

Fiduciary Focus: Special Update

Extension and alignment of dates for fee disclosure regulations

Insights on legislative updates and industry affairs

Industrywide, plan sponsors are facing heightened concerns about fiduciary responsibilities. To help our clients better understand these responsibilities, as well as their associated risks, J.P. Morgan Defined Contribution Investment Solutions offers *Fiduciary Focus*, a monthly e-newsletter that provides insight into fiduciary best practices and examines today's evolving regulatory environment.

The U.S. Department of Labor's Employee Benefit Security Administration (EBSA) published a notice in the Federal Register on June 1, 2011 that proposes to officially extend the applicability date for the fiduciary-level fee disclosure regulations under ERISA §408(b)(2) to January 1, 2012. In February of this year, the EBSA announced its intention to provide such an extension to the interim/final regulations, which were originally scheduled to apply to contracts or arrangement for services on or after July 16, 2011.

The interim/final regulations do not require a specific format for these disclosures. However, the EBSA had requested comments to help it weigh the potential benefits to fiduciaries of a summary format versus the additional production costs for service providers. Until final/final regulations are issued, service providers are unsure if additional programming will be necessary to satisfy specific formatting requirements. The final regulations are scheduled to be released to the Office of Management and Budget soon, and could take an additional 90 days to be published.

The other action being proposed by the EBSA relates to participant-level fee disclosures under §404(a) of ERISA. These final regulations were issued in October of last year, applicable for plan years beginning on or after November 1, 2011, with a 60-day transition period. The regulations require initial disclosures of potential administrative and investment related fees applicable to participants, which are required prior to an eligible employee's ability to first direct investments under a plan. In addition, a quarterly statement of actual fees charged against a participant's accounts in the prior quarter is required.

The final regulations provide that the initial disclosures for participants who have the right to direct the investment of assets held in their accounts when the regulations become applicable (the applicability date), must be provided within 60 days after the applicability date. The EBSA is proposing to extend this transition period to 120 days. In addition, it has been clarified that employees who become eligible after the applicability date also fall into this transition period for receiving the initial disclosures.

This extension to the transition period for participant-level fee disclosures will help ensure that plan fiduciaries will receive fee disclosures from service providers before being required to disclose applicable fees to participants. Thus, calendar year plans will need to provide the initial disclosures no later than April 30, 2012, and the first quarterly statement of administrative expenses actually deducted from a participant's account no later than May 15, 2012.

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