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Department of Labor Delays Effective Date of Rules Requiring New Fee Disclosures by Pension Plan Service Providers

February 15, 2011

On February 11, 2011, the U.S. Department of Labor ("DOL") announced a delay until January 1, 2012 in the applicability date of the new disclosure rules imposed under interim final regulations (the "Interim Final Regulations") it published last year under Section 408(b)(2) of the U.S. Employee Retirement Income Security Act of 1974, as amended ("ERISA").

By way of background, the Interim Final Regulations, originally published on July 16, 2010, require certain service providers to employee pension benefit plans and certain entities holding "plan assets" to disclose information regarding their compensation so as to assist plan fiduciaries in assessing the reasonableness of the service provider's contract with the plan and the potential for conflicts of interest. A contract or arrangement for services that does not satisfy these new dislcosure rules would not be considered a "reasonable" arrangement for services under the exemption from ERISA's prohibited transaction rules for service contracts or arrangements and, therefore, would not be covered by the exemption. The Interim Final Regulations were set to become effective on July 16, 2011, and would have applied to arrangements entered into on or after that date, as well as to arrangements already in effect as of that date. Proskauer's Client Alert on the Interim Final Regulations can be found here: http://www.proskauer.com/publications/client-alert/department-of-labor-issues-interim-final-regulations/.

In extending this July 16, 2011 applicability date to January 1, 2012, the DOL provided itself with more time to consider carefully its response to the many comments it received on the Interim Final Regulations, which response would be embodied in final regulations that were anticipated to be issued in the coming months. In addition, the DOL indicated that it wished to ensure that affected service providers and plans were given sufficient time to comply with any final regulations.

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