

DOL Extends the Deadline for Delivering Participant Fee Disclosures

Overview

The Department of Labor (“DOL”) has released Field Assistance Bulletin No. 2013-02, which allows plan sponsors to delay the delivery of the 2013 annual participant fee disclosure for up to six months, if the plan sponsor determines it is in the best interest of the plan’s participants to do so.

Background

Beginning in 2012 plan sponsors were required to provide their plan participants with certain plan and investment information, as required under ERISA §404(a)(5), commonly referred to as participant fee disclosures. The first disclosures were required to be delivered to the plan participants no later than August 30, 2012, and then “annually thereafter”.

Moving into 2013, speculation grew as to exactly what the DOL meant by “annually thereafter”. As we reported in May, 2013, most conservative practitioners were recommending that, “annually thereafter”, meant within 365 days of the date the disclosure was delivered in 2012. For example, if the plan sponsor provided the disclosure on August 25, 2012, then the 2013 disclosure must be provided by August 25, 2013. We also reported that several industry groups had petitioned the DOL to consider some flexibility in the annual delivery deadline.

Field Assistance Bulletin No. 2013-02

On July 22, 2013, the DOL released Field Assistance Bulletin (“FAB”) No. 2013-02, providing transitional relief to plan sponsors with respect to the deadline for delivering the 2013 participant fee disclosures required under ERISA §404(a)(5).

It is clear from the FAB that the DOL did intend that “annually thereafter” meant within 365 days of the date the disclosure was delivered in the prior year. The DOL was persuaded by requests received from plan sponsors, service providers, and industry groups, however, to provide transitional relief for the 2013 fee disclosure delivery deadline.

In the FAB, the DOL states that if the plan sponsor determines that delaying the delivery of the 2013 disclosure will benefit the plan’s participants, then the plan sponsor may take up to 18 months from the date the disclosures were delivered in 2012 to deliver the next disclosure. This is a onetime “reset” of the annual deadline date.

For example, if the plan sponsor delivered the original disclosure on August 25, 2012, the plan sponsor has a onetime transitional deadline date of no later than February 25, 2014 to deliver the 2013 disclosure. Essentially this onetime “reset” allows the plan sponsor to determine whether it is better for the participants to receive the disclosure in the beginning, middle, or end of the plan year. Once the date is “reset”, the term “annually thereafter” does, at least for now, mean that the plan sponsor would need to provide the next annual disclosure within 365 days of the “reset” date. (In the FAB the DOL reports that they are considering allowing a 30 or 45 day “window” during which future annual disclosures would be provided, but cautions that this is only under consideration and is not authorized under the FAB.)

Action Steps

Here are some action steps for plan sponsors to consider:

- Determine when you provided the fee disclosure last year.
- Determine what time of the year you feel that receiving the disclosure would best benefit your plan participants. For example:
 - Do you think your participants would benefit most by providing this information in the beginning of the calendar year, when many investors are thinking about their upcoming tax return and tax planning?
 - Do you think your participants would benefit most by providing this information at the end of the plan year, when many plans are already providing various end of year notices such as Safe Harbor Notices, QDIA Notices, etc?
 - If you have annual notices to provide at the end of the plan year, and you charge the delivery expense to the plan, does it make sense to also provide the fee disclosure at the end of the plan year to help reduce the cost of delivery?
 - Or is the August deadline more appropriate for your participants because things tend to slow down in the summer which means the participants may actually take the time to read the disclosure?
- Once you have determined the appropriate time of the year to deliver the disclosure be certain to schedule a reminder.

Remember, in most cases, the next participant fee disclosure you provide will set the annual delivery deadline for all future annual participant fee disclosures.

- Be certain to record the date that you deliver the next participant fee disclosure so that you do not miss next year's deadline.

For plan sponsors who have already delivered the 2013 disclosure, or have already begun the process of delivering the 2013 disclosure, the FAB provides that the plan sponsor may make use of the onetime "reset" next year.

For example, again assume the original disclosure was delivered on August 25, 2012. Further assume that the plan sponsor has already delivered the disclosure for this year, or has already begun the process to have the disclosures prepared for August. Under those circumstances the FAB allows the plan sponsor to use the onetime reset in August of 2014, so that the deadline for the 2014 disclosure could be as late as February 25, 2015.

Please do not hesitate to contact our office if you would like to review the fee disclosure requirements or the new delivery deadline relief provided under FAB 2013-02.