



## **Broker Compensation Disclosure Requirements under the CAA, 408(B)(2)**

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## History of CAA

Requirements of 408(B)(2)

In December 2020, Congress enacted the **Consolidated Appropriations Act of 2021** (CAA), which included a new requirement that bars an ERISA plan fiduciary from entering into, renewing, or extending a contract or arrangement with a “covered service provider” that is providing brokerage services or consulting services to a plan unless specific disclosures are satisfied.

# Who must disclose?



Covered service provider (brokers, agents, consultants) must disclose their commissions/fees to the employer beginning on **December 27, 2021**.



Any renewal or new business that you write **after December 27, 2021, must include a disclosure** prior to “selling” the group.



This must be disclosed **separately** from any other contract between the broker and employer.



The disclosure **must list all compensation** that is ***reasonably expected*** to be received by the covered service provider (brokers, agents, consultants) during the contract year.

# Who must disclose? (cont'd)

Specifically, this disclosure applies to covered service providers (brokers, agents, consultants) who:

- Enter into a contract or arrangement to provide services to a group health plan of any size and reasonably expect to receive **at least \$1,000 in “direct” or “indirect” compensation** related to:
  - **Brokerage services:** vision, dental, recordkeeping, medical management, benefits administration, stop loss, pharmacy benefits, wellness services, transparency tools, group purchasing organization, disease management, compliance services, EAP or TPA services
  - **Consulting:** related to the development or implementation of plans design, insurance or insurance selection, vision, dental, recordkeeping, medical management, benefits administration, stop loss, pharmacy benefits, wellness services, transparency tools, group purchasing organization, disease management, compliance services, EAP or TPA services

## When must compensation be disclosed?

- **“Not later than the date that is reasonably in advance of the date** on which the contract or arrangement is entered into, extended or renewed”
- The purpose of the disclosure is **to enable the plan fiduciary to ensure** that the compensation that will be received in connection with the services provided is “reasonable.”

## What if you need to update disclosure because of an omission, mistake or increase/decrease compensation?

- Any disclosure errors or omissions made in good faith and with reasonable diligence **must be corrected within 30 days of discovery**, and any plan-related compensation or cost changes must be reported to the plan **within 60 days of the change**.

## What if a plan fiduciary requests compensation information?

- **“Upon written request if the responsible plan fiduciary or covered plan administrator”** and **within 90 days of the request**, you must 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 under ERISA.”
- This is an **additional disclosure** if requested by the plan fiduciary.

# What services need to be disclosed?

- **Placement services** – assessing/reviewing current plans, conducting renewal analysis, summarizing plans/policies, negotiating with carriers/advising on opportunities for improvement
- **Enrollment services** – annual enrollment meetings, online enrollment services platform
- **Account management services** – liaison between carrier and employer, resolution on billing/claims, plan questions, claims related issues, general benefits questions
- **Plan servicing** – setting up premium deductions, reviewing plan performance
- **Compliance services** – legislative/regulatory updates, preparing 5500s
- **Consulting services**
- **Referral services**
- **Other self-funded plan services**
- **Value added services** – HR services, wellness resources
- **Additional out-of-scope services** – COBRA administration, FMLA, HSA/FSA

# What is direct compensation?



Requirements of 408(B)(2)

Any money collected directly from the employer group



# What is indirect compensation?

- Any compensation **received from any source other than the covered plan, plan sponsor** in connection with the services described in the contract with the covered plan, **including compensation from a vendor to a brokerage firm**
- This includes:
  - Commissions (e.g., measured as a percentage of premium, a per contract or employee per month, commission tiers or schedules)
  - Payment made or received from any covered service provider subcontractors that are supporting the plan-related services
  - Any compensation related to plan-related services
  - Plan referral fees or other payments (TPAs, PBMs, wellness vendors)
  - Other administrative fees – FSA, HSA, HRA, COBRA, HRIS

## ERISA Section 408(B)(2) Notice

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Group Name/Plan Fiduciary: \_\_\_\_\_

Section 408(b)(2) of the Employee Retirement Income Security Act (ERISA) requires disclosure of fees, compensation, and other plan information to plan sponsors. The objective of this disclosure is to provide you, the plan fiduciary, with a comprehensive statement of the compensation we may receive related to providing you with options for offering health benefits and services to your employees. This disclosure is intended to assist you in selecting providers for your benefit plan and to assist you as you fulfill your obligations to the Plan and plan participants.

### Services Provided and Fiduciary Status

\_\_\_\_\_ provides consulting and brokerage services on behalf of the Plan. These services are deemed by the U.S. Department of Labor to involve the performance of certain covered services under ERISA as the consultant or agent for the Plan. The services are provided in accordance with the service agreement or agent of record separately entered into by \_\_\_\_\_ and you, the plan sponsor. \_\_\_\_\_ (including its consultants and agents) \_\_\_\_\_ are \_\_\_\_\_ are not fiduciaries and \_\_\_\_\_ do \_\_\_\_\_ do not provide fiduciary services to the Plan(s).

**Direct Compensation** – Compensation received directly from a covered plan. Covered plan, means a group health plan. \_\_\_\_\_ receives direct compensation as described below:

Covered Plan (Employer)	Describe Fee Arrangement in Dollar Amount or Percentage	Describe Services Provided

**Indirect compensation** – Indirect compensation is defined to mean compensation received from any source other than the covered plan sponsor, the covered service provider or an affiliate.

Vendor	Description of Services	Amount or Calculation	Arrangement between payer and covered service provider

## ERISA Section 408(B)(2) Notice

\_\_\_\_\_ also may be paid additional commissions by carriers normally calculated at the calendar year end that are contingent on several factors including overall number of employer plans and/or employee participants in plans for which we have placed the insurance, plan retention rates and premium growth.

**Non-monetary compensation** – Non-monetary compensation is defined as non-cash compensation that is received from a vendor or service provider which exceeds \$250 in the aggregate over the term of the arrangement. This may include meals, entertainment, trips, sponsorships, and other carrier/vendor events.

This disclosure document includes the disclosures \_\_\_\_\_ is required to make in accordance with ERISA Section 408(B)(2). Any other plan services provider that is subject to 408(B)(2) disclosure requirements is required to make its own independent 408(B)(2) and such disclosure are not included in this notice.

This engagement will commence on \_\_\_\_\_ and will terminate on: \_\_\_\_\_. As of the termination date, I will not be providing services, therefore, will not have any further obligations to you in any capacity.

This engagement letter and its contents, including the fees arrangement we have reached, is confidential, as is any advice that I provide to you. To that end, by signing below, you agree not to disclose the contents of this letter to third parties unless you are required to do so by law.

✓ Please confirm that you have read, understood and agreed to the terms set forth above by signing and returning a copy of this letter with your original signature.

\_\_\_\_\_  
Employer/Plan Fiduciary Signature Date

\_\_\_\_\_  
Employer/Plan Fiduciary Printed Name Date

## ERISA Section 408(B)(2) Notice

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Group Name/Plan Fiduciary:

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Type your "Agency  
Name/Agency  
Associated Persons"  
and fields will  
pre-populate  
throughout the form

### Services Provided and Fiduciary Status

provides consulting and brokerage services on behalf of the Plan. These services are deemed by the U.S. Department of Labor to involve the performance of certain covered services under ERISA as the consultant or agent for the Plan. The services are provided in accordance with the service agreement or agent of record separately entered into by  and you, the plan sponsor.  (including its consultants and agents)  are  are not fiduciaries and  do  do not provide fiduciary services to the Plan(s).

Click appropriate boxes  
to select fiduciary status

**Direct Compensation** – Compensation received directly from a covered plan. Covered plan, means a group health plan. XYZ Agency \_\_\_\_\_ receives direct compensation as described below:

Covered Plan (Employer)	Describe Fee Arrangement <i>in Dollar Amount or Percentage</i>	Describe Services Provided
MJB Trucking Co.	\$15,000	Flat fee for RFP preparation

**Indirect compensation** – Indirect compensation is defined to mean compensation received from any source other than the covered plan sponsor, the covered service provider or an affiliate.

Vendor	Description of Services	Amount or Calculation	Arrangement between payer and covered service provider
Aetna	Medical	3%	Broker and medical carrier
Humana	Dental	\$2.50/PEPM	Broker and dental carrier
Avesis	Vision	\$1.00/PEME	Broker and vision carrier
TASC	COBRA	\$.50/PEPM	COBRA vendor and broker


XYZ Agency also may be paid additional commissions by carriers normally calculated at the calendar year end that are contingent on several factors including overall number of employer plans and/or employee participants in plans for which we have placed the insurance, plan retention rates and premium growth.

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This disclosure document includes the disclosures XYZ Agency is required to make in accordance with ERISA Section 408(B)(2). Any other plan services provider that is subject to 408(B)(2) disclosure requirements is required to make its own independent 408(B)(2) and such disclosure are not included in this notice.

This engagement will commence on 01/01/2022 and will terminate on: 12/31/2022. As of the termination date, I will not be providing services, therefore, will not have any further obligations to you in any capacity.

This engagement letter and its contents, including the fees arrangement we have reached, is confidential, as is any advice that I provide to you. To that end, by signing below, you agree not to disclose the contents of this letter to third parties unless you are required to do so by law.

 Please confirm that you have read, understood and agreed to the terms set forth above by signing and returning a copy of this letter with your original signature.

Employer/Plan Fiduciary Signature

Date

Employer/Plan Fiduciary Printed Name

Date

Click to access drop-down calendars for all date fields

Confirm that you have read, understood and agreed to the terms, then sign and date the form using the drop-down options provided

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Questions?

