

Benefits Advisory and Compliance

Bulletin

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Last month's final version of the sweeping financial reform legislation clarified matters relating to pension plan swap transactions and insurance wrappers around stable-value funds. Also in July, the Senate introduced another bill allowing in-plan Roth conversions. But the highlight of July was the Department of Labor's (DOL's) publication of fee disclosure regulations. Though the burden of disclosure falls upon the vendor, plan fiduciaries are required to determine whether the fees are reasonable. Plan fiduciaries will need to review their governance processes in light of these new regulations.

Legislative Developments

Pension Plan Swap Provisions Eased in Financial Reform Legislation

Earlier versions of the legislation had raised concerns for pension plans that enter into swap transactions — a common means of mitigating risk and controlling plan asset and funded status volatility. Also worried were defined contribution plans that offer stable-value funds as investment options for plan participants. Under an earlier version, a swap dealer entering into a swap transaction with a pension plan would have had a fiduciary duty to the plan. This raised concerns that the transactions could result in self-dealing and could effectively prevent plans from entering into swap transactions. Also, the insurance contract issued in connection with a stable-value fund could be construed as a “swap.”

Insight: The final legislation eases concerns that new rules for swaps could effectively prevent pension plans from entering into swap transactions. It also provides that stable-value funds in participant-directed plans won't be treated as swaps, pending a review by regulatory agencies. While plans may continue to offer stable-value funds as an investment option, plan sponsors should consider taking the opportunity to review the appropriateness of the stable-value fund and the other funds in the investment lineup.

To read the Dodd-Frank Wall Street Reform and Consumer Protection Act, click [here](#).

In-Plan Roth Conversions

A provision of the Small Business Jobs Act in the Senate would permit Roth conversions within a 401(k) or 403(b) plan. This would eliminate the need for a rollover to a Roth IRA. The Senate bill also would allow for Roth contributions and in-plan Roth conversions in governmental 457(b) plans.

Insight: The provision is similar to the American Workers, State and Business Relief Act, on which we reported in the [May Bulletin](#). Like that bill, conversions are limited to amounts that are otherwise distributable from the plan. With the potential tax benefits of Roth conversions being reported in the national media, now is a good time for plan sponsors to think about whether adding a Roth feature to their 401(k) or 403(b) plan makes sense.

Read the bill [here](#).

Regulatory Developments

DOL Releases Interim Final Rules on Service Provider Fee Disclosure

Under new regulations, certain service providers must provide fee disclosures to ERISA-covered defined benefit and defined contribution plan fiduciaries who are responsible for hiring and monitoring such providers. These rules are part of ERISA's statutory exemption from the prohibited transaction rules for reasonable contracts and arrangements with service providers. The DOL also intends that the fee-related disclosures supplied by service providers may be used by plan fiduciaries to fulfill their fiduciary responsibility to act prudently when selecting and monitoring service providers and plan investments.

The regulations also include a class exemption from the prohibited transaction rules for responsible fiduciaries who reasonably enter into contracts or arrangements without knowing that the service provider has failed to comply with its disclosure obligations.

Insight: The regulation places the initial burdens of the disclosure of and the communication about service provider fees on service providers. Responsible plan fiduciaries will need to evaluate and understand the information received, determine whether any required disclosures are missing, and ultimately determine whether a specific contract or arrangement is reasonable. Given the complexity of these regulations, fiduciaries should be encouraged to seek expert advice in establishing the processes necessary to fulfill the obligations imposed upon them under the regulations and, more generally, under ERISA. In addition, to identify information gaps and to assess the reasonableness of the fees themselves, we recommend that plan fiduciaries conduct a fee analysis and a benchmarking review before the effective date of these disclosure rules. This will allow fiduciaries to make any adjustments to the fee arrangement or the providers, if necessary, before the fee disclosure effective date.

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