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## QUALIFIED DEFAULT INVESTMENT ALTERNATIVES (QDIA)

### SITUATION

On October 24, 2007, the U.S. Department of Labor (DOL) issued final regulations applicable to qualified default investment alternatives (QDIAs) under participant-directed individual account plans. These regulations extend Employee Retirement Income Security Act (ERISA) Section 404(c) fiduciary relief for decisions to invest plan assets in default investment funds as long as those funds meet QDIA requirements. The final regulations became effective on December 24, 2007. If your plan has not made the election, it is not too late.



### SOLUTION

A QDIA is generally described as a balanced fund, a life-cycle fund (based on the participant's age or target retirement date) or professionally managed account. A QDIA must be managed by an investment manager, a plan trustee, a plan sponsor or an investment company registered under the Investment Company Act of 1940. The final regulations exclude capital preservation funds, such as money market or stable value funds, as permitted QDIAs. Investments in stable value funds; however, are provided grandfather protection under certain circumstances for investments made prior to December 24, 2007.

Under the final rules, a fiduciary will be afforded ERISA Section 404(c) relief for QDIAs, provided that the fiduciary prudently selects the QDIA fund and meets all of the following conditions:

- Each participant is given an opportunity to direct the assets in his or her account but does not do so.
- Participants and affected beneficiaries are furnished an advance notice (both before initial investment in a QDIA and an annual QDIA notice) that describes the circumstances under which plan contributions will be invested on their behalf in a QDIA.
- Participants are automatically provided investment information relating to the QDIA, such as a fund prospectus.
- Defaulted participants are permitted to transfer out of the QDIA with the same frequency afforded other participants, but at least once each quarter.
- No restrictions, fees or expenses are imposed by the QDIA during the 90-day period beginning on the date of the participant's first contribution.
- The plan offers a broad range of investment alternatives that satisfy ERISA Section 404(c).

### SIGNIFICANCE

Plan sponsors are not required to comply with the QDIA final regulations. Indeed, if a plan requires participants to make affirmative investment elections upon enrollment, the QDIA regulations will not apply to those decisions. Moreover, even where a plan uses default investment funds, the regulations clearly provide that they are not the exclusive means by which a fiduciary may satisfy the ERISA fiduciary responsibilities with regard to a plan's default fund. Failure to comply with the regulations means that the plan fiduciary is responsible for the default investment decision.

To qualify for this protection, plan sponsors and fiduciaries should issue an initial QDIA notice to all affected participants and beneficiaries (*i.e.*, those who are affected by default investment options). Even if a plan sponsor or fiduciary fails to satisfy the initial QDIA notice, Section 404(c) fiduciary relief for later default QDIAs is available for investments made after the notice requirements are satisfied.

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