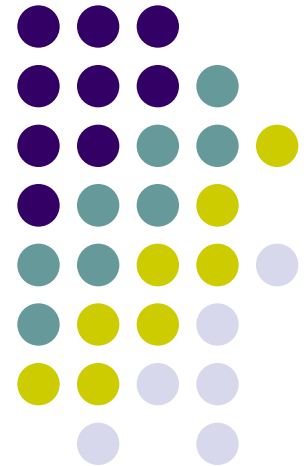


Regulatory Update -- Employee Benefits Security Administration, DOL

Proposed rule on expanded definition
of “fiduciary”

Interim final rule on service provider
disclosures to fiduciaries

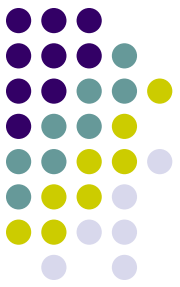
Final rule on participant-level fee
disclosure





Definition of “Fiduciary”

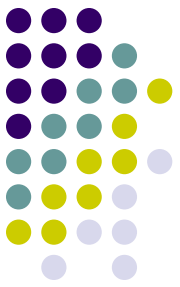
- Background
 - Oct. 22, 2010 – Proposed regulation published
- Underlying philosophy
 - Existing guidance inappropriately limits investment advice relationships that result in fiduciary status
 - Changes in financial industry and expectations of sponsors and participants receiving investment advice
 - Protect participants from conflicts of interest and self-dealing



Definition of “Fiduciary”

- **ERISA sec. 3(21)(A) definition**

A person is a fiduciary with respect to a plan to the extent that, among other things, “ (ii) it renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so”



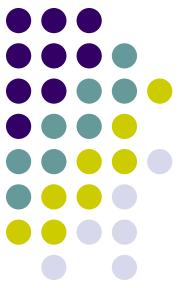
Definition of “Fiduciary”

- **1975 DOL regulation narrows statute:**
 - Adviser with no discretionary authority provides investment advice only if:
 - advises on value of securities or other property or makes recommendations on the advisability of investing in, purchasing or selling securities or other property
 - on a regular basis
 - under mutual agreement, arrangement or understanding with plan or plan fiduciary that
 - advice will be primary basis for investment decisions, and that
 - advice will be individualized based on needs of plan

Definition of Fiduciary - Proposal



- What is advice?
 - Advice, appraisals or fairness opinions concerning value of securities or other property
 - Recommendations about advisability of investing, purchasing, holding or selling securities or other property
 - Advice or recommendations about management of securities or other property
- Limitations



Definition of Fiduciary - Proposal

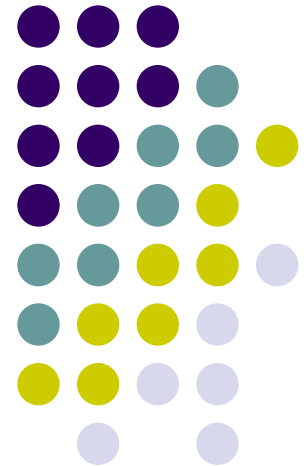
- Update
 - Sept. 19, 2011 – Announced intention to re-propose the regulation.
- Extended input will supplement --
 - More than 260 public comments
 - Two days of public hearings
 - More than three dozen meetings with interested parties

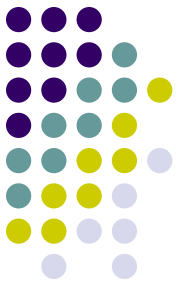
ERISA , 408(b)(2)

Service Provider Disclosure to Pension Plan Fiduciaries

Interim Final Regulation
Published July 16, 2010

Employee Benefits Security
Administration, DOL





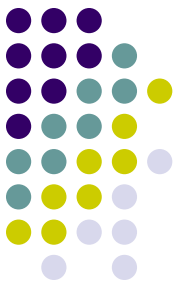
Overview

- Goal of regulation
- Legal framework
- Effective date extended to April 1, 2012
 - New service arrangements entered into on or after the effective date must comply.
 - Pre-existing service arrangements must be brought into compliance by the effective date
- Class exemption for fiduciaries



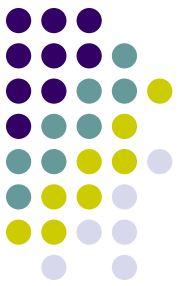
Scope

- **Covered plans:**
 - DB and DC pension plans, but not IRAs, SIMPLEs, SEPs
 - Welfare benefit plans being considered separately
- **Covered service providers:**
 - An ERISA fiduciary
 - A registered investment adviser
 - A record-keeper or broker who makes designated investment alternatives available to a covered DC plan; or
 - A provider of specified other services that receives indirect compensation.



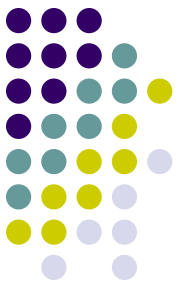
Initial Disclosures

- Disclosures must be made by the CSP to the responsible plan fiduciary in writing and reasonably in advance of entering service contract or arrangement.
 - CSP responsible for disclosing information on behalf of its affiliates and subcontractors.
- Disclosures include:
 - Description of services
 - Whether provided as a fiduciary or RIA, if applicable
 - Compensation
 - Recordkeeping and investment expenses



Initial Disclosures

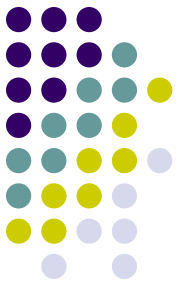
- **Compensation** includes all compensation that will be received by the CSP and its affiliates or subcontractors.
 - Direct compensation
 - Indirect compensation
 - Certain compensation paid among related parties.
 - Set on a transaction basis (e.g., commissions)
 - Charged against and reflected in net asset value of investment (e.g., 12b-1 fees)
 - Compensation in connection with contract termination.



Initial Disclosures

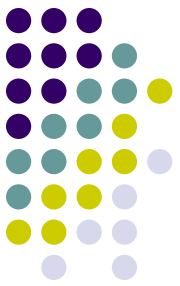
- **Recordkeeping Services**
 - Direct and indirect compensation for recordkeeping
 - If recordkeeping services are provided without an explicit charge or if subject to an offset or rebate based on other compensation, a reasonable good faith estimate of the cost of the services to the plan

Initial Disclosures



Investment Information

- To be provided by an ERISA fiduciary to a plan asset investment vehicle or a recordkeeper or broker that makes designated investment alternatives available to the plan.
- Any charges against amount invested in connection with acquisition, sale, etc. (e.g., sales loads, redemption fees)
- Annual operating expenses (e.g., expense ratio)
- Ongoing expenses in addition to annual operating expenses (e.g., wrap fees, M&E fees)



Extending 408(b)(2) disclosures to welfare benefit plans

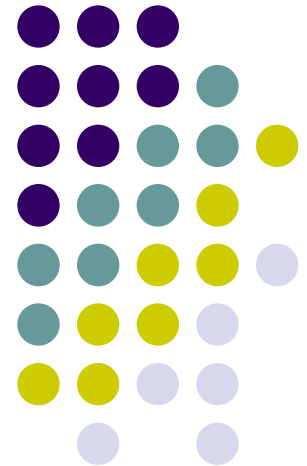
- Separate project underway to determine what disclosures should be provided to fiduciaries of welfare benefit plans in order for a contract or arrangement to be “reasonable.”
- Public hearing held on Dec. 7, 2010
- Interim final regulation reserved paragraph (c) for this purpose.

Participant-level Fee Disclosure

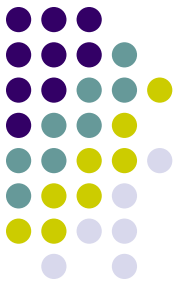
29 CFR 2550.404a-5

Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans

Final rule published Oct. 20, 2010

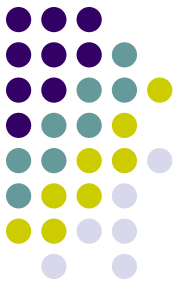


For the First Time, Workers will Receive:



- Core investment information in comparative chart – model chart available
- Uniform investment information regardless of investment product, allowing for “apples-to-apples” comparisons
- At least quarterly statements showing fees actually deducted from their accounts

Annual Disclosures



- On or before date of first ability to direct investment and at least annually thereafter
- Two types of information
 - Plan-related
 - Investment-related

Plan-related Information



- General plan operational and identification information
- Explanation of administrative expenses (e.g., legal, accounting, recordkeeping)
- Explanation of individual expenses (e.g., fees for processing loans or QDROs)

Investment-related Information in Comparative Chart



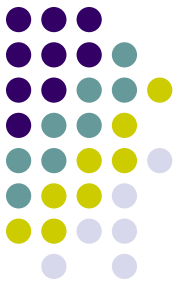
- Performance data (1, 5, 10 years)
- Benchmark returns over comparable periods
- Fee and expense information
 - Total Annual Operating Expenses
 - Shareholder-type fees
- Glossary
- Website address

Investment-related Information in Comparative Chart



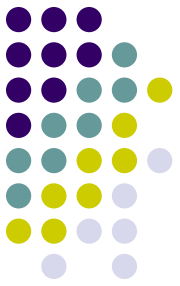
- Website address providing access to the following for each designated investment alternative:
 - Objectives and goals
 - Principal strategies and risks
 - Portfolio turnover rate
 - Updated performance data (at least qtrly)
 - Fee and expense information

Quarterly Disclosures



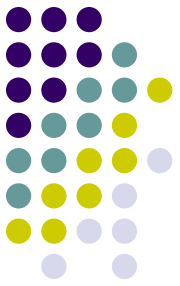
- Statement of fees actually charged against P's or B's account
 - If applicable, explanation of payment of plan's administrative expenses from annual operating expenses of designated investment alternatives
- May combine with quarterly pension benefit statement

Applicability Date



- Applicability date: First day of plan year that begins on or after Nov. 1, 2011
- Calendar year plans: Applicable on Jan. 1, 2012
- Special Transition Rules: published July 19, 2011

Transition Rules



- Initial disclosures: later of 60 days after the plan's applicability date or 60 days after the effective date of 29 CFR 2550.408b-2(c).
- First quarterly disclosures: no later than 45 days after the end of the quarter the initial disclosures are furnished.
- Example (calendar year plans):
 - The first comparative chart must be furnished by May 31, 2012.
 - The first quarterly disclosure must be furnished by Aug. 14, 2012.