

MEMO# 24753

December 2, 2010

DOL Proposes Target Date Disclosure; Conference Call Scheduled for December 9, 3:00 PM ET

[24753]

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TO: PENSION COMMITTEE No. 29-10

PENSION OPERATIONS ADVISORY COMMITTEE No. 30-10 RE: DOL PROPOSES TARGET DATE DISCLOSURE; CONFERENCE CALL SCHEDULED FOR DECEMBER 9, 3:00 PM ET

The Department of Labor proposed amendments to existing rules on qualified default investment alternatives and participant disclosure to require additional disclosure about target retirement date funds and similar investments. [1] The proposal would amend the two regulations to ensure that defaulted participants and participants who give investment instructions receive consistent information about target date funds. [2] The disclosure largely incorporates the items of information in the Institute's Principles to Enhance Understanding of Target Date Funds. [3] The proposal also makes additional, non-target date changes to conform the QDIA regulation to the new participant disclosure regulation.

Comments on the proposal are due January 14, 2010. We will hold a conference call on Thursday, December 9, at 3:00 p.m. EDT to discuss the proposal and ICI's comments. The dial-in number for the call is 1-800-857-9730 and the passcode is 19273. Please e-mail Brenda Turner at bturner@ici.org if you plan to participate on the call. If you are unable to participate, please provide any comments to Anna Driggs (202-218-3573 or adriggs@ici.org).

New Target Date Disclosure

The proposed amendments to both regulations would require fiduciaries of participant-directed individual account plans that include a target date fund or similar investment option ("target date fund" or "fund") to provide:

- an explanation of the fund's asset allocation, how the asset allocation will change over time, and the point in time when the fund will reach its most conservative asset allocation; including a chart, table, or the graphical representation that illustrates the change in asset allocation over time and that does not obscure or impede a participant's or beneficiary's understanding of the information;
- if a date is used in the fund's name or description, an explanation of the age group for whom the fund is designed, the relevance of the date, and any assumptions about a participant's or beneficiary's contribution and withdrawal intentions on or after such date; and
- a statement that the participant or beneficiary may lose money by investing in the fund, including losses near and following retirement, and that there is no guarantee that the fund will provide adequate retirement income.

It is DOL's view that the proposed disclosure is consistent with the Investor Bulletin on Target Date Funds DOL issued with the SEC in May 2010 [\[4\]](#) and the guidance to plan fiduciaries DOL expects to publish shortly. DOL asked for comment on the extent it also should include disclosure contained in the SEC's proposed rule for target date mutual fund marketing and advertising materials. [\[5\]](#)

Participant-Level Disclosure Rule - New Appendix with Target Date Disclosure

The proposal would add provisions to the recently-finalized participant-level disclosure rule to require the new target date fund disclosure. The participant disclosure rule requires plans to provide participants with certain information about each designated investment alternative under the plan and to provide some of the information in a comparative format (e.g., a chart) and some information via a web site. Generally, the information must be provided before the first investment and annually thereafter.

The proposal would require plans that include target date funds or similar investments as designated investment alternatives to add the new target date disclosure as an appendix to the comparative chart.

QDIA Rule Amendments

The QDIA rule provides relief from fiduciary liability for fiduciaries of participant-directed individual account plans that, in the absence of directions from a participant, invest the participant's account in a qualified default investment alternative, including a target date fund. The QDIA rule requires plan fiduciaries to provide participants with a notice describing the QDIA, generally, at least 30 days in advance of a participant's eligibility to participate in the plan and annually thereafter.

The proposal would amend the QDIA regulation to require that the QDIA notice include the target date disclosure if the plan's QDIA is a target date fund or similar investment.

The current QDIA notice requires a description of investment objectives, risk and return characteristics, and fees and expenses. To conform the QDIA rule to the participant-disclosure rule, the proposal would replace the current wording with a list of six elements including the investment's objectives and goals, principal strategies and risks, historical performance data and attendant fees and expenses. These elements are similar, but not

identical to those in the participant-level disclosure. The DOL requested comment on the extent to which the QDIA requirements should conform to the final participant-level disclosure.

The proposal also would make the following changes:

- The current QDIA notice must describe any applicable restrictions and fees and expenses that may apply in connection with a participant's transfer of assets from a QDIA to any other investment option under the plan. Because, as proposed, the QDIA description would discuss fees, this section would only require a statement that certain fees and limitations may apply in connection with the transfer.
- The current QDIA notice must include an explanation of where participants can obtain investment information concerning "the other investment alternatives available under the plan." The proposal would expand this language to say information on the QDIAs and the other investment alternatives under the plan.
- The current QDIA rule requires fiduciaries to provide participants with certain information identified in regulations under section 404(c) of ERISA. The proposal would replace a reference to section 404(c) with references to the participant disclosure rule.

Electronic Delivery

The DOL did not address electronic delivery issues in this proposal because it anticipates releasing a separate proposal on e-delivery in the near future.

Effective Date

The proposed effective date of the proposed amendments to the QDIA and participant disclosure rules is 90 days after publication of a final rule in the Federal Register. Most plans have to begin complying with the previously-adopted participant disclosure rule as of January 1, 2012.

Anna Driggs
Associate Counsel

endnotes

[1] See 75 Fed. Reg. 73987 (Nov. 30, 2010), available at <http://webapps.dol.gov/FederalRegister/PdfDisplay.aspx?DocId=24466>.

[2] See 29 C.F.R. § 2550.404c-5 (the QDIA regulation) and 29 C.F.R. § 2550.404a-5 (participant disclosure regulation).

[3] A copy of the Principles is available here: http://www.ici.org/pdf/ppr_09_principles.pdf. The Principles were created by the Institute's Target Date Fund Disclosure Working Group,

which determined in early 2009 that prominent disclosure of five key pieces of information could enhance understanding of target date funds.

[4] See [Memorandum](#) to Pension Members No. 15-10, SEC Rules Members No. 42-10, Small Funds Members No. 31-10 [24287], dated May 10, 2010.

[5] See [Memorandum](#) to Pension Members No. 35-10, SEC Rules Members No. 86-10, Small Funds Members No. 48-10, Advertising Compliance Advisory Committee No. 5-10, 529 Plan Advisory Committee No. 4-10 [24508], dated August 23, 2010.

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