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DEPARTMENT OF LABOR FINALIZES, DELAYS 401(K) FEE DISCLOSURE RULES

After months of delay, the Department of Labor (DOL) has just released final regulations under Section 408(b)(2) of ERISA, requiring retirement plan service providers to disclose information about their services and fees to plan sponsors. In doing so, the DOL delayed the effective date of those rules and made minor modifications to them. The final regulations defer the compliance date from April 1 to July 1, 2012. As a consequence, plan sponsors will also have more time to comply with the related participant-level fee disclosure rules.

In an attempt to arm plan fiduciaries with additional information about the increasingly complex services provided by retirement plan vendors (such as record keepers, third-party administrators, and brokers) and the fees charged for those services, the Section 408(b)(2) regulations impose specific disclosure requirements on those providers. Under ERISA, fiduciaries must ensure that these arrangements are reasonable, and that only reasonable compensation is paid for them. As we reported in our [May 2011 article](#), the information that will be provided under these rules is intended to help fiduciaries fulfill that responsibility.

The final regulations published on February 2 replace an interim final rule that was released on July 16, 2010. In addition to delaying the effective date of the disclosure requirements, the final rule makes a number of minor changes in response to comments received on the interim final rule. These include:

- An exclusion for certain Code § 403(b) annuity contracts and custodial accounts;
- Expansion of the information that service providers must disclose about "indirect" compensation they receive;
- Changes to the investment-related disclosures to conform to the requirements of the DOL's participant-level disclosure rules; and
- A separate provision for disclosing changes to investment-related information, which must be updated at least annually.

The final regulations "strongly encourage" service providers to offer plan fiduciaries a "guide" or summary of their disclosures. The DOL included a sample guide as an appendix to the final rule. Debate about whether to *require* such a summary disclosure is rumored to have delayed the release of the final rules. For now, the summary is voluntary, but the DOL strongly hinted that it may make the summary mandatory in future regulations.

These regulations will be effective for contracts or arrangements (whether existing or new) between covered plans and covered service providers as of July 1, 2012. This delayed effective date (from April 1) also will push back the effective date for disclosures that plan administrators must send to participants. Initial annual participant-level disclosures must be furnished within 60 days after the effective date of the Section 408(b)(2) service provider disclosures. For calendar year plans, this means that the initial disclosure of plan- and investment-related information must be furnished to participants no later than August 30, 2012 (rather than May 31), and the first quarterly statement must be furnished to participants no later than November 14, 2012 (rather than August 14).

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