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Re: DOL Again Extends Compliance Dates for Fee Disclosure Rules

Dear Clients and Other Friends:

The latest DOL extension of compliance dates for fee disclosures appropriately occurred during the middle of baseball season. This timing brings to mind a great quote from the famous ballplayer Yogi Berra: "It's déjà vu all over again."

The two sets of rules impacted by this extension are the participant fee disclosure rules and the service provider fee disclosure rules (also known as the 408(b)(2) fee disclosure rules). See the latest DOL guidance regarding these fee disclosure rules at the following website: <http://www.gpo.gov/fdsys/pkg/FR-2011-07-19/pdf/2011-18029.pdf>. 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/>.

Initial Fee Disclosures for Participants

Plan sponsors of 401(k) plans and other defined contribution ERISA retirement plans must provide these initial fee disclosures to all participants and beneficiaries who have the right to direct their investments when such disclosures are furnished.

As a result of the latest DOL extension, plans must furnish participants the initial disclosures by the later of: (1) 60 days after the first day of the first plan year beginning on or after November 1, 2011; or (2) 60 days after the effective date of the service provider fee disclosures (see discussion below). Since the service provider fee disclosure compliance date is now April 1, 2012, the initial participant fee disclosure for calendar year plans is due **May 31, 2012**.

Electronic delivery – The DOL again asserted that its consideration of electronic delivery options is on-going. The DOL states that it intends to provide guidance on this issue before the compliance date.

Quarterly Statement Disclosures for Participants

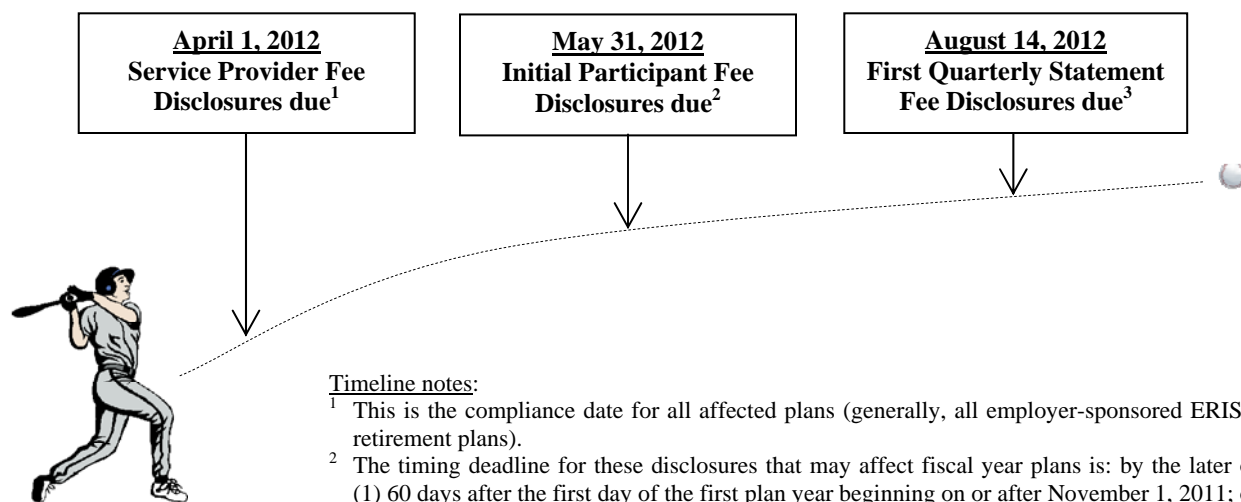
This latest guidance also extended the compliance date for the first quarterly statement disclosing actual fees and expenses to participants. Plan sponsors must provide these quarterly statements of fees/expenses to participants no later than 45 days following the close of the first quarter in which the initial participant disclosures are to be furnished. This means that, for calendar year plans, the first quarterly statement must be provided by **August 14, 2012**, corresponding to the 2nd quarter, which ends on June 30.

Service Provider Fee Disclosures to Plan Sponsors

Under the 408(b)(2) service provider fee disclosure rules, covered service providers must disclose their fees, compensation and other related information to plan sponsors in the manner required under those rules (again, please see our prior newsletters for a summary). After reviewing comments about the extension proposal announced in February of this year (proposing a January 1, 2012 compliance date), the DOL decided to extend the compliance date for service provider fee disclosures to **April 1, 2012** for all affected plans. Plan sponsors will need to assure that service provider fee disclosures are received and reviewed, taking any appropriate action in response.

Fielding the Upcoming Compliance Dates

The DOL's latest guidance focused heavily on the interaction between the compliance dates for participant and service provider fee disclosures. Based on this extension, calendar year plans must focus on the following timeline:



Timeline notes:

- ¹ This is the compliance date for all affected plans (generally, all employer-sponsored ERISA retirement plans).
- ² The timing deadline for these disclosures that may affect fiscal year plans is: by the later of (1) 60 days after the first day of the first plan year beginning on or after November 1, 2011; or (2) 60 days after the effective date of the service provider fee disclosures (April 1, 2012).
- ³ The initial timing deadline for quarterly disclosures is 45 days following the close of the first quarter when initial participant fee disclosures were made.

Further Extensions Still Possible?

In its latest guidance, the DOL stated that it intends to publish a final 408(b)(2) service provider fee disclosure regulation before the end of this year and “does not expect that the changes to the interim final rule are likely to require more additional time for compliance.” For now, we can look to Yogi Berra for more words of wisdom: “It ain't over 'til it's over!”

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

Sincerely,

Theodore K. Rice

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