

DOL Provides Flexibility in Fee Disclosure Timing

Effective immediately, plan administrators of individual account plans that permit participants to direct investments have additional time to provide annual participant fee disclosure documents. They no longer need to target distribution timing to a precise 12-month deadline to avoid “deadline creep.” Disclosures will be timely if provided within 14 months of the prior year’s disclosure.

Background

Under the DOL’s October 20, 2010 final fee disclosure regulation, individual account plans subject to ERISA that provide for participant investment direction must provide participants with 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 participants timely information in a format that would enable them to meaningfully compare the plan’s investment options. Participants must receive the fee disclosures 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.

Several regulatory delays resulted in the first disclosures for calendar year plans being due on August 30, 2012 — generally, a time when no other disclosures are required and well in advance of the typical year-end notices for automatic enrollment, default investments, and safe harbor plan status. Comments submitted to DOL voiced concern that requiring fee disclosures when no other communication was required raises costs and decreases the likelihood of participants focusing 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. This 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 concerns that the current timing requirement may result in a fixed annual deadline going forward, if the plan administrator wanted to avoid having future year deadlines creep forward to 12-months after an early delivery ("deadline creep"). DOL indicated that it was considering providing a 30-45 day window period. (See our [July 23, 2013](#) and [January 22, 2015](#) *For Your Information* publications.)

Final Regulation Creates 14-Month Rule

Citing as valid many comments about the administrative trouble caused by the 12-month rule in the final regulation, the DOL's new "[direct final rule](#)" changes the 12-month rule to a 14-month rule. As explained in the accompanying [fact sheet](#), plan administrators of individual account plans will now be required to provide participant fee disclosures at least once in any 14-month period, without regard to whether the plan operates on a calendar or fiscal year basis.

Example: A plan administrator could choose to provide the fee disclosure with annual enrollment material provided on October 31, 2015 for the 2016 plan year, and then provide the disclosure on December 31, 2016 for the 2017 plan year.

This relief applies only to the distribution of the fee disclosure notice. No changes have been made to the timing of the quarterly information or to requirements for providing change notices in advance of a plan change.

Effective Date

DOL's revision becomes effective June 17, unless significant adverse comment is received by April 20. If that were to happen, the DOL would withdraw the rule. Mindful that plan sponsors may have deadlines before June 17, DOL is adopting a temporary enforcement policy, effective immediately, allowing plan administrators to rely on the 14-month rule, provided they reasonably determine that doing so will benefit participants and beneficiaries. If significant adverse comment leads to a withdrawal of the change, DOL will provide guidance on the enforcement policy at that time.

Other Timing Issues

Interestingly, DOL's rationale for this timing change identified other events that also may warrant a change in the timing of participant fee disclosures — including corporate mergers and changes in recordkeepers, investment lineups, plan years (e.g., from fiscal to calendar year), and law. The direct final rule did not address timing options specific to these changes, but, in many cases, the 14-month rule may provide sufficient flexibility.

In Closing

The revised timing requirement takes the pressure off plan administrators to time delivery of fee disclosures to the same date each year to avoid creeping towards an earlier deadline year-by-year. In light of the strong support it had received in advance of this guidance, it is unlikely that the DOL will need to reverse course.

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