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DOL Extends Compliance Dates for Fiduciary and Participant Fee Disclosures

In response to numerous requests asking for more time, the DOL extended the effective date of its regulations on service provider fee disclosure to pension plan fiduciaries from the proposed January 1, 2012 date to April 1, 2012. The DOL also extended the date plan administrators must provide an initial fee disclosure to all current participants and beneficiaries until the later of May 31, 2012 or 60 days after the first day of the first plan year beginning on or after November 1, 2011.

Background

On July 16, 2010, the Department of Labor (DOL) issued [interim final regulations](#) requiring certain pension plan service providers to provide fiduciaries with increased fee disclosures under Section 408(b)(2) of the Employee Retirement Income Security Act (ERISA) (“fiduciary-level fee disclosure”). The interim final regulations were to be effective on July 16, 2011; however, the DOL later proposed extending the effective date until January 1, 2012. (See our June 6, 2011 [For Your Information](#).)

On October 20, 2010, the DOL issued [final regulations](#) on disclosure of plan fee and expense information by plan administrators to participants (both existing and newly eligible) under ERISA Section 404(a) (“participant-level fee disclosure”). The final regulations also included revisions to the disclosure rules for self-directed plans under ERISA Section 404(c). Although the final regulations were effective on December 20, 2010, they were not applicable until the first day of the plan year beginning on or after November 1, 2011 (the “applicability date”).

The participant-level fee disclosure regulations included a transition rule stating that the plan administrator must make the initial disclosure on or before the date a participant or beneficiary can first direct his or her investment. The plan administrator must also provide a disclosure to existing participants and beneficiaries no later than 60 days after the plan’s applicability date. The DOL later proposed changing the 60 days to 120 days. (See our June 6, 2011 [For Your Information](#).)

Extended Dates

Fiduciary-Level Fee Disclosure

The [final regulations](#) issued on July 19, 2011 extend the effective date of the interim final regulations on fiduciary-level fee disclosure under ERISA Section 408(b)(2) to April 1, 2012. In explaining the change, the DOL indicates

that it intends to issue final regulations with respect to the substance of the interim final regulations before the end of the year and believes that further delay, beyond April 1, 2012, is not necessary for service providers and sponsors to be able to comply with the changes made in the final regulations.

Participant-Level Fee Disclosure

The July 19, 2011 final regulations leave unchanged the effective date of the final regulations on participant-level fee disclosure under ERISA Section 404(a). Instead, as in the proposed regulations, the DOL focuses on the transition rule. In a change from the proposed regulations, the final regulations provide that the relevant date for the initial disclosure is 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 fiduciary-level fee disclosure rule.

BUCK COMMENT. *The DOL drafted the rules for initial disclosure under the participant-level fee disclosure regulations in a way that moves the initial notice's deadline if the fiduciary-level fee disclosure regulations are further delayed. Thus, if the effective date of the fiduciary-level fee disclosure regulations is changed to later than April 1, 2012 for calendar year plans, the initial disclosures to current participants and beneficiaries would be changed to later than May 31, 2012.*

The DOL also provides that the initial quarterly disclosures are not due until 45 days after the end of the quarter in which the initial participant disclosures are due.

BUCK COMMENT. *For calendar year plans, if the April 1, 2012 and May 31, 2012 dates apply, plan administrators would have to provide the first quarterly disclosures by August 14, 2012, which is the 45th day after the end of the second quarter.*

The participant-level fee disclosure regulations also made changes to the disclosures under the existing self-directed account regulations under ERISA Section 404(c). The DOL confirms that plan administrators do not have to furnish the new information required under Section 404(c) until the time the Section 404(a) participant-level fee disclosures are required.

Electronic Delivery

In the preamble to the July 19, 2011 regulations, the DOL addresses the status of its separate rulemaking with respect to electronic disclosure. That separate rulemaking affects the form of disclosure that plans can make to participants and still satisfy the regulations. The DOL indicates that it is "carefully analyzing" comments received on electronic disclosure, including comments requesting the extension to participant-level fee disclosure of the disclosure methods permitted in [DOL Field Assistance Bulletin 2006-3](#) for benefit statements. The DOL intends to provide guidance on this issue in advance of the participant-level fee disclosure regulations' compliance date.

Conclusion

Plan sponsors were concerned about the timing of the two regulations because plan administrators need the information from the service providers to prepare the disclosures to participants. The new coordinated dates help to avoid that problem. However, the DOL will not issue the final fiduciary-level fee disclosure regulations until, at the earliest, late in 2011. Until sponsors receive those final regulations, it will be difficult to determine if the DOL has provided adequate time for service providers to adjust their systems and get the information to plan sponsors in a timely manner.

Buck's consultants are available to provide assistance.

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.