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DOL Delays ERISA Fee Disclosure Regulations Until January 1, 2012

The DOL's fee disclosure interim final regulations for plan fiduciaries and service providers under ERISA Section 408(b)(2) were scheduled to apply on or after July 16, 2011. The DOL has now delayed the applicability date until January 1, 2012 to give it time to review and incorporate public comments and issue final regulations before requiring compliance.

Background

The Department of Labor (DOL) has adopted a three-part approach to providing better fee disclosure. Part I, which became effective for the 2009 Form 5500, requires plans to report actual fee information on the Schedule C of the Form 5500 (see our December 19, 2007 [For Your Information](#)). The DOL issued final regulations for Part II on October 20, 2010 (see our November 30, 2010 [For Your Information](#)). Part II addresses the fee information plans must provide participants and beneficiaries.

Part III, which is the subject of the current relief, requires plan fiduciaries to obtain fee information from service providers in order to satisfy the statutory prohibited transaction exemption under Section 408(b)(2) of the Employee Retirement Income Security Act (ERISA) for parties-in-interest to provide service to a plan. For Part III, the DOL issued interim final regulations on July 16, 2010 (see our September 2, 2010 [For Your Information](#)), which were applicable to plan contracts and arrangements for services in existence on or after July 16, 2011.

DOL Announcement

The DOL published Part III as interim final regulations in order to obtain public comments. In the extension [announcement](#), the DOL stated that the numerous comments it received on the interim final regulations, including comments on whether service providers should have to provide a summary document to assist plan fiduciaries in their reviews, require more time for analysis. As a result, the DOL did not feel it could have final regulations published in sufficient time to give all parties time "to undertake orderly and efficient compliance efforts." The DOL's new applicability date is January 1, 2012.

BUCK COMMENT. *The extension is certainly welcome and was requested by many industry groups. How helpful the extension will be to fiduciaries and sponsors will depend on when the final regulations are*

issued and whether additional disclosures are required by the final regulations. The DOL's final regulations are highly unlikely to reduce the level of disclosure that service providers must make. Both fiduciaries and service providers should take the existing proposal into consideration in negotiating and continuing contracts even before the final regulations are issued and applicable.

Conclusion

Instead of waiting until the last moment to issue relief, which has happened in other cases, the DOL has assessed the situation early and provided plan fiduciaries and service providers with early notice of the delay. Hopefully, that trend will continue.

Buck's consultants are available to answer your questions and to help you with any disclosures or assessments. Buck's consultants are also available if you have questions for or comments to the DOL.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.