

DOL Delays Applicability Dates of Plan Fee Disclosure Rules

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The Department of Labor ("DOL") has issued final regulations delaying the applicability dates of the interim-final rule regarding fiduciary-level fee disclosures under ERISA Section 408(b)(2) and the final rule regarding participant-level fee disclosures under ERISA Section 404(a) in order to give retirement plan service providers and fiduciaries more time to comply with the disclosure rules.

On July 16, 2010, the DOL published interim-final regulations under ERISA Section 408(b)(2) requiring retirement plan service providers to disclose comprehensive information about their fees and potential conflicts of interest to plan fiduciaries. These disclosure requirements were originally scheduled to apply to service contracts or arrangements in existence on or after July 16, 2011.

On October 20, 2010, the DOL published final regulations under ERISA Section 404(a) requiring plan administrators to disclose information about plan and investment costs to participants and beneficiaries who direct the investment of assets in their individual accounts. These disclosure requirements, which were initially scheduled to apply for plan years beginning on or after November 1, 2011, included a 60-day transition period for furnishing initial disclosures.

On June 1, 2011, the DOL issued a proposal to extend and more closely align the initial compliance dates of the two rules to give service providers and plan fiduciaries more time to comply with the new disclosure requirements. Under this proposed rule, the effective date of the 408(b)(2) regulation would be extended from July 16, 2011 to January 1, 2012, and the transition period for furnishing initial participant-level fee disclosures would be extended from 60 days to 120 days.

The DOL has now issued a final rule further delaying the applicability dates of the two rules. Under this final rule, the effective date of the 408(b)(2) regulation is amended to April 1, 2012 - three months longer than the extension under the proposed regulations. In addition, the participant-level disclosure regulation's transitional rule is amended to require that (1) initial disclosures be furnished no later than the later of 60 days after the first day of the first plan year beginning on or after November 1, 2011, or 60 days after the effective date of the 408(b)(2) regulation (e.g., May 31, 2012 for calendar year plans), and (2) quarterly disclosures be furnished no later than 45 days after the end of the quarter in which the initial disclosures must be furnished (e.g., August 14, 2012 for calendar year plans).

The DOL delayed the 408(b)(2) regulation's effective date to ensure that, to the extent the final 408(b)(2) regulation (which the DOL expects to issue by the end of 2011) makes any changes to the interim-final rule, covered service providers and plan fiduciaries have sufficient time to review these changes and make final modifications to their systems and disclosures. Since the three-month delay of the 408(b)(2) regulation's effective date has the effect of further delaying the initial participant-level fee disclosure regulation's transition period by the same amount of time, the DOL determined that an extension of the transition period from 60 to 120 days was no longer necessary.



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