

Fiduciary Duty #36

As we continue our series of fiduciary duties and their corresponding responsibilities, we come next to the topic of a Qualified Default Investment Alternative, otherwise known as the QDIA.

The background behind the utilization of a QDIA begins with the passage of the Pension Protection Act (PPA) of 2006, which removed the impediments to employers who adopted the concept of Automatic Enrollment, and the fears about legal liability for market fluctuations when employees were enrolled without having clearly expressed an investment choice in the process.

These impediments had prevented many employers from adopting automatic enrollment, or had led them to invest workers contributions in low-risk, low return “default” investments.

The PPA directed the Dept. of Labor (DOL) to issue a regulation to assist employers in selecting default investments that best serve the retirement needs of workers who do not direct their own investments. And, after much marketplace discussion and debate, the DOL implemented the final regulation on October 24, 2007.

The end result enables an employer to obtain safe harbor relief from fiduciary liability for investment outcomes, PROVIDED that the fund that is selected meets the necessary requirements, and that the participating employee has received the necessary information before, during and after the investment process.

Acceptable fund candidates include the following options:

- A target date fund
- A risk-based/balanced fund
- A professionally managed account

Necessary employee communications include the following:

- Participants and beneficiaries must have been given an opportunity to provide investment direction, but have not done so.
- A notice generally must be furnished to participants and beneficiaries in advance of the first investment in the QDIA, and annually thereafter.
- Material, such as investment prospectuses, provided to the plan for the QDIA, must be furnished to participants and beneficiaries.
- Participants and beneficiaries must have the opportunity to direct investments out of the QDIA as frequently as from other plan investments, but at least quarterly.

Additionally, your process needs to consider the fees and expenses of the QDIA that you select against peer groups, or appropriate benchmarks.

Keep in mind that the final regulation DOES NOT absolve fiduciaries of the duty to prudently select and monitor QDIA's.

For further insight into this topic, a copy of the regulation is available on the agency's website at www.dol.gov/ebsa under the heading of “Laws and Regulations”.

We hope you find this brief overview of the concepts surrounding a QDIA to be of benefit in the efforts that you undertake to fulfill your fiduciary obligations.

If we can be of assistance in this, or any other plan related matter, please be sure to let us know.

Mike & Matt