
DOL Provides Relief for Second Round of 404(a)(5) Disclosures

On July 22, 2013, the Department of Labor (DOL) issued Field Assistance Bulletin (FAB) 2013-02, which announced a transitional enforcement policy regarding the due date for the second round of 404(a)(5) participant disclosure regulations. The FAB comes in response to concerns voiced by plan administrators and service providers that the timing of the second round of disclosures could lead to additional mailing costs, as well as the potential inefficiencies of mailing disclosures independent of other plan disclosures or notices. After weighing these concerns, the DOL promptly took action, granting a one-time “reset” regarding the timing of the second round of participant fee disclosures.

Review of original 404(a)(5) disclosure requirements

On October 20, 2010, the Employee Benefits Security Administration published final regulations pertaining to disclosure requirements for participant-directed plans. The regulation, known as 404(a)(5), required plan administrators to provide detailed information to plan participants and beneficiaries to help them understand plan fees and make informed investment selections. The initial deadline for issuing these disclosures was August 30, 2012. Subsequent disclosures, under the original regulations, were due no later than 12 months after issuance of the initial disclosures.

FAB 2013-02 explained

FAB 2013-02 allows plan administrators to delay the second round of 404(a)(5) disclosures (also referred to as “comparative charts”) until a date no later than 18 months after the initial 404(a)(5) disclosures were furnished, if it can be reasonably determined that doing so would benefit plan participants and beneficiaries. For example, if a plan administrator issued the initial 404(a)(5) disclosures on August 20, 2012, the second round of 404(a)(5) disclosures would be due no later than February 20, 2014.

Key considerations of FAB 2013-02

In light of this change, plan administrators should note the following key points:

- This flexibility allows you to align the second round of 404(a)(5) disclosures with other plan disclosure and notice deadlines, creating a cost-efficient solution for mailings. It also allows participants to receive the information in conjunction with other plan materials, notices, or disclosures.
- If you have already furnished 2013 comparative charts, you may apply the same one-time reset rule to 2014 disclosures.
- Relief granted in FAB 2013-02 does not apply to other required disclosures and notices, and it does not alter the fiduciary responsibilities of plan administrators.

In addition, the DOL is considering further amending the regulation to provide for a 30- or 45-day window for furnishing future comparative charts, and it is currently asking for public comment.

