

UPDATE: One-Time Extension for Furnishing Annual Fee Disclosures to Participants

Earlier this month we reminded you that plan administrators of participant-directed ERISA defined contribution retirement plans (e.g., 401(k) plans, 403(b) plans, profit sharing plans and money purchase plans) had to annually disclose certain fee information to participants and beneficiaries, and that for most plans there was an upcoming deadline in August 2013 for the second round of annual notices. Please click [here](#) to read that prior Alert. We noted in that Alert that practitioners and employers had appealed to the U.S. Department of Labor ("DOL") to provide some flexibility to plans regarding the timing of the annual disclosures. *We now write to inform you that the DOL has recently released guidance providing for a one-time extension of the deadline to provide annual fee information.*

The DOL has released a temporary enforcement policy providing that a plan administrator is able to furnish the second round of annual "comparative charts"¹ no later than 18 months after the prior (i.e., the first) comparative chart was furnished. Given that for most plans the first annual fee disclosure notices were initially required by August 30, 2012, the second round of annual fee disclosure notices now will be due as late as **February 2014**. For example, if a plan had distributed its first comparative chart on August 25, 2012, the second distribution would be due no later than August 25, 2013, but under the DOL's guidance the plan now has until February 25, 2014 to make the second distribution. This gives plan administrators a one-time opportunity to "re-set" the timing for the distribution of their plans' annual fee disclosure notices (in subsequent years, the annual disclosure will be due by the yearly anniversary date of the prior years' distribution, which date could change from year-to-year depending on the actual distribution date each year).

The DOL recognizes that some plan administrators have already furnished the second round of annual fee disclosures or have already taken steps to comply by the August 2013 deadline. For these plan administrators who have already or will meet the 2013 deadline, the DOL has provided that they also have the opportunity for a one-time "re-set" of the timing of their annual fee disclosures by furnishing *the 2014* disclosures (i.e., the third round of fee disclosures) no later than 18 months after furnishing the prior years' (i.e., the 2013) disclosures. For example, if a plan had distributed the first comparative chart on August 25, 2012 and furnishes the second annual comparative chart on August 25, 2013 (i.e., within the normal 12-month deadline), the third annual comparative chart would normally be due no later than August 25, 2014, but under the DOL's guidance the plan now would have until *February 25, 2015* to furnish the third annual comparative chart.

The DOL indicated that it is continuing to review the ongoing timing rules that apply to the annual fee disclosures, and could very well issue additional guidance in this regard in the near future. In the meantime, the "re-set" opportunity should be helpful to plan administrators who may want to try to implement a more practical annual

¹ For your convenience, you may click [here](http://www.dol.gov/ebsa/participantfeerulemodelchart.doc) (www.dol.gov/ebsa/participantfeerulemodelchart.doc) for a copy of the DOL's model comparative chart.

distribution date for its fee disclosures. We again remind plan administrators and plan sponsors to contact their service providers to discuss preparation and distribution of annual fee disclosure notices, being mindful that plans with multiple service providers will have more affirmative obligations with respect to compiling and distributing relevant fee information from their various providers.

Please contact one of the attorneys named below if you would like further information about participant fee disclosures.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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