



Submitted Electronically

December 14, 2011

Mr. Michael L. Davis  
Deputy Assistant Secretary of Labor  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Ave., NW  
Washington, DC 20210

Re: **Impact of the Delayed Release and Potential Changes to the 408(b)(2) Regulations**

Dear Mr. Davis:

This is a follow-up to our conversation yesterday regarding the impact of the delayed release and potential changes to the 408(b)(2) regulations. As you requested, I documented the points I covered, including the steps that service providers will have to take and the estimated time needed to change systems, processes, procedures, documents and communications due to the delay in releasing the final regulations or if there are any changes from the interim final regulations.

### **Summary of Concerns**

If there are no changes from the interim final rules that will require changes to systems, processes, procedures, documents or communications, record keepers already are, or will be ready to comply by April 1, 2012. Record keepers (and other service providers) have devoted substantial time and resources to preparing to comply with the interim final rules by April 1, 2012 and need to know by January 1, 2012 at the latest that there are no changes to them so that they are able to continue with their compliance efforts and be in full compliance with their existing customers by April 1st.

Some record keepers have already built fee summaries and have initiated rollout of their new 408(b)(2) materials. Any change to the interim final rules is likely to require systems and coding changes, as well as changes to processes, procedures, documents and communications for the vast majority of record keepers.

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Without seeing the final rules and having an opportunity to evaluate the complexity of a potential roadmap requirement and other possible changes, it is extremely difficult to estimate the time that will be needed to make all of the necessary changes. However, we developed time estimates based on three scenarios: (1) no changes (record keepers are already or will be ready by April 1, 2012), (2) general and flexible road map requirement or other basic and simple changes, and (3) specific and detailed roadmap requirement (e.g., requiring cross reference to pages and sections embedded in other documents) or other significant or complicated changes. Estimates for scenarios 2 and 3 are provided below.

Not all record keepers may agree on whether certain changes are basic and simple or significant and complex. Even changes that appear to be simple can require costly and time consuming changes. Record keepers' views may vary based on their size and number of customers, business model and number of affected systems, the approach they have already taken to comply with the interim final rules as they are currently known and understood (e.g., some have already built fee summaries), and other factors.

Most record keepers prefer a single implementation deadline for **all** of the 408(b)(2) changes, which means that if there are any changes from the interim final rules that will require systems changes, the April 1, 2012 compliance deadline should be delayed for everything, including maintaining the linkage with 404a-5 and a corresponding delay of those rules. The majority of our members prefer this approach over good faith compliance with the interim rules, followed by a second implementation of the final rules. Those who are concerned about a two-stage implementation are particularly concerned about incurring significantly greater and duplicative implementation costs. However, other members prefer to proceed with implementing what they have developed already based on the interim final regulations.

We are also concerned about the costs resulting from an additional delay, the costs of making additional changes and the wasted money spent on potential throw-away work resulting from having to change systems, documents, agreements and marketing materials that have been developed and are currently ready to comply with the interim final rules.

The following summary of the steps and time required to make systems and other changes is based on input from multiple large record keepers.

### **Project Initiation and Planning**

- Evaluate regulatory requirements.
- Analyze existing systems, processes, procedures, documents and communications already developed to support the interim final rules.
- Communicate and review new rules with management and affected resources.
- Assemble project team.
- Develop project plan.

## **Execution**

- Validate new legal requirements.
- Create and modify disclosure documents, forms and notifications.
- Identify other required changes.
- Internal and external legal counsel review of proposed changes.
- Compliance and audit review of proposed changes.
- Communicate changes and revisions to implementation plan to existing customers, business partners, intermediaries and subcontractors.
- Identify and revise all affected training tools for customers, internal staff and intermediaries.
- Coordinate changes and revisions with subcontractors and other affected third parties.
- Write, validate, confirm and approve systems change requirements.
- Revise, install and test systems code changes. Code changes must be scheduled in advance based on peak work cycles (e.g., quarter-end) in order to avoid service disruption, and avoid scheduled systems freezes (e.g., year-end).
- Regression testing (ensuring new code does not disrupt existing systems and functionality).
- Final systems and compliance approvals.

## **Rollout**

- Organize internal resources and coordinate client and intermediary rollout of new disclosure materials.
- Train and prepare internal staff for rollout and to respond to customer inquiries.
- Train and prepare existing customers, business partners, intermediaries and subcontractors.

## **Timing**

**General and flexible road map requirement or other basic and simple changes** - Six to 12 months based on the nature of the changes, with the majority of record keepers estimating 12 months.

**Specific and detailed roadmap requirement (e.g., requiring cross reference to pages or sections embedded in other documents) or other significant or complicated changes** - Eighteen to 24 months or more depending on the specificity of the roadmap requirement.

No two systems are alike and client contracts differ even within the same organization. This type of change would require all of the steps above plus the development, restructuring or replacement of document production and archival systems, or the development of entirely new processes. The document production system would then have to be integrated with the fee disclosure systems and tools, and all other existing systems.

These systems would take significant time and be very expensive to develop and maintain, and it may not be practical or possible to do so. The costs of these efforts may far exceed the potential incremental benefits. Focus on this as a priority across providers would also interfere with other client deliverables and general product development aimed at improving retirement outcomes.

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Thank you for considering our views and recommendations on this very important topic. The SPARK Institute is available to provide additional information and clarification regarding these matters. Please do not hesitate to contact us at (704) 987-0533.

Respectfully,



Larry H. Goldbrum  
General Counsel