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# DOL Proposes New Disclosure Requirements for QDIAs and Target Date Funds

*The DOL has issued proposed regulations that would require plan fiduciaries to make additional disclosures to participants and beneficiaries with respect to all QDIAs as well as with respect to target date funds (whether or not they are a plan's QDIA). The proposed regulations would amend the existing final regulations on QDIAs and the existing final regulations on disclosures to participants and beneficiaries in participant-directed individual account plans.*

## Background

The Pension Protection Act of 2006 (PPA) amended the Employee Retirement Income Security Act (ERISA) to add a new paragraph (5) to Section 404(c). Section 404(c)(5) provides fiduciary relief for a plan fiduciary who invests a participant's self-directed individual account in a specified qualified default investment alternative (QDIA) in the absence of investment direction by the participant. In October 2007, the Department of Labor (DOL) issued final regulations defining what investments are appropriate QDIAs. The DOL included target date funds as an appropriate QDIA. Target date funds are funds such as lifecycle funds and similar investments that change their asset mix of equity and fixed income exposures based on the participant's age, target retirement date, or life expectancy, with the idea of decreasing portfolio risk with increasing age.

> ***BUCK COMMENT.*** *The drop in the equity markets in 2008 made regulators realize that target date fund labels may be misleading. For example, some funds labeled "2010 funds" (for workers expected to retire in or around 2010) aggressively shifted from equities to fixed income as 2010 approached in order to focus on capital preservation; other 2010 funds moved more slowly towards changing the risk mix because a worker at or near retirement in 2010 still has an actuarial expected life expectancy of 20 to 30 years. These two funds would have, and did have, very different results when the value of equities dropped precipitously.*

The existing DOL regulations require numerous disclosures both with respect to the plan's QDIA and with respect to all funds the plan offers as investment options. The DOL has now proposed modifications to the disclosures required by both the QDIA regulation and the participant-directed account regulation.

# Proposed Regulations

## QDIA Regulation Amendment

The proposed regulations would amend the existing QDIA regulations to require the disclosures to describe the investment objectives, risk and return characteristics, and fees or expenses of the QDIA. The proposed regulations would require the disclosure of the following:

- The QDIA's issuer,
- The QDIA's objectives or goals,
- The QDIA's principal strategies (including the type of assets) and principal risks,
- The QDIA's historical performance, including a statement that past performance is not an indication of future performance, and
- The QDIA's fees and expenses.

If the QDIA is a target date fund, the disclosure would also have to include the following:

- The asset allocation, how it will change over time, and the point in time when the allocation will reach its most conservative point (including a chart, table, or other graphical representation that illustrates such change in asset allocations),
- If the investment's name includes the investment's target date, an explanation of the age group for which the investment is designed and the relevance of the date, and
- A statement that a participant or beneficiary could lose money, including losses near or after retirement, and that there is no guarantee that the investment will provide adequate retirement income.

In addition, the QDIA disclosure must include a description of the right of a participant invested in a QDIA to redirect those investments, including describing any fees and limitations that may apply if the participant wants to redirect the investment, and an explanation of where additional information may be obtained.

## Participant-Directed Account Plan Regulation

The proposed regulations would amend the participant-directed account plan disclosure regulations to require that disclosures include the sixth element above – the one solely applicable to target date funds – as an appendix. Many of the other new requirements for QDIA disclosure are already incorporated in the required disclosures for participant-directed account plans.

***BUCK COMMENT.*** *In the preamble to the proposed regulation, the DOL once again indicates that it will be reexamining its electronic disclosure standards, which will govern the furnishing of notices under both the*

*QDIA regulation and the participant-directed investment regulation. The DOL will be issuing proposed regulations on electronic distribution in the "very, near" future and the DOL encourages comments once the electronic distribution regulations are proposed.*

Written comments on the proposed regulation must be received by the DOL no later than January 14, 2011. The DOL has specifically requested comments on whether the same information should be required to be disclosed for both the QDIA and participant-directed account plan disclosures. For example, there is no requirement for the QDIA notice to provide a broad-based investment benchmark as is mandated for the participant-directed account plan disclosure.

## Conclusion

The SEC, the DOL, and Congress have held hearings on the issues underlying target date funds. These proposed regulations are just one part of the approach the SEC and the DOL are taking, jointly and separately, to help individual investors understand target date funds.

Buck's consultants are available to assist you with preparing disclosures or to answer other questions.