



## GAC alert

### **DOL Provides Transitional Relief Requested by ASPPA**

On July 22, 2013, the Department of Labor (“DOL”) provided relief to plan administrators in the form of Field Assistance Bulletin (“FAB”) 2013-02. [ [LINK](#) ] The FAB announces a transitional enforcement policy regarding the due date for the “second round” of participant disclosures under the new 404(a)(5) regulations. Under the FAB, the DOL pledges not to take any enforcement action if a plan administrator reasonably determines that delaying the second round of notices will benefit participants (*e.g.*, by reducing plan administrative costs or by providing the information at a time more relevant to participants) and certain extended deadlines are met.

As background, most plan administrators made their first required 404(a)(5) disclosures in July or August of 2012. Since the notices must then be provided “annually thereafter”, the second round would have been due in July or August of 2013. In an April 22, 2013 comment letter, ASPPA’s Government Affairs Committee urged the DOL to provide relief in the form of a one-time transitional period that would permit the second round of participant disclosures to be given as late as early 2014. This relief would permit plan administrators to align the annual 404(a)(5) disclosures with other participant notices typically made either just before or just after the beginning of a plan year. This, in turn, would save duplicative mailing and processing costs and allow participants to receive the information at a time they are considering other plan disclosure materials.

The DOL listened to ASPPA’s concerns, examined the problem and took quick action. The FAB generally permits plan administrators a one-time election to delay the next round of 404(a)(5) disclosures until a date that is no later than 18 months after the date of the initial round. So, for example, if the initial disclosure was given on August 25, 2012, the next round must be given no later than February 25, 2014. If the plan administrator has already given out the 2013 second round, the FAB would allow the one-time transitional election to be exercised with regard to the 2014 disclosures. The DOL is also considering the possibility of amending the regulation to provide for a 30-45 day disclosure window at some future time and has asked for public comment.

This FAB is good news and plan administrators should find the relief very helpful. The DOL should be commended for their responsive action to the concerns raised by ASPPA and others with regard to this issue.