Transparency of Fees and Expenses for Workers in 401(k)-Type Retirement Plans Webcast
Participant-level Fee Disclosure

- 29 CFR 2550.404a-5
- Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans
Background

- **Request for Information**: April 25, 2007
  - 72 FR 20457

- **Proposed Rule**: July 23, 2008
  - 73 FR 43014

- **Final Rule**: October 20, 2010
  - 75 FR 64910

- **Delayed Rule**: July 19, 2011
  - 76 FR 42539
For the First Time, Workers will Receive:

- Core investment information in **comparative format** to help comparison shop
- **Uniform** investment information regardless of investment product, allowing for "apples-to-apples" comparisons
- At least quarterly statements showing fees **actually deducted** from their accounts
Basic Legal Premise

- ERISA Sec. 404(a)(1)(A) and (B)
- If plan is “participant directed”
  - Plan administrator 3(16)
  - Must take steps
  - Regular & periodic basis
  - Sufficient information
    - Plan
    - Designated investment alternative
  - Informed decisions
Disclosure Framework

• 2 types of disclosures
  1. Automatic
  2. On-request

• 2 types of automatic disclosures
  1. Annual
  2. Quarterly

• 2 types of annual disclosures
  1. Plan-related information
  2. Investment-related information
Annual Disclosures - Timing

- On or before date of first ability to direct investment
- And-
- At least annually thereafter

- 2 types
  - Plan-related information
  - Investment-related information
Plan-related Information

- General plan operational and identification information
- Explanation of administrative expenses (e.g., legal, accounting, recordkeeping)
- Explanation of individual expenses (e.g., fees for processing loans or QDROs)
Plan-related Information, General

- Circumstances under which Ps and Bs may give investment instructions
- Limits/restrictions on transfers
- Plan provisions on voting, tender and similar rights
- Identity of designated investment alternatives and managers
- Description of any brokerage window, self-directed brokerage account or similar arrangement
Plan-related Information, Expenses

- Explanation of any administrative expenses which **may** be charged on a **plan-wide** basis against Ps’ and Bs’ accounts

- Basis on which such charges will be allocated among accounts (e.g., pro rata, per capita)

- Explanation of any **individual** expenses which **may** be charged against a P’s or B’s account
Investment-related Information

- Regarding each designated investment alternative
  - Not investments selected through brokerage window

- Information essential for workers to consider in evaluating their investment choices
  - Not just fee and expense information

- Must be in comparative chart or similar format
  - Model comparative chart in appendix
Investment-related Information

- Performance data (1, 5, 10 years)
- Benchmark returns over comparable periods
- Fee and expense information
  - TAOE
  - Shareholder-type fees
- Glossary
- Website address
Website Address

- Address that is sufficiently specific to provide access to
  - Objectives and goals
  - Principal strategies and risks
  - Portfolio turnover rate
  - Updated performance data
  - Fee and expense information
Comparative Chart

- Additional Details:
  - Date of chart, shown prominently
  - How to obtain free paper copies of information required to be on websites
  - Contact information for plan administrator or designee
Quarterly Disclosures

- At least quarterly – statement of fees actually charged against P’s or B’s account

- If applicable, explanation of payment of plan’s administrative expenses from annual operating expenses of designated investment alternatives

- May combine with quarterly pension benefit statement
Disclosures Upon Request

Timing - General ERISA req. w/in 30 days (reasonable standard w/in 30 days)

- Imported from 404(c) regulation

- Prospectuses or similar documents for investments not registered w/SEC

- Financial statements or reports, if provided to plan

- Statement of the value of a share or unit in each DIA and valuation date
Manner of Furnishing

- Pending further guidance, general disclosure rule at 29 CFR 2520.104b-1 applies, including safe harbor for electronic furnishing in paragraph (c).

- Department published a Federal Register notice seeking public comment regarding possible modification of electronic disclosure standards on April 7.
Applicability Date

- **Applicability date**: First day of plan year that begins on or after Nov. 1, 2011

- **Calendar year plans**: Applicable on January 1, 2012

- **Special Transition Rules**: published July 19, 2011
Transition Rules

- **Initial disclosures**: by the later of 60 days after the plan’s applicability date or 60 days after the effective date of 29 CFR 2550.408b-2(c).

- **First quarterly disclosures**: no later than 45 days after the end of the quarter the initial disclosures are furnished.

- **Example (calendar year plans)**:
  - The first comparative chart must be furnished by May 31, 2012.
  - The first quarterly disclosure must be furnished by August 14, 2012.
Questions?