

Fact Sheet



U.S. Department of Labor
Employee Benefits Security Administration
March 2015

Direct Final Rule Provides Flexibility for the Timing of Annual Disclosures to Workers in 401(k)-Type Retirement Plans

The Department of Labor's Employee Benefits Security Administration (EBSA) published in the Federal Register a direct final rule that makes a technical amendment to the "participant-level fee disclosure regulation." The rule provides plan administrators with a two-month grace period to furnish required annual disclosures concerning plan and investment fees and other information. The rule continues to ensure that participants and beneficiaries receive the information they need on a regular and periodic basis. The amendment provides plan administrators with some necessary flexibility by modifying the original requirement that annual disclosures must be made no later than one-year exactly after the prior year's disclosure.

Background

- ▶ EBSA is responsible for administering and enforcing the fiduciary, reporting, and disclosure provisions of Title I of the Employee Retirement Income Security Act of 1974 (ERISA).
- ▶ The agency oversees approximately 677,000 private pension plans, including 509,000 participant-directed individual account plans such as 401(k)-type plans.
- ▶ In 2010, EBSA published a final rule that helps workers manage and invest the money they contribute to their 401(k)-type pension plans.
- ▶ The 2010 participant-level fee disclosure regulation requires that workers are given, or have access to, the information they need to make informed plan and investment decisions, including information about fees and expenses, with the delivery of investment-related information in a format that enables them to meaningfully compare the investment options under their pension plans.
- ▶ In general, the regulation requires that the disclosures must be furnished on or before the date on which a participant can first direct his or her investments and "at least annually thereafter."
- ▶ The regulation defined the above-referenced term as "at least once in any 12-month period, without regard to whether the plan operates on a calendar year or fiscal year basis."
- ▶ In Field Assistance Bulletin 2013-02 (FAB 2013-02), issued July 22, 2013, the Department stated that the participant-level fee disclosure regulation requires annual disclosures be made no later than one year exactly (e.g., 365 days) after the prior annual disclosures.
- ▶ FAB 2013-02 provided a one-time "re-set" opportunity under which EBSA, as an enforcement matter, would treat a plan administrator as satisfying the "at least annually thereafter" requirement if the administrator furnished the annual disclosures no later than 18 months from the prior disclosures.
- ▶ FAB 2013-02 also solicited public comments on whether EBSA should amend the regulation to provide plan administrators with additional flexibility regarding when they must furnish the annual disclosures.
- ▶ The commenters overwhelmingly supported a regulatory amendment that provides flexibility as to the timing of the annual disclosures.
- ▶ The Department published the direct final rule on March 19, 2015.

Overview of the Direct Final Rule

- ▶ The direct final rule provides a two-month grace period for furnishing the annual disclosures to participants and beneficiaries.
- ▶ The term “at least annually thereafter” is now defined as “at least once in any 14-month period, without regard to whether the plan operates on a calendar year or fiscal year basis.”

Effective and Applicability Dates

- ▶ The direct final rule was published simultaneously with a notice of proposed rulemaking that serves as a notice of proposal to amend the 2010 regulation.
- ▶ Although the amendment is effective June 17, 2015 without further action or notice unless significant adverse comment is received by April 20, 2015, EBSA has adopted a temporary enforcement policy, which is described below.
- ▶ If significant adverse comment is received, EBSA will publish a timely withdrawal of the direct final rule, which will include further guidance on the enforcement policy, and later address public comments in a subsequent final rule; in such a case, EBSA will not initiate a second comment period.

Temporary Enforcement Policy

- ▶ During the interim period until the effective date of the direct final rule, EBSA, as an enforcement matter, will treat a plan administrator as satisfying the current “12-month rule” if disclosures are furnished within the new 14-month deadline.
- ▶ A condition of the enforcement policy is that the plan administrator must reasonably determine that using the extended deadline will benefit participants and beneficiaries.
- ▶ The relief under this policy is in addition to the “re-set” relief previously granted under FAB 2013-02 and is available regardless of whether a plan used that relief.
- ▶ This enforcement policy expires on the effective date of the direct final rule without notice or any other action by the Department.

A copy of the regulation is available on the agency’s Web site at <https://www.dol.gov/ebsa> under “Laws & Regulations.”