



DOL Issues Final Regulations on the Selection of Annuity Providers for Individual Account Plans

The Department of Labor has issued final regulations providing guidance and a safe harbor for the selection of annuity providers for individual account plans. As required under PPA, the DOL also issued a final rule limiting the application of Interpretive Bulletin 95-1 to the selection of annuity providers for defined benefit plans.

Background

In [Interpretive Bulletin 95-1](#) (IB 95-1), the DOL provided guidance on the ERISA fiduciary standards applicable to the selection of annuity providers for pension plan benefit distributions and set forth a general framework to guide plan fiduciaries in their selection process. Among other things, IB 95-1 generally required plan fiduciaries to take steps to obtain the safest annuity available. In [Advisory Opinion 2002-14A](#), the DOL indicated that the principles in IB 95-1 applied equally to the selection of annuity providers for both defined benefit and defined contribution plans.

The Pension Protection Act of 2006 (PPA) directed the DOL to clarify that the selection of an annuity contract as an optional form of distribution from an individual account plan would not be subject to the safest available annuity standard under IB 95-1, but would still be subject to all otherwise applicable fiduciary standards. Last year, the DOL issued an interim final rule limiting the application of IB 95-1 to defined benefit plans and proposed regulations that provided, in the form of a safe harbor, guidance on selecting annuity providers for individual account plan distributions. (See our September 20, 2007 [For Your Information](#).) The DOL has now issued final regulations on annuity provider selection and a final rule limiting the scope of IB 95-1.

Final Regulations for Individual Account Plans

The DOL [final regulations](#) governing the selection of annuity providers for individual account plans establish a safe harbor for satisfying ERISA's fiduciary obligations and are largely similar to the proposed regulations. However, they include some clarifications and simplifications to the safe harbor conditions.

Selection of Annuity Providers and Contracts

Like the proposed regulations, the final regulations set forth specific conditions which, if met, will satisfy the fiduciary's burden to act prudently in selecting an annuity provider for individual account plans. However, in response to commenters' concerns, the DOL clarified that the safe harbor does not establish minimum requirements or the exclusive means to satisfy fiduciary responsibilities in selecting an annuity provider or contract for benefit distributions. Rather, it sets forth an optional means to satisfy those responsibilities.

Safe Harbor. Under the safe harbor provision, a fiduciary will be deemed to have acted prudently if he or she –

- conducts an objective, thorough and analytical search to identify and select annuity providers
- considers sufficient information to assess the annuity provider's ability to make all future contractual payments
- considers the cost of the annuity contract – including fees and commissions – in relation to the associated benefits and administrative services
- concludes that, at the time of selection, the annuity provider is financially able to make all future payments under the annuity contract and that the cost of the contract is reasonable for the benefits and services to be provided
- if necessary, consults with an appropriate expert(s) to ensure compliance with these steps.

Timing Issues. The final regulations clarify that the safe harbor conditions apply only with respect to the fiduciary's decision to purchase a distribution annuity for an individual account plan – not for purposes of the selection of an investment product. The regulations specify that the standards may be satisfied either when the fiduciary selects the annuity provider and contract for distribution to a specific participant or beneficiary or when the fiduciary approves a provider for annuity contracts for future distributions. In this latter case, however, the fiduciary must periodically review the ability of the annuity provider to make required future payments using an appropriate cost-benefit analysis.

BUCK COMMENT. *The fiduciary is not required to review the appropriateness of an annuity provider for an individual annuity contract after it is purchased for a participant or beneficiary.*

Final Rule Amending IB 95-1

The [final rule](#) limits the application of IB 95-1 to the selection of annuity providers for defined benefit plans.

Effective Dates

The final regulations and final rule are effective on December 8, 2008.

Conclusion

The DOL final regulations are welcome, particularly as more and more plans are providing, or considering, annuities as pension distribution options.

Buck's consultants would be pleased to discuss this guidance with you and assist in the annuity selection process.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.