



The
ERISA
Industry
Committee

June 3, 2013

The Honorable Phyllis Borzi
Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Room S-2524
Washington, D.C. 20210

RE: Fee Disclosures in Participant-Directed Individual Account Plans

Dear Assistant Secretary Borzi:

The ERISA Industry Committee (“ERIC”) is writing to request transitional relief with respect to the fee disclosure regulation for participant-directed individual account plans.¹

ERIC’S INTEREST IN RETIREMENT PLANS

ERIC is a nonprofit association committed to the advancement of the employee retirement benefit plans of America’s largest employers. ERIC’s members provide comprehensive retirement benefits to tens of millions of active and retired workers and their families. ERIC has a strong interest in rules that impact its members’ retirement plans.

DETAILED COMMENTS

The participant fee disclosure regulation applies to individual account plans (such as 401(k) plans) that allow participants to direct the investment of their accounts.² The regulation requires both annual and quarterly disclosures to be made. The annual disclosures must include general plan information, administrative expenses and fees that may be charged against participant accounts, participant-specific expenses and fees that may be charged against a participant’s account, and designated investment alternative information.

The regulation requires plan administrators of these plans to provide participants and beneficiaries with this information at least annually. For example, plan-related information must be provided “[o]n or before the date on which a participant or beneficiary can first direct his or her investments and at least annually thereafter...”³ The regulations state that “at least annually thereafter” means “at least once in any 12-month period, without regard to whether the plan operates on a calendar or fiscal year basis”.⁴

¹ 29 CFR §2550.404a-5.

² 29 CFR §2550.404a-5(b).

³ 29 CFR §2550.404a-5(c)(1)(i).

⁴ 29 CFR §2550.404a-5(h)(1).

The annual participant fee disclosures were initially required by August 30, 2012.⁵ Many plans distributed their annual fee disclosures in August 2012. As a result, the following year's disclosures for these plans will need to be made by August 2013, that is, within 365 days of the initial disclosure.


Eighty percent of retirement plans operate on a calendar-year basis.⁶ These plans frequently distribute materials to participants in the third quarter of each year. Guidance from the Department indicates that the fee disclosures could be mailed with other disclosures.⁷ However, because many participant fee disclosures are due in August, plans cannot combine them with the disclosures that are sent out in September or even later in the year.

As a result, plans will incur considerable additional expense to mail these disclosures separately from their other disclosures – and with little or no benefit to participants. According to the Department, there are an estimated 72 million participants who will receive these disclosures.⁸ By the Department's own calculations, the distribution of the disclosures to these participants will cost millions of dollars.⁹

ERIC recommends the Department issue guidance that interprets the regulation's definition of "at least annually thereafter" to mean at least once in any twelve-month period, but no later than 18 months from the last annual disclosure.

ERIC appreciates the opportunity to provide comments on participant fee disclosures. If you have any questions concerning our comments, or if we can be of further assistance, please contact us at (202) 789-1400.

Sincerely,


Kathryn Ricard
Senior Vice President, Retirement Policy

⁵ The Department issued the final participant fee disclosure regulations on October 20, 2010. 75 Fed. Reg. 64910 (Oct. 20, 2010). The final rules stated that the regulation was applicable for plan years beginning on or after November 1, 2011. On July 29, 2011, the Department delayed the effective date of the regulations to the later of 60 days after the plan's applicability date or 60 days after the effective date of the 408(b)(2) regulation. 76 Fed. Reg. 42539 (Jul. 19, 2011). The final rule for the 408(b)(2) regulation provided an effective date of July 1, 2011. 77 Fed. Reg. 5632 (Feb. 3, 2012).

⁶ Treasury Inspector General for Tax Administration, *Statistical Trends in Retirement Plans*, p.4, footnote 11 (Aug. 9, 2010), available at <http://www.treasury.gov/tigta/auditreports/2010reports/201010097fr.pdf>.

⁷ U.S. Department of Labor, Field Assistance Bulletin No. 2012-02R, Q&A-26, available at <http://www.dol.gov/ebsa/regs/fab2012-2R.html>.

⁸ 75 Fed. Reg. at 64910.

⁹ 75 Fed. Reg. at 64933.