

April 20, 2015

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

RE: Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans—Timing of Annual Disclosure

Dear Assistant Secretary Borzi:

The undersigned organizations thank the Department of Labor for issuing Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans—Timing of Annual Disclosure as a direct final rule on March 19, 2015 (the “Regulation”).¹ The Regulation provides employers with needed flexibility to meet their obligations to furnish the required annual disclosures to plan participants.²

Prior to this change, employers were required to furnish the annual disclosure at least once in any 12-month period. As revised, the Regulation requires employers to furnish the annual disclosure at least once in any 14-month period. This extension is extremely helpful for those employers who would otherwise have to track the annual mailing to an exact date. As the Department explained in the preamble, the Regulation would prevent the deadline from “creeping” forward when there is early compliance. With this buffer, employers will be able to provide the annual disclosure to participants without the risk of an inadvertent failure to disclose the information prior to the deadline. We support the Department’s 14-month limit in the Regulation, which will ensure that participants receive the information in a timely manner.

Given the benefits of the Regulation and the protections provided to participants, we do not expect that the Department will receive any adverse comments on the Regulation, which was adopted as a “direct final rule.” However, if that occurs, then this letter serves as our comments on the “proposed regulation” and we would urge the Department to finalize it as soon as possible in its current form.

¹ DEPT. OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans—Timing of Annual Disclosure [RIN: 1210-AB68], 80 Federal Register 14301 (Mar. 19, 2015) (Direct Final Rule).

² See 29 C.F.R. § 2550.404a-5 (the “Rule”).

The Department also requests comments on whether a similar adjustment is needed for the “at least quarterly” definition in paragraph (h)(2) of the regulation. We do not believe that the issue related to the annual disclosure addressed by the direct final rule is presented with respect to quarterly disclosures. This is because paragraph (e)(2) states that the information required to be disclosed quarterly (namely, charges against a participant’s account) “may be included as part of a pension benefit statement furnished pursuant to ERISA section 105(a)(1)(A)(i).” Paragraph (e)(2), unlike paragraph (e)(1), makes no reference to timing.

Under Field Assistance Bulletin 2006-03, a pension benefit statement may be furnished up to 45 days after the end of a quarter. There is no requirement that a quarterly pension benefit statement be furnished within exactly 90 days (or three months) of the prior pension benefit statement. Thus, we believe that the information required to be disclosed under paragraphs (c)(2)(ii) and (c)(3)(iii) will be timely as long as it is included in a pension benefit statement sent within 45 days after the end of a quarter, regardless of the date the immediately prior quarterly pension benefit statement was sent. We recommend the Department confirm this interpretation. **If the Department disagrees with this interpretation, then a similar change to the participant disclosure regulation will be required.**

Again, we thank you for your prompt consideration of our concerns and the work done to issue the Regulation as a direct final rule.

Sincerely,

American Benefits Council
American Council of Life Insurers
American Retirement Association
Financial Services Institute, Inc.
Financial Services Roundtable
Insured Retirement Institute
Investment Company Institute
National Association of Insurance and Financial Advisors
Small Business Council of America
The ERISA Industry Committee
U.S. Chamber of Commerce

Cc: Ms. Judy Mares, Deputy Assistant Secretary
Mr. Joe Canary, Director, Office of Regulations and Interpretations
Mr. Jeff Turner, Deputy Director, Office of Regulations and Interpretations