Retirement Plan Fee Disclosure Guidance (Field Assistance Bulletin 2012-02)

Benefits Briefing

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Jan Jacobson
Senior Counsel,
Retirement Policy
American Benefits Council

Kent Mason
Michael L. Hadley
Partners
Davis & Harman LLP

DAVIS & HARMAN LLP

Background

- Participant Disclosure Regulations (Reg. § 404a-5)
  - **Disclosures to participants on fees and investments**
  - **Applies to participant-directed defined contribution plans**
  - **First disclosure due August 30, 2012 for calendar-year plans**
- Service Provider Disclosure Regulations (Reg. § 408b-2)
  - **Disclosures from “covered” service providers to plan fiduciaries**
  - **Applies to defined benefit and defined contribution plans**
  - **First disclosure due July 1, 2012 for existing contracts and arrangements**

Field Assistance Bulletin 2012-02

- Provides Guidance Primarily on Participant Disclosure Regulation
- Guidance in 38 "Frequently Asked Questions"
- Issued as a Field Assistance Bulletin
  - **Means guidance from the national office to enforcement personnel on the Department of Labor's enforcement position**
  - **Often used as means to provide public guidance on the Department's views**
- Additional Guidance Expected Focusing on Service Provider Disclosure Regulation

Q&A-30

- The Issue
  - **Disclosure required for all "designated investment alternatives"**
  - **Definition under regulation: "any investment alternative designated by the covered plan into which participants and beneficiaries may direct the investment of assets held in, or contributed to, their individual accounts"**
  - **Excludes "brokerage windows, self directed brokerage accounts, or similar plan arrangements that enable participants and beneficiaries to select investments beyond those designated by the covered plan"**
- "Limited" Mutual Fund Windows

Q&A-30

- Discussion in response beyond that needed to answer question
- Significant discussion of fiduciary duties
- "Safe harbor" rule
  - **At least three designated investment alternatives**
  - **Disclosure also provided for any other investment "in which at least five participants and beneficiaries, or, in the case of a plan with more than 500 participants and beneficiaries, at least one percent of all participants and beneficiaries, are invested on a date that is not more than 90 days preceding each annual disclosure."**

Q&A-30

- Significant adverse effects and costs
  - **Confusion regarding brokerage windows**
  - **Fiduciary implications**
  - **Others**

- Procedural concern
  - **No notice and comment**

- American Benefit Council response

Q&A-37

- FAB 2012-02 issued very near deadline
- “Good faith” and “reasonable interpretation” of rules
- For enforcement purposes only
- Must have “plan” to comply with FAQs

Other Q&As of significance

- Q&A-9 – Administrative expenses expected to be paid by plan sponsor
- Q&A-20 – Glossary requirement
- Q&A-26 – Furnishing disclosures along with other participant communications
- Q&A-27 and 28 – Designated investment managers and model portfolios
- Q&A-34 – Expense ratio calculation for stable value fund
- Others?

Questions?