U.S. Department of Labor

Assistant Secretary for
Employee Benefits Security Administration
Washington, D.C. 20210

DEC 03 2014

MEMORANDUM FOR: Brenda Aguilar
Office of Management and Budget OIRA

THROUGH: Michel Smyth
Departmental Clearance Officer

FROM: PHYLLIS C. BORZI
Assistant Secretary
Employee Benefits Security Administration

SUBJECT: Request for Emergency PRA Clearance

On October 20, 2010, the Department of Labor (the "Department") published a final regulation requiring plan administrators to disclose certain plan and investment-related information, including fee and expense information, to participants and beneficiaries in participant-directed individual account plans (the "participant-level fee disclosure regulation").[1] The regulation requires the participant fee disclosure to 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 defines this term as "at least once in any 12-month period, without regard to whether the plan operates on a calendar or fiscal year basis.[2]"

In Field Assistance Bulletin 2013-02 (FAB 2013-02), issued July 22, 2013, the Department made clear that that the participant-level fee disclosure regulation requires annual disclosures to be made no later than one year exactly (*e.g.*, 365 days) after the prior annual disclosures. At the same time, however, EBSA was concerned that requiring disclosures to be made no later than one year exactly from the prior annual disclosures might impose undue administrative burdens on plans. Consequently, FAB 2013-02 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 overwhelming supported a regulatory amendment that provides flexibility as to the timing of annual disclosures.

The overall objective of the participant-level fee disclosure regulation is to make sure participants and beneficiaries in participant-directed individual account plans are furnished the information they need, on a regular and periodic basis, to make informed decisions about the management of their individual accounts and the investment of their retirement savings. While deadlines are needed to avoid irregular and non-periodic disclosures, flexible deadlines alone do not undermine the overall objective of the regulation.

Based on the foregoing, the Department has decided to issue a direct final rule that replaces the "12-month period" definition contained in the current regulation with a "14-month period definition that provides a buffer requested by the commenters. In the Department's view, this definition achieves the correct balance by ensuring that participants and beneficiaries will receive

[1] 29 CFR 2550.404a-5; 75 FR 64910.
[2] 29 CFR 2550.404a-5(h)(1).

annual disclosures on a consistent and regular basis, without unwarranted delays between disclosures, while at the same time providing flexibility to plan administrators.

The participant-level fee disclosure is an information collection request (ICR) subject to the Paperwork Reduction Act (OMB Control Number 1210-0090), which currently is scheduled to expire on April 30, 2017. The Department does not expect this amendment to have any impact on the cost or hour burden associated with the ICR, because it solely determines when the disclosures are distributed but does not affect the content of the disclosures. The use of normal Paperwork Reduction Act clearance procedures to submit the revised ICR to OMB would be disruptive to many plan administrators who are preparing to furnish their next set of annual disclosures in late 2014 and early 2015, because they would not be able to currently utilize the timing flexibility provided in the rule. Therefore, in accordance with 5 CFR 1320.13, the Department is hereby requesting emergency clearance for the revised ICR within fifteen (15) days after the Department submits the revised ICR to OMB.

Thank you for your consideration of this request.