



DOL clarifies guidance on brokerage windows in defined contribution plans

The Department of Labor (DOL) recently issued [Field Assistance Bulletin 2012-02R](#) which modifies guidance previously issued in [Field Assistance Bulletin 2012-02](#). This new guidance clarifies the DOL's position regarding the treatment of brokerage windows and other similar arrangements in participant-directed defined contribution plans under DOL Rule 404a-5 (the "Rule").

Background

On May 7, 2012, the DOL issued Field Assistance Bulletin 2012-02 (Bulletin) to help plan administrators and service providers comply with the final rules requiring disclosure of fees, expenses, and other plan and investment-related information to participants and beneficiaries in participant-directed defined contribution plans that are subject to ERISA. The Bulletin supplemented the regulations by providing guidance on some frequently asked questions regarding the application of the final rules.

However, the Bulletin included some surprising and unexpected guidance regarding brokerage windows, self-directed accounts and similar arrangements. Specifically, Q&A 30 required plan fiduciaries to monitor individual investment decisions made by plan participants through an open brokerage window or self-directed brokerage account, and in certain circumstances, to treat investments available through these accounts as designated investment alternatives under the Rule. This guidance also set forth new fiduciary standards which provided that the failure to designate a manageable number of investment alternatives raised issues regarding fiduciary responsibilities.

The guidance reflected in Q&A 30 raised significant concern among industry groups and service providers. Not only was the guidance within Q&A 30 problematic for plan fiduciaries, it appeared the DOL had imposed new regulatory requirements without following the public comment and the regulatory review process.

Field Assistance Bulletin 2012-02R

On July 31, 2012, the DOL issued Field Assistance Bulletin 2012-02R. In this new guidance, the DOL withdrew Q&A 30 and replaced it with a new Q&A 39. This new guidance confirms that:

- Brokerage windows, self-directed brokerage accounts and other similar arrangements offered by participant-directed plans are not designated investment alternatives (DIAs) that require disclosures by plan fiduciaries if the underlying investments are not DIAs under the plan.
- The participant-fee disclosure rules do not require that a plan designate a specific number of DIAs.
- The requirements of 404(c) relief are not changed with respect to these arrangements.

The DOL, did however, indicate their general views as to a plan fiduciary's selection of a brokerage window, self-directed brokerage account, or other similar arrangement, stating that:

- Plan fiduciaries may breach their fiduciary duty if they do not offer DIAs to avoid providing investment disclosures under the participant-fee disclosure regulations.
- Plan fiduciaries must still comply with the fiduciary duties of prudence and loyalty to participants and beneficiaries who use brokerage windows, self-directed brokerage accounts or similar arrangements. These duties include monitoring the nature and quality of services provided in connection with these arrangements.

Next steps

The DOL recognizes that plan sponsors and service providers may have questions regarding fiduciary duties with respect to brokerage windows and similar arrangements. The DOL intends to have future discussions with interested parties to determine how to comply with these duties in a practical and cost effective manner, including the issuance of future regulations, if necessary. Prudential Retirement will continue to monitor DOL guidance on this issue and will keep you informed as additional guidance is made available.

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