

# A Change in One Number Provides Participant Directed Account Plan Administrators Relief

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Sometimes a simple change is all that is needed to provide room for a plan administrator to work. Participant directed investment account plans (most 401(k) plans) have been living with the U.S. Department of Labor's increased disclosure requirements for a number of years now. One problem has been interpreting what the regulation required by the requirement to provide updated disclosures on the investments available and their fees "at least annually thereafter" because the regulation stated it had to be "at least once in any 12 month period." This caused some consternation when the information was not always available at exactly the same time to update the tables of information on investment returns, benchmarks and the related fees for each investment option. Did missing the deadline by a week or two mean non-compliance and loss of the fiduciary protection provided by the participant directed investment regulation? The U.S. Department of Labor heard the concerns of the benefits community and today released some relief. The change to the regulation which is effective 90 days after it is published in the Federal Register on March 19, 2015, or on June 17, 2015. However, under a Temporary Enforcement Policy included in the preamble to the regulation amendment, plan administrators may rely on the change described below before the effective date of the regulation. So if a plan administrator is preparing its annual investment and fee disclosure for participants currently, it can rely on the new requirement that it be distributed at least once in a 14 month period, which is the annual requirement plus a two month grace period. The temporary enforcement policy will end on the effective date of the final regulation or any other action by the Department on this rule (e.g., if it withdraws the amendment to the rule due to adverse comments). The investment and fee disclosures to participants in a participant directed investment account plan will be treated as timely if it is distributed to participants in the plan at least once in any 14 month period, instead of a 12 month period. Thus, the plan administrators now have an extra 60 days within which to get the updated information out to the plan participants and the information will still be timely. This will help plan administrators to meet the requirement and be able to argue that the fiduciary relief for ERISA 404(c) plans should be available, at least with respect to meeting this requirement.

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