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The Ferenczy Flash

FROM THE LAW OFFICES OF Ilene H. Ferenczy, LL

How Do You Spell "Disclosure Relief"?

In new regulations issued on July 16, the Department of Labor (DOL) again extended the deadline for service provider contracts to conform to the new regulations under ERISA §408(b)(2). The new deadline for these rules is **April 1, 2012**.

In addition to this extension, the DOL has linked the deadline for the new participant disclosure regulations to the §408(b)(2) rules by making the initial disclosures due by the later of (a) 60 days after the first day of the first plan year beginning on or after November 1, 2011; or (b) 60 days after the effective date of the §408(b)(2) regulations. Therefore, the earliest date for the initial participant disclosures is **May 31, 2012**. Furthermore, the quarterly disclosures must be furnished by 45 days after the end of the quarter in which the initial disclosures are required to be furnished, i.e., **August 14, 2012** for a calendar year plan.

That was the good news

The not-so-good-news is that the DOL still has not issued the final version of the regulations under ERISA §408(b)(2). This means that we will not know for sure whether the contracts people are using that have been modified to meet the DOL's interim final regulation issued in July of 2010 will suffice when April 1, 2012, rolls around.

DOL representatives have informally indicated that the final rule should not differ materially from the interim final regulation, and have hinted that the disclosure may be required to include a schedule or chart to illustrate the estimated fees. However, that is merely speculation at this time.

Our office is continuing to prepare service contracts intended to comply with the §408(b)(2) regulations, as well as with our recommendations for reduced liability, dispute resolution, and risk management. If changes are required when the final regulations are issued, we will make any needed adjustments at that time.

If you have any questions, please call us.

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