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TCRS 2011-02: DOL extends (again) the Effective Date for Compliance with ERISA section 408(b)(2) Service Provider Fee Disclosure and extends the Effective Date for Compliance with ERISA section 404(a) Participant Fee Disclosure

On July 19, 2011, the Department of Labor (“DOL”) published amendments to the interim final regulations issued under Section 408(b)(2) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) (see [TCRS 2010-05](#)) as well as the regulations issued under Section 404(a) of ERISA (see [TCRS 2010-07](#)), which amendments extended the compliance dates for each regulation. See also [TCRS 2011-01](#).

Effective Dates for Compliance

These regulations concern required disclosures from service providers to plan fiduciaries (the “408(b)(2) regulations”) and required disclosures from plan fiduciaries to plan participants and beneficiaries (the “404(a) regulations”), respectively. **The 408(b)(2) regulations will now take effect on April 1, 2012. The extended applicability date for the 404(a) regulations will occur 60 days following the first day of the first plan year commencing on or after November 1, 2011 or, if later, the effective date of the 408(b)(2) regulations.** Essentially, this means that most of the disclosures required to be provided under the 404(a) regulations will not need to be provided until May 31, 2012. Further, the initial quarterly disclosures required under the 404(a) regulations may be provided to participants 45 days after the end of the first calendar quarter in which the new rules become applicable (for calendar year plans, initial quarterly disclosures must be provided no later than August 14, 2012).

Background

The 408(b)(2) regulations were originally issued “interim final” form on July 16, 2010, with an effective date of July 16, 2011. As such, the DOL solicited comments from the public and indicated that it would take such comments into account before issuing final regulations. Many of the comments provided to the DOL included requests to delay the effective date of the 408(b)(2) regulations in order to give covered service providers time to fulfill their obligations once the final regulations were issued.

Due to a delay in the issuance of the final regulations, in February 2011 the DOL announced its intention to delay the effective date until January 1, 2012. The DOL followed up on this announcement by issuing a proposal on June 1, 2011 to formalize the intended delay.

The DOL also received numerous requests to delay the 404(a) regulations. Specifically, commenters indicated that it would be difficult, if not impossible, for plan fiduciaries to provide participants with required disclosures in the absence of clarity on the required 408(b)(2) disclosures from service providers. The DOL noted that the alignment of the effective dates of the two regulations would assist plan fiduciaries in fulfilling their participant obligations, which would ultimately be in the best interests of plan participants and beneficiaries.

In the June 1, 2011 proposal, the DOL extended the transition rules provided under the 404(a) regulations. The original transition rule indicated that plan sponsors could provide participant disclosures to participants and beneficiaries who were already eligible to direct investments under their plans as of the effective date of the regulation no later than 60 days following the initial applicability date (which is, for calendar year plans, January 1, 2012). The DOL initially proposed extending this transition period from 60 days to 120 days.

In response to the June 1, 2011 proposed extension, the DOL received a number of comments requesting additional extensions of the applicability dates of both regulations, which comments expressed many of the same

concerns outlined above. The DOL took these comments into consideration in finalizing the amendments to the 408(b)(2) and 404(a) regulations' effective dates.

Additional Changes Possible

At this time, the DOL has indicated that it does not intend to provide additional extensions of the applicability dates of either of the disclosure regulations but, to date, the final 408(b)(2) regulations have not been issued. In addition, several aspects of the 404(a) regulations are still under consideration by the DOL (including guidance on target date funds and electronic delivery of disclosures).

This Summary is designed to provide an overview of the DOL's extension of the applicability dates for compliance with regulations under ERISA sections 408(b)(2) and 404(a) and is not intended to be comprehensive. The Transamerica Center for Retirement Studies® ("The Center") is a non-profit corporation and private foundation. The Center may be funded by contributions from Transamerica Life Insurance Company and its affiliates or other unaffiliated third-parties. For more information about The Center, please refer to www.transamericacenter.org. The Center and its representatives cannot give ERISA, tax or legal advice. This material is provided for informational purposes only and should not be construed as ERISA, tax or legal advice. Interested parties must consult and rely solely upon their own independent advisors regarding their particular situation and the concepts presented here. Although care has been taken in preparing this material and presenting it accurately, The Center disclaims any express or implied warranty as to the accuracy of any material contained herein and any liability with respect to it.