



NEPC, LLC

YOU DEMAND MORE. *So do we.*SM

SEBC

Southern Employee Benefits Conference

Fee Disclosures: Unintended Consequences

October 2, 2012

Bradley S. Smith, CFA, CEBS, Partner

One Main Street, Cambridge, MA 02142 | TEL: 617.374.1300 | FAX: 617.374.1313 | www.nepc.com

CAMBRIDGE | ATLANTA | CHARLOTTE | CHICAGO | DETROIT | LAS VEGAS | SAN FRANCISCO

- **The Department of Labor (DOL) has completed three-pronged effort to improve the disclosure of qualified plan fees**
 - 5500 Reporting
 - Sponsor disclosure, 408(b)(2)
 - Participant disclosure, 404(a)
- **Fiduciary standard remains unchanged: ensure fees are reasonable for services provided**

- **408(b)(2)**

- Disclosures from service providers to plan fiduciaries
- Format not prescribed
- One-time disclosure
- Effective July 1, 2012

- **Fiduciary standard**

- Collect and review disclosures
- Assess the reasonableness of fees
- Identify potential conflicts of interest

- **Impact**

- Fiduciaries have treated **408(b)(2)** as a compliance exercise
- Disclosures have varied considerably
- No material surprises

- **Implications?**

- Fiduciaries unconvinced of the value of the regulation
- Identifying “covered service providers” was not straightforward. In most cases, no disclosures received from mutual funds, attorneys, auditors, etc.
- Primary perceived benefit in the defined contribution space

- **404(a)**

- Disclosures from plan administrators to participants
- Prescribed format
- Annual disclosure (at a minimum)
- Effective August 31, 2012

- **Fiduciary standard**

- Ensure/verify distribution of Notice

• Impact

- Administrators treated **404(a)** as a compliance/communication requirement, like the QDIA and other required notices
- Time, effort, resource cost was material
- Format was prescribed; few record keepers allowed customization

• Implications?

- Prescribed format had some shortcomings, in design and in implementation
- Arguable whether the notice will help participants make informed decisions

- **Regulations (and excessive 401(k) fee lawsuits) have...**
 - Focused attention on **defined contribution fees**
 - Changed certain service providers' practices on promoting proprietary funds and retail share classes within **defined contribution** plans
 - Overall, lowered **defined contribution** record keeping fees, and
 - Increased the prevalence of Plan Expense Re-Imbursement Accounts

- **Regulations have not...**
 - Had a material impact on pension plan fees
 - Made participants care