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ERISA Service Provider and Enhanced Participant Disclosures: Near-Term Requirements and Long-Term Consequences

408(b)(2) Final Regulations Released!

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Agenda

- Introductions
- Context and Focus
- What's Changed?
- Near-Term Requirements
 - General Obligations
 - Developing a Process
 - Challenges
- Long-Term Consequences

What's Changed?

Comparison to Interim Final Rules – 408(b)(2)

- Extended compliance date
- Definition of covered plans
- Definition of covered service providers (CSPs)
- Description of services
- Disclosure of status
- Disclosure of compensation

Comparison to Interim Final Rules – 408(b)(2) (continued)

- Investment disclosures
- Recordkeeping and brokerage services
- Disclosure summary/guide
- Electronic delivery
- CSP response to requests
- Class exemption requirements

Near-Term Requirements

General Obligations

- Identify covered plans
- Contact covered service providers
- Verify receipt of adequate disclosures
- Analyze data
- Take appropriate action
- Consequences of failure

Developing a Process

- Assign internal responsibilities
- Develop a schedule
- Select method of vendor outreach
- Track data collection
- Determine how data will be analyzed:
 - Internal
 - Consultants
- Document process and results
- Perform periodic internal audits

Challenges

- Revenue sharing/proprietary funds
- Non-plan assets
- Plan design/structure
- Reimbursement accounts/credits
- Cross-subsidization
- Participant disclosures
- Conflicts

Long-Term Consequences

Long-Term Consequences

- Pending guidance for welfare plans
- Previously issued PTEs
- ERISA Litigation
- DOL Audits

Questions?

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Practice Areas

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[Defined Contribution Plans/401\(k\) Plans](#)
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Bar Admissions

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I. Lee Falk is senior counsel in Morgan Lewis's Employee Benefits and Executive Compensation Practice. Mr. Falk has substantial expertise in all facets of employee benefits law and executive compensation matters and has considerable experience with a broad range of employee benefits and deferred compensation plans and programs, including tax-qualified pension and profit-sharing plans, qualified cash or deferred arrangements (401(k) plans), master and prototype plans, stock option and other incentive compensation and capital accumulation programs. A significant part of Mr. Falk's practice involves ERISA fiduciary and prohibited transaction matters for clients in the financial services industry and pension investments, including hedge funds and private equity funds, for large single employer and multiemployer plans. Mr. Falk also has extensive experience handling employee benefits aspects of corporate transactions, such as mergers and acquisitions, joint ventures, reorganizations, and loans and similar financing arrangements.

Education

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Azeez Hayne is a partner in Morgan Lewis's Labor and Employment Practice. Mr. Hayne's practice focuses primarily on employee benefits plan litigation and general employment litigation, including Sarbanes-Oxley whistleblower litigation. His practice includes representing employee benefits plans and employers in disputes with plan participants and beneficiaries, representing employee benefits plans in disputes with plan trustees, and representing employers in Sarbanes-Oxley whistleblower suits, discrimination suits, and executive compensation disputes. In addition, Mr. Hayne regularly counsels clients in employment and benefits decisions.

Education

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Marianne R. Yudes is an associate in Morgan Lewis's Employee Benefits and Executive Compensation Practice. Ms. Yudes's practice encompasses all areas of employee benefits law and executive compensation, with a particular focus on vendor practice; 403(b), IRA, and other master/prototype products; pension/welfare and other plan investments and services; and fiduciary compliance.

Ms. Yudes advises a wide array of leading vendors of financial products and services regarding emerging legal issues and key industry concerns pertaining to retirement plan products and services, such as the investment of plan assets, revenue sharing, retention of float, fee rebate and disclosure issues, delivering participant investment advice, compliance with ERISA section 404(c), and electronic delivery. She provides support services to financial institutions for 403(b) plan, traditional/Roth IRA, and other "retail" products, such as SEPs, SIMPLEs, and CESAs, including preparation and maintenance of account applications and agreements, disclosure statements, and other account documentation; obtaining nonbank custodial approvals; coordinating the acquisition, merger, and transfer of custodians; and navigating complex reporting and filing issues, transfer agency and customer service issues, investments in alternative vehicles, and prohibited transaction issues.

She drafts and negotiates agreements in connection with single- and multiemployer plan investments, including investment management and agreements for investment-related services, such as transition management, securities lending, commission recapture, directed brokerage, trust and custody services, and third-party administration. She provides analysis and advice to plan sponsors as to fiduciary structure and committee membership, appropriate delegation of authority and oversight responsibilities, and other fiduciary "best practices." She also provides guidance and educational seminars as to ERISA fiduciary duties and responsibilities, prohibited transaction exemptions and corrections, the provision of investment advice and participant education, the payment of plan expenses, and reporting and disclosure requirements.

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