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## Stable Value Funds: Anything But Stable in Light of Increased Litigation Risks

Stable value funds are options available to qualified retirement plans that aim to protect principal while delivering steady and stable returns. These characteristics make stable value funds a popular choice for many plan participants, especially those nearing or in retirement. Participants 50 years and older own approximately 85% of stable value assets offered in retirement plans.<sup>1</sup>

Stable value funds can vary in design, but most provide returns through a crediting rate. That rate is either declared at set intervals by an insurer that administers the fund or by using a formula based on the performance of the fund's underlying assets.

### The Current Pattern of Stable Value Fund Lawsuits

Stable value litigation has been increasing with most complaints following a similar pattern where plaintiffs identify a period when another fund provided higher returns and argue that the plan's selection and monitoring of its stable value fund was imprudent by comparison. In *Plummer v. Bob Evans Restaurants, LLC et al*, plaintiffs target the stable value fund in Bob Evans' plan, the Prudential Guaranteed Income Fund. This type of fund is known as a general account stable value fund, whereby the retirement plan invests in Prudential's general account and the performance of that general account determines the crediting rate. Plaintiffs argue that general accounts are the riskiest version of stable value because the fund does not own specific assets and would have to compete with other creditors if the insurer experiences financial difficulty.

The *Bob Evans* case is one of several recent cases focusing on stable value funds. We believe these cases are motivated in part by recent market conditions. The cases follow the general pattern of cases criticizing fiduciaries for selecting underperforming funds. For example, in *Bob Evans*, the plaintiffs allege other plans using similar Prudential products had significantly higher crediting rates compared to Bob Evans' crediting rate of 1.65% and that large plans, like the Bob Evans plan, should be able to negotiate better pricing, thereby framing the low crediting rate as the result of imprudence rather than an unfortunate market outcome.

### Stable Value Investment Association

Like in other underperforming fund litigation, whether the benchmarks used by plaintiffs to allege the fund is underperforming are meaningful likely will enter into the court's analysis. The Stable Value Investment Association ("SVIA"), a non-profit organization, has written several amicus briefs defending stable value funds against allegations of imprudence.

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1. SVIA, Who Invests in Stable Value and Why? (July 7, 2021)

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SVIA argues that ERISA evaluates fiduciaries on the quality of their process, not on backward-looking comparisons to funds that later posted higher rates of return. SVIA urges comparing funds that are similar in all material respects, such as product design, the party bearing the credit risk, how the crediting rates are set, and fee structures. SVIA also cautions against penalizing conservative designs that credit less than other investment options available because it could discourage plan sponsors from offering a quality capital preservation option that is valued by many plan participants.

### Staples: A New Approach to Identifying Similar Funds

In September 2025, participants in the Staples 401(k) plan filed a lawsuit against Staples. In their complaint, plaintiffs present a new method for identifying meaningful benchmarks with the same core features as the alleged underperforming stable value fund. First, the plaintiffs identify general account products only. Second, they focus on funds where the insurer bears the responsibility for paying benefits at contract value, which means that the insurer must pay the value of a participant's initial deposited principal plus accumulated interest regardless of the performance of the underlying assets. Accordingly, plaintiffs claim that the differences in the crediting rates cannot be explained simply by a different risk allocation. Third, they identify funds with insurer-declared rates that are set on a similar schedule. By screening for these factors, mostly with Form 5500 filings, the plaintiffs argue that the resulting benchmarks share the same structure and risk profile as the alleged underperforming fund and because the fund pays a lower crediting rate, a fiduciary breach occurred.

### Action Items

Although the cases discussed in this article have not been resolved on the merits, the complaints offer useful insights for how fiduciaries should select and monitor the stable value funds. In light of recent litigation trends, we recommend that fiduciaries:

- Thoroughly document why the stable value fund strategy is appropriate considering the characteristics of the plan and its participants.
- Regularly review the aspects of investments that impact risk (e.g., funding, liquidity, credit quality of the insurer, underlying investment strategy of the fund, etc.).
- Determine the relevant characteristics of their stable value funds and the resulting meaningful index(es) and comparison funds (peers).
- Seek to negotiate crediting rates with insurance companies.

For additional information on fiduciary obligations related to stable value funds, please contact a member of our Employee Benefits and Executive Compensation practice group.

