



Wells Fargo  
Institutional  
Retirement  
and Trust

*and put it  
into action*



## PANC 2010: Keeping up with D.C.

**A panel at the PLANADVISER National Conference discussed what is happening with regulators and in Congress that will affect retirement plan advisers and their clients.**

Marcia Wagner, President, The Wagner Law Group PC, said the administration desires to broaden the definition of fiduciary to reduce conflicts of interest, and the Department of Labor (DoL) is working to change the definition. According to Wagner, a new definition of fiduciary will create a greater impact for other regulations; plan providers will have to adopt fee leveling, change the nature of their services so they are deemed not to provide fiduciary advice, and eliminate conflicts of interest.

In addition, Wagner noted that the new Dodd-Frank financial legislation empowers the Securities and Exchange Commission (SEC) to impose a fiduciary standard on brokers. The SEC may also impose new disclosure regulations. The Department of Labor rules on investment advice may also impact brokers advising a plan in a non-fiduciary capacity, she said.

One way to regulate non-fiduciaries is through the new 408(b)(2) fee disclosure regulations, according to Roberta J. Ufford, Principal, Groom Law Group Chartered. She said providers who do not comply may be deemed to have engaged in prohibited transactions, will be subject to an excise tax, and possibly be required to return excess compensation. In a worst-case scenario, advisers may end up providing services for free.

Ufford also warned that regulations on fee disclosure to participants are pending. The DoL rule may be similar to a rule proposed in 2008 requiring disclosure of general plan information, expenses for services, and fee and performance information for investments. Ufford thinks disclosure of revenue-sharing information will only have to be provided on request.

Jason K. Bortz, Partner, David & Harman LLC, reminded conference attendees that the DoL is looking at how to improve individual account plans to ensure they provide lifetime income and earlier this year sent out an RFI asking what they could do to encourage plans to offer to participants lifetime income options in their plans. In addition, Bortz said the Treasury Department is considering guidance that would encourage longevity insurance products be offered in retirement plans.

Bortz said the DoL is thinking about financial education to encourage the use of lifetime income options, and a new safe harbor for sponsors on lifetime income options (see "[Lifetime Income Hearing Witnesses Demand Fiduciary Shield](#)"). There may also be proposals out of Congress.

### Target-Date Funds and Roth Conversions

Wagner told attendees to expect new guidance requiring greater disclosure on target-



Wells Fargo Institutional  
Retirement and Trust

*as it is  
to them*



date funds, especially with regard to glide paths. She said the government has a guide book advisers should read to understand what they are expected to tell clients. Advisers should educate sponsors so they can make a prudent selection of target-date funds and a qualified default investment alternative.

The U.S. House and Senate recently approved a bill that would allow conversion of retirement plan assets to Roth accounts within the plan (see "[House Approves Bill Allowing In-Plan Roth Conversions](#)"). According to Bortz, this may lead sponsors to loosen distribution rules to allow Roth conversions. Also, because plans must have a Roth account feature to offer in-plan conversions, Bortz anticipates an uptick of the adoption of Roth accounts within plans.

The advantage to sponsors, according to Bortz, is that they will be able to keep the assets of high balance participants within the plan to give them a greater economy of scale.

Finally, Wagner addressed automatic IRA proposals that have been introduced by legislators (see "[Auto IRA Bill Introduced in the House](#)"). She said the trap for employers who sponsor a retirement plan already is that any excluded employee groups will have to be offered an automatic IRA, and under the proposals, any employee at least age 18 and with three months of service will have to be covered.

## Rebecca Moore

