

Extension of Applicability Dates for New ERISA Disclosure Rules

July 18, 2011

On July 13, the Department of Labor (DOL) announced a final rule extending the compliance dates for the DOL's new service provider (408(b)(2)) and participant-level (404a-5) disclosure regulations. The final rule, which is currently available on the DOL website,¹ is expected to be published in the *Federal Register* on July 19.

Service Provider Disclosure Regulation

The effective date for the rule concerning required disclosures from certain pension plan service providers to plan fiduciaries under ERISA section 408(b)(2) is being extended by three months to **April 1, 2012**.

As originally provided in the interim final regulation published on July 16, 2010, the effective date for the 408(b)(2) service provider disclosure regulation was July 16, 2011. On June 1, 2011, the DOL published a proposal to extend the effective date to January 1, 2012, consistent with an announcement it had made in February 2011. Based on its review of the comments it received and consideration of the fact that it has not yet published a "final" final regulation, which is expected to change the interim final rules, the DOL believed that an extension of time would be needed to allow service providers to make the necessary systems changes. The DOL indicated that it intends to publish the final 408(b)(2) service provider disclosure regulation before the end of the year.

Participant-Level Disclosure Regulation

In October 2010, the DOL published a final regulation on the disclosure of plan fee, expense, and investment information by plan administrators to participants and beneficiaries in participant-directed individual account plans. The transitional rule for the initial disclosures to be provided under the regulation is now being amended to require that the initial disclosures be furnished no later than the later of (i) 60 days after the first day of the first plan year beginning on or after November 1, 2011 (the original time frame), or (new provision) (ii) 60 days after the effective date of the 408(b)(2) disclosure rule (now extended to April 1, 2012, as described above).

1. Available online at <http://www.dol.gov/ebsa/pdf/extensionofapplicabilitydatesfinalrule.pdf>.

Implications

A provision in the 408(b)(2) interim final regulation requires covered service providers to furnish information requested by a responsible plan fiduciary or plan administrator in order to comply with ERISA's reporting and disclosure requirements, which the DOL said would include information needed to comply with the participant-level disclosure regulation. As a result, the DOL indicated that aligning the applicability dates of the two regulations would assist plan fiduciaries and plan administrators in obtaining information required to comply with the participant-level disclosure regulation. The transitional rule, as amended, also provides that the required quarterly disclosures must be furnished no later than 45 days after the end of the quarter in which the initial disclosures are furnished, to avoid requiring quarterly disclosures to be provided prior to the initial disclosures.

Following is an illustration of how this would work for calendar-year plans:

April 1, 2012	408(b)(2) Regulation becomes applicable
May 31, 2012	First set of participant disclosures must be furnished (60 days after April 1, 2012)
August 14, 2012	First set of quarterly statement of fees/expenses actually deducted must be furnished (45th day after the end of the second quarter)

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