

Employee Benefits Update

July 2013

Temporary Enforcement Relief for Delivery of Annual Participant Disclosures

Thompson Hine's employee benefits lawyers understand the challenges associated with administering retirement plans and work closely with clients to monitor and ensure compliance with changing regulatory requirements. The breadth and depth of our experience allows us to identify best practices as they emerge and provide responsive, legally compliant and cost-effective solutions. For more information on issuing annual participant disclosures, please contact any member of our [Employee Benefits & Executive Compensation](#) practice group.

On July 22, 2013, the Department of Labor (DOL) issued Field Assistance Bulletin 2013-02 (FAB) in which it announced temporary enforcement relief regarding the deadline for delivery of annual participant disclosures by plan administrators of participant-directed individual account plans (e.g., 401(k) plans). The DOL also announced it is considering changes to the annual disclosure requirements to provide reasonable timing flexibility on a permanent basis.

Background

At least once every 12 months, the plan administrator of a participant-directed individual account plan must provide a written disclosure that discloses certain plan, expense and investment-related information to all participants and beneficiaries who have the right to direct investment of their plan accounts. The initial disclosure was due no later than August 30, 2012, with succeeding annual disclosures due no later than the one-year anniversary of the initial disclosure.

According to the DOL, some plan administrators and service providers have expressed concern regarding the timing requirement, noting that the deadline for the annual disclosure bears no correlation to the timing of any other annual participant disclosures. As a result, plan

administrators and service providers will bear increased costs for having to send the annual disclosure in a separate mailing. Additionally, plan administrators contend that the disclosure would be more likely to attract the attention of participants and beneficiaries if it were distributed at another time, such as the end of the year or during an open enrollment period.

Temporary Relief

According to the FAB, the DOL will, as an enforcement matter, treat a plan administrator as satisfying the "at least annually thereafter" requirement if:

- The 2013 annual participant disclosure is furnished no later than 18 months after the initial annual disclosure was provided (e.g., if the initial annual disclosure was issued on August 25, 2012, the 2013 annual disclosure must be furnished no later than February 25, 2014), or
- For plan administrators that have already issued the 2013 annual disclosure or incurred administrative costs and taken steps to do so, the 2014 annual disclosure is furnished no later than 18 months after the 2013 annual disclosure is (or was) provided.

In either case, the plan administrator must reasonably determine that the delay will benefit participants and beneficiaries.

The delay does not affect all disclosure requirements under the regulation . . .

The FAB notes that the announced enforcement relief does not affect the plan administrator's other obligations under the regulation, including the obligation to provide advance written notice of certain changes to information included in the annual disclosure, or to provide more frequently updated investment-related information on the required website.

Next Steps

The FAB provides welcome relief to plan administrators that wish to "reset" the timing of the annual disclosures. Plan administrators that are considering taking advantage of the enforcement relief should consult with their service providers and counsel to work through the details.

FOR MORE INFORMATION

For more information, please contact any member of our [Employee Benefits & Executive Compensation](#) group.

IRS Circular 230 Disclosure: *To ensure compliance with requirements imposed by the IRS, we inform you that nothing contained herein is intended to be used, or can be used, to avoid penalties imposed under the Internal Revenue Code.*

This advisory bulletin may be reproduced, in whole or in part, with the prior permission of Thompson Hine LLP and acknowledgement of its source and copyright. This publication is intended to inform clients about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in it without professional counsel.

This document may be considered attorney advertising in some jurisdictions.

© 2013 THOMPSON HINE LLP. ALL RIGHTS RESERVED.