



## New Effective Dates Set For ERISA Disclosure Rules

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### Effective Date of Service Provider Fee Disclosure Extended to April 1, 2012

### Effective Date of Participant-Level Disclosure Extended to May 31, 2012

On July 16, 2011, the U.S. Department of Labor's Employee Benefits Security Administration issued an interim-final regulation aligning and implementing the two remaining components of its three-pronged disclosure based attack on excessive fees for retirement plans, the [Service Provider Disclosure Regulation](#) under ERISA Section 408(b)(2) and the [Participant-Level Disclosure Regulation](#) under ERISA Section 404(a). The initial prong was already effected by the expanded disclosures regarding plan fees on the Schedule C to Form 5500 for plan years beginning in or after 2009.

### The Service Provider Disclosure Interim-Final Regulation

Absent an exemption, payments to a service provider by a plan covered by ERISA can constitute a prohibited transaction. The primary exemption allowing the payment of a fee to a service provider is the ERISA Section 408(b)(2) statutory exemption that permits a reasonable arrangement or contract for services that are necessary for the operation of the plan, provided no more than reasonable compensation is paid for the services.

Under the new Service Provider Disclosure Regulation, as a condition of the Section 408(b)(2) statutory exemption, service providers to most qualified retirement plans must furnish comprehensive disclosures to the plan fiduciary (who is responsible for entering into the arrangement) detailing the services that will be provided and the direct and indirect compensation to be received for each of those services. This information is to enable the plan fiduciary to intelligently evaluate the reasonableness of the service provider's arrangement with the plan. The disclosures must also include a statement if the service provider has fiduciary status and are a vehicle to discover potential conflicts of interest. Not complying with these new disclosure rules can preclude an arrangement from qualifying as a "reasonable" arrangement and, therefore, the service arrangement would not be covered by the exemption, thereby triggering potential fiduciary liability under ERISA and exposure to prohibitive excise taxes.

The DOL has indicated that it intends to publish the final-final ERISA Section 408(b)(2) Regulations before the end of the year. However any changes to the interim-final regulations pertaining to the disclosures should not require additional compliance time or another extension of the effective date.

### The Participant-Level Disclosure Regulation

The Participant-Level Disclosure Regulation mandates extremely detailed initial and quarterly disclosures to participants and beneficiaries in participant-directed individual account plans, such as 401(k) plans, to help participants understand plan fees and make informed investment decisions.



The Participant Disclosure Regulation generally require the plan administrator to disclose, among other things, both plan-wide and individual itemized fee and expense information that may be charged against their plan accounts as well as comprehensive historical performance data. This may include breaking-out administrative expenses paid through revenue sharing, 12b-1 fees or sub-transfer agent fees from one or more of the plan's designated investment alternatives.

The Service Provider Disclosure Regulation anticipates the need of a service provider to furnish information requested by a responsible plan fiduciary or plan administrator to allow them to comply with their obligations under the Participant-Level Disclosure Regulation. As a result, aligning the applicability dates of the two regulations is intended assist plan fiduciaries and plan administrators in obtaining information required to comply with the Participant-Level Disclosure Regulation.

### **Effective Dates**

Under the newly extended effective dates for calendar plans:

Service providers now until have April 1, 2012, to make the 408(b)(2) disclosures to plan fiduciaries. Prior to the July 16, 2011 extension, the effective date for the service provider disclosure regulation was July 16, 2011, that on June 1, 2011, the DOL proposed to extend to January 1, 2012.

Plan administrators must:

1. Furnish their first set of initial disclosures to plan participants (all disclosures other than disclosures required at least quarterly) no later than May 31, 2012, i.e., 60 days after the April 1, 2012 effective date of the 408(b)(2) regulation; and
2. Provide the participant-level quarterly disclosure (a statement of fees and expenses deducted from each participant's account) no later than August 14, 2012, i.e., the 45<sup>th</sup> day after the end of the second quarter in which the initial disclosure was provided.

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