

Retirement Plan Topics and Trends – May 2013

Recent U.S. Department of Labor (DOL) guidance underscores the need for plan fiduciaries to rigorously examine and monitor target date fund (TDFs), and potentially explore the use of custom or non-proprietary TDFs.

Many plan fiduciaries have decided to use target date funds (TDFs) as their plan's qualified default investment alternative under U.S. Department of Labor (DOL) regulations. The rapid growth of assets in TDFs, along with the widely varying performance of TDFs in the most recent financial downturn, has caused both the DOL and the U.S. Securities and Exchange Commission (SEC) to continue to examine the need for further rulemaking regarding TDFs. In 2010, the DOL and SEC issued a joint Investor Bulletin regarding TDFs. Last year, the DOL reopened the comment period for proposed amendments relating to enhanced participant disclosures concerning TDFs; the DOL is expected to finalize those regulations by the end of 2013.

The new guidance is technically framed as a series of non-binding tips for plan fiduciaries and does not constitute formal guidance. However, the DOL uses mandatory language in setting forth several of these tips, suggesting that plan fiduciaries should carefully analyze the DOL's position on TDFs set forth in the guidance.

The guidance comes in the form of several "to-do's" for employers and fiduciaries when choosing a TDF for their qualified defined contribution plan. Here are the key points:

- Establish an objective process for comparing and selecting TDFs to ensure that the fiduciary can evaluate the prudence of any investment option offered in the Plan.
- Establish a process for the periodic review of selected TDFs, which, at a minimum, should include examining whether there have been any significant changes in the information that the fiduciary may have reviewed when the option was first selected.
- Understand the TDF's investments – the allocation in different asset classes (stock, bonds, cash), individual investments, and how these things will change over time (e.g. the glide path). It is important to consider whether a glide path will use a "to retirement" approach, with investments being the most conservative at the time of retirement, or have the glide path continue "through retirement," in which the most conservative point of the investments will not be until years later.
- Review the fund's fees and investment expenses (as well as possible fees and expenses if the TDF invests in underlying funds that may charge fees and expenses).
- Inquire about whether a non-proprietary TDF (a fund that uses only the vendor's proprietary funds as component investments) or custom-designed TDF (a fund which may include nonproprietary funds as component investments) would be a better fit for your plan.

- Develop effective employee communications to keep participants generally informed about their investment and to comply with disclosures required by law (for example, participant-level fee disclosures required for all 401(k)-type individual account plans), as well as being sure to check the DOL's Employee Benefits Security Administration website for disclosure requirement updates.
- Take advantage of available sources of information to evaluate the TDFs and the recommendations you received.
- Document the selection and review process, including how decisions about individual investment options are made.

In light of the guidance, as plan fiduciaries, over the course of the next several quarters, we will be providing you with additional information and assistance in examining the characteristics of the participant population and determining whether and how these characteristics affect the plan's investment objectives, considering whether the utilized approach is appropriate for plan participants as a whole, providing you further information on whether a custom or non-proprietary TDF is better suited to the plan's objectives than a proprietary TDF, and continue to monitoring the TDFs using the criteria used to evaluate all investment options and the criteria unique to TDFs, and document that review.

