

MEMO# 30520

January 13, 2017

DOL Information Letter on QDIA Status of Target Date Fund with Annuity Feature

[30520] January 13, 2017 TO: ICI Members SUBJECTS: Pension RE: DOL Information Letter on QDIA Status of Target Date Fund with Annuity Feature

The Department of Labor (DOL) has issued an information letter regarding the use of certain customized target date funds as a default investment in participant-directed individual account plans.^[1] The letter responds to a request for guidance on a particular investment product that is similar to a traditional target date fund, but includes portfolio allocations to a fixed guaranteed annuity (referred to as an “annuity sleeve”). The applicant specifies that the investment product generally meets the criteria under 29 CFR 2550.404c-5 for a “qualified default investment alternative” (QDIA), except that the annuity component has certain restrictions on liquidity and transferability that are prohibited by the QDIA rule.^[2]

The DOL letter states that because the particular product described does not satisfy the QDIA rule’s transferability condition, the product would not constitute a QDIA. Nevertheless, DOL opines that “a fiduciary of a participant-directed individual account plan could, consistent with the provisions of Title I of ERISA, prudently select an investment with lifetime income elements as a default investment under the plan if it complies with all the requirements of 29 CFR 2550.404c-5 except for reasonable liquidity and transferability conditions beyond those permitted in paragraph (c)(5)(i) of the regulation.” In other words, a plan fiduciary could still meet its fiduciary obligations under Title I of ERISA if it selects a default investment not afforded QDIA status, as long as the fiduciary engages “in an objective, thorough and analytical process that considers all relevant facts and circumstances.” In this regard, the letter cites, for example, a consideration of the demographics of the plan and whether “the characteristics of the investment alternative align with the needs of plan participants and beneficiaries, taking into account, among other things, the nature and duration of the liquidity restrictions, the level of the guarantees of principal and minimum interest rates, any opportunities for the guaranteed minimum interest rates to be supplemented with additional credited amounts, as well as the expected lifetime income to be provided in retirement”.

The letter concludes that “[w]hether the selection of any particular investment alternative, including the [product that is the subject of the letter], as a default investment alternative satisfies the fiduciary duties of prudence and loyalty in ERISA section 404(a) with respect to

any particular plan would depend on the facts and circumstances.”

Elena Barone Chism
Associate General Counsel

endnotes

[1] The Information Letter is available at:

<https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/information-letters/12-22-2016>.

[2] The QDIA regulation requires that, to qualify for the rule’s fiduciary relief, participants invested by default must be able to transfer assets to any other investment alternative available under the plan with the same frequency as participants who elect to invest in the QDIA, but not less frequently than once within any three month period. 29 CFR 2550.404c-5(c)(5)(i).

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.