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To Disclose or Not to Disclose: Key Takeaways from the CAA's New Broker and Consultant Compensation Disclosure Requirements

By Mark E. Bokert and Alan Hahn

2022 has proven to be a pivotal year for group health plans, as many new rules and compliance requirements take effect. Of note, the Consolidated Appropriations Act ("CAA"), signed into law on December 27, 2020, introduced a new requirement that, starting December 27, 2021, brokers and consultants providing services to Employee Retirement Income Security Act ("ERISA") group health plans must disclose to plan fiduciaries, in writing, certain direct and indirect compensation they receive for providing such services. The new requirement applies to those service providers anticipated to earn $1,000 or more, with disclosure required reasonably in advance of executing the applicable agreement or arrangement (effective for contracts or arrangements entered into, extended, or renewed on or after December 27, 2021). In tandem with this mandate, plan sponsors now also have a fiduciary responsibility to report to the Department of Labor ("DOL")

Mark E. Bokert is a partner and co-chairs the Benefits + Compensation Practice Group of Davis+Gilbert LLP. His practice encompasses nearly all aspects of executive compensation and employee benefits, including matters related to equity plans, deferred compensation plans, phantom equity plans, qualified retirement plans, and welfare plans. Mr. Bokert may be contacted at mbokert@dglaw.com. Alan Hahn is a partner and co-chairs the firm's Benefits + Compensation Practice Group. His practice is devoted to advising clients of all sizes, including in the design and implementation of a wide variety of creative, unique, and tax-effective employee benefit plans and programs. Mr. Hahn may be contacted at ahahn@dglaw.com. Caroline Cima, an associate in the firm's Benefits + Compensation Practice Group, assisted in the preparation of this column.

any such service providers who fail to disclose their compensation appropriately. Accordingly, plan sponsors and administrators, as well as health plan brokers and consultants, should familiarize themselves with these new disclosure requirements as soon as possible so to ensure timely compliance.

BACKGROUND

On December 27, 2020, the No Surprises Act was signed into law as part of the CAA of 2021. The No Surprises Act in many ways serves to address a push for increased transparency on the parts of plans, insurers, and providers alike, and fits into a broader patchwork of recent initiatives designed to make health coverage more approachable, fair and forthright. Accordingly, the No Surprises Act institutes certain requirements for health plans and issuers intended to protect against surprise medical bills, enable care cost comparisons, increase transparency and enable patient awareness, many of which become effective or enforceable in 2022.[1] For instance, effective January 1, 2022, providers must not "surprise" balance bill in certain instances when the patient has not provided written consent, including when receiving emergency services from an out-of-network provider or facility, or care from an out-of-network provider at an in-network hospital, hospital outpatient department, critical access hospital, or ambulatory surgical center. Also, effective January 1, 2022, are certain continuity of care requirements, in-network provider directory requirements, and medical ID card requirements, while certain other No Surprises Act requirements become effective or enforceable later in the year or beyond.

The CAA's new broker and consultant compensation disclosure requirements, under Section 202 of the CAA's Transparency provisions,[2] immediately follow the No Surprises Act and thus work in tandem as part of the greater push towards a more accessible, navigable, and predictable health care system. In particular, the enhanced disclosure rules closer align ERISA group health plans with existing disclosure rules under Section 408(b)(2) of ERISA applicable to pension plans (effective since 2012),[3] and may be considered a long time coming given prior changes to annual return/report Form 5500's Schedule C, effective since 2009 and which expanded annual disclosure requirements concerning direct and indirect compensation paid to certain plans' service providers.[4] As a result, the CAA's broker and consultant compensation disclosure requirements may be the inevitable product of recent administrative, legislative, and popular efforts, timely effective in a year characterized by compliance overhauls and fiduciary duty scrutiny. Through this lens, more comprehensive disclosure requirements become of a piece, reflecting a wider demand for transparency in coverage, as well as in compensation and potential conflicts of interest.

Accordingly, the below key takeaways offer a summary of the new broker and consultant compensation disclosure requirements most anticipated to substantively impact ERISA group health plan sponsors and administrators, as well as health plan brokers and consultants, and necessarily do not cover every provision nor every nuance or exception in the provisions covered. As a result, an employee benefits attorney should be consulted in connection with interpreting and implementing the requirements, particularly as the specific plan, service provider, form of services and compensation will dictate the appropriate disclosure.

KEY TAKEAWAYS FROM THE CAA'S NEW BROKER AND CONSULTANT COMPENSATION DISCLOSURE REQUIREMENTS

1. What are the new disclosure requirements trying to achieve?

At a high level, ERISA Section 408(b)(2) permits certain plans to enter into reasonable plan service contracts or arrangements for reasonable compensation so to exempt such arrangements from certain ERISA Section 406 prohibited transaction rules (as noted, reporting under this provision was already applicable to pension plans, and the CAA amends Section 408(b)(2) to now extend the reporting requirement to group health plans).[5] Thus the main goal is to require covered brokers and consultants to provide plan fiduciaries with the information necessary to (i) assess the reasonableness of the compensation to be received and (ii) be better positioned to identify potential conflicts of interest relative to the receipt of compensation from sources other than the plan or plan sponsor (with significant focus placed on "indirect compensation" so to help guard against unknown conflicts of interest, particularly when received from third parties).[6] As with pension plans, failure to comply with the disclosure requirements may mean that the service arrangement is not reasonable and is therefore likely a prohibited transaction under ERISA Section 406 because the exemption under Section 408(b)(2) would be unavailable.[7]

2. Which plans are subject to the new disclosure requirements?

The new requirements apply to "covered plans," meaning all "group health plan[s] as defined [in ERISA] Section 733(a)."[8] Such "group health plans" include "employee welfare benefit plans" to the extent that the plan provides medical care to employees or their dependents through insurance, reimbursement, or otherwise, with "employee welfare benefit plan" meaning, in relevant part, a plan, fund, or program established

or maintained by an employer, employee organization, or both, for the purpose of providing certain welfare benefits to participants or their beneficiaries.[9] In practice, this means that the new requirements apply to employers' group health plans of any size subject to ERISA – i.e., regardless of whether the plan is self-insured or fully insured by a third party insurance carrier (and including grandfathered health plans under Section 1251(e) of the Patient Protection and Affordable Care Act),[10] or whether it covers 10 or 10,000 employees.[11] It does not matter, for instance, whether the plan is exempt from filing the Form 5500 annual return/report because it is a small group health plan and fully insured, unfunded, or a combination of fully insured and unfunded.[12] Additionally, the new requirements do not explicitly carve out "excepted benefits" (as some other health care reform rules do) and the benefits provided by the group health plan can include medical, dental, vision, health reimbursement arrangements "HRAs"), flexible spending accounts ("FSAs"), certain employee assistance programs ("EAPs"), certain wellness programs, and other health benefits.[13] However, non-ERISA plans are not subject to the new requirements (as it applies to ERISA-covered group health plans), nor are qualified small employer health reimbursement arrangements ("QSEHRAs") (as Section 733(a)(1) excludes QSEHRAs from the definition of "group health plan").[14]

3. When do the new compensation disclosure requirements take effect?

The new requirements apply to service provider contracts or arrangements entered into, extended, or renewed on or after the one-year anniversary of the CAA's effective date (i.e., on or after December 27, 2021, given the December 27, 2020, effective date).[15] Pursuant to the CAA's transition rule, no contract executed prior to such date will be subject to the new disclosure requirements (unless such contract is extended, renewed, amended, replaced, or similar, after the December 27, 2021 effective date).[16] For this determination, the date on which a contract or arrangement is entered into between the service provider and the plan fiduciary will be considered the date the contract or arrangement was "executed" (versus, for instance, looking to its effective date or the applicable plan year start date).[17] For example, if a plan fiduciary entered into a new service contract with a broker on December 1, 2021, effective for the plan year beginning on January 1, 2022, the service contract would be treated as having been "executed" on December 1, 2021 – and as this date is prior to the December 27, 2021, effective date, the contract would not be subject to the new compensation disclosure requirements; however, the disclosure requirements could still later apply if the same contract is subsequently renewed or extended, or a new contract or amendment is entered into, on or after December 27, 2021. Note also that the DOL has clarified, in the case of a service

provider entering into an arrangement through use of a "broker of record" agreement or letter (BOR), the relevant date for this determination will be the earlier of the date on which (x) the BOR is submitted to the insurance carrier or (y) a group application is signed for insurance coverage for the following plan year, provided that the submission or signature is done in the ordinary course and not to avoid disclosure obligations.[18]

4. To whom do the disclosure rules apply and who has the burden of actually disclosing?

Under the applicable CAA Section 202(a)(2), the new group health plan disclosure requirements apply to a "covered service provider," which is defined by the types of services provided and compensation received – namely, a service provider that reasonably expects to receive $1,000 or more in total direct or indirect compensation from a covered plan in connection with providing a covered service to the plan, pursuant to a contract or arrangement between that provider and the plan.[19] For this purpose, covered "service" is divided into two camps: "brokerage services" and "consulting."[20] Whether a service provider becomes a "covered service provider" by virtue of its "brokerage" or "consulting" services is a facts-and-circumstances determination (including, for instance, when providing bundled services where broker or consulting services are just a piece of the broader package).[21] Moreover, a service provider cannot evade being considered a "covered service provider" simply because it does not identify itself as a "broker" or "consultant," nor because it does not identify its services as "brokerage" or "consulting" services.[22] Pending further guidance, the DOL's enforcement policy applies to parties who reasonably and in good faith determine their status as a "covered service provider" (and note that, if the DOL initiates an audit, the burden is on the service provider to defend that it is not a "covered service provider" under a reasonable, good faith interpretation).[23]

The CAA and DOL do helpfully provide guidance with respect to services that will be deemed "covered services", as follows: (i) "brokerage services" are those with respect to selection of insurance products (including vision and dental), recordkeeping services, medical management vendors, benefits administration (including vision and dental), stop-loss insurance, pharmacy benefit management services, wellness services, transparency tools and vendors, group purchasing organization preferred vendor panels, disease management vendors and products, compliance services, employee assistance programs, or third party administration services; and (ii) "consulting services" are those related to the development or implementation of plan design, insurance or insurance product selection (including vision and dental), recordkeeping, medical management, benefits administration selection (including vision and dental), stop-loss insurance, pharmacy benefit management

services, wellness design and management services, transparency tools, group purchasing organization agreements and services, participation in and services from preferred vendor panels, disease management, compliance services, employee assistance programs, or third party administration services.[24]

Importantly, and in addition to the covered service provider's own particular services, the broker or consultant's affiliates and/or subcontractors must also be taken into consideration in connection with the disclosure, as compensation received by such affiliate or subcontractor is taken into account for purposes of applying the $1,000 minimum threshold.[25] In other words, disclosure is required regardless of whether such services will be performed, or direct or indirect compensation received, by the covered service provider, its affiliates, or its subcontractors.[26] This is consistent with the DOL's goal to enhance fee transparency, especially for service arrangements that involve receipt of indirect compensation (discussed in above paragraph 1).[27] However, it is the relevant broker or consultant – the covered service provider actually in contract with the plan – who has the burden of timely and accurately disclosing (and not any affiliate or subcontractor, unless separately in contract with the covered plan).[28] Therefore, in arrangements with multiple parties under a single contact where some covered services are performed by affiliates or subcontractors, the party actually entering into the contract with the covered plan should be deemed the "covered service provider" responsible for making the required disclosures to the plan.

Note that, although the covered service provider discloses to the plan (discussed in below paragraph 6) and not to the DOL, such service provider can still be deemed liable under ERISA Section 502(i) and assessed penalties thereunder by the DOL (as Section 502(i) allows the DOL to penalize service providers whose arrangements result in prohibited transactions).[29] As a result, brokers and consultants should work closely with their benefits counsel to comply with the new requirements and to archive disclosure records, particularly as errors and omissions insurance policies may not cover financial liabilities, including penalties, for failing to appropriately disclose.

5. What compensation is covered?

If a covered service provider reasonably expects to receive $1,000 or more in total direct or indirect compensation from a covered plan in connection with providing covered services to the plan, pursuant to a contract or arrangement between that provider and the plan, then such direct or indirect compensation must be disclosed (including, as noted above, any such compensation received by an affiliate or subcontractor).[30] In a broad sense, "direct compensation" is compensation directly paid by the group health plan itself, whereas "indirect compensation" is

that received by a provider from a source other than the plan, plan sponsor, the covered service provider, or an affiliate.[31] This compensation may include potential contingent fees as well as non-monetary compensation (if exceeding $250 in value), such as gifts or event tickets.[32]

Special care should be taken to adequately disclose "indirect compensation" (and, if in doubt, erring on the side of over-disclosure may be prudent so to demonstrate best efforts to comply with the new rules) – particularly given the DOL's primary goal of enhancing fee transparency in service arrangements that involve receipt of indirect compensation, as the DOL may consequently hone in on and scrutinize such compensation during an audit. For this purpose, "indirect compensation" may include, without limitation, incentive compensation paid to the broker or consultant "based on a structure of incentives not solely related to the contract with the plan" and including from a third party (for instance, bonuses and transaction-based compensation, such as based on business placed or retained, which could include commissions and finder's fees and could come from a vendor, such as an insurance carrier).[33]

6. To whom is the disclosure made?

The covered service provider must disclose to the ERISA group health plan's "responsible plan fiduciary," meaning a plan fiduciary with the authority to cause a plan to enter into, extend, or renew a contract or arrangement for plan services.[34] As noted in above paragraph 1, this is to enable the plan fiduciary to assess whether the arrangement between the plan and the service provider is "reasonable" (and that no more than "reasonable compensation" is, or will be, paid), while also aiding the plan fiduciary in identifying potential conflicts of interest relative to a broker or consultant's receipt of indirect compensation. Additionally, the duties of prudence and loyalty under ERISA Section 404 apply to a responsible plan fiduciary's decisions to hire service providers and to monitor service provider arrangements, and so the newly required disclosures may help the plan fiduciary comply with these obligations.[35] The disclosure may therefore better enable the plan fiduciary to serve the plan and, if the compensation is deemed "reasonable", may allow for an exemption from certain prohibited transaction rules under ERISA Section 406.[36]

7. How must the disclosure be made?

The DOL has clarified that there is no model disclosure notice for compliance, as each arrangement is highly fact-specific and there may be wide variations (for instance, in services provided and compensation received) such that a form would be ineffective.[37] However, the covered

service provider must disclose the following in its particular notice: (i) a description of the services provided to the plan pursuant to the covered arrangement (discussed in above paragraph 4); (ii) if applicable, a statement that the broker or consultant (or its affiliate or subcontractor) expects to provide services to the plan as a fiduciary; (iii) a description of all direct and indirect compensation the broker or consultant (or its affiliates or subcontractors) reasonably expects to receive in connection with anticipated services (discussed in above paragraph 5); (iv) if applicable, the identity of any entity paying indirect compensation and description of the arrangement that exists between that entity and the service provider and the services for which the indirect compensation will be received; (v) if applicable, a description of how compensation is shared among the broker/consultant and its affiliates or subcontractors; (vi) if the broker or consultant's compensation is received on a transaction basis (e.g., based on business placed or retained, such as commissions and finder's fees), the information must identify the relevant services and who is paying and receiving such commissions and fees; (vii) a description of any termination-related fees, including (if applicable) a description of how pre-paid amounts will be calculated and refunded; and (viii) a description of the manner in which compensation will be received.[38]

Note that descriptions of compensation may be expressed as a dollar amount, formula, a per capital charge per enrollee, or any other reasonable method (including a range in anticipated compensation, if reasonable and applicable)[39] – the exact form of disclosure will depend on what is most appropriate for the particular arrangement (including the form of compensation and how the service provider reasonably expects to earn such compensation).[40] If the compensation is incalculable at the time of disclosure, the covered service provider should describe the circumstances under which the compensation may be earned, provide a good faith estimate (including a reasonable range, if applicable), and include any supporting explanations, methodologies, and assumptions (for instance, when describing any contingent-based or non-cash compensation).[41] Above all else, and no matter the form of disclosure, the information should be sufficient for the plan fiduciary to evaluate the arrangement's reasonableness and whether the compensation to be received is reasonable (for the reasons discussed).[42] The DOL will accept good faith, reasonable efforts to comply with this standard[43] – therefore, if in doubt, erring on the side of over-disclosure may be prudent so to demonstrate best efforts to comply with the new rules.

8. When must the disclosure be made?

To be considered compliant, the service provider must disclose reasonably in advance of the date on which the applicable agreement

or arrangement with the plan is entered into, extended or renewed.[44] Additionally, the broker or consultant must: (i) disclose any subsequent compensation changes as soon as possible, but no later than 60 days after becoming aware of the change (unless extraordinary circumstances beyond the service provider's control apply, in which case the disclosure must be provided as soon as practicable); (ii) correct inadvertent errors and omissions by providing an updated disclosure notice as soon as possible, but no later than 30 days after discovery; and (iii) respond to any written requests for disclosure made by the client within 90 days (and timely provide such disclosure).[45]

9. Do any new obligations apply to the plan itself, or do they only target covered brokers and consultants?

Although the onus is on the applicable covered service provider to appropriately disclose, this does not mean that plans can wash their hands of disclosure compliance or punt it entirely to the provider without further consideration, monitoring, or double-checking. On the contrary, in tandem with the new requirements for brokers and consultants, ERISA group health plan fiduciaries now also have an obligation to report to the DOL any such service providers who should, but fail to, disclose their compensation appropriately. Specifically, under applicable CAA Section 202(a)(2): (i) when a covered service provider fails to make the required disclosure, plan fiduciaries must submit a written request to the service provider for such disclosure; and (ii) if the appropriate disclosure is not then provided within 90 days of the request (or is rejected), such that the broker or consultant still has failed or refused to adequately disclose, the plan could be liable for a DOL penalty unless it reports this failure in writing to the DOL within 30 days.[46] Additionally, if that disclosure involves future services to the plan, the plan fiduciary must also terminate the relevant contract or arrangement as expeditiously as possible.[47] Failure of the plan fiduciary to comply would likely mean that the covered service provider arrangement is not "reasonable" under ERISA Section 406 and, as a result, is not eligible for an exemption with respect to certain prohibited transaction rules.

Note that the DOL can request a plan's Section 408(b)(2) disclosures during routine plan audits (as it has done for retirement plans under similar rules). Assuming the DOL similarly exercises this for group health plans, both plans and service providers will want to take care to appropriately document compensation and retain disclosure records, and to promptly check and confirm disclosures to ensure they meet the new requirements. Plans, for instance, may wish to establish a process and/or filing system for reviewing and retaining disclosures and for inquiring into any necessary follow-up.

CONCLUSION

As many novel rules and compliance requirements for group health plans take effect in 2022, special attention should be paid to the CAA's new broker and consultant compensation disclosure requirements given the new obligations imposed on both plans and contracted service providers. Plan sponsors and administrators, as well as health plan brokers and consultants, should reach out to their legal counsel to discuss and learn more about these new disclosure requirements. In particular, all relevant parties should work to understand their respective obligations and options thereunder, including how to comply with the new rules, prepare and complete the appropriate documentation, establish procedures that anticipate and ensure timely and accurate disclosure (including any follow-up and/or corrections), and, if needed, prepare for and respond to any DOL inquiries or audits. As the new requirements became effective for contracts or arrangements entered into, extended or renewed on or after December 27, 2021, benefits counsel should be consulted as soon as possible, to the extent discussions are not already underway.

Notes

1. Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, Division BB, Title I, §§ 101-118 (2020). Note that this Title I is also known as the "No Surprises Act" under the CAA.

2. Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, Division BB, Title II, §§ 201-204 (2020). Note that this Title II is also known as the "Transparency" provision under the CAA. For the new group health plan broker and consultant compensation disclosure requirements in particular, *see* Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, Division BB, Title II, § 202 (2020).

3. Employee Retirement Income Security Act of 1974 (ERISA), Pub. L. No. 93-406, 88 Stat. 829, Title I, Part 4, § 408(b)(2) (1974); *see also* 29 C.F.R. § 2550.408b-2(c). For further information, including the Dept. of Labor's explanation for adopting § 408(b)(2), *see* Dept. of Labor, Reasonable Contract or Arrangement Under Section 408(b)(2), 77 Fed. Reg. 5632, 5631-5659 (Feb. 3, 2012), as well as Fact Sheet, Dept. of Labor, Final Regulation Relating to Service Provider Disclosures Under Section 408(b)(2) (Feb. 2012). The Dept. of Labor links § 408(b)(2) applicable to ERISA pension plans to the new ERISA group health plan broker and consultant disclosure requirements by stating the following: "The Department [of Labor] pursued a similar goal when issuing its final regulation requiring enhanced fee disclosures for pension plan service providers, ensuring comprehensive disclosure of compensation to be received by covered service providers, whether directly from the plan or indirectly from third parties" and "Similar disclosure requirements already apply to pension plan service providers, and became effective in 2012 in the form of regulations issued by the department." *See* Dept. of Labor Field Assistance Bulletin No. 2021-03, Footnote 1 (Dec. 30, 2021), available at *https://www.dol.gov/agencies/ebsa/*

employers-and-advisers/guidance/field-assistance-bulletins/2021-03, and Press Release, Dept. of Labor, U.S. Department of Labor Announces Enforcement Policy on Disclosure Requirements for Group Health Plan Service Providers (Dec. 30, 2021), available at *https://www.dol.gov/newsroom/releases/ebsa/ebsa20211230*, respectively.

4. Dept. of Labor, Treasury Dept., and Pension Benefit Guaranty Corporation, Form 5500 ("Annual Return/Report of Employee Benefit Plan") (2021), available at *https://www.dol.gov/sites/dolgov/files/EBSA/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/form-5500/2021-form-5500.pdf*, and Dept. of Labor, Treasury Dept., and Pension Benefit Guaranty Corporation, Schedule C to Form 5500 ("Service Provider Information") (2021), available at *https://www.dol.gov/sites/dolgov/files/EBSA/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/form-5500/2021-schedule-c.pdf*. In November 2007, the Dept. of Labor issued revised forms, instructions and reporting regulations in a major retooling of the Form 5500, including substantial changes to Schedule C when reporting indirect compensation earned by plan service providers, effective 2009. For more information regarding Schedule C reporting, including detailed instructions for 2021 Schedule C filings, *see* Dept. of Labor, Treasury Dept., and Pension Benefit Guaranty Corporation, 2021 Instructions for Form 5500 (Annual Return/Report of Employee Benefit Plan), at 26-30 (2021), available at *https://www.dol.gov/sites/dolgov/files/EBSA/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/form-5500/2021-instructions.pdf*; for the Dept. of Labor's line-by-line guide to completing Schedule C filings, *see also* Dept. of Labor, Troubleshooter's Guide to Filing the ERISA Annual Report (Form 5500 and Form 5500-SF), at 46-49 (Oct. 2010), available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/publications/troubleshooters-guide-to-filing-the-erisa-annual-report.pdf*.

5. Dept. of Labor Field Assistance Bulletin No. 2021-03, Introduction and Q2 (Dec. 30, 2021), available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-03*; *see also* Press Release, Dept. of Labor, U.S. Department of Labor Announces Enforcement Policy on Disclosure Requirements for Group Health Plan Service Providers (Dec. 30, 2021), available at *https://www.dol.gov/newsroom/releases/ebsa/ebsa20211230*. ERISA §§ 406(a)(1)(C)-(D) and 408(b)(2) contain the primary prohibited transaction rules governing an ERISA plan's service provider arrangements. In general, plan fiduciaries must make sure that any arrangement between a plan and a service provider is "reasonable" and that no more than "reasonable compensation" is paid. *See* Employee Retirement Income Security Act of 1974 (ERISA), Pub. L. No. 93-406, 88 Stat. 829, Title I, Part 4, §§ 406(a)(1)(C)-(D) and 408(b)(2) (1974); *see also* 29 C.F.R. § 2550.408b-2(c), as well as Dept. of Labor, Reasonable Contract or Arrangement Under Section 408(b)(2), 77 Fed. Reg. 5632, 5631-5659 (Feb. 3, 2012), and Fact Sheet, Dept. of Labor, Final Regulation Relating to Service Provider Disclosures Under Section 408(b)(2) (Feb. 2012).

6. Dept. of Labor Field Assistance Bulletin No. 2021-03, Introduction and Q5 (Dec. 30, 2021), available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-03*; *see also* Press Release, Dept. of Labor, U.S. Department of Labor Announces Enforcement Policy on Disclosure Requirements for Group Health Plan Service Providers (Dec. 30, 2021), available at *https://www.dol.gov/newsroom/releases/ebsa/ebsa20211230*.

7. Dept. of Labor Field Assistance Bulletin No. 2021-03, Q2 (Dec. 30, 2021), available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-03*.

8. Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, Division BB, Title II, § 202(a)(2) (2020); *see also* Dept. of Labor Field Assistance Bulletin No. 2021-03, Q2 (Dec. 30, 2021), available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-03*.

9. 29 C.F.R. § 2510.3-5(a).

10. Dept. of Labor Field Assistance Bulletin No. 2021-03, Q2 (Dec. 30, 2021), available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-03*.

11. Dept. of Labor Field Assistance Bulletin No. 2021-03, Q7 (Dec. 30, 2021), available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-03*.

12. *Id.*

13. Dept. of Labor Field Assistance Bulletin No. 2021-03, Q3 (Dec. 30, 2021), available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-03*.

14. Dept. of Labor Field Assistance Bulletin No. 2021-03, Q2 (Dec. 30, 2021), available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-03*.

15. Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, Division BB, Title II, § 202(e) (2020); *see also* Dept. of Labor Field Assistance Bulletin No. 2021-03, Q6 (Dec. 30, 2021), available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-03*.

16. Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, Division BB, Title II, § 202(d) (2020); *see also* Dept. of Labor Field Assistance Bulletin No. 2021-03, Q6 (Dec. 30, 2021), available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-03*.

17. Dept. of Labor Field Assistance Bulletin No. 2021-03, Q6 (Dec. 30, 2021), available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-03*.

18. *Id.*

19. Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, Division BB, Title II, § 202(a)(2) (2020); *see also* Dept. of Labor Field Assistance Bulletin No. 2021-03, Introduction and Q4 (Dec. 30, 2021), available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-03*.

20. *Id.*; *see also* Press Release, Dept. of Labor, U.S. Department of Labor Announces Enforcement Policy on Disclosure Requirements for Group Health Plan Service Providers (Dec. 30, 2021), available at *https://www.dol.gov/newsroom/releases/ebsa/ebsa20211230*.

21. Dept. of Labor Field Assistance Bulletin No. 2021-03, Q4 (Dec. 30, 2021), available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-03*.

22. *Id.*

23. Dept. of Labor Field Assistance Bulletin No. 2021-03, Introduction and Q4 (Dec. 30, 2021), available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-03*; *see also* Press Release, Dept. of Labor, U.S.

Department of Labor Announces Enforcement Policy on Disclosure Requirements for Group Health Plan Service Providers (Dec. 30, 2021), available at *https://www.dol.gov/newsroom/releases/ebsa/ebsa20211230*.

24. Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, Division BB, Title II, § 202(a)(2) (2020); *see also* Dept. of Labor Field Assistance Bulletin No. 2021-03, Footnote 3 (Dec. 30, 2021), available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-03*.

25. Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, Division BB, Title II, § 202(a)(2) (2020).

26. *Id*.

27. Dept. of Labor Field Assistance Bulletin No. 2021-03, Introduction and Q4 (Dec. 30, 2021), available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-03*.

28. Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, Division BB, Title II, § 202(a)(2) (2020); *see also* Dept. of Labor Field Assistance Bulletin No. 2021-03, Introduction and Q4 (Dec. 30, 2021), available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-03*.

29. *See* Employee Retirement Income Security Act of 1974 (ERISA), Pub. L. No. 93-406, 88 Stat. 829, Title I, Part 5, § 502(i) (1974); *see also* 29 C.F.R. § 2560.502i-1 and Enforcement Manual – Civil Penalties, Dept. of Labor, available at *https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/enforcement/oe-manual/civil-penalties#:~:text=ERISA%20section%20502(i)(,a%20non%2Dqualified%20pension%20plan* (last visited July 25, 2022).

30. Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, Division BB, Title II, § 202(a)(2) (2020); *see also* Dept. of Labor Field Assistance Bulletin No. 2021-03, Introduction and Q4 (Dec. 30, 2021), available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-03*.

31. *Id*.

32. Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, Division BB, Title II, § 202(a)(2) (2020).

33. *Id*.

34. *Id*.; *see also* Dept. of Labor Field Assistance Bulletin No. 2021-03, Introduction and Q5 (Dec. 30, 2021), available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-03*.

35. Dept. of Labor Field Assistance Bulletin No. 2021-03, Q5 (Dec. 30, 2021), available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-03*.

36. Dept. of Labor Field Assistance Bulletin No. 2021-03, Introduction and Q2 (Dec. 30, 2021), available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-03*.

37. Dept. of Labor Field Assistance Bulletin No. 2021-03, Introduction and Q5 (Dec. 30, 2021), available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-03*.

38. Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, Division BB, Title II, § 202(a)(2) (2020).

39. *Id.*; *see also* Dept. of Labor Field Assistance Bulletin No. 2021-03, Q5 (Dec. 30, 2021), available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-03*.

40. Dept. of Labor Field Assistance Bulletin No. 2021-03, Q5 (Dec. 30, 2021), available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-03*.

41. Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, Division BB, Title II, § 202(a)(2) (2020); *see also* Dept. of Labor Field Assistance Bulletin No. 2021-03, Introduction and Q5 (Dec. 30, 2021), available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-03*.

42. *Id.*

43. Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, Division BB, Title II, § 202(a)(2) (2020); *see also* Dept. of Labor Field Assistance Bulletin No. 2021-03, Introduction, Q4 and Q5 (Dec. 30, 2021), available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-03*; *see also* Press Release, Dept. of Labor, U.S. Department of Labor Announces Enforcement Policy on Disclosure Requirements for Group Health Plan Service Providers (Dec. 30, 2021), available at *https://www.dol.gov/newsroom/releases/ebsa/ebsa20211230*.

44. Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, Division BB, Title II, § 202(a)(2) (2020); *see also* Dept. of Labor Field Assistance Bulletin No. 2021-03, Introduction and Q5 (Dec. 30, 2021), available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-03*.

45. Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, Division BB, Title II, § 202(a)(2) (2020).

46. *Id.*

47. *Id.*