

MEMO# 25237

June 1, 2011

DOL Proposes Extension of 408(b)(2) and Participant Disclosure Rules

[25237]

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TO: PENSION MEMBERS No. 26-11
OPERATIONS MEMBERS No. 11-11
BANK, TRUST AND RECORDKEEPER ADVISORY COMMITTEE No. 31-11
TRANSFER AGENT ADVISORY COMMITTEE No. 41-11 RE: DOL PROPOSES EXTENSION OF 408(b)(2) AND PARTICIPANT DISCLOSURE RULES

The Department of Labor has requested comment on extending the effective date of the section 408(b)(2) service provider disclosure regulation and the date on which both disclosure first must be provided to participants under the new 404(a) participant disclosure rule.

Under the proposal, the 408(b)(2) service provider disclosure interim final regulation – due to go into effect on July 16 for both new and existing contracts and arrangements – would be extended to January 1, 2012. [\[1\]](#) DOL provides no information on when it will make the rule final, but DOL officials have told us that they are close to sending a final rule to OMB for review.

The participant disclosure regulation, applicable for plan years beginning on or after November 1, 2011, provides that the first disclosures to current participants (i.e. participants with the right to direct investment of their account on the applicability date) are due 60 days after the applicability date. [\[2\]](#) DOL proposes to extend this to 120 days after the applicability date. For example, a calendar year plan would have to furnish the initial disclosures no later than April 30, 2012, and the required quarterly disclosure of fees actually deducted would have to be furnished no later than May 15, 2012. DOL proposes also to apply this transition rule to participants who become eligible for the plan in between the applicability date and the end of the 120-day period. DOL does not propose to otherwise extend the applicability date of the regulation or further revise the effective date of the changes to the section 404(c) regulation.

Comments on the proposed extension of these rules are due June 15.

Michael L. Hadley
Associate Counsel

[Attachment](#)

endnotes

[1] DOL previously announced an intention to extend the 408(b)(2) effective date. See [Memorandum](#) to Pension Members No. 11-11, Operations Committee No. 7-11, Bank, Trust and Recordkeeper Advisory Committee No. 10-11 and Transfer Agent Advisory Committee No. 13-11 [24962], dated February 11, 2011. For a description of the interim final regulation, see [Memorandum](#) to Pension Members No. 29-10, Bank, Trust and Recordkeeper Advisory Committee No. 21-10, Operations Committee No. 18-10 and Transfer Agent Advisory Committee No. 37-10 [24432], dated July 16, 2010. The Institute filed a comment letter on the interim final regulation which discussed the need for an extension if the final regulation imposes new obligations on service providers. See [Memorandum](#) to Pension Members No. 36-10, Bank, Trust and Recordkeeper Advisory Committee No. 30-10, Transfer Agent Advisory Committee No. 52-10 and Operations Committee No. 24-10 [24520], dated August 30, 2010.

[2] For a description of the final regulation, see [Memorandum](#) to Pension Members No. 49-10, Transfer Agent Advisory Committee No. 76-10, Bank, Trust and Recordkeeper Advisory Committee No. 49-10, Broker/Dealer Advisory Committee No. 56-10 and Operations Committee No. 37-10 [24702], dated November 11, 2010.

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