

**MEMO# 27398**

July 23, 2013

## **DOL Provides Annual Deadline Relief for Participant Fee Disclosures**

[27398]

July 23, 2013

TO: PENSION MEMBERS No. 33-13  
BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 22-13  
BROKER/DEALER ADVISORY COMMITTEE No. 35-13  
TRANSFER AGENT ADVISORY COMMITTEE No. 56-13  
OPERATIONS COMMITTEE No. 34-13 RE: DOL PROVIDES ANNUAL DEADLINE RELIEF FOR PARTICIPANT FEE DISCLOSURES

DOL has released Field Assistance Bulletin (FAB) No. 2013-02, providing limited relief from the annual deadline for providing certain participant disclosure materials under 29 C.F.R. § 2550.404a-5 (the participant disclosure regulation). [\[1\]](#) Under the participant disclosure regulation, certain information, such as the comparative chart of investment options, must be provided at least annually (once in any 12-month period) after the initial disclosures, the deadline for which was August 30, 2012 (for calendar year plans). [\[2\]](#) Thus, the annual deadline for each plan would depend on the date on which the previous annual (or initial) disclosure was furnished to participants. DOL heard from plan sponsors and service providers that this deadline would make it difficult to combine the §404a-5 participant disclosures with other annual participant notices and disclosures.

FAB 2013-02 provides that plan administrators have a one-time opportunity to reset the §404a-5 deadline by furnishing either the second or third round of disclosures no later than 18 months after the prior disclosure materials were furnished. In other words, for a plan that furnished initial disclosures on August 25, 2012, the plan administrator could choose to reset the deadline this year by providing the second-round disclosures by February 25, 2014 instead of August 25, 2013. Alternatively, the plan administrator could provide the 2013 disclosures on August 25, 2013 and reset the following year by providing the third-round disclosures by February 25, 2015. The plan administrator must reasonably determine that resetting the deadline will benefit participants and beneficiaries.

The relief is limited to the disclosure of information required under §404a-5(c) (plan-related information) and section §404a-5(d)(1) and (2) (investment-related information to be provided automatically and in a comparative format). (As originally published, the FAB limited the relief to paragraphs (c)(1)(i) and (d)(1) and (2). We are told that this was a mistake and the reference to (c)(1)(i) has been corrected to now refer simply to paragraph

(c.) The relief does not impact other requirements under the §404a-5 regulation, such as providing updated investment information or notice of changes to the circumstances under which participants may provide investment instructions.

DOL also indicates in the FAB that it is considering revising the regulation's timing requirement on a permanent basis to provide more flexibility in meeting the annual disclosure requirement. Specifically, DOL is considering establishing a 30-day or 45-day window during which a subsequent annual disclosure would have to be furnished, rather than fixing the 12-month "at least annually" period to end on one specific day. The Institute likely will submit comments to DOL in response to this suggestion.

Elena Barone Chism  
Associate Counsel

#### **endnotes**

[1] The FAB is available at <http://www.dol.gov/ebsa/regs/fab2013-2.html>. For a description of the final participant disclosure regulation, see [Memorandum](#) to Pension Members No. 49-10, Transfer Agent Advisory Committee No. 76-10, Bank, Trust and Recordkeeper Advisory Committee No. 49-10, Broker/Dealer Advisory Committee No. 56-10, and Operations Committee No. 37-10 [24702], dated November 11, 2010.

[2] See [Memorandum](#) to Pension Members No. 8-12 [25876], dated February 7, 2012; [Memorandum](#) to Pension Members No. 40-11, Operations Members No. 14-11, Bank, Trust and Recordkeeper Advisory Committee No. 41-11, Transfer Agent Advisory Committee No. 55-11 [25330], dated July 14, 2011.

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