Spring 2012 | *Volume 3, Edition 1*

Perspectives

AN EXECUTIVE COMPENSATION, BENEFITS & HUMAN RESOURCES LAW UPDATE

pillsbury

IN THIS EDITION...

Compliance Deadlines

This issue of *Perspectives* provides a comprehensive discussion of the final Department of Labor regulations on Plan Service Provider Fee Disclosures (issued on February 2, 2012 and required to be provided to plan fiduciaries by July 1, 2012) and Participant-level Fee Disclosures for Participant-Directed Plans, such as 401(k) plans, (issued on October 14, 2010 and required to be provided initially to participants who may direct investments in their accounts by August 30, 2012 for calendar year plans). Susan Serota and Kathleen Bardunias of our New York Executive Compensation and Benefits group address the scope of the requirement for plan service providers to provide certain fee-related information to plan fiduciaries to help them assess whether such fees are "reasonable" under the ERISA prohibited transaction exemption provided in ERISA section 408(b)(2) for the provision of services between a plan and a party-in-interest. Howard Clemons of our Northern Virginia office updates an earlier Client Alert to reflect the coordination of the effective dates for plan service provider fee disclosures with the participant-level disclosures effective dates. We have also included "Next Steps for Responsible Plan Fiduciaries" for each disclosure requirement. (p.2)

Department of Labor Issues Final Regulations on Fee Disclosures for Pension Plans

On February 2, 2012, the Department of Labor released the final regulations under Section 408(b)(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") subjecting certain retirement plan service providers to new disclosure obligations that are intended to assist retirement plan fiduciaries in assessing the "reasonableness" of the contract or arrangement in connection with the ERISA section 408(b)(2) prohibited transaction exemption. (p.4)

Department of Labor Issues Final Regulations on Fee Disclosures for Participant-Directed Plans

On October 14, 2010, the Department of Labor released final regulations detailing a plan administrator's fiduciary responsibilities regarding disclosure of plan and investment-related information, including fee and expense information, to participants and beneficiaries of participant-directed individual account plans such as 401(k) plans. (p.8)

Upcoming Events...

New Retirement Plan Fee Disclosure Requirements and Your Plan Service Provider Agreements: What Retirement Plan Sponsors and Fiduciaries Need To Do Now To Avoid Fiduciary Liability

Northern Virginia/Washington, DC Seminar
Tuesday, May 1, 2012

Silicon Valley Seminar
Wednesday, May 9, 2012

San Francisco Seminar
Tuesday, May 15, 2012

San Diego Seminar
Wednesday, May 16, 2012

To RSVP or for more information please contact Winston Tucker at 212.858.1630 or winston.tucker@pillsburylaw.com.

Recent Publications...

Department of Labor Issues Final Regulations on Fee Disclosures for Pension Plans

Health Care Reform: Relief for Employers on Summary of Benefits and Coverage

To learn more about these and other recent publications, visit www.pillsburylaw.com/executivecompensation

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Compliance Deadlines

Service Provider Disclosures

Deadline

July 1, 2012 for both new and existing arrangements

Next Steps for Responsible Plan Fiduciaries

1. Identify the service providers to which the service provider disclosure rules apply and notify them that you expect them to comply fully and timely.
2. Institute a plan and timeline to confirm that all required disclosures have been provided to the applicable plan fiduciaries.
3. Review all service provider disclosures to ensure that sufficient information has been provided in compliance with the rules and to assess the reasonableness of the compensation paid under the service provider agreement.
4. Establish a process for follow-up with a service provider and/or notification to the Department of Labor if adequate information is not provided.
5. Analyze the disclosures and consider whether the fees charged are competitive and/or reasonable. As part of the analysis, consider whether to issue a request for proposal or request for information to compare different service providers, or whether to renegotiate certain agreement terms.
6. Establish ongoing processes to monitor and analyze the disclosures for purposes of determining whether the compensation paid to service providers is reasonable.
7. Document the review process and decisions made by the plan administrator or other fiduciary during the review.

Participant-Level Disclosures

Deadlines

Plan Year End	Date Participant-Level Disclosure Rules Apply	Deadline to Provide Initial Annual Disclosures	Deadline to Provide First Quarterly Disclosures
December 31	January 1, 2012	August 30, 2012	November 14, 2012
March 31	April 1, 2012	August 30, 2012	November 14, 2012
June 30	July 1, 2012	August 30, 2012	November 14, 2012
September 30	October 1, 2012	November 30, 2012	February 14, 2013

Next Steps for Responsible Plan Fiduciaries

1. Identify the benefit plans for which participant disclosures must be provided and the participants and beneficiaries who must receive the disclosures.
2. Determine who will draft and/or distribute the disclosures (e.g., the recordkeeper, plan administrator or other fiduciary).
3. Review the service provider disclosures to ensure that all information relevant for the participant disclosures has been provided. (This may involve some coordination if there are multiple service providers.)
4. Coordinate with the service providers to determine who will distribute the disclosures and in what form (e.g., electronic delivery or incorporation into the summary plan description).
5. Consider whether to provide additional participant education or communications in connection with the initial disclosures.
6. Establish ongoing processes to monitor the preparation and distribution of participant disclosures.
7. Document the review process and decisions made by the plan administrator during the review.

Department of Labor Issues Final Regulations on Fee Disclosures for Pension Plans[1]

by Susan P. Serota and Kathleen D. Bardunias

On February 2, 2012, the Department of Labor ("DOL") released the final regulations under Section 408(b)(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), requiring certain retirement plan service providers to disclose fee-related information to plan fiduciaries. These new disclosure obligations are intended to assist retirement plan fiduciaries in assessing the "reasonableness" of the contract or arrangement in connection with the ERISA section 408(b)(2) prohibited transaction exemption. The final regulations are effective for all applicable service provider arrangements as of July 1, 2012 (including new and existing arrangements). Plan fiduciaries and retirement plan service providers should begin reviewing service agreements now to ensure timely fee and compensation disclosure in compliance with the new regulations. The goal of the regulations is to make it easier for plan fiduciaries to assess whether the compensation paid to plan service providers is "reasonable" and if there are any conflicts of interest between the plan and the service provider.

Background

Section 408(b)(2) of ERISA provides an exemption from the ERISA prohibited transaction rules if the arrangement and compensation paid to a service provider of an employee benefit plan is "reasonable."[2] For the exemption to apply (1) the services must be necessary for the establishment or operation of the plan, (2) no more than reasonable compensation can be paid to the service provider, and (3) the services must be provided under a "reasonable" contract or arrangement. Prior to the final regulations, DOL Regulation section 2550.408b-2(c) only provided that a contract was considered to be "reasonable" under this third prong if the arrangement could be terminated without penalty upon reasonably short notice. The final regulations add to paragraph (c) of the regulation additional fee disclosure obligations on the part of the service provider for certain contracts before the contract or arrangement can be deemed "reasonable" under the third prong of this test.

Covered Plans

The final regulations only apply to "covered service providers" of defined contribution and defined benefit plans. Service provider arrangements with welfare plans, individual retirement accounts, simple retirement accounts, and certain "frozen" 403(b) plans where, among other requirements, the annuity contract or custodial account was issued to a current or former employee before January 1, 2009, are not subject to these fee disclosure regulations. The DOL did, however, reserve a dedicated subsection within the final regulations to address welfare plans and requested comments on how the fee disclosure rules should apply to such plans. It is likely that the DOL will begin addressing these rules in connection with welfare plans in the near future.

Covered Services

The final regulations provide that only arrangements with "covered service providers," where the service provider expects to receive at least $1,000 in direct or indirect compensation in connection with the services described below, are subject to the fee disclosure regulations. A "covered service provider" includes the following three categories:

1. *Plan Fiduciaries or Investment Advisors:* includes those who provide services directly to the plan as an ERISA fiduciary or as an investment advisor (registered under state law or the Investment Advisors Act of 1940) or fiduciary services provided to an investment contract, product or entity that holds plan assets and in which the plan has a direct equity investment.[3]
2. *Recordkeepers and Brokers:* includes services provided to an individual account plan where plan participants direct their account investments (such as a 401(k) plan), and designated investment alternatives are available to the participants in connection with the recordkeeping or brokerage services.
3. *Other Service Providers:* includes service providers (including subcontractors and affiliates) who reasonably expect to receive indirect compensation for a broad range of services, such as accounting, auditing, banking, actuarial, consulting, legal and third party administration, among others.

Required Disclosures

The obligation to provide the required disclosures does not need to be a part of a formal written contract, although the fee disclosure must still be made in writing. All necessary disclosures (described below) must be disclosed reasonably in advance of the effective date of the final regulations (for existing arrangements) or in advance of the date the contract is entered into, extended or renewed. In general, all covered service providers must disclose to the "responsible plan fiduciary" (i.e., the fiduciary with the authority to enter into the contract or arrangement) (the "RPF") the following:

- A description of all the services to be provided to the plan;
- If applicable, a statement that the service provider (including any affiliates or subcontractors) will be providing services as a fiduciary or a registered investment advisor (registered under the Investment Advisors Act of 1940 or state law);
- A description of all compensation the service provider (or an affiliate or subcontractor) reasonably expects to receive, including:
  - Direct compensation (except for certain recordkeeping services, as described below, the compensation may be disclosed as an aggregate number);
  - Indirect compensation (such disclosure must identify the services for which the indirect compensation will be received, a description and explanation of the arrangement between the payer and covered service provider, and the payer of the indirect compensation);
  - Compensation payable in connection with the termination of the contract or arrangement; and
- A description of the manner in which the compensation will be received (e.g., invoice provided to the plan or compensation deducted directly from the plan's investments).

A covered service provider who is providing recordkeeping services must also disclose all direct and indirect compensation that an affiliate or subcontractor expects to receive in connection with such services. If an arrangement does not generally provide for a separate charge for recordkeeping services or such services are offset based on other compensation received under the arrangement, then a reasonable and good faith estimate of the compensation received for the recordkeeping services must be broken out and disclosed to the plan fiduciary.

Sample Guide. The final regulations include an Appendix with a "sample guide" that covered service providers can provide to RPFs. The guide is intended to enable to the RPF to locate compensation information that is disclosed in multiple or complex documents. While use of this guide is "strongly encouraged" by the DOL, it is not currently required. However, the preamble to the final rule states that the DOL intends to issue a proposed regulation that would require covered service providers to use such a guide to assist RPFs in locating required information.

Designated Investment Alternatives ("DIA"). Under the final rule, covered service providers must disclose additional information for any investment that is a DIA under a participant-directed 401(k) or similar plan. Such disclosures include: (1) the total annual operating expenses for the DIA (expressed as a percentage and calculated in accordance with the participant-level fee disclosure rules) and (2) any other information that is within the control of, or reasonably available to, the covered service provider and is required to be disclosed as investment-related information under participant-level fee disclosure rules. Covered service providers may generally rely on investment-related disclosures of the issuer of the DIA so long as the issuer is one of several regulated entities specified under the rule.

Deadlines to Provide Disclosures. There is no required timeline for the initial disclosure of the required information; however, such information must be disclosed reasonably in advance of the initial effective date of the final regulations or entering into the contract or arrangement. If the covered service provider experiences a change to any of the information previously provided to the plan fiduciary (other than investment-related information), such change must be disclosed as soon as practicable, but not later than 60 days after the date the service provider has knowledge of the change. Changes to investment-related information must be provided at least annually. The final regulations do not relieve service providers from the obligation to disclose information reasonably in advance of the date a plan must comply with rules upon request in order to comply with the reporting and disclosure requirements of Title I of ERISA. If the covered service provider makes an error or omission in disclosing changes to previously disclosed information, such error or omission can be corrected within 30 days after the covered service provider knows of the error.

Plan Fiduciary Exemption

If the service provider fails to adequately disclose all necessary information, the RPF may still be able to qualify for the prohibited transaction exemption as long as the following requirements are met:

- The RPF must not have actual knowledge or reason to know of the service provider's inadequate disclosure;
- Upon discovering the failure, the RPF must request, in writing, that the service provider disclose the missing information; and
- If the service provider does not provide adequate disclosure within 90 days of this written request, the RPF must notify the DOL of the failure in accordance with the regulations.

Additionally, the RPF must reassess the contract or arrangement with the service provider in light of the disclosure failures and make a determination whether to terminate or continue the contract or arrangement under such circumstances. If the covered service provider's failure to disclose is related to future services, the RPF must terminate the applicable service provider arrangement as "expeditiously" as possible.

The DOL released a model form for the notification that can be used by the RPF to disclose the covered service provider's failure to the DOL.

Next Steps

Failure to comply with the final regulations will cause the plan and service provider arrangement to be a prohibited transaction and subject the service provider to certain excise taxes under Code section 4975. Plan fiduciaries and all "covered services providers" should begin reviewing existing arrangements in light of these new regulations and the July 1, 2012 deadline, and developing and documenting a process for providing adequate written fee disclosure for all service arrangements with defined benefit and defined contribution plans going forward. In light of the DOL's intention to include welfare plans under these regulations in the future, it may be wise for service providers and plan fiduciaries to begin reviewing any service provider arrangements under these plans as well.

Department of Labor Issues Final Regulations on Fee Disclosures for Pension Plans (continued)

Endnotes

1. This Advisory, which was originally issued on August 17, 2010, has been updated to reflect the changes made to the ERISA Section 408(b)(2) final regulations, including the updated July 1, 2012 effective date. The effective date of the service provider disclosure final regulations impacts the effective dates of the participant-level fee disclosures.

2. Section 4975(d)(2) of the Internal Revenue Code of 1986, as amended (the "Code") provides a similar exemption to the Code section 4975(c) prohibited transaction rules, which are substantially similar to the ERISA rules.

3. Thus, for example, there is no disclosure obligation under the final regulations with respect to mutual funds and other investment entities that are not deemed to hold plan assets under DOL Regulation section 2510.3-101 and ERISA section 3(42), such as venture capital operating companies, real estate operating companies and investment entities in which less than 25% of the total value of any class of equity interests in the entity is held by "benefit plan investors."

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Department of Labor Issues Final Regulations on Fee Disclosures for Participant-Directed Plans[1]

by John J. Battaglia and Susan P. Serota (as updated by Howard L. Clemons)

On October 14, 2010, the Department of Labor released final regulations detailing a plan administrator's fiduciary responsibilities regarding disclosure of plan and investment-related information, including fee and expense information, to participants and beneficiaries of participant-directed individual account plans such as 401(k) plans. Because the final regulation is promulgated under the general fiduciary provisions of section 404(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), it applies generally to all participant-directed plans, not just those that intend to meet the ERISA section 404(c) plan requirements. Based on the final rules, as amended, sponsors of calendar year plans must begin providing this information to participants no later than August 30, 2012.

Under the final regulations, the plan administrator of each "covered individual account plan"[2] that allocates investment responsibility to participants and beneficiaries must take steps to ensure that such participants and beneficiaries are made aware, on a regular and periodic basis, of their rights and responsibilities with respect to the investment of the assets in their accounts and are provided sufficient disclosure regarding the plan and the plan's designated investment alternatives to make informed investment decisions.

Failure to comply with the final regulation's disclosure obligations would result in the plan administrator's breach of fiduciary duty under sections 404(a)(1)(A) and (B) of ERISA, and the plan administrator could be personally liable for participants' losses resulting from the breach.[3] The plan administrator would not, however, be liable for the completeness and accuracy of any information used to satisfy the administrator's disclosure obligations if the administrator reasonably and in good faith relied on information provided by a plan service provider or the issuer of a designated investment alternative.

Even though plans that voluntarily comply with ERISA's 404(c) safe harbor for participant-directed plans currently disclose similar investment information, the final regulations also amend the section 404(c) regulations to conform to the final regulations.

Specific Disclosure Requirements

The plan administrator must provide each participant and beneficiary of a covered individual account plan with certain plan-related and investment-related information, as described below.

Disclosure of Plan-Related Information

The following subcategories of plan-related information must be disclosed to participants and beneficiaries under the final regulations:

- *General Plan Information.* The plan administrator must disclose the following general plan information regarding the structure and mechanics of the plan and its designated investment options:
  - Explanations of the circumstances under which investment instructions may be given and any plan-based limitations on investment instructions, such as transfer restrictions;

Department of Labor Issues Final Regulations on Fee Disclosures for Participant-Directed Plans (continued)

- A description of or reference to plan provisions relating to the exercise of voting, tender or similar rights with respect to plan investments;
- Identification of the designated investment alternatives offered under the plan and any designated investment managers;
- A description of any brokerage windows, self-directed brokerage accounts or similar arrangements that enable participants to select investments outside those designated under the plan.

- *Administrative Expense Information.* The plan administrator must provide an explanation of any fees and expenses for general plan administrative services (such as legal, accounting and recordkeeping services) that may be charged against individual accounts and are not reflected in the total annual operating expenses of any designated investment alternative. The administrator must also disclose the basis on which such charges will be allocated (e.g., pro rata vs. per capita).
- *Individual Expense Information.* The plan administrator must also provide each participant and beneficiary with an explanation of any fees and expenses that may be charged to individual accounts on an individual, rather than plan-wide, basis (such as fees for processing plan loans or QDROs, commissions, sales charges, brokerage window fees, redemption or transfer fees, etc.) and are not reflected in the total annual operating expenses of any designated investment alternative.
- *When Must the Plan-Related Information be Disclosed.* Disclosure of the plan-related information described above must be made on or before the date that a participant or beneficiary can first direct his or her investments under the plan, and at least annually thereafter. If there is a change to any plan information that was previously disclosed, the plan administrator must provide each participant and beneficiary a description of the change at least 30 days, but not more than 90 days, before the effective date of the change, except in the case of unforeseeable circumstances or circumstances beyond the control of the plan (in which case notice of the change must be made as soon as reasonably practicable).
  - ***Note:*** Previously under the section 404(c) regulations, prospectuses and other fund information were required to be given only after a participant made his or her initial investment in the fund.
- Quarterly Fee Statements. In addition to the required annual disclosures, at least quarterly the plan administrator must provide a statement that includes the dollar amount of the administrative and individual fees and expenses actually charged to the participant's or beneficiary's account for such services during the preceding quarter and a description of the services to which the charges relate. If any of the administrative expenses for the preceding quarter were paid out of the total operating expenses of any of the plan's designated investment options (e.g., through revenue sharing arrangements, 12b-1 fees, sub-transfer agent fees, etc.), an explanation to such effect must also be provided with the quarterly fee disclosure statement. The quarterly fee disclosure may be included as part of the quarterly benefit statement required under section 105 of ERISA.
  - ***Note:*** This will require the benefit statements to be redesigned to provide the required information.

Disclosure of Investment-Related Information

The following subcategories of investment-related information must be disclosed to participants and beneficiaries on or before the date that a participant or beneficiary can first direct his or her investments under the plan, and at least annually thereafter:

- *Identifying Information Regarding Investment Alternatives.* For each designated investment alternative offered under the plan, the plan administrator must disclose the name of the investment alternative and the type or category of the investment (e.g., money market fund, balances fund, large-cap stock fund, employer stock fund, etc.).
- *Performance Data.* The performance data that must be disclosed under the final regulations varies depending on whether or not the investment has a fixed rate of return.

Department of Labor Issues Final Regulations on Fee Disclosures for Participant-Directed Plans (continued)

- *Return not Fixed*. For investment alternatives that do not have a fixed rate of return, the average annual total return for 1-, 5- and 10-calendar year periods (or the life of the alternative, if shorter) must be disclosed. The disclosure must also include a statement that the investment's past performance is not necessarily an indication of how the investment will perform in the future.
  - ***Note:*** Plans that are registered with the Securities and Exchange Commission (SEC) on Form S-8 are required to include in the Section 10(a) prospectus performance data for each of the last three fiscal years. Thus, to satisfy both the SEC and ERISA requirements, registered plans will need to disclose performance data for 1-, 2-, 3-, 5- and 10-calendar year periods.
- *Fixed Return*. For investment alternatives that have a fixed return for the terms of the investment, both the fixed rate of return and the terms of the investment must be disclosed. If the issuer reserves the right to prospectively adjust the rate of return, additional disclosure is required regarding such right.

- *Benchmarks*. For designated investment alternatives for which the return is not fixed, the disclosure must also include the name and returns of an appropriate broad-based securities market index over the same 1-, 5- and 10-calendar years period for which the performance data is provided. Benchmark information is not required for fixed rate investments.
  - ***Note:*** Prior to these final regulations, there was no requirement to disclose benchmark information, even for SEC-registered plans or plans intended to qualify for ERISA section 404(c) protection.
- *Fee and Expense Information*. For each designated investment alternative, the amount and description of each shareholder-type fee (such as commissions, sales charges, redemption fees, exchange fees, etc.) that is not included in the total annual operating expenses of any designated investment alternative, and a description of any restriction or limitation relating to the purchase, transfer or withdrawal of the investment in whole or in part, must be disclosed. Also, for each investment alternative that does not have a fixed rate of return, the following additional fee and expense information must be disclosed:
  - The total annual operating expenses for the investment alternative expressed both as percentage (i.e., expense ratio) and as a dollar amount per each $1000 invested.
  - Statements indicating that (i) fees and expenses are only one of several factors to consider when making investment decisions, (ii) the cumulative effect of fees and expenses can substantially reduce the growth of the participant's or beneficiary's retirement account and (iii) participants and beneficiaries can visit the Employee Benefits Security Administration's website for an example demonstrating the longterm effect of fees and expenses.
- *Internet Website Address*. For each designated investment alternative, the final regulations require disclosure of an Internet website address that participants and beneficiaries can access to obtain more current and specific additional information regarding the investment alternative.
  - ***Note:*** Many plan sponsors already provide this information on their own or their recordkeeper's or other service provider's Internet platforms. Other plan sponsors may need to develop a new website to provide this information.
- *Glossary*. Participants and beneficiaries must be provided with either a glossary of terms to assist them in understanding the plan's investment alternatives or an Internet website address that provides access to such a glossary.
- *Comparative Chart*. The investment-related information described above must be provided to participants and beneficiaries in a chart or similar format that prominently displays the date and is designed to facilitate a comparison of each investment alternative available under the plan. The chart must include the name, address and telephone number of the plan administrator or other person to contact for additional information, a statement that additional information regarding each investment alternative is available on the websites provided, and a statement explaining how to obtain, free of charge, paper copies of the information available on the websites. An appendix to the final regulations includes a model

comparative chart that plan administrators can use to satisfy the requirement that investment-related information be provided in a comparative format. The model comparative chart is available at www.pillsburylaw.com/modelchart.pdf.

- *Additional Disclosure Requirements.* In additional to the annual disclosures described above, the final regulations require the plan administrator to furnish each participant or beneficiary who is invested in a designated investment alternative with any materials provided to the plan relating to the exercise, voting, tender and similar rights with respect to the investment alternative to the extent that the plan provides that such rights are passed through to the investing participants and beneficiaries. Also, upon request, each participant and beneficiary must be provided with prospectuses, financial statements, valuations and an assets list (to the extent that investments in a portfolio constitute plan assets under ERISA's plan asset regulations).

Effective Date

The regulations require that the initial fee disclosures for existing participants or new participants of calendar year plans be provided not later than August 30, 2012. The initial quarterly disclosures must be provided not later than 45 days of the end of the quarter which includes August 30, 2012. Thus for plans operating on a calendar year, the initial quarterly disclosure must be provided for the quarter ending September 30, 2012, and that quarterly disclosure must be provided to participants not later than November 14, 2012.

Next Steps

Plan sponsors of covered participant-directed individual account plans should review their summary plan descriptions, plan prospectuses, benefit statements, plan websites and other plan communications to determine what additional information must be provided under the final regulations and how they will comply with the information and disclosure requirement. Plan administrators will also need to coordinate with the various investment managers and other plan service providers to assure that the required information within their possession will be made available to the plan administrator for disclosure. Much of this information is required to be provided to the plan fiduciary under the Department of Labor's final regulations under ERISA section 408(b)(2). For more information, see our Advisory on the final regulations on service provider fee disclosure obligations at www.pillsburylaw.com/Final-Retirement-Plan-Fee-Disclosure-Rules-Compliance-Required-July-1.

Endnotes

1. This Advisory, which was originally issued on November 1, 2010, has been updated to reflect the effective dates of the participant fee disclosure final rules resulting from an amendment to the rules issued by the Department of Labor and published in the Federal Register on July 19, 2011. The effective dates of the amended final participant fee disclosure rules are based on the effective date of the final rules governing service provider fee disclosures to plan fiduciaries for which disclosure for existing agreements is required not later than July 1, 2012.

2. For purposes of the final regulation, a covered individual account plan is any participant-directed individual account plan (other than a "simplified employee pension" or a "simple retirement account" described in sections 408(k) or 408(p) of the Internal Revenue Code of 1986, as amended.

3. Under ERISA sections 404(a)(1)(A) and (B), fiduciaries must discharge their duties with respect to the plan prudently and solely in the interests of participants and their beneficiaries.

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