



Summer Retirement Report 2010

408(b)(2) Regs Covered Fiduciary Summary

ERISA section 406 protects plans by prohibiting certain transactions between a qualified plan and a party in interest. One such transaction is the furnishing of services by a party in interest. An issue facing plans is that nearly every service provider (record-keeper, TPA, consultant, auditor, attorney, etc.) to a plan is potentially a party in interest. However, ERISA section 408 provides statutory exemptions to the prohibited transaction rules. Section 408(b)(2) was specifically crafted to allow plans to enter into transactions involving services necessary for the establishment or operation of the plan. That said, the (b)(2) exemption is conditioned on both the contract or arrangement and the compensation being paid for the services being “reasonable.”

Prior to the Department of Labor’s recent issuance of final rules, a contract was “reasonable” if it allowed for termination of the service agreement on reasonably short notice, without penalty, so as to prevent the plan from being locked into a disadvantageous arrangement. And the reasonableness of compensation was determined according to facts and circumstances (but “excessive compensation” was neither “reasonable” nor actually defined). The standard of “reasonable” was just that simple.

The final rules that the Department of Labor issued in mid July (to be effective July 16, 2011) create a more involved set of criteria for determining whether a contract or arrangement is reasonable. **The following is a checklist of items that plan fiduciaries need to be aware of pending the July 16, 2011 effective date:**

1. Service providers reasonably expecting to receive \$1,000 or more in (in)direct compensation in conjunction with providing services to a plan must provide plan fiduciaries with detailed disclosures. The disclosures must be made reasonably in advance of the date the contract is entered into, extended, or renewed. The disclosures primarily describe compensation, services, fiduciary status of the provider, recipients of compensation, and termination of contract compensation issues. These disclosures must be in writing, but need not be explicitly included in the contract or agreement for services.
2. The necessary level of detail provided in the disclosures is ultimately determined by the fiduciary. They must decide whether the information disclosed allows them to determine whether plan costs are reasonable.
3. The form of such disclosures may vary and record-keepers are allowed to provide “reasonable and good faith estimates” as long as they meet certain requirements.
4. Providers have a responsibility to provide information necessary for the plan to meet Title I of ERISA reporting requirements.
5. Fiduciaries must request service providers remedy any disclosure failure. And the fiduciary must notify the Department of Labor of the failure to cure either 30 days following provider refusal to cure the failure or within 90 days of the request if the providers has not cured by that time.

During the next 11 months fiduciaries should be prepared to receive, review, understand, respond (if necessary) and ultimately file the disclosures they will be receiving from their service providers.

Please contact my offices with questions.

Q2 Market Summary: Momentum Shifts

U.S. equity markets backed-off their heady advance by posting a negative 11.2 percent return for the second quarter of 2010 (DJW 5000). After four quarters of strong gains, equity markets continued to display their heightened volatility, but this time, to the downside. International equities fared no better, returning a negative 13.7 percent for the quarter (MSCI EAFE) as investors continued to flee foreign markets for the relative safety of the U.S. (which posted smaller, albeit negative, returns). The shift left most equity markets negative for the year, erasing all the positive gains achieved in the first quarter. U.S. fixed income, as in 2008, was the favored asset class, posting a strong 3.5 percent (Barclays Aggregate) for the quarter. For the year, U.S. fixed income is now



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above the return achieved in all of 2008, when it was the best performing asset class (5.3 percent year-to-date 2010 vs. 5.2 percent return in 2008). Unlike the fixed income leadership over 2009, where riskier fixed income assets (like high yield) drove out-performance, government bonds reemerged as the leaders as safety commanded a premium.

Economic indicators were mixed, which probably gave investors pause as to the strength of the recovery and whether the market's strong market performance was justified (or not). While the Fed kept rates at historic lows and corporations continued to post record profit growth; flat or declining unemployment, housing and retail sales numbers all suggested the pace of recovery was slower than anticipated, and, perhaps that it would slow further from its current pace. The trend away from equities began in May, as investors pulled an estimated \$30 billion from equity funds (http://www.ici.org/pdf/flows_data_2010.pdf) from the end of the month through June 30. Clearly, investors had little appetite for a "wait and see" approach. On top of the economic indicators, however, were other events that impacted the markets over the quarter. Of most importance was the new (proposed) financial regulation that left investors with more uncertainty. Country debt issues also weighed on investors as possible solutions appeared to only hinder future economic growth. Capping off the quarter was BP's Deepwater Horizon explosion and resulting oil spill, specifically penalizing other energy and oil related companies along with the sector.

What Are the Prospects You Will Run Short of Money in Retirement?

The 2010 Retirement Readiness Rating™ from the nonpartisan Employee Benefit Research Institute (EBRI) finds that well over a third (41 percent) of Americans in the lowest preretirement income level will be running short after 10 years in retirement. In addition, the EBRI Retirement Readiness Rating™ finds that after 20 years of retirement, almost a third (29 percent) of those in the next-to-highest income level will run short of money, as will more than 1 in 10 (13 percent) of those in the highest-income level.

	10 Years of Retirement	20 Years of Retirement
Lowest-Income Quartile	41%	57%
2nd Income Quartile	23%	44%
3rd Income Quartile	13%	29%
Highest-Income Quartile	5%	13%

Source: July 2010 EBRI Issue Brief, www.ebri.org

An individual or family is considered to "run short of money" if their aggregate resources in retirement are not sufficient to meet aggregate minimum retirement expenditures – defined as a combination of basic expenses from the Bureau of Labor Statistics' Consumer Expenditure Survey and some health insurance and

out-of-pocket health-related expenses, plus expenses from nursing home and home health care expenses. Full

details appear in the July *EBRI Issue Brief*, available at www.ebri.org.

Communication Corner: Asset Allocation and Diversification

This month's sample participant communication memo explains why diversification is the single most important thing you can do to manage investment risk. Email jill.shea@shea-retirement.com so that you can print and distribute to employees.

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