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TCRS 2013-03: Participant Fee Disclosures under ERISA §404(a) – Allowed “re-set” of Annual Disclosure Date.

Snapshot Summary:

The U.S. Department of Labor (“DOL”) published Field Assistance Bulletin (“FAB”) 2013-02 on July 22, 2013, providing temporary relief for plan administrators and service providers with respect to a “re-set” of the annual date for participant fee disclosures under ERISA §404(a). The “re-set” may be made, but is not required, during 2013 or 2014. A reset during 2013 would be accomplished by establishing a new disclosure anniversary date that is no more than 18 months following the date that the original 2012 404(a) participant fee disclosures were delivered to participants. For example, if the 2012 disclosures were delivered on August 25, 2012, a “re-set” 2013 anniversary date could be as late as February 25, 2014. Correspondingly, if a reset were to be established for 2014 instead of 2013, the new anniversary date would have to be a date no more than 18 months following the date that the 2013 annual 404(a) participant fee disclosures were delivered to participants.

The “temporary” relief is that plan administrators and service providers who do not “re-set” the distribution date using the 2013 or 2014 disclosure, and who wish to re-set the distribution date in a later year, will need to provide two disclosures within one year, as described below in the “Expanded Summary.”

Expanded Summary:

The initial required participant fee disclosures under ERISA §404(a) generally had to be provided by August 30, 2012. The delivery of annual disclosures in years subsequent to 2012 is required on or before the anniversary date of the initial disclosure’s distribution. See TCRS Releases [2010-07](#), [2011-02](#), and [2012-01](#) for related information.

Plan administrators and service providers expressed concern to the DOL about the timing requirement of the disclosures. The concern is that the August 30th (or earlier) distribution date is not the same as other required annual disclosures (such as individual benefit statements), which potentially results in more costs (e.g. to distribute the participant fee disclosure in mailings separate from other required disclosures) which might be passed to participants, and which may result in less attention by participants to the fee disclosures.

Prior to the temporary relief under FAB 2013-02, plan administrators and service providers could only “re-set” the annual distribution date of participant fee disclosures by first distributing disclosures on or before the anniversary of the initial disclosure, and then distributing yet another disclosure within a period shorter than one year. However, this “re-set” resulted in essentially doubling the disclosure distribution costs in the year of “re-set.” (For plan administrators who do not “re-set” the annual distribution date of disclosures with their 2013 or 2014 disclosure, this method will still be available.)

As a result of this concern, the DOL is allowing plan administrators and service providers the ability to “re-set” the annual distribution date as the anniversary of either the 2013 or the 2014 disclosure, provided the plan administrator otherwise reasonably determines that doing so will benefit participants. To “re-set” the annual distribution date, the 2013 or 2014 disclosure must be made within 18 months of the last annual disclosure which complied with the “at least annual” distribution requirement under ERISA §404(a).

The DOL recognizes that plan administrators and service providers may have already provided the 2013 disclosure, or may have already incurred administrative costs and taken steps to furnish the 2013 disclosure based upon the anniversary of the initial disclosure. For this reason, the DOL is allowing a “re-set” using the 2014 disclosure.

The DOL provided the example of a plan administrator who furnished the initial disclosure on August 25, 2012 and who has incurred expenses and taken steps to provide the 2013 disclosure within the next month, by August 25, 2013. Assuming the 2013 disclosure is made on August 25, 2013 (within one year of the initial disclosure), the plan administrator may “re-set” the annual distribution date by providing the 2014 disclosure no later than February 25, 2015. The 2015 disclosure, and annual disclosures thereafter, must be made by the anniversary of the distribution of the 2014 disclosure.

This Summary is designed to provide an overview of the DOL’s FAB 2013-02 and is not intended to be comprehensive. The Transamerica Center for Retirement Studies® (“TCRS”) is a nonprofit, private foundation. TCRS may be funded by contributions from Transamerica Life Insurance Company and its affiliates or other unaffiliated third parties. For more information about TCRS, please refer to www.transamericacenter.org. TCRS and its representatives cannot give ERISA, tax, investment or legal advice. This material is provided for informational purposes only and should not be construed as ERISA, tax, investment or legal advice. Interested parties must consult and rely solely upon their own independent advisors regarding their particular situation and the concepts presented here. Although care has been taken in preparing this material and presenting it accurately, TCRS disclaims any express or implied warranty as to the accuracy of any material contained herein and any liability with respect to it.