

## Extension of Applicability Dates for New ERISA Disclosure Rules

July 18, 2011

On July 13, the Department of Labor (DOL) announced a final rule extending the compliance dates for the DOL's new service provider (408(b)(2)) and participant-level (404a-5) disclosure regulations. The final rule, which is currently available on the DOL website,<sup>1</sup> is expected to be published in the *Federal Register* on July 19.

### Service Provider Disclosure Regulation

The effective date for the rule concerning required disclosures from certain pension plan service providers to plan fiduciaries under ERISA section 408(b)(2) is being extended by three months to **April 1, 2012**.

As originally provided in the interim final regulation published on July 16, 2010, the effective date for the 408(b)(2) service provider disclosure regulation was July 16, 2011. On June 1, 2011, the DOL published a proposal to extend the effective date to January 1, 2012, consistent with an announcement it had made in February 2011. Based on its review of the comments it received and consideration of the fact that it has not yet published a "final" final regulation, which is expected to change the interim final rules, the DOL believed that an extension of time would be needed to allow service providers to make the necessary systems changes. The DOL indicated that it intends to publish the final 408(b)(2) service provider disclosure regulation before the end of the year.

### Participant-Level Disclosure Regulation

In October 2010, the DOL published a final regulation on the disclosure of plan fee, expense, and investment information by plan administrators to participants and beneficiaries in participant-directed individual account plans. The transitional rule for the initial disclosures to be provided under the regulation is now being amended to require that the initial disclosures be furnished no later than the later of (i) 60 days after the first day of the first plan year beginning on or after November 1, 2011 (the original time frame), or (new provision) (ii) 60 days after the effective date of the 408(b)(2) disclosure rule (now extended to April 1, 2012, as described above).

---

1. Available online at <http://www.dol.gov/ebsa/pdf/extensionofapplicabilitydatesfinalrule.pdf>.

## Implications

A provision in the 408(b)(2) interim final regulation requires covered service providers to furnish information requested by a responsible plan fiduciary or plan administrator in order to comply with ERISA's reporting and disclosure requirements, which the DOL said would include information needed to comply with the participant-level disclosure regulation. As a result, the DOL indicated that aligning the applicability dates of the two regulations would assist plan fiduciaries and plan administrators in obtaining information required to comply with the participant-level disclosure regulation. The transitional rule, as amended, also provides that the required quarterly disclosures must be furnished no later than 45 days after the end of the quarter in which the initial disclosures are furnished, to avoid requiring quarterly disclosures to be provided prior to the initial disclosures.

Following is an illustration of how this would work for calendar-year plans:

April 1, 2012	408(b)(2) Regulation becomes applicable
May 31, 2012	First set of participant disclosures must be furnished (60 days after April 1, 2012)
August 14, 2012	First set of quarterly statement of fees/expenses actually deducted must be furnished (45th day after the end of the second quarter)

If you have questions, please contact the Morgan Lewis attorney with whom you regularly consult or any of the following Morgan Lewis attorneys:

### Chicago

Louis L. Joseph	312.324.1726	<a href="mailto:louis.joseph@morganlewis.com">louis.joseph@morganlewis.com</a>
-----------------	--------------	--

### New York

Craig A. Bitman	212.309.7190	<a href="mailto:cbitman@morganlewis.com">cbitman@morganlewis.com</a>
-----------------	--------------	--

### Philadelphia

I. Lee Falk	215.963.5616	<a href="mailto:ilfalk@morganlewis.com">ilfalk@morganlewis.com</a>
Vivian S. McCardell	215.963.5810	<a href="mailto:vmccardell@morganlewis.com">vmccardell@morganlewis.com</a>
Steven D. Spencer	215.963.5714	<a href="mailto:sspencer@morganlewis.com">sspencer@morganlewis.com</a>
Marianne R. Yudes	215.963.5490	<a href="mailto:myudes@morganlewis.com">myudes@morganlewis.com</a>
David B. Zelikoff	215.963.5360	<a href="mailto:dzelikoff@morganlewis.com">dzelikoff@morganlewis.com</a>

### Pittsburgh

Lisa H. Barton	412.560.3375	<a href="mailto:lbarton@morganlewis.com">lbarton@morganlewis.com</a>
Lauren B. Licastro	412.560.3383	<a href="mailto:llicastro@morganlewis.com">llicastro@morganlewis.com</a>

### Washington, D.C.

Benjamin I. Delancy	202.739.5608	<a href="mailto:bdelancy@morganlewis.com">bdelancy@morganlewis.com</a>
Stuart P. Kasiske	202.739.6368	<a href="mailto:skasiske@morganlewis.com">skasiske@morganlewis.com</a>
Daniel R. Kleinman	202.739.5143	<a href="mailto:dkleinman@morganlewis.com">dkleinman@morganlewis.com</a>
Donald J. Myers	202.739.5666	<a href="mailto:dmyers@morganlewis.com">dmyers@morganlewis.com</a>
Michael B. Richman	202.739.5036	<a href="mailto:mrichman@morganlewis.com">mrichman@morganlewis.com</a>

### **About Morgan, Lewis & Bockius LLP**

With 22 offices in the United States, Europe, and Asia, Morgan Lewis provides comprehensive transactional, litigation, labor and employment, regulatory, and intellectual property legal services to clients of all sizes—from global Fortune 100 companies to just-conceived startups—across all major industries. Our international team of attorneys, patent agents, employee benefits advisors, regulatory scientists, and other specialists—nearly 3,000 professionals total—serves clients from locations in Beijing, Boston, Brussels, Chicago, Dallas, Frankfurt, Harrisburg, Houston, Irvine, London, Los Angeles, Miami, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, Washington, D.C., and Wilmington. For more information about Morgan Lewis or its practices, please visit us online at [www.morganlewis.com](http://www.morganlewis.com).

### **IRS Circular 230 Disclosure**

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. For information about why we are required to include this legend, please see <http://www.morganlewis.com/circular230>.

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered **Attorney Advertising** in some states. Please note that the prior results discussed in the material do not guarantee similar outcomes.

**© 2011 Morgan, Lewis & Bockius LLP. All Rights Reserved.**