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AUGUST 2008 NEWSLETTER



Next Generation of 401(k)'s Shows Automatic Enrollment and Step-Up Provisions Doubling Among Employers

Employers are taking actions to make 401(k) plan participation easier for employees, according to the 2008 401(k) benchmarking Survey, conducted by Deloitte, the International Foundation of Employee Benefit Plans and the International Society of Certified Employee Benefit Specialists (ISCEBS).

Of the 436 plan sponsors surveyed, 42% now have an automatic enrollment feature -- nearly double the 23% total in the last survey. Another 26% say they are considering auto-enrollment. Step-up provisions that automatically increase deferral percentages on the participant's behalf also doubled, to 35% from 18%.

Time-based lifestyle funds remained popular, with 57% of respondents offering programs, up from 44% in the last survey and 28% in 2004. Roth 401(k) plans also jumped significantly as 23% of respondents reported offering that feature, almost doubling from 12% in the previous survey.

In This Issue

[Next Generation of 401\(k\)'s Shows Automatic Enrollment and Step-Up Provisions Doubling Among Employers](#)

[ERISA Fee Disclosure...The Next Chapter](#)

[\\$50k Employee Will Need 81% Retirement Replacement](#)



\$50k Employee Will Need 81% Retirement Replacement

The latest version of an annual study finds that workers trying to keep their standard of living when they retire will need to be able to generate from \$15,000 to around

"Given today's economic uncertainties, employees may be tempted to stop saving as they deal with their immediate financial needs," said Michael Wilson, chief executive of the International Foundation. "It is critical that employees take advantage of their 401(k) options. We're seeing employers adjust their 401(k) offerings to be more appealing to employees. They are also stepping up their education efforts."

Respondents believe most of their employees are not taking advantage of their 401(k) plans to effectively fund their retirement, and few believe "most" employees are adequately saving enough for retirement.

"Employers and providers should continue to provide new tools and options that will create the most effective participant experience. They should also evaluate, periodically, whether or not those approaches are effective and make the necessary adjustments. While employees need to understand that investing in a 401(k) is not without risk or effort, but that the greater risk may lie in not taking full advantage of what employers are offering," said Mark Dzierzak, senior manager with Deloitte.

TECHNICAL CORNER

ERISA FEE DISCLOSURE- THE NEXT CHAPTER

Recently, there has been increased activity in the area of fee disclosures, much of it precipitated by litigation against plan sponsors and their service providers for allegedly charging excessive fees. Bills mandating the disclosure of certain fees have been introduced in Congress. The U.S. Department of Labor (the "DOL") issued a proposed regulation under ERISA (the "Regulation") requiring the disclosure of certain fees, expenses and conflicts of interest by service providers to the plan representatives with the authority to enter into service agreements for the plan. It is expected the regulation will be finalized soon. This article highlights the key provisions of the DOL proposed regulation. The provisions of the final regulation may be somewhat different from the proposed regulations described in this article.

Effective Date

The Regulation states that it is effective 90 days after the final version of the regulation is published. However, it is expected the effective date will be no earlier than January 1, 2009.

Applicability of Regulation

The service providers required to comply with the Regulation are those that provide a myriad of services to plans, including fiduciary, banking, consulting, custodial, insurance, investment advisory,

\$185,000 annually. The latest Replacement Ratio Study conducted by Georgia State University found that a worker earning \$50,000 at retirement will need to replace 81% of that amount annually to continue the same standard of living. On a yearly basis, this worker may receive 51% (\$25,500) from Social Security (including spousal benefits), while the remaining 30% (\$15,000) needs to come from an employer retirement plan and/or the worker's own savings, according to the study.

Meanwhile, a worker earning \$150,000 at retirement will need to replace 84% of that salary to continue the same pre-retirement standard of living. Social Security will provide only 23% (\$34,500), while the employer retirement plan and/or worker's own savings must account for the remaining 61% (\$91,500) each year.

The study also reveals the number of years an average person should plan for their retirement assets to last. If a married couple is comfortable with a 50% chance they will not outlive their assets, they need to plan for 27 years, the study asserts. In terms of dollars, if this couple were earning \$80,000 annually before retiring,

investment management, recordkeeping, securities, other investment brokerage, or third party administration services. In addition, the Regulation applies to service providers who receive indirect compensation and provide accounting, actuarial, appraisal, auditing, legal, or valuation services.

Contract Must Be in Writing

The Regulation requires the contract or arrangement to be in writing. Most service providers already use written agreements.

Services and Compensation

The disclosures must include:

1. All services to be provided to the plan under the contract.
2. For each service, the compensation to be received by the service provider. Compensation includes money or anything else of value that is received directly from the plan or plan sponsor, or indirectly from any other source.
3. A description of how the service provider will be paid. This includes whether the service provider will bill the plan, deduct fees directly from plan accounts, reflect a charge against plan investments, or receive indirect payments from a third party. The service provider would also need to describe how any prepaid amounts will be calculated and refunded when a contract terminates.

Bundled Services

Where services are bundled and provided as part of a package, the allocation of fees charged among those providing services as part of the package need not generally be disclosed. However, separate disclosure would be required for direct separate charges against a plan's investments that are reflected in the net value of the investment. In addition, a separate charge set on a transaction basis, such as finder's fees or brokerage commissions must be disclosed.

Fiduciary Status

The Regulation requires a service provider to disclose in writing whether he or an affiliate will provide any services to the plan as a fiduciary.

Financial or Other Interest

Service providers would also need to disclose in writing whether they (or an affiliate) will have any interest in transactions involving the plan that relate to their contract with the plan. If they will have an interest, they would need to provide a description of the transaction and their participation or interest in it.

Other Relationships or Arrangements

The Regulation would require a service provider to disclose in writing whether he (or an affiliate) has any material relationship or arrangement with another service provider to the plan that creates or may create a conflict of interest.

Ability to Affect Own Compensation

then accumulating \$420,000 from an employer retirement plan and/or their own savings by the time they retire will allow them to maintain their pre-retirement standard of living.

If the couple were more conservative and wanted a 95% chance they would not outlive their assets, they should plan for at least 38 years, the study says. This translates into approximately \$715,000 in savings by the time they retire.

According to the announcement, the study shows the percentage of a person's earnings that need to be saved annually until age 65, if a worker were to start saving at various ages and salary levels.

For example, a 25-year-old male earning \$30,000 who has not started saving for retirement will need to save at least 4.2% of his pay each year until 65 to have a chance of retiring with an appropriate amount of savings. If this worker were age 35 making \$60,000, the number jumps to 7.5% of pay each year until 65.

The primary data source for this information is the U.S. Department of Labor's

A service provider would also need to disclose in writing whether he or an affiliate would be able to affect his own compensation in connection with the provision of services without the prior approval of an independent plan fiduciary.

Policies to Address Conflicts of Interest

The Regulation would require the written disclosure of whether the service provider or an affiliate has any policies or procedures that address or prevent actual or potential conflicts of interest that may have an adverse effect on the provision of services. If a service provider has policies or procedures, he must provide the responsible plan fiduciary with an explanation of the policies or procedures and how they address conflicts of interest or prevent an adverse effect on the provision of services. The Regulation does not require the creation of such policies.

Material Changes

The terms of the contract must require the service provider to disclose to the responsible plan fiduciary any material change to the information described above not later than 30 days from the date on which the service provider acquires knowledge of the material change.

Penalties for Failing to Disclose Required Information

Failure to disclose the required information would result in a prohibited transaction that could make the service providers liable to restore excess fees to the plan, as well as for excise taxes and penalties. Plan representatives would not incur any liability if they reasonably believe that their contract with a service provider satisfies the Regulation, but they failed to receive all of the appropriate documentation and disclosures from the service provider.

Next Steps

BCG has been working with the American Society of Pension Professionals & Actuaries and the Council of Independent 401(k) Recordkeepers to provide input to the DOL to assist them in fashioning the final regulation so that it is workable and provides relevant information to plan sponsors and their representatives in order to make informed decisions in hiring service providers for their plan.

Moreover, since 2003 we have disclosed the fact that we (as well as most other recordkeepers) receive compensation from investment providers (e.g., mutual fund companies) for maintaining individual plan participant accounts and other services provided to the plan. The receipt of such compensation allows us to keep our fees to the plan as low as possible. We will continue to be in the forefront of the fee disclosure movement to assure that you receive relevant fee information to allow you to make informed decisions on the selection of plan service providers.

DOL has recently issued proposed regulations requiring the plan to disclose to participants certain information concerning plan

Bureau of Labor Statistics' Consumer Expenditure Survey (CES). Georgia State University used data from the most recent years available - 2003, 2004, and 2005. This data includes information on approximately 12,823 working consumers and 6,498 retired consumers.

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administration and investment expenses, and specific fees and charges to their plan accounts. We will update you on these proposed rules in a later newsletter.

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