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March 26, 2026

The Honorable Daniel Aronowitz
Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Assistant Secretary Aronowitz:

We write to urge the Employee Benefits Security Administration (EBSA) to take action to ensure stakeholders are aware of their obligations under a recently enacted provision of the *Consolidated Appropriations Act, 2026*¹ (CAA 2026) and longstanding requirements of the *Consolidated Appropriations Act, 2021*² (CAA 2021). Specifically, EBSA should issue guidance instructing group health plans and their service providers, such as pharmacy benefit managers and third party administrators, regarding the obligation to disclose indirect and direct compensation. These disclosures are vital to improving health care transparency and lowering costs for both workers and employers.

In the CAA 2021, Congress extensively amended the prohibited transaction exemption at section 408(b)(2) of the *Employee Retirement Income Security Act*³ (ERISA) to now require "covered service providers" to disclose their sources of direct and indirect compensation to plan fiduciaries of group health plans.⁴ This bipartisan provision was intended to ensure that plan fiduciaries have information needed to ensure the reasonableness of fees paid to covered service providers and to identify any conflicts of interests that might exist.⁵

¹ Pub. L. No. 119-75, div. J, tit. VII, § 6702 (2026).

² Pub. L. No. 116-260, div. BB, tit. II, § 202 (2020).

³ 29 U.S.C. § 1144.

⁴ 29 U.S.C. § 1108(b)(2)(B).

⁵ See Emp. Benefits Sec. Admin., U.S. Dep't of Lab., *Improving Transparency Into Pharmacy Benefit Manager Fee Disclosure*, 91 Fed. Reg. 4348, 4361 (2026), <https://www.govinfo.gov/content/pkg/FR-2026-01-30/pdf/2026-01907.pdf> ("These arrangements have a high potential for conflicts of interest that warrant disclosure, as evidenced by Congress's amendment to ERISA section 408(b)(2)").

As previously noted by bipartisan leaders of the Committee on Education and Workforce (Committee),⁶ the intent of the CAA 2021 was to ensure these transparency requirements apply to a broad range of covered service providers. Congress specifically listed the activities that would be subject to these requirements, including, among many others, “consulting... related to the development or implementation of ... pharmacy benefit management services ... or third party administration services.”⁷ However, the Committee was informed in 2023 by the leader of a major trade association that some pharmacy benefit managers may believe they are not subject to this provision.⁸ Additionally, other covered service providers may also not be providing disclosures under the CAA 2021, limiting the ability of plan fiduciaries to ensure they are getting a fair deal on behalf of participants and beneficiaries. Regrettably, EBSA did not provide clarity on this issue in its previously issued guidance⁹ and took no further action in the following years despite the Committee’s previous request to do so.¹⁰ Accordingly, many stakeholders remain unaware of their obligations under the CAA 2021.

In the absence of guidance or enforcement actions by EBSA, Congress was forced to take additional steps in the CAA 2026 to resolve any perceived ambiguity regarding the meaning of “covered service provider” through additional amendments to section 408(b)(2)(B). References to “brokerage services” were clarified to ensure such term is not read narrowly and, more importantly, references to “consulting” were amended to read as follows:

(BB) **Other services**, for which the covered service provider, an affiliate, or a subcontractor reasonably expects to receive indirect compensation or direct compensation described in item (dd), **including any of the following**: 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, or consulting services related to any such services.¹¹

According to the plain language of this provision, in order to qualify for the exemption in section 408(b)(2)(B) of ERISA, a responsible plan fiduciary must receive compensation disclosures from any covered service providers engaged in *any* of the activities listed above. This applies to a

⁶ Letter from Rep. Robert C. “Bobby” Scott and Rep. Virginia Foxx to the Hon. Lisa M. Gomez, Asst. Sec’y, Emp. Benefits Sec. Admin., U.S. Dep’t of Lab. (Dec. 14, 2022), <https://democrats-edworkforce.house.gov/imo/media/doc/bipartisan-scott-foxx-letter-to-ebsa-re-health-transparency.pdf>.

⁷ *Supra* note 2.

⁸ Statement of J.C. Scott, *Competition and Transparency: The Pathway Forward for a Stronger Health Care Market*, Hearing Before the Subcomm. on Health, Emp’t, Lab., and Pensions of the H. Comm. on Educ. & the Workforce, 118th Cong. 233 (2023), <https://www.congress.gov/118/chrg/CHRG-118hhrg55562/CHRG-118hhrg55562.pdf> (“PCMA’s member companies may be taking varying positions on whether or not they are considered covered service providers under Section 408(b)(2)(B).”).

⁹ Emp. Benefits Sec. Admin., U.S. Dep’t of Lab., Field Assistance Bulletin No. 2021-03.

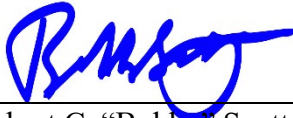
¹⁰ Foxx and Scott, *supra* note 6.

¹¹ 29 U.S.C. § 1108(b)(2)(B) (emphasis added).

broad range of contracts and arrangements for which group health plans receive services from vendors, including pharmacy benefit managers, insurance companies, and third party administrators. These disclosures are critical to evaluating the reasonableness of fees paid and potential conflicts of interest raised by sources of indirect compensation received by service providers. Failure to obtain these disclosures means the plan has entered into a prohibited transaction, potentially resulting in penalties for both the plan fiduciary and the covered service provider.¹²

Stakeholders may be unaware that these requirements are currently in effect. In light of the importance of this issue to plan fiduciaries and participants, we urge you to promptly issue guidance and, if necessary, take further steps to ensure compliance with this requirement.

Sincerely,



Robert C. "Bobby" Scott
Ranking Member
Committee on Education and Workforce



Mark DeSaulnier
Ranking Member
Subcommittee on Health,
Employment, Labor, and Pensions



Joe Courtney
Member of Congress

¹² 29 U.S.C. § 1106(a)(1)(C); 1132(i).