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

Benefits Briefing
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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
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
• 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?