b)(2) regulations, Great-West has strengthened these documents even further, and has in addition created a comprehensive disclosure document that is generated automatically by our recordkeeping system and updated each month. This disclosure document is made available to almost all of Great-West’s client plans, not just to those that are subject to ERISA standards.

Great-West believes that the regulations promulgated under ERISA section 408(b)(2) are an important and much-needed tool to help plan fiduciaries meet their obligations under ERISA, as well as to bring clarity to what has in many cases been a very complex and confusing set of relationships between plans and their various service providers. We have been more than happy to develop the

materials and functionality to meet and, we believe, even exceed these disclosure requirements. We are very proud of our disclosures, which have been very well received by both plan fiduciaries and their advisors and agents.

We understand that some 408(b)(2)-related disclosures may still be very lengthy and complex for plan fiduciaries to digest and understand. We commend the ongoing efforts of the Department of Labor to get the necessary information into the hands of these plan fiduciaries that they need in order to make informed decisions for their plans. However, we have some serious concerns with the new proposed regulation as it pertains to an additional guide.

#### General Concerns

The proposed requirement for a guide to the 408(b)(2) disclosures creates concerns with respect to both the plan fiduciary and the Covered Service Provider. With respect to the plan fiduciary, there is the concern that a guide that calls out information located in specific documents or specific pages of a document may have the unintended effect of de-emphasizing other important information contained in the disclosures and agreements. Also, a guide that simply directs the plan fiduciary where to find certain information does nothing to help them digest or understand that information. How key information is described is much more important than where it resides.

Finally, there is a significant cost concern. Because of the difficulties a Covered Service Provider will have in producing a guide, as described below, there will be substantial costs incurred, which will unavoidably be passed on to the plan and participants. Based on our initial assessment, the cost to implement the guide proposal would be similar to the cost we incurred to implement the initial 408(b)(2) disclosure rule. These increased costs are unfair to plan fiduciaries that can already understand the disclosures they have been provided. The costs are also unnecessary. Our experience has shown that the vast majority of plan fiduciaries have had no trouble obtaining and understanding the required information. About 2/3rds of the 23,000 401(k) plans which we provided disclosures to are small employer plans. After providing the initial disclosures we tracked questions and responses and found that very few employers had difficulty understanding the disclosure and none of the questions we received were about difficulties with locating cross referenced information. There are also much simpler and cheaper ways of addressing the few difficulties that do exist, namely by providing for quick and easy access to obtaining answers and explanation from Covered Service Providers when necessary.

With respect to Covered Service Providers, the requirement of a guide in the case of disclosures that are not in a single document may work best for a small provider or one that offered a limited set of services to a smaller number of plans. In the case of a large recordkeeper like Great-West, providing



a guide of the sort contemplated by the proposed regulation would be an extraordinarily daunting task.

First, because of the very large number of plans serviced by Great-West, and to an even greater degree because of the variability in the size, complexity, and customization of different plans on Great-West's system, there is no reasonably feasible way to get all of the required information into a single document. Second, and for exactly the same reasons, there is no readily discernible way to build a guide for all these different types of plans that would satisfy the guide requirements. These problems apply in different ways to different types of required disclosures.

#### Service Disclosures

With respect to required service disclosures, Great-West provides each plan fiduciary with a services agreement, signed by both parties at the initiation of the relationship. In the case of smaller plans, where it is possible to limit the range of fee and service offerings available, Great-West uses a standard services agreement that looks nearly the same for each plan. If all of Great-West's services agreements were like this, it might be possible to construct a 408(b)(2) guide that pinpoints particular services by page or section number, though it would still consume a considerable amount of resources to do so. However, even in these smaller market segments, Great-West's standard services agreement has changed a great deal over time, such that an agreement that is entered into today would look very different from one from five, ten, or fifteen years ago or more, and as a result the pages and sections would be completely different.

This difficulty is magnified many times over in other market segments, such as those involving larger, more complex plans. In these markets, Great-West uses a customized services agreement for each client, giving each the opportunity to select from a suite of elective services that are only available to such plans, as well as providing each the opportunity to individually negotiate many contractual provisions. As a result, the page and sections numbers are not the same from any one agreement to the next.

We believe it is important that a plan fiduciary have access to a clear description of the services offered to the plan. Therefore, Great-West has established procedures for storing and maintaining all of these services agreements, and in order to make it easier for plan fiduciaries to refer to their individual agreements we make scanned copies of them available for viewing online. In addition, we have built an automated Schedule of Services which, drawing upon information stored on Great-West's systems, automatically generates a document listing each of the services pertaining to a particular plan that is also make available for viewing online. Obviously, neither of these methods of disclosing services to plan fiduciaries is an integral part of Great-West's standard 408(b)(2) disclosure.

Instead, the 408(b)(2) disclosure refers to these documents and explains to plan fiduciaries how to access and view them.

We believe that this complexity in disclosing services is not unique to Great-West, but is common among other large recordkeepers that have a similarly diverse business.

### Investment-Related Disclosures

As a recordkeeper, Great-West is subject to the 408(b)(2) regulation provisions that require disclosure of investment-related information, as well as those provisions that apply to all Covered Service Providers. (§ 2550.408b-2(c)(1)(iv)(F)) Because Great-West has relationships with a large number of investment providers and stores information on most of those providers on its system, Great-West is able to pull into its standard 408(b)(2) disclosure a wide range of information about almost any investment that a plan fiduciary may select for its plan. Great-West does offer some proprietary investment on its platform; however, by far the majority of investments available are managed by other, unrelated investment providers. As a result, Great-West has developed a disclosure that relies in part on the portion of the 408(b)(2) regulation that permits a recordkeeper to make use of materials developed by the issuer of each investment. (§ 2550.408b-2(c)(1)(iv)(F)(2))

Great-West's standard 408(b)(2) disclosure includes a great deal of investment-related information that is stored on Great-West's systems, including the names of the funds and their issuers, the expense ratios of the funds, and the basis for each calculation. Fees are disclosed in both percentages/basis points and estimated dollar amounts. However, there are a few types of investment-related fees that are not stored on Great-West's system and so cannot be pulled into the disclosure automatically, such as certain redemption fees or finder's fees. Since these fees are disclosed in the prospectuses for each investment, Great-West's disclosure refers the plan fiduciary to these prospectuses. Great-West posts a link to each prospectus on its website for the convenience of the plan fiduciaries.

Because these prospectuses and other issuer-developed materials are not created or controlled by Great-West, and because an issuer might update or modify such materials at any time, it is not clear what steps Great-West might reasonably take to extract the page or section numbers where required information could be found in order to include such references in a 408(b)(2) guide. This difficulty is greatly compounded by the very large number of investments that are available on Great-West's recordkeeping platform.

Again, we believe that this complexity in making investment-related disclosures is not unique to Great-West, but is common among other large recordkeepers that have a similarly diverse business.

### Affiliates



Great-West Financial is a brand that includes various related entities. Great-West Life & Annuity Insurance Company is a recordkeeper and, in some cases, an investment provider. Advised Assets Group, LLC is a registered investment advisor. Great-West Trust Company, LLC is a trustee and custodian. Each of these entities has certain disclosure obligations under 408(b)(2). In order to make the disclosures easier for the plan fiduciary to follow and to reduce duplication and waste, Great-West has chosen to combine some of the disclosures for all of these entities into a single standard 408(b)(2) disclosure. Thus, our disclosure includes information regarding fees for each of these entities and, where applicable, includes disclosures regarding fiduciary or other status for each entity. However, these related entities also have their own, separate agreements with respect to each plan, such as a services agreement or trust/custodial agreement. These agreements also contain disclosable information relating to both services and fees.

As with the description of the complexities involving Service Disclosures, above, the existence of these different agreements presents great difficulties in extracting the pages or section numbers where certain information may be found. We believe that similar obstacles would exist for any Covered Service Provider offering bundled services in this manner.

### Recommendations

Great-West does believe that disclosures under 408(b)(2) should not be excessively complex or difficult to read. However, the fact is that many arrangements between plan fiduciaries and Covered Service Providers are very complex by nature. Where such complexity exists, rather than trying to force a false simplicity upon the arrangement, there should be an onus upon the Covered Service Provider to help bring clarity to that complexity.

The proposed regulation includes a provision that, by itself, would go a long way toward fostering this kind of clarity. This provision would require a Covered Service Provider to “identify a person or office, including contact information, that the responsible plan fiduciary may contact regarding the disclosures provided”. A Covered Service Provider should be, and Great-West certainly is, perfectly willing to answer any questions that a plan fiduciary may have with respect to the disclosures provided. If a disclosure, regardless of number of pages or different documents, is already sufficiently clear for a plan fiduciary to follow, then no additional guide is needed. If some subset of plan fiduciaries requires assistance in understanding the disclosure, the cited requirement would provide a good avenue for obtaining this assistance. If a Covered Service Provider’s disclosures are inherently confusing, then presumably they would expend a great deal of time and resources fielding these requests from plan fiduciaries, which would be an incentive to improve the quality of the disclosure.

In addition to the above, the existing 408(b)(2) regulations already contain other procedures by which a plan fiduciary can obtain needed information or clarification with respect to a Covered Service Provider's disclosures. § 2550.408b-2(c)(1)(vi)(A) requires a Covered Service Provider to "furnish any other information relating to the compensation received in connection with the contract or arrangement that is required for the covered plan to comply with the reporting and disclosure requirements of Title I of the Act and the regulations, forms and schedules issued thereunder. Likewise, § 2550.408b-2(c)(1)(ix) describes in detail the manner in which a plan fiduciary may request information from the Covered Service Provider, resulting in an exemption for the plan fiduciary as well as consequences for non-responsive Covered Service Provider.

These provisions provide a flexible set of tools for a plan fiduciary to obtain needed clarification of disclosures, which can be tailored to any type of arrangement regardless of complexity or size. With these tools, Great-West believes that an additional guide would not only be unnecessary, but would also be unnecessarily expensive and burdensome, both to Covered Services Provider and to plan fiduciaries.

Thank you again for the opportunity to comment. If you have any questions regarding this letter, please do not hesitate to contact me at 303-737-3086 or via e-mail at [charlie.nelson@greatwest.com](mailto:charlie.nelson@greatwest.com).

Regards,



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Great-West Financial