Are the asset allocation models used in 401(k) plans subject to DoL disclosure requirements?

By Editor Test *Wed, Jul 6, 2011*

Probably, says ERISA expert Fred Reish--but not if the model is managed by a 'discretionary fiduciary.'

When a registered investment advisor or broker-dealer uses an asset allocation model to guide the investments of retirement plan participants, is that model a “designated investment alternative,” and must it meet Department of Labor disclosure requirements?

That’s a question that ERISA attorney Fred Reish posed in a recent e-mail broadcast.

Reish’s answer: “Based on informal discussions with the DOL, it appears that they are leaning toward the conclusion that models are designated investment alternatives. If so, the disclosure requirements would include, among other things, reports from recordkeepers about the performance history of the models.

“However, we believe that most recordkeepers have not been, and may not be able to (on a reasonable basis), calculate and report those returns. (Similar difficulties may exist for asset allocation models for other disclosures required by the regulations.) This could result in the inability to continue to use those models.

“However, if the model is ‘managed’ by a discretionary fiduciary, it appears that the DOL may conclude that is not a model, but instead an investment management service–which apparently would not be considered a DIA.”