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## When is a year, not a year? When sending out participant disclosures, of course.

The Department of Labor (“DOL”) today published an amendment to the participant disclosure regulation changing the definition of “at least annually thereafter” from “at least once in any 12-month period” to “at least once in any 14-month period.” 80 FR 14301 (March 19, 2015). If DOL does not receive significant adverse comments by April 20, the amended definition will go into effect June 17. The direct final regulation also provides a temporary enforcement policy that allows plan administrators to rely on the new definition prior to the effective date of the amendment. Therefore, the deadline for furnishing the 2015 disclosures has, for many plans, been pushed back by two months. The change should also reduce the likelihood that plans will commit “foot-fault” violations of the regulation’s deadlines.

Under the regulation, the plan administrator of a participant directed plan must furnish, to every participant and beneficiary, certain specified information regarding the plan and the investment alternatives offered thereunder on or before the date the participant can first direct his or her investments and at least annually thereafter. 29 C.F.R. § 2550.404a-5(c),(d). The term “at least annually thereafter” was originally defined under the regulation to mean “at least once in any 12-month period, without regard to whether the plan operates on a calendar or fiscal year basis.” 29 C.F.R. § 2550.404a-5(h)(1).

Due to delays in the companion service provider disclosure regulation under ERISA section 408(b)(2), the deadline to furnish the first annual participant disclosure was delayed, for calendar year plans, until August 30, 2012; the Friday before Labor Day weekend. Based on the regulation’s rigid timing rules, this meant that many plans would be required to issue subsequent annual disclosures in late summer, a time that did not generally conform to open enrollment periods or the start/end of a plan year. Over time, many commenters to the DOL pointed out the awkward timing of this key disclosure obligation. This regulatory amendment is the second attempt by the DOL to allow plans more flexibility in determining the time at which they will issue these annual disclosures. In 2013, DOL adopted a temporary enforcement policy regarding the timing of the 2013 or 2014 comparative chart. See Field Assistance Bulletin 2013-02 (July 22, 2013). Under the enforcement policy, a plan administrator could have taken up to 18 months between automatically furnishing comparative charts. However, that enforcement policy was limited in its usefulness, because it permitted only a one-time reset of the annual disclosure timing, only for the 2013 or 2014 annual disclosure. Today’s regulatory change gives plan administrators additional flexibility on an ongoing basis to determine the timing of these important investment and fee disclosures for participant directed plans.

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