

May 10, 2012

DOL Releases FAQs on Retirement Plan Fee Disclosures

On May 7, 2012, the Department of Labor (DOL) released [Field Assistance Bulletin 2012-02](#) (the "Bulletin"), which provides additional guidance on the [final participant-level fee disclosure regulations](#) (the "Participant-Level Regulation") in the form of frequently asked questions (FAQs) and answers. The Bulletin is also intended to provide guidance with respect to the [final 408\(b\)\(2\) disclosure regulations](#) (the "408(b)(2) Regulation") (together with the Participant-Level Regulation, the "Regulations") to the extent that the information that covered service providers are required to disclose under those regulations is necessary for plan administrators to comply with the participant-level disclosure requirements. The final Participant-Level Regulation becomes effective August 30, 2012, while the 408(b)(2) Regulation takes effect July 1, 2012.

Among other guidance, the Bulletin addresses the compliance difficulties that covered service providers and plan administrators may encounter if they have already furnished or are preparing to furnish their initial disclosures pursuant to the Regulations. Specifically, DOL acknowledges that it may be unduly difficult or expensive to bring such disclosures into compliance with the Bulletin before the Regulations' respective effective dates. DOL therefore states that although it will not grant a broad-based extension for compliance with the Regulations, it generally will take no enforcement action against a covered service provider or plan administrator who has acted in good faith based on a reasonable interpretation of the Regulations and who also establishes a plan for complying with the requirements of the Bulletin in future disclosures.

In general, the Bulletin brings some welcome clarification with respect to DOL's interpretation of the Regulations. The [press release](#) accompanying the Bulletin indicates that DOL is also preparing a second set of frequently asked questions addressing more narrowly the requirements for disclosures by covered service providers under the 408(b)(2) Regulation.

The Bulletin provides additional guidance with respect to the following topics:

- Clarification of "covered individual account plans." In particular, DOL specifies that § 403(b) plans that are subject to ERISA are generally covered by the Participant-Level Regulation; however, DOL will not take enforcement action against a 403(b) plan administrator who reasonably determines that it would be impracticable or impossible to comply with the investment-related disclosures under the Participant-Level Regulation if certain requirements are met.
- Disclosures of plan-related information, including administrative and individual expenses. DOL describes the specificity with which administrative expenses should be disclosed and notes that a quarterly revenue-sharing explanation must be provided to participants regardless of whether the plan allocates some administrative expenses to participants' accounts.
- Information required to be disclosed with respect to brokerage windows and self-directed brokerage accounts
- Disclosures of blended benchmark returns
- Compliance with the website address requirement
- Compliance with the glossary of terms requirement. DOL notes that it received two sample glossaries from the American Bankers Association and the SPARK Institute and Investment Company Institute. DOL states that it does not intend to publish its own sample glossary because it believes plan sponsors to be best-positioned to determine the glossary most appropriate for their participants.

© 2012 Sutherland Asbill & Brennan LLP. All Rights Reserved.

This communication is for general informational purposes only and is not intended to constitute legal advice or a recommended course of action in any given situation. This communication is not intended to be, and should not be, relied upon by the recipient in making decisions of a legal nature with respect to the issues discussed herein. The recipient is encouraged to consult independent counsel before making any decisions or taking any action concerning the matters in this communication. This communication does not create an attorney-client relationship between Sutherland and the recipient.

- Comparative format of disclosures. The Bulletin provides that plan administrators may satisfy the comparative format requirement through multiple comparative charts supplied by the plan's various service providers or investment issuers, so long as they are provided at the same time in a single mailing or transmission and are designed to facilitate a comparison among the designated investment alternatives under the plan. The Bulletin also clarifies that if there is a change to a designated investment alternative's fee and expense information after the plan administrator has furnished the annual disclosure, the plan administrator is not automatically required to provide a new comparative chart to participants. Fee and expense information provided on the required website, however, must be updated as soon as reasonably possible following such a change.
- Information to be provided on request with respect to unregistered designated investment alternatives
- Form of disclosures. The Bulletin confirms that the required disclosures may be furnished along with or as part of other documents.
- Definitions of certain applicable terms. The Bulletin clarifies that, in general, neither an account managed individually for a participant by an ERISA § 3(38) investment manager nor an asset allocation model (unless it is unitized or in certain other circumstances) will be treated as a designated investment alternative.
- Effective dates and transition rules
- § 404(c) compliance. The Bulletin confirms that a fiduciary of a § 404(c) plan need not furnish the new disclosures by the applicability date of the Participant-Level Regulation for the plan to retain its status as a § 404(c) plan.



If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

Adam B. Cohen	202.383.0167	adam.cohen@sutherland.com
Jamey A. Medlin	404.853.8198	jamey.medlin@sutherland.com
Alice Murtos	404.853.8410	alice.murtos@sutherland.com
Joanna G. Myers	202.383.0237	joanna.myers@sutherland.com
Robert J. Neis	404.853.8270	robert.neis@sutherland.com
Vanessa A. Scott	202.383.0215	vanessa.scott@sutherland.com
W. Mark Smith	202.383.0221	mark.smith@sutherland.com
William J. Walderman	202.383.0243	william.walderman@sutherland.com
Carol A. Weiser	202.383.0728	carol.weiser@sutherland.com