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DOL's Answer in Fee Disclosure Guidance "Surprising"

May 24, 2012 (PLANSponsor.com) - When reading Field Assistance Bulletin 2012-02, relating to participant fee disclosures, some industry experts are particularly surprised by the Department of Labor's (DOL) response to Question 30.

The DOL's Employee Benefits Security Administration (EBSA) recently issued frequently asked questions about the requirements of new participant fee disclosure rules. The bulletin answers questions about what types of plans are covered under the regulation and addresses methods of disclosing plan-related information and how to deal with revenue sharing (see ["DOL Issues Additional Guidance for Participant Fee Disclosures"](#)).

Question 30 asks whether an investment platform offered by a retirement plan is considered a designated investment alternative when the platform includes many registered mutual funds of multiple fund families to which participants and beneficiaries may direct the investment of assets held in or contributed to their individual accounts. It adds that although the plan fiduciary selected the platform provider, the fiduciary did not designate any of the funds on the platform as "designated investment alternatives" under the plan.

The DOL responded by saying that although the regulation does not specifically require a plan to have a particular number of designated investment alternatives, the failure to designate a manageable number of investment alternatives raises questions as to whether the plan fiduciary has satisfied its obligations under section 404 of the Employee Retirement Income Security Act (ERISA).

"So the DOL is throwing down the gauntlet here," Fred Reish, chairman of the financial services ERISA team at Drinker Biddle & Reath LLP, told *PLANSponsor*.

The DOL goes on to say that unless participants and beneficiaries are financially sophisticated, many of them may need guidance when choosing their own investments from among a large number of alternatives. Designating specific investment alternatives also enables participants and beneficiaries, who often lack sufficient resources to screen investment alternatives, to compare the cost and return information for the designated investment alternatives when they are selecting and evaluating alternatives for their accounts.

Reish interprets the DOL as saying plan sponsors now must look at how their participants are investing inside of brokerage accounts. "All of a sudden, you have to look at investment patterns of participants," he said. "You have to see if something is so commonly used that it needs to be labeled a designated investment alternative."

Roberta Ufford, principal at Groom Law Group, said she is also surprised by the DOL's answer to question 30. "Some plan sponsors have thought, 'If I have a totally open brokerage window, I don't have any designated investment alternatives,'" she said. The DOL, however, seems to be saying that the failure to designate a manageable number of investment alternatives can raise fiduciary questions.

"The typical 401(k) plan [that has a core lineup] will not be affected, but if you don't offer a core lineup, I think the DOL just threw you under the bus," Reish said. "That's the most shocking thing I found in here."

Field Assistance Bulletin No. 2012-02 is available [here](#).

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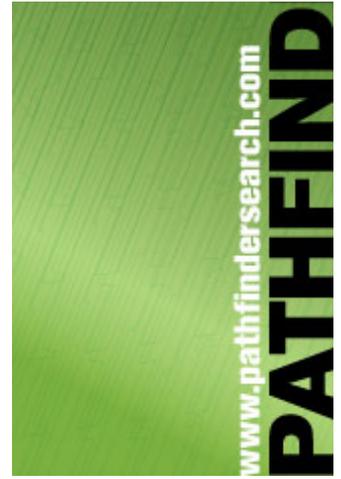


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