

Corporate & Financial Weekly Digest

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DOL Sets Coordinated Effective Dates for Service Provider, Participant Fee Disclosures

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On July 19, the Employee Benefits Security Administration of the U.S. Department of Labor issued a final rule (the Final Rule) on the applicability dates of two related disclosure requirements under Employee Retirement Income Security Act:

1. Service provider disclosure. Under amendments to regulations under Section 408(b)(2) of the ERISA, "covered service providers," including fiduciaries, investment advisers, and record keepers, must provide disclosure of direct, indirect, and related party compensation received for services performed for a pension, 401(k), or other retirement plan to a fiduciary of the plan. In addition, if requested by a plan fiduciary or administrator, a covered service provider must provide additional information which is necessary to comply with the ERISA's reporting and disclosure requirements.
2. Disclosure to participants. Under Section 404(a)(5) of ERISA and the related regulations, plan administrators of 401(k) and other plans which permit participant-directed investments must provide annual disclosure of investment performance, fees and expenses for each investment alternative under the plan and of administrative fees and expenses that may be charged against a participant's account, as well as quarterly disclosures of administrative fees and expenses actually charged against a participant's account.

The two disclosure requirements are inter-related; some of the information disclosed by covered service providers (such as investment advisers and record keepers) will be included in the disclosure to participants. In addition, a plan may determine that it is necessary to request additional information from a covered service provider in order to fulfill its disclosure obligations.

The Final Rule coordinates the disclosure requirements as follows:

1. The effective date for the initial disclosure of compensation by covered service providers under Section 408(b)(2) of ERISA is April 1, 2012.

2. The first annual disclosure to participants under Section 404(a)(5) of ERISA must be made not later than 60 days later, i.e., no later than May 31, 2012. Thereafter, the annual disclosure must be made once in any 12-month period, which need not be the same as the plan year.
3. The first quarterly disclosure to participants under Section § 404(a)(5) of ERISA must be made 45 days after the end of the quarter in which the § 404(a)(5) initial disclosure is provided, i.e., no later than August 14, 2012. Thereafter, quarterly disclosures must be made once in any 3-month period, which need not correspond to the quarters of the plan year.

Click [here](#) to view the Final Rule.

Click [here](#) to view ERISA Section 408(b)(2).

Click [here](#) to view ERISA Section 404(a)(5).

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