

Hot Topics in Employee Benefit Plan Design, Planning and Negotiations: Default Investment

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Proposed Regulation – Overview

- Proposed regulation § 2550.404c-5
- Section 624(a) of the Pension Protection Act added a new section 404(c)(5) to ERISA
- Applies to participant directed individual account plans

Proposed Regulation

- Conditions for Relief
 - 1) Must be invested in a Qualified Default Investment Alternative (QDIA)
 - 2) Participant or beneficiary had the opportunity to direct the investment of the assets in his or her account, but did not direct the investment of the assets

Proposed Regulation

- Conditions for Relief (continued)
 - 3) Notice
 - At least 30 days in advance of first investment
 - At least 30 days in advance of each subsequent plan year
 - Summary plan description, summary of material modification or other notice

Proposed Regulation

- Conditions for Relief (continued)
 - 4) Under the terms of the plan any material provided to the plan relating to a participant's or beneficiary's investment in a QDIA will be provided to the participant or beneficiary

Proposed Regulation

- Conditions for Relief (continued)
 - 5) Any participant or beneficiary invested in a QDIA may transfer assets to any other investment alternative available under the plan without financial penalty
 - Must be permitted no less frequently than once within any three month period
 - 6) Plan offers a broad range of investment alternatives within the meaning of 29 CFR 2550.404c-1(b)(3)

Proposed Regulation

- Notice Requirements
 - Notice shall be written in a manner calculated to be understood by the average plan participant and contain:
 - Description of circumstances under which assets in an individual account will be invested in a QDIA
 - Description of the QDIA
 - Description of the right of participants and beneficiaries to direct the investment in a QDIA to another plan investment
 - Explanation of where participants and beneficiaries can obtain information on other investment alternatives in the plan

Proposed Regulation

- Qualified Default Investment Alternative means an investment alternative that:
 - 1) Does not hold or permit acquisition of employer securities except for:
 - Mutual funds
 - Matching contributions
 - Prior acquired securities

Proposed Regulation

- Qualified Default Investment Alternative means an investment alternative that:
 - 2) Does not impose financial penalties or otherwise restrict the ability of a participant or beneficiary to transfer his or her investment from the QDIA to any other investment alternative available under the plan
 - 3) Is managed by an investment manager as defined by section 3(38) of ERISA, or is an investment company registered under the Investment Company Act of 1940
 - 4) Is diversified so as to minimize the risk of large losses

Proposed Regulation

- Qualified Default Investment Alternative means an investment alternative including:
 - Life-cycle fund
 - Targeted-retirement-date fund
 - Balanced fund
 - Investment management service

Proposed Regulation

- No relief from fiduciary responsibility to prudently select and monitor any QDIA
- No relief for investment manager
- No relief from prohibited transactions

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