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## DOL Further Extends the Compliance Dates for the 408(b)(2) and Participant Disclosure Regulations

Yesterday the Department of Labor ("DOL") announced on its website final extensions of the applicability dates for two major DOL disclosure initiatives -- its service provider disclosure regulation under ERISA section 408(b)(2) ("The 408b-2 Regulation") and its participant disclosure regulation issued under ERISA sections 404(a) and 404(c) ("The Participant Disclosure Regulation"). DOL's notice is attached for your review. The final extended applicability dates are set forth below.

### For the 408b-2 Regulation

The effective date of the 408b-2 Regulation has been extended to April 1, 2012. This means that covered service providers within the meaning of the 408b-2 Regulation must provide the disclosures required under DOL's interim final rule to their current plan customers no later than April 1, 2012.

This gives covered service providers an additional three months to distribute their initial 408b-2 disclosures to their plan customers. DOL also announced that it intends to publish a final 408b-2 regulation before the end of the year, and that it does not expect that changes to the interim final rule already published will require more additional compliance time than the April 1<sup>st</sup> deadline provided by DOL. DOL's announcement gave no indication as to whether DOL will require a "summary" disclosure in the final rule, an issue on which DOL has requested and received numerous public comments.

### For the Participant Disclosure Regulation

The initial disclosure of information that must be provided to participants and beneficiaries on or before the date they may first direct investments (*i.e.*, general plan and fee information and comparative designated investment alternative information) must be made no later than 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 408b-2 Regulation.

DOL's finalized transition rule also provides that the initial disclosure of quarterly fee information must be furnished no later than 45 days after the end of the quarter in which the initial disclosures must be furnished.

This means that for a calendar year plan, the initial disclosures (other than quarterly fee information) must be provided by May 31, 2012, and the initial quarterly disclosures must be provided by August 14, 2012 (the 45<sup>th</sup> day after the end of the calendar quarter of April 1 through June 30, 2012). DOL announced that these compliance dates were selected in order to more closely align the effective dates of both regulations, so that fiduciaries will be provided 408b-2 disclosures before they are required to provide participant-level disclosures.

**Electronic Disclosure:**

DOL also used the notice to reiterate that it is considering the extent to which it may provide further guidance on the extent to which electronic delivery methods may be used for the disclosures that are required under the Participant Disclosure Regulation. As you may know, DOL recently asked for comments from the regulated community as to whether it should broaden its current standards for the use of electronic disclosure generally. DOL stated in the notice that it intends to issue further guidance on the use of electronic disclosure prior to the compliance date.

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