



qualified pension professionals, inc.
specializing in the administration of 401(k) plans

July 2013

HERE'S THE SCOOP ON AN OPTIONAL EXTENSION OF TIME FOR THE ERISA §404a-5 ANNUAL NOTICE

On July 22, 2013 the Department of Labor's (DOL) Employee Benefits Security Administration (EBSA) released Field Assistance Bulletin (FAB) NO. 2013-2 regarding the timing of the required 404a-5 Annual Notice that qualified plans must provide to their participants. In an effort to allow more flexibility to plan administrators (employers) in when they must distribute the Annual Notice each year, EBSA is now offering a one-time reset option.

CHANGE OF ENFORCEMENT POLICY:

In the FAB, EBSA offers a one-time option to “reset” the Annual Notice timing. The intention behind this FAB is to offer plan administrators (employers) the flexibility to move the 12-month cycle such that the annual deadline could be changed to align with other participant notices and perhaps make the distribution more cost-effective without requiring the plan administrator to hand out the Annual Notice twice in one year. This extension is available if the plan administrator reasonably determines that using the extension will benefit participants and beneficiaries.

2013 Annual Notice “Reset”

The FAB provides that EBSA will not take enforcement action against a plan administrator based on the timeliness of the Annual Notice if the 2013 disclosure is provided within 18 months of the date that the 2012 disclosure was provided.

For example, if the initial Annual Notice was distributed on August 25, 2012, the 2013 Annual Notice must be distributed by August 25, 2013 to comply with the 12-month rule. This FAB allows that the 2013 Annual Notice could be distributed as late as February 25, 2014 and the DOL would not take any enforcement action. The 12-month period for the Annual Notice would then be February 25, 2014 to February 25, 2015 and so forth each 12 months after that.

2014 Annual Notice “Reset”

EBSA realizes that some plans have already begun preparation of their 2013 Notices, or may have already distributed them to participants. To accommodate this, the one-time 18-month reset option may be used for the 2014 Notice if it was not used for the 2013 Notice. For example, if the initial Annual Notice was distributed on August 25, 2012 and the 2013 Annual Notice was distributed on August 25, 2013, a plan administrator could distribute the 2014 Annual Notice as late as February 25, 2015. The 12-month period for the Annual Notice would then be February 25, 2015 to February 25, 2016 and so forth each 12 months after that.



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CONSIDER THE FOLLOWING WITH REGARD TO THE RESET OPTION:

- * The FAB is technically only a change in the EBSA enforcement policy; this does not prevent participants from claiming that their ERISA rights were violated because their employer waited 18 months to provide the Annual Notice.
- * You are responsible for keeping track of the 12-month deadline for your plan.
- * Participants may be more apt to read this information if it is provided separately from other disclosures. If this is provided with the Safe Harbor Notice or QDIA Notice in November, participants may be overwhelmed by the amount of disclosures and not read any of them.
- * If you are mailing out other disclosures to participants and beneficiaries, the mailing costs could potentially be reduced if you consolidate multiple notices into one mailing.
- * Before deciding to change the timing for your Annual Disclosure, check to see when the investment information will be available for your plan each year. Before this “reset” rule was issued this week, nearly all plans distributed their Annual Notices near July/August and that timeframe is what most fund companies considered when they set up their systems. Some fund companies may provide updated information throughout the year, but some fund companies prepare notices for you to use only once each year. Make sure the data will be available when you want to distribute it.
- * If you’d like for our office to assist with your plan’s Annual Notices AND you want to “reset” your 12-month deadline, please contact our office to discuss the timing before proceeding.

POTENTIAL FOR FUTURE RULE CHANGES:

- * EBSA is considering revising the current regulation’s timing requirements to allow permanent reasonable flexibility to plan administrators. One of the options they are looking at is whether to allow a 30 or 45-day window during which subsequent Annual Notices could be provided instead of the current “fixed” 12-month “at least annually” deadline. They are still accepting comments on possible options to consider. Unless and until the rule is amended, the Annual Notice must be provided at least once every 12 months (unless the above extension/one-time reset is applied).
- * The DOL is working on additional rules relating to the 408b-2 Service Provider Fee Disclosures. This guidance would impact the disclosures that plan administrators receive from their service providers (fund company, investment advisor, TPA, etc.). Keep in mind that you must review and keep all 408b-2 disclosures you receive for your plan. The DOL has been asking plans for copies of their 408b-2 disclosures on audit – make sure you can locate yours.

This article is only intended to provide general information. It does not offer legal or tax advice, or profess to treat all of the issues surrounding any one topic.