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Retirement Plan Compliance Alert

QDIAs? – Fiduciary Protection Questions & Answers

The Pension Protection Act of 2006 (PPA '06) added new fiduciary protection under ERISA. PPA '06 provides that, where participants have an opportunity to direct their investments but fail to do so, the fiduciaries will receive relief from fiduciary liability if those participants are invested in a qualified default investment alternative (QDIA). This is being called a fiduciary “safe harbor.”

The following questions and answers will bring plan fiduciaries “up-to-speed” with the current thinking regarding the Department of Labor (DOL) 2007 QDIA regulations. We have written these Q&As to help you understand the fiduciary protection available with a properly implemented QDIA for your plan.

Q: Why should I implement a QDIA?

The question you really want to be asking is “Why wouldn’t I implement a QDIA”? Implementing a QDIA is the only way to assure fiduciary protection for defaulted participant investments. This is particularly important for plan sponsors implementing auto enrollment.

Q: What is the extent of fiduciary protection provided under a QDIA?

A fiduciary that complies with the DOL requirements will not be liable for any loss or breach that occurs as a result of participants’ deposits being defaulted to a QDIA. A fiduciary does remain responsible, however, for the prudent selection and monitoring of the QDIA.

Q: Is complying with the QDIA rules the only way I can get the safe harbor protection?

Yes. If another non-QDIA default investment is prudently selected and used, however, fiduciaries may not necessarily have breached their duties. The DOL regulations provide that “these standards are not intended to be the exclusive means by which a fiduciary might satisfy his or her responsibilities under ERISA ...”

If you select a non-QDIA default fund, make sure to document your decision-making process and be prepared to justify the decision...to the DOL, to your plan participants, and to their advisors.

Q: When do I need to implement a QDIA?

It is never “too late” to implement a QDIA, as implementation is generally optional. Fiduciary protection becomes available 30 days after the required QDIA notice is delivered to participants. Of course, fiduciaries do not have the safe harbor protection for assets invested in a default fund that does not satisfy the DOL rules.

Q: What types of investments qualify as a QDIA?

The DOL regulations provide three QDIA investment alternative mechanisms:

- A product with a mix of investments that takes into account the individual’s age, retirement date, or life expectancy (for example, lifecycle or target retirement date funds);
- A product with a mix of investments that takes into account the characteristics of the group of employees as a whole, rather than each individual (for example, balanced funds or risk-based lifestyle funds); or
- An investment service that allocates contributions among existing plan options to provide an asset mix that takes into account the individual’s age or retirement date (for example, a professionally managed account).

According to the Profit Sharing Council of America (PSCA) 2007 survey, 48.7% of the employers surveyed use a target retirement date fund as their default and 21% use a lifestyle fund.

This Compliance Alert is not intended as legal advice or as an opinion on specific facts.

Q: What is a “short-term QDIA”?

The DOL regulation further provides for a 120-day capital preservation QDIA for eligible automatic enrollment plans. This short-term QDIA is intended to allow employees to take withdrawals easily within the first 90 days after automatic contributions are initiated. After 120 days, the participants’ accounts must be transferred to one of the three (long-term) QDIAs selected by the plan in order to continue the fiduciary protection safe harbor.

Q: What criteria must we use in selecting the type of QDIA investment and the particular investment fund or model portfolio?

The regulation is clear that, when selecting among the available categories of investments that qualify as a QDIA, the fiduciary is free to select any of the categories. “The Department believes that each of these qualified investment alternatives is appropriate for participants who fail to provide investment direction.” In other words, the *fiduciary does not have to evaluate which type would be best for a specific participant.*

As noted above, however, once a type of QDIA is chosen, the fiduciaries must engage in a prudent process to select and continue to monitor the investments in that category to be used by the plan.

Q: Are 100% equity funds or 100% capital preservation funds QDIAs?

No. The DOL regulation requires the QDIA to provide some level of capital preservation as well as some level of equity investment.

Q: I have implemented a QDIA fund; is there anything else I need to do?

Yes. Plan fiduciaries only receive the QDIA fiduciary protection if all of the DOL requirements are satisfied. Key among the additional requirements is that a participant notice must be provided at least 30 days in advance of the first QDIA investment and 30 days in advance of each subsequent year.

Q: Does my plan need to satisfy all the conditions under ERISA 404(c) to get the QDIA protection?

No. The DOL regulations make clear that the default fund relief is not contingent on a plan satisfying ERISA 404(c). (These are the rules that provide fiduciaries other relief from the consequences of participant investments in a participant-directed plan.)

Q: My existing default fund is a stable value fund. Can I keep it as my default?

No, unfortunately. The regulations do, however, grandfather investments in a stable value fund before December 24, 2007. New amounts must, however, be invested in one of the three types of QDIAs defined above (and in the short-term QDIA for the first 120 days only, if that option is selected).

We have done our best to identify the key information contained in the final DOL regulations, but this alert should not be considered comprehensive. Please contact Means & Associates at 619-696-7284 or ERISA Compliance Associates at 619-233-3054 with any questions you may have regarding QDIA implementation.