



AMERICAN BENEFITS COUNCIL

January 19, 2012

Honorable Phyllis Borzi
Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

RE: Extension of Disclosure Rules

Dear Assistant Secretary Borzi:

The American Benefits Council (Council) and its members share the Department's interest in effective communication of information that plan sponsors and plan participants need to make informed decisions. We realize that the Department of Labor is interested in making the fiduciary-level (408(b)(2)) and participant-level (404a-5) disclosure regulations effective as soon as possible. However, the Council believes that a reasonable extension of the effective date of both rules is necessary and the extension should be commensurate with the complexity of any changes or clarifications.

The Council is a public policy organization principally representing Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

As we send this, the final fiduciary-level disclosure regulation has not been published. In our June 13, 2011 letter on the Department's proposed effective date extension, the Council expressed concern that there may be little time between publication of the final 408(b)(2) regulation and the applicability date of the interim final regulation. We appreciate that the Department has been working hard to complete and publish the final regulations under 408(b)(2), and that the timing of final release is not solely within the Department's control. We have no doubt that the Department has done what it can to move the final 408(b)(2) regulation forward.

Because of the current circumstances, however, an extension of the effective date of the fiduciary-level disclosure regulation is warranted. Considering the time it takes to implement programming changes, it would be impossible to revise already prepared disclosure forms to comply with any new requirements set forth in the final regulation by April 1, 2012. It would also be difficult to comply with provisions of the earlier regulations that may be subject to differing interpretations which are clarified in the preamble or other parts of the final regulations. Even if compliance with all or parts of the final regulation is delayed, if the interim final regulation's April 1 effective date is not delayed, it would increase administrative requirements and costs to have a partial implementation and then a second disclosure in the future.

In addition, because fiduciaries must have the tools to obtain the information necessary to satisfy their obligations under the participant-level fee disclosure regulation, the transition rule under the participant-level disclosure regulation also must be delayed.¹ A delay in the participant-level disclosure regulation, incidentally, would give the Department breathing room to finalize necessary guidance (formal or informal) on the numerous interpretive questions that have arisen. Releasing such guidance, in turn, will help administrators understand their obligations and ensure the disclosures they furnish participants and beneficiaries are effective and fully comply with the regulation. The Department also has not finalized the regulations that were proposed in November of 2010 under section 404(a) and 404(c) of ERISA relating to participant disclosure rules for target date funds. Plan fiduciaries, investment providers and other service providers will need to understand and implement those final rules before they are able to provide comprehensive participant-level disclosure.

The Department, the Council and its members, and other interested parties have worked together for many years on these important disclosure projects. We all share the goal of making their implementation smooth. The Council strongly believes a reasonable extension serves that goal.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Jacobson", written in a cursive style.

Jan Jacobson
Senior Counsel, Retirement Policy

¹ The participant disclosure regulation appears to do this automatically because, as amended, it provides that the initial disclosures must be furnished "no later than the later of 60 days after such applicability date or 60 days after the effective date of 29 CFR 2550.408b-2(c)." *See* 29 C.F.R. § 2550.404c-5(j)(3), *as amended by* 76 Fed. Reg. 42539 (July 19, 2011). The Department should confirm this extension is automatic.