

KELLY, HANNAFORD & BATTLES P.A.

ANTHONY R. BATTLES
JULE M. HANNAFORD IV
A. DAVID KELLY
THEODORE K. RICE
SONJA LEMMER MARTENS
HOLLY A. FISTLER

MARK D. MEYER
JEAN L. FINDORFF
OF COUNSEL

ATTORNEYS AT LAW
900 BAKER BUILDING
706 SECOND AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55402
TELEPHONE (612) 341-0881
FACSIMILE (612) 341-1041
KHBLAW.COM

WRITER'S DIRECT DIAL:
612/455-6084
TRice@KHBlaw.com

WRITER'S DIRECT DIAL:
612/341-3398
HFistler@KHBlaw.com

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Re: DOL Extends and Aligns Compliance Dates for Fee Disclosure Rules

Dear Clients and Other Friends:

On Wednesday, June 1, the Department of Labor published a proposed extension of the compliance dates for retirement plan fee disclosure rules (see <http://www.gpo.gov/fdsys/pkg/FR-2011-06-01/pdf/2011-13516.pdf>). The two sets of rules involved are the service provider fee disclosure rules (also known as the 408(b)(2) fee disclosure rules) and the participant fee disclosure rules. For a summary of these fee disclosure rules as currently issued by the DOL, see our past newsletters at our website: <http://www.khblaw.com/newsletters/>.

Service Provider Fee Disclosures

The compliance date for the new service provider fee disclosure rules was initially established as July 16, 2011 in the interim final 408(b)(2) regulations. In February of this year, the DOL announced that it planned to extend this compliance date to January 1, 2012. The June 1 rule now formally proposes to extend the original compliance date. Therefore, no real change has been made to the compliance date for these rules from what was announced by the DOL in February; the new compliance date is January 1, 2012.

Initial Participant Fee Disclosures

The compliance date for the participant fee disclosure rules had previously been set as no later than 60 days after the applicability date. The applicability date under these rules is the first date of a plan year beginning on or after November 1, 2011. Therefore, for calendar year plans, the applicability date is January 1, 2012. The newly announced extension of the compliance date now sets the compliance date as no later than 120 days after the applicability date. As a result of this extension, a calendar year plan must furnish participants the initial disclosures no later than April 30, 2012.

Under the proposed transition rule, the initial disclosures must be provided to all participants and beneficiaries who have the right to direct their investments when such disclosures are furnished, not just to those individuals who had the right to direct their investments on the applicability date. This is to ensure that individuals who become plan participants in between the applicability date and the end of the 120-day period receive the information required under the rule.

Timing for Quarterly Statement Disclosures

The proposed extension of the compliance dates also provided helpful clarification of the timing for furnishing participants with quarterly statement disclosures. Although the applicability date under these rules is the first date of a plan year beginning on or after November 1, 2011,

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it was unclear if the new quarterly statement disclosures were required for the 4th quarter 2011 statements or for the 1st quarter 2012 statements. The preamble to the proposed extension clarified that a calendar year plan must furnish participants the quarterly statement of fees/expenses actually deducted no later than May 15, 2012, which is 45 days following the close of the 1st quarter 2012.

Reasons for the Alignment of these Compliance Dates

The DOL made these changes to these respective compliance dates to better align the application of these two fee disclosure rules so as to assist plan fiduciaries and administrators in obtaining information required to comply with the participant fee disclosure regulation. The DOL asserts that delayed application will better afford plans sufficient time to ensure an efficient and effective implementation of the participant-level fee disclosure regulation.

Further Extensions Possible?

Because the service provider fee disclosure regulation is currently structured as an “interim” final rule and the DOL has been reviewing comments received, it is possible that the DOL will make certain amendments to the regulation when it is issued in “final, final” form. Therefore, the possibility exists that the DOL will issue a further extension of the above-described compliance dates. Plan sponsors and service providers should continue to monitor developments in this area. We will send news of further extensions of the compliance dates or other key developments regarding the fee disclosure rules as they are issued by the DOL.

Please contact us with questions about retirement plan fee disclosures or other employee benefits matters.

Sincerely,

Theodore K. Rice

Holly A. Fistler