

Possible “Window” for Delivery of Participant Fee Disclosures

On January 9, the DOL submitted a change to their fee disclosure regulation to the Office of Management and Budget (OMB) for review and approval. The change would provide a “window” period for delivering fee disclosures for participant-directed individual account retirement plans. The addition of a window addresses a timing rule in the existing regulation that sets a fixed annual date for delivering notices without allowing for reasonable variations. Generally, review by the OMB takes 90 days, and it is likely that the relief will be available sometime this year.

Background

On October 20, 2010, the DOL published a final regulation requiring specific disclosures to be made by individual account plans subject to ERISA that provide for participant investment direction. The disclosures must provide plan and investment information, including details about fees and expenses, comparative charts, and access to a glossary of relevant terms. The objective was to provide plan participants timely information in a format that would enable them to compare the plan’s investment options meaningfully. Participants must receive the fee disclosure when first eligible to direct investments and annually (“at least once in any 12-month period”) thereafter, with select information also included on quarterly statements.

Despite the issuance of these regulations in 2010, several delays resulted in the first disclosures for calendar year plans being due on August 30, 2012. This meant that many fee disclosures were sent at the end of the summer — generally at a time when no other disclosures were sent and well in advance of the typical year-end notices for automatic enrollment, default investments, and safe harbor plan status. Comments submitted to DOL indicated concern that because fee disclosure notices were due when no other communication was required, costs would be higher and participants would be less likely to focus on the material.

The DOL, in Field Assistance Bulletin [FAB 2013-02](#), provided a one-time “re-set” of the annual 12-month period. Plans could deliver the disclosures up to 18 months after the previously released notice and could take advantage of the extension option in either 2013 or 2014. That meant that a



plan that delivered the notices on August 25, 2012 had until February 25, 2014 to provide the next notice. Once the disclosures were mailed, the “clock” for the next year’s mailing was set at the date 12 months later.

The DOL acknowledged that the one-time “re-set” did not address the concerns that the current timing requirement may result in a fixed annual deadline and indicated that it was considering providing a 30-45 day window period. (See our *For Your Information* of [July 23, 2013](#).)

OMB Reviewing Change to Provide “Window” Period

On January 9, the DOL submitted to the OMB a direct final amendment to their disclosure regulation that would make a technical adjustment to the timing requirement for annual disclosure by adding a window period for delivery. The amendment would provide plan administrators with flexibility in furnishing annual fee disclosures to participants and beneficiaries. The change is considered noncontroversial and therefore it likely will be approved and become effective shortly thereafter.

In Closing

Given that the standard OMB 90-day review period will end in April, we hope the relief will be available for this year’s delivery of participant fee disclosures. We’ll provide more information when the regulation is published.

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