



TOPIC: PROPOSED REGULATIONS CONCERNING THE MEANING OF A
“REASONABLE” CONTRACT OR ARRANGEMENT UNDER §408(B)(2) OF
ERISA

EXECUTIVE SUMMARY: The Proposed Amendment would redefine the meaning of a “reasonable contract or arrangement”. To be a “reasonable contract or arrangement” as defined, contracts between employee benefit plans and certain service providers must include provisions requiring disclosure of certain information that may be relevant to a fiduciaries’ assessment of the provider’s compensation. In addition, such disclosure must actually be made before the contract is entered into. A contract that is not “reasonable” under the proposed regulation would not qualify for the relief from the prohibited transaction exemption under section 408(b)(2) of ERISA, with the result that the plan fiduciaries would have engaged in a prohibited transaction in violation of section 406(a)(1)(C) of ERISA, and the service provider would be subject to excise taxes as a disqualified person under the Internal Revenue Code.

NCCMP PROPOSED DRAFT COMMENTS ARE ATTACHED FOR YOUR REVIEW AND COMMENT.

PURPOSE: TO ENSURE FULL DISCLOSURE OF PROVIDER FEE ARRANGEMENTS

CATEGORY: PROPOSED REGULATIONS

ISSUER: DEPARTMENT OF LABOR

TARGET AUDIENCE: TRUSTEES AND PROFESSIONAL ADVISORS TO EMPLOYEE BENEFIT PLANS

INPUT REQUESTED: REVIEW AND COMMENT ON PROPOSED DRAFT COMMENTS

OFFICIAL COMMENT PERIOD ENDS: FEBRUARY 11, 2008

NCCMP DEADLINE: CLOSE OF BUSINESS THURSDAY, FEBRUARY 7, 2008

SEND COMMENTS TO: Multi-Elert@nccmp.org

REFERENCE: VOL.8, ISSUE 1,

FOR ADDITIONAL BACKGROUND SEE: FEDERAL REGISTER, THURSDAY, DECEMBER 13, 2007 – PART III, DEPARTMENT OF LABOR, EMPLOYEE BENEFIT SECURITY ADMINISTRATION, 29 CFR PART 2550 “REASONABLE CONTRACT OR ARRANGEMENT UNDER SECTION 408(B)(2) – FEE DISCLOSING PROPOSED RULE – (ATTACHED)