

DEPARTMENT OF LABOR PUBLISHES SEMI-ANNUAL REGULATORY AGENDA

The Department of Labor (DOL) recently published its regulatory agenda for 2014. Following are some of the topics it intends to address that would have an impact on 401(k) plans.

- Expanded Definition of Fiduciary: For several years the DOL has been working on a regulatory project that would change the definition of when someone becomes a fiduciary as a result of providing investment advice for a fee. It issued a proposed rule in 2010 but received a lot of criticism and did not finalize it. It was on the DOL's 2013 regulatory agenda to publish a new proposed rule, but that did not occur. It is currently on the DOL's agenda to publish a proposed rule in August of 2014.
- Guide for 408(b)(2)/Service Provider Fee Disclosures: The service provider fee disclosure rule that went into effect in 2012 allowed for a great deal of flexibility in how fee information was provided, including the ability to cross-reference other documents, such as a prospectus. The final fee disclosure rule contains a sample index or guide intended to assist plan sponsors in locating relevant information, particularly if that information is in a cross-referenced document, but use of the guide is voluntary. The DOL is now looking to propose a rule that would require use of a guide or index. The intended publication date of the proposed rule is January of 2014.
- Exploring Fiduciary Requirements in Connection With Offering a Brokerage Window: The DOL intends to publish a Request for Information (RFI) in April of 2014 to explore whether it may be appropriate to issue guidance on fiduciary requirements and regulatory safeguards when participants are given the option to direct investment of their plan account through a brokerage window.
- Including Lifetime Income Disclosures on Benefit Statements: In 2013 the DOL published an Advanced Notice of Proposed Rulemaking (ANPRM) seeking public comment on its ideas about including presentation of participant account balances as a monthly retirement income stream on benefit statements. It received many comment letters and intends to publish a proposed rule on this topic in August of 2014.
- Safe Harbor for Selection of Annuity Providers: In 2008 the DOL published a fiduciary safe harbor intended for situations where a plan fiduciary is selecting an annuity provider for benefit distributions. Since that time many products have become available that would allow participants to begin investing some or all of their plan account in annuities or other guaranteed lifetime income products while still actively employed. In 2008 the DOL received comments in response to an RFI suggesting that plan sponsors would like the safe harbor to be amended to more fully address this situation where guaranteed payments may not begin until some future date. The DOL intends to publish a proposed rule in October of 2014 that will address more fully the steps plan fiduciaries need to take in order to assess an insurance company's ability to make payments at a future date.

It should be noted that placing a project on the regulatory agenda does not necessarily mean that it will happen at the projected date, or that it will happen at all. If and when any of these projects are published, we will keep you informed in future editions of 401(k)ommuniqué.

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