

Additional guidance on timing of fee disclosures for ERISA plans

On July 22, 2013, DOL issued Field Assistance Bulletin No. 2013-02, providing temporary timing relief for the fee disclosures required for ERISA plans that permit participant direction. The relief is in response to a request from industry groups for clarification of the requirement to provide the notices “at least annually.” The guidance provides a one-time option of sending out the notice within 18 months of the 2012 notice rather than the 12-month requirement specified in the regulations. This will give plan administrators flexibility in coordinating the timing of the mailing of annual notices and disclosures. Plan administrators who already sent out or are in the process of sending out the 2013 notices may take advantage of this option for the 2014 mailing.

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Background

Final DOL regulations required ERISA participant-directed plans to provide detailed information to plan participants and beneficiaries about the plan’s designated investment alternatives on initial eligibility to make investment elections and “at least annually thereafter.” The regulations required that initial notices be sent the later of 60 days after the July 1, 2012 deadline for service provider disclosures under 408(b)(2) or 60 days after the first day of the plan year starting on or after November 1, 2011. For calendar year plans, that date was August 30, 2012. The regulations define “at least annually thereafter” as “at least once in any 12-month period without regard to whether the plan operates on a calendar or fiscal year basis.” Under these requirements, calendar year plans would have to send out 2013 notices on or before the anniversary date of the 2012 disclosures, namely before August 30, 2013.

Plan administrators and service providers expressed concern that the notices would be more effective if delivered with end-of-year events such as with the annual enrollment material. In addition, cost savings may be realized if required information is combined with other annual notices and disclosures at year-end—savings that could be passed on to plan participants.

Industry groups petitioned DOL to consider modifying the 12-month requirement to 18 months to enable plan administrators to coordinate the mailing at a more opportune time. Although a plan administrator could send more

frequent notices to get the timing aligned, this would entail a second notice in a 12-month period and additional costs, which ultimately might be passed on to plan participants.

Buck Comment: Indeed, in our July 18 [For Your Information](#), we advised plan administrators to move forward in the absence of guidance. Given this new development, more time is available.

Temporary relief provided

In response to the recommendations of the industry groups, DOL provided a one-time option to reset the timing of notices. [Field Assistance Bulletin 2013-02](#) provides guidance that they will treat the “at least annually thereafter” requirement as being satisfied if the 2013 comparative chart is provided no later than 18 months after the last notice was sent. If, for example, a plan administrator sent out the 2012 disclosures on August 15, 2012, the deadline to comply with the 2013 requirements would be February 15, 2014. The guidance goes on to state that the decision to delay sending the notices must be in the best interests of the plan participants.

Buck Comment: This is an excellent opportunity for plan sponsors to better organize the mailings to participants. Coordinating the annual fee disclosure notice with Qualified Default Investment Alternative (QDIA) mailings, year-end total benefits statements, or even quarterly statements can both reduce mailing and fulfillment costs and provide an opportunity to deliver consistent messaging across plan communications. In addition, plan sponsors can use this as an opportunity to synchronize the effective date of investment return data across fee disclosure materials, quarterly statements, and participant websites.

Extension to 2014 for those who already mailed 2013 notices

DOL recognizes that some plan administrators may have started preparing or even sent out notices in anticipation of the August 30 deadline. In that case, plan administrators may take advantage of this transitional “re-set” for the 2014 plan year. Those plan administrators will have 18 months from the date that the 2013 notices were distributed to send out the 2014 notice.

Additional relief under consideration

DOL is considering whether to revise the regulation’s timing requirement to provide flexibility to plan administrators on a permanent basis. Consideration is being given to allowing a 30- or 45-day window during which a subsequent notice would be required, thereby providing more permanent relief. This would prevent the subsequent mailings from being tied to a specific day.

Buck Comment: It is great to see that plan sponsors who distributed fee disclosures earlier than required in 2013 will be able to use this “one-time synchronization” for the 2014 materials. In addition, we are hopeful that DOL will follow through and provide an annual window for disclosures instead of the current annual requirement that does not allow for weekends/holidays and penalizes a sponsor for mailing early one year by setting the date to be one year from the previous year’s mail date.

In closing

Plan administrators who have not sent out their notices will have the opportunity to review current disclosures and assess the timing of the distribution of the participant fee disclosures. Safe harbor plans, plans with auto enrollment, or plans that mail an annual benefits statement may want to combine notices to reduce costs. For those further along in the process of sending out the 2013 notices, there is ample time to evaluate the timing of notices and they can use the 2014 period to combine any notices and realign mailing dates. In the interim, DOL will be reviewing other timing issues and additional relief may be forthcoming.

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