



Brenda Berg

Partner
303.295.8029
Denver
brberg@hollandhart.com

DOL Has Given Plans a One-Time Opportunity to Elect a New Deadline on When to Provide Participant Fee Disclosures

Insight — August 8, 2013

Under the applicable fee disclosure regulations, plans must provide participants fee disclosures at least once in any 12-month period. The first round of participant fee disclosures was due by August 30, 2012 (for calendar year plans), thus the second round of participant fee disclosures is due by August 30, 2013 (or if earlier, 12 months from the date of the first disclosure). In Field Assistance Bulletin (FAB) No. 2013-02 (July 22, 2013), the DOL gave plan administrators some flexibility in the timing and provided that the DOL would not enforce the second deadline, provided that the disclosures are distributed within 18 months from the date of the initial disclosures and the plan administrator has determined that doing so will benefit participants and beneficiaries. Future notices would then have to be provided within 12 months of this second disclosure date. This would allow plans to align the participant disclosures with other disclosure requirements and possibly avoid a separate mailing.

If a plan has already furnished the second notice, the plan administrator can elect to take advantage of the 18-month period for the *next* notice (the 2014 notice) instead. Plan administrators should consider whether to take advantage of this opportunity to elect a new annual disclosure deadline. Note that the delay only provides relief from DOL enforcement, and not necessarily from participant claims for breach of fiduciary duty.

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