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DOL Proposes Short Delays for Regulations on Fiduciary-Level and Participant-Level Fee Disclosure

The DOL proposes extending the effective date of its regulations on service provider fee disclosure to pension plan fiduciaries from July 16, 2011 to January 1, 2012. The DOL also proposes with respect to the final regulation on plan fee disclosure to participants and beneficiaries expanding and extending the transition rule for initial disclosures from 60 days to 120 days after the applicability date.

Background

Fiduciary-Level Fee Disclosure

On July 16, 2010, the Department of Labor (DOL) issued interim final regulations requiring certain pension plan service providers to provide plan fiduciaries with increased disclosures under Section 408(b)(2) of the Employee Retirement Income Security Act (ERISA). The interim final regulations were to be effective on July 16, 2011. (See our September 2, 2010 [For Your Information](#).) In February 2011, the DOL announced its intention to extend the effective date until January 1, 2012. (See our February 18, 2011 [For Your Information](#).)

Participant-Level Fee Disclosure

On October 20, 2010, the DOL issued final regulations on disclosure of plan fee and expense information by plan administrators to plan participants and beneficiaries under ERISA Section 404(a). The final regulations also included revisions to the disclosure rules for self-directed plans under ERISA Section 404(c). These participant-level fee disclosure regulations were effective on December 20, 2010 but do not apply until plan years beginning on or after November 1, 2011.

The final regulations included a general rule requiring that plans provide an initial disclosure to a participant before a participant can first direct his or her investments. The regulations also included a transition rule providing that a plan does not need to provide this initial disclosure to those who had a right to direct investments on the applicability date until January 1, 2012 (60 days after the November 1, 2011 applicability date). (See our November 30, 2010 [For Your Information](#).)

Proposed Amendments to the Regulations

Fiduciary-Level Fee Disclosure

The DOL is proposing to amend the interim final regulations to extend the effective date of the fiduciary-level fee disclosure interim final regulations from July 16, 2011 to January 1, 2012. The proposed extension is consistent with the announcement that the DOL made in February 2011 that it would be extending the effective date. In its discussion of the proposed regulatory amendment, the DOL indicates that it is proposing the change because of numerous requests for more time to update systems and procedures for information collection and disclosure. The DOL emphasizes that the January 1, 2012 date for contracts to be in compliance is not affected by the later date for the initial disclosures to participants and beneficiaries under the participant-level fee disclosure regulations.

***BUCK COMMENT.** The DOL has not indicated when final regulations will be issued. In the interim final regulations, the DOL stated that it was “considering adding a requirement that covered service providers furnish a ‘summary’ disclosure statement, for example limited to one or two pages that would include key information intended to provide an overview for the responsible plan fiduciary of the information required to be disclosed. The summary also would be required to include a roadmap for the plan fiduciary describing where to find the more detailed elements of the disclosures required by the regulation.” It is very possible that the final regulations will include such a summary requirement.*

Participant-Level Fee Disclosure

In neither its February 2011 announcement nor in this proposed regulatory amendment does the DOL propose to extend the effective date (December 20, 2010) or the applicability date (plan years beginning on or after November 1, 2011) for the final participant-level fee disclosure regulations. However, in response to comments and in the interest of allowing plan fiduciaries to receive the fiduciary-level disclosures from service providers before having to provide fee disclosures to participants and beneficiaries, the DOL is now proposing to extend the transition rule governing initial disclosures from 60 days to 120 days after the plan’s applicability date.

In the case of a calendar year plan, the 120-day rule would mean that initial disclosures would have to be provided by April 30, 2012. A calendar year plan would still be required to provide the quarterly statement of fees and expenses actually deducted for the first quarter of 2012 by May 15, 2012. For a non-calendar year plan with a plan year beginning in November or December, the 120-day period could end as early as February 29, 2012.

***BUCK COMMENT.** Sponsors of calendar year plans have been uncertain as to whether the statement for the fourth quarter of 2011, which must be provided by February 15, 2012, is subject to the new disclosure rules because the disclosure takes place after the January 1, 2012 effective date of the new rules. In*

indicating that the initial quarterly disclosure is not due before May 15, 2012, the DOL appears to eliminate that concern.

The DOL also makes clear in its discussion of the proposed amendment that plans must provide the initial disclosure to all participants who have the right to direct investments when the disclosures are furnished, not just those who had the right on the applicability date.

BUCK COMMENT. *In April, the DOL issued a separate request for information on electronic disclosure. (See our April 21, 2011 [For Your Information](#).) While the DOL originally indicated that it intended to revise the current electronic disclosure requirements before the participant-level disclosure regulations became final, that now appears highly unlikely. If employers may only use current rules, disclosure costs are likely to be higher.*

Conclusion

Employers and service providers had hoped that the DOL would delay the effective date or applicability date of the two regulations further than the DOL does in this proposal. The lack of electronic disclosure guidance and the need for time to implement new systems continue to present a challenge for many employers and service providers despite the proposed welcome delays. The DOL provided only 14 days for comments on the proposed regulations, making comments due by June 15, 2011.

Buck's consultants are available to assist you with addressing the disclosure requirements.

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.