

FERRAIUOLI LLC

LABOR & EMPLOYMENT DEPARTMENT

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U.S. Department of Labor proposed new ERISA regulations

On March 12, 2014, the U.S. Department of Labor (“DOL”) proposed to amend final regulations under Section 408(b)(2) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA” and the “408(b)(2) Regs.”). The proposed amendment requires covered service providers who make the required disclosures therein through several or lengthy documents to provide a “guide” along with said disclosures.

Background: In 2012, the DOL issued the 408(b)(2) Regs., requiring specific disclosures from ERISA plan service providers to ensure that plan fiduciaries are provided with the information they need to meet their fiduciary obligations when selecting and monitoring service providers for their plan. Since then, the DOL has been reviewing service providers’ disclosures and plan fiduciaries’ experiences in receiving these disclosures.

New Proposed Regulations: The DOL is now proposing an amendment to the 408(b)(2) Regs., to require a “guide” when the applicable disclosures are made through “lengthy documents”. This is an effort to assist plan fiduciaries in reviewing such disclosures in a trouble-free manner. As such, the proposed “guide” must specifically identify the document, page, or, if applicable, other sufficiently specific locator, such as section, that enables the plan fiduciary to quickly and easily find the specified information, as applicable to the contract or arrangements. Moreover, in those situations in which a “guide” is required, the covered service provider must direct the fiduciary to the place in the disclosure documents where the fiduciary can find the following: (1) the description of services to be provided; (2) the statement concerning services to be provided as a fiduciary and/or as a registered investment adviser; (3) the description of all direct and indirect forms of compensation; and (4) the required investment disclosures for fiduciary services, recordkeeping and brokerage services. The DOL proposes that the amendment to the final rule becomes effective 12 months after publication of a final amendment in the Federal Register.

Next Steps: Covered service providers, plan sponsors and administrators should closely follow developments regarding these new proposed regulations. They should also consider whether their existing 408(b)(2) Regs. disclosures could be subject to the additional requirements under the proposed new regulations.

This document has been prepared for information purposes only and is not intended as, and should not be relied upon as legal advice. If you have any questions or comments about the matters discussed in this notice, wish to obtain more information related thereto, or about its possible effect(s) on policy or operational matters, please contact us.

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