

DOL Extends the Annual ERISA §404(a)(5) Disclosure Deadline

The Department of Labor (“DOL”) has issued a Direct Final Ruling as well as a Temporary Enforcement Policy allowing Plan Sponsors an additional two months to distribute the annual participant fee disclosures required under ERISA §404(a)(5).

Each year, plan sponsors whose qualified retirement plans allow the plan participants to direct the investments in their plan accounts, must provide the participants certain plan and investment information, including information regarding fees, expenses, and historical investment data. The first disclosures were required to be distributed no later than August 30, 2012 and “annually thereafter”. In subsequent guidance the DOL defined “annually thereafter” to mean, not to exceed 365 days from the date in which the last disclosure was distributed to the participants.

In 2013 the DOL permitted a one-time “reset” of the annual deadline by increasing the 12 month deadline to 18 months. If the 18 month reset was not used in 2013 a plan sponsor had one more opportunity to reset their annual disclosure deadline in 2014.

At the time the DOL issued the guidance permitting the one-time reset the DOL also indicated that they were considering allowing plan sponsors to have a “window” of time to distribute disclosures so that the prior year’s distribution date did not set a “hard” 365 day deadline for the following year’s disclosure.

On March 19, 2015 the DOL issued a Direct Final Rule changing the term “at least annually thereafter”, to “at least once in any 14-month period, without regard to whether the plan operates on a calendar year or fiscal year basis.”

The effect of the Final Rule is to give plan sponsors more flexibility in determining when they will provide the annual participant fee disclosure to their participants and greater opportunity to coordinate the fee disclosures with other notices and disclosures that may also be required.

For example, assume a plan sponsor distributed the very first fee disclosure on August 1, 2012. The following year the plan sponsor took advantage of the one-time deadline reset, and distributed the 2013 disclosure on November 1, 2013. In 2014, faced with a 365 day deadline, the plan sponsor opted to distribute the 2014 disclosure on October 15, 2014.

Under the old guidance, the plan sponsor would be required to distribute the 2015 disclosure no later than October 15, 2015.

As a result of the new Final Rule that permits a 14 month deadline, the plan sponsor can now distribute the 2015 disclosure any time up to December 15, 2015.

The Direct Final Rule is effective June 17, 2015, however the DOL has issued a Temporary Enforcement Policy allowing plan sponsors to implement the new rule immediately.

Please do not hesitate to contact our office if you have any questions or would like to discuss.