

US Department of Labor responds to requests for public dialogue on brokerage window arrangements in 401(k) plans

The U.S. Department of Labor's Employee Benefits Security Administration today issued Field Assistance Bulletin No. 2012-02R, which supersedes Field Assistance Bulletin No. 2012-02 (issued May 7, 2012) by modifying and replacing Q&A 30 with a new Q&A 39.

On May 7, 2012, the Department issued Field Assistance Bulletin No. 2012-02, which provides guidance to its field enforcement personnel in question and answer format on the obligations of plan administrators under a final regulation to improve transparency of fees and expenses to workers with 401(k)-type retirement plans. The regulation requires plan administrators to give workers improved disclosures regarding administrative and investment fees and expenses in their 401(k) type plans. While plan sponsors and service providers generally found the Bulletin helpful, some have asked questions about statements in Question 30 regarding brokerage windows and other arrangements that enable plan participants and beneficiaries to select investments beyond those designated by the plan.

The Department, therefore, decided to issue Field Assistance Bulletin No. 2012-02R to further clarify its position and to give interested parties more time to engage in discussions with the Department on practical and cost effective ways to ensure participants and beneficiaries receive all the fiduciary protections afforded to them under ERISA when they use brokerage windows and other similar arrangements, including, if appropriate, through amendment of relevant regulatory provisions.

Field Assistance Bulletin No. 2012-02R is available at <http://www.dol.gov/ebsa/regs/fab2012-2R.html>