

New DOL Guidance Regarding Fee Disclosures and Brokerage Windows

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Previously, the United States Department of Labor ("DOL") issued guidance suggesting that a plan fiduciary may not have met its fiduciary obligations if there are no designated investment alternatives under a plan (i.e., it is solely a brokerage window) or if a significant number of participants select an investment through a brokerage window and the fiduciary does not treat such investment as a designated investment alternative. The DOL issued new guidance replacing this previous guidance. In reversing its prior position, the new guidance clarifies that the fee disclosure regulation does not require that a plan have a particular number of designated investment alternatives and the selection through a brokerage window of a particular investment by a significant number of participants does not impose such a requirement. However, the guidance notes a fiduciary's failure to designate investment alternatives to avoid disclosure requirements would raise questions under ERISA's fiduciary duties of prudence and loyalty and reminds fiduciaries of plans with brokerage windows or similar arrangements that those duties require taking into account the nature and quality of services provided in connection with the brokerage window. The DOL intends to engage in discussions with interested parties to determine how best to comply with these fiduciary duties, which may include amendment of relevant regulations. The guidance also clarifies how a number of different fee disclosures and investment related disclosures should be provided, including information related to benchmarks. The guidance indicates that plans permitting participants to contract with investment managers to manage the investments in the participant's personal account in the plan may limit the investments the personal managed account can make by the agreement with the investment manager. The information above includes just a few highlights of the 39 questions answered in the guidance. Field Assistance Bulletin No. 2012-02R can be found [here](#).