
DOL Final Rule Provides Flexibility on Annual Participant Fee Disclosure Requirements

By Douglas J. Ellis / Mar 20, 2015

Current Department of Labor (DOL) regulations require 401(k) plan administrators to provide fee and expense disclosures regarding plan investment options where participants have the ability to direct some or all of their investments. These disclosures must be initially provided to participants on or before the date the participants become eligible to direct their investments in the plan and "at least annually thereafter." Additional guidance from the DOL clarified that "at least annually thereafter" means at least once in any 12-month period after the prior disclosure was provided.

Concerns have been raised that this timing requirement creates administrative difficulties and complicates providing coordinated disclosures that may be due at a later date or which are not ready by the fee disclosure deadline. The timing rule can even lead to disclosures not being made early due to disclosure "creep" (i.e., providing disclosures earlier than the prior year accelerates the deadline for the following year's disclosure). Recognizing these issues, the DOL issued a final rule on March 18, 2015, amending the regulation to change the definition of "at least annually thereafter" to mean "at least once in any 14-month period" after the prior disclosure was provided. The change gives administrators greater flexibility by allowing a grace period of up to two months for making the required disclosures. The final rule does not make any changes in the required content of the fee disclosures.

In addition to providing annual fee disclosures by the revised deadlines, plan sponsors and administrators must confirm on a regular basis that plan fees and expenses charged against participants or plan assets are appropriate and reasonable. This issue has been a major focus of the DOL in recent audits and agency actions.

The new final rule takes effect June 17, 2015, but the DOL also issued a temporary enforcement policy allowing plan administrators to rely on the final rule before its effective date. The temporary enforcement policy allows a plan administrator to make the required annual disclosures within the 14-month period as provided under the new rule, as long as the administrator reasonably determines that doing so will benefit participants and beneficiaries. The final rule can be found [here](#).

Plan sponsors and administrators should work closely with their legal counsel to comply with the timing and content requirements for fee disclosures. If you have any questions about the subject matter of this e-alert, please contact Doug Ellis at dellis@clarkhill.com or (412) 394-2367; Ed Hammond at ehammond@clarkhill.com (248) 988-1821; Kristi Gauthier at kgauthier@clarkhill.com or (480) 684-1300; or Nancy Farnam at nfarnam@clarkhill.com or (248) 530-6333.