DOL CLARIFIES ANNUITY PROVIDER SELECTION RULES

In conjunction with the White House’s Conference on Aging held on July 13, the Department of Labor (“DOL”) issued a Field Assistance Bulletin (“FAB”) restating earlier guidance regarding a plan sponsor’s responsibilities when selecting an annuity provider for benefit distributions from defined contribution plans.

The FAB reaffirms an earlier pronouncement that a plan sponsor’s responsibility in offering an annuity provider remains at the time of the selection and periodic review. The subsequent selection of an annuity contract by a participant does not automatically trigger the need for additional review of the provider at that time. The frequency of the need to review a provider, says the DOL, depends on the facts and circumstances of each particular case.
THE BACKGROUND

In 2008, the DOL issued a regulation outlining a list of actions that a plan sponsor can take when selecting an annuity provider in order to take advantage of a Safe Harbor Rule satisfying ERISA fiduciary requirements.

The Safe Harbor Rule requirements are satisfied if the plan fiduciary:

1. Engages in a thorough search that avoids self-dealing, conflicts of interest, or other improper influences

2. Assesses the ability of the annuity provider to continue to make benefits under the annuity contract

3. Considers the cost of the contract in relation to the services being provided

4. Concludes that, at the time of selection, the annuity provider is financially able to make the payments

5. If necessary, consults other experts in order to satisfy these provisions

WHAT FIDELITY THINKS

“This Administration remains committed to the notion of guaranteed income for employees in retirement,” says Joann Flaminio, vice president retirement policy development at Fidelity, “but this particular bulletin merely restates what is the current law regarding the responsibility of the plan sponsor when choosing to take advantage of the Safe Harbor Notice in selecting an annuity service provider. The bulletin was intended to clear up any existing confusion for plan sponsors surrounding this issue.”
Pension De-Risking to Be Prohibited

In yet another indication of the importance of lifetime income to this Administration, the Internal Revenue Service (IRS) has issued a notice indicating that it will amend current required minimum distribution (“RMD”) regulations to prohibit defined benefit plan sponsors from replacing in-pay annuities to participants with a cash-out or lump-sum payment. The Treasury Department and the Internal Revenue Service has signaled that these amendments, when issued, will be effective as of July 9, 2015, unless this form of pension risk transfer had:

- already been authorized and approved by a plan sponsor prior to July 9, or
- was the subject of a private letter ruling before the issuance of the notice on July 9.

The IRS did not indicate when the actual amendments would be released.

If you would like additional information on these topics, please consult your Fidelity representative. You may also access these additional resources:

- DOL’s Field-Assistance Bulletin regarding plan sponsor duties relating to the selection of an annuity service provider.
- IRS Notice regarding future de-risking amendments to current RMD rules