



UPDATE Employee Benefits and Compensation

JULY 2011

Department of Labor Extends Compliance Deadline for Fee Disclosure Rules

On July 13, 2011, the U.S. Department of Labor (DOL) issued a final rule delaying the effective date of the new fiduciary-level disclosure rules required under Section 408(b)(2) of ERISA until April 1, 2012. The final rule also delayed the date that initial participant-level fee disclosures must be provided under Sections 404(a) and 404(c) of ERISA, thereby aligning it with the fiduciary-level disclosure deadline.

FIDUCIARY DISCLOSURE REGULATIONS

The fiduciary disclosure regulations require certain plan service providers to disclose information to assist plan fiduciaries in understanding the reasonableness of the fees being charged for plan services and to assess potential conflicts of interest. The rules cover plan service providers, such as trustees, record keepers, third-party administrators, brokers, and investment advisors. The fiduciary disclosure regulations had been scheduled to apply as of July 16, 2011, to both new and existing contracts or arrangements for services between covered plans and covered service providers; however, the newly issued final rule extends the effective date to April 1, 2012.

PARTICIPANT DISCLOSURE REGULATIONS

The participant disclosure regulations established new fiduciary requirements for disclosures to participants and beneficiaries who direct their own investments in ERISA-covered 401(k) and other individual account retirement plans. The final regulations make clear that the fiduciary responsible for providing the required information is the plan administrator, as defined under ERISA (in most plans, the employer is the plan administrator). The participant disclosure regulations generally require administrators to disclose to plan participants and beneficiaries, among other things, a description of any administrative or planwide fees and expenses that may be charged against their plan accounts. The new participant disclosures include both quarterly and annual disclosures, as well as disclosures on or before the first day that participants can first direct their investments.

The participant disclosure regulations contained a 60-day transition rule that permitted initial compliance no later than 60 days after the beginning of the first plan year on or after the regulations' applicability date to the plan. The newly issued final rule, however, provides that the initial disclosures (required on or before the date on which a participant or beneficiary can first direct investments) must be provided by 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 April 1, 2012, effective date of the fiduciary-level disclosures. Also, the first quarterly statement would not be required until 45 days after the end of the quarter in which the initial disclosures were due. Therefore, for a calendar year plan, the initial participant disclosures (other than quarterly fee information) must be provided by May 31, 2012, and quarterly fee information must be provided by August 14, 2012.

Compliance with the final rule will be a large undertaking for plan sponsors and administrators. If you have any questions about the applicability dates or the final rule in general, please contact any of the following attorneys in our [Employee Benefits and Compensation Practice Group](#):

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