

**** UPDATE: As of February 3, 2012, the DOL has extended the 408(b)(2) effective date to July 1, 2012 and the 404(a) effective date to generally be August 30, 2012. See [TCRS 2012-01](#) memo for details. ****

Date: February 18, 2011

TCRS 2011-01: DOL Extends Effective Date for Compliance with ERISA section 408(b)(2) Service Provider Fee Disclosure

On February 11, 2011, the Department of Labor (“DOL”) announced that it extended the compliance date for new disclosure rules under ERISA section 408(b)(2) from July 16, 2011 to January 1, 2012. Under the new disclosure rules, service providers must disclose certain information to plan fiduciaries about an existing, or future, service arrangement.

Background

The DOL issued an interim final regulation effective July 16, 2011, requiring covered service providers to disclose to plan fiduciaries a description of the services provided to the plan and the compensation the plan would pay to the service provider for such services during the term of the service arrangement.

The disclosure information is necessary for the plan fiduciaries to assess the reasonableness of compensation paid for services to the plan, and to identify any conflicts of interest. Under ERISA section 406(a)(1)(C), a service arrangement between a plan and a service provider (party-in interest) would generally constitute a prohibited transaction. However, ERISA section 408(b)(2) provides an exemption from ERISA’s prohibited transaction rules if the service arrangement is reasonable, the services are necessary for the establishment and operation of the plan and no more than reasonable compensation is paid for the services.

With this extension, covered service providers must comply with the disclosure requirements for all service arrangements in existence on January 1, 2012, as well as any arrangements effective on and after January 1, 2012. For more specific information about the interim final regulation, the disclosure requirements, and definitions of the covered service arrangements, plans, and service providers, see [TCRS 2010-05](#).

Impact on Covered Service Providers and Plan Fiduciaries

With this extension, covered service providers have more time to implement procedures and mechanisms necessary to comply with the disclosure requirements.

Plan fiduciaries should expect covered service providers to provide disclosure information required under the regulation by January 1, 2012 for existing service arrangements.

The extension also places the new applicability date of the service provider fee disclosure regulations coincident with the January 1, 2012 applicability date of the final Participant Fee Disclosure regulations for calendar year plans. Certain service providers and/or plan fiduciaries could view as problematic the effort of complying with both regulations simultaneously. For more information about the Participant Fee Disclosure regulations, see [TCRS 2010-07](#).

Additional Changes Possible

In the February 11, 2011 announcement, Phyllis C. Borzi, Assistant Secretary of the DOL’s Employee Benefits Security Administration, said “[a]n extension of the applicability date to January 1, 2012 will ensure that we have the time we need to get the final rule right and that plans and their service providers have the time they need to

undertake orderly and efficient compliance efforts following publication of the final rule.” Ms. Borzi’s statement reinforces the fact that the DOL may still make changes to the interim final regulation prior to the January 1, 2012 effective date. At a minimum, a final rule appears forthcoming.

According to the DOL’s announcement, additional information about the interim final regulation is available at www.dol.gov/ebsa. Furthermore, questions concerning the applicability date or the final rule may be directed to Jeffrey Turner, EBSA regulations division chief in the Office of Regulations and Interpretations, at (202) 693-8500.

This Summary is designed to provide an overview of the DOL’s extension of the applicability date for compliance with regulations under ERISA section 408(b)(2) 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.