

QUALIFIED DEFAULT INVESTMENT ALTERNATIVE (QDIA)

The Pension Protection Act (PPA) added a new fiduciary protection to ERISA for default investments. Section 404(c)(5) provides that, in situations where participants have an opportunity to direct their investments but fail to do so, the fiduciaries will be entitled to a 404(c) defense if those participants are invested in a qualified default investment alternative (QDIA).

Fiduciaries have historically selected a single "default investment" for all of the defaulting participants in the plan. However, since those were fiduciary selected—and not participant directed, the fiduciaries were legally responsible for prudently selecting and monitoring the use of the investment for the defaulted participant.

The following conditions must be met to qualify for the fiduciary safe harbor:

- o Assets must be invested in a QDIA as defined in the Regulation: Generally, target maturity funds (e.g., lifecycle or target date funds), balanced funds or models (including risk-based lifestyle funds) and managed accounts. The short-term QDIA is a default into a money market account for not more than 120 days after the date of the first elective contribution for the defaulted participant. By the end of that 120-day period, the participant's account must be transferred to one of the long-term QDIAs above in order to continue the fiduciary safe harbor.
- o Participants must have been given the opportunity to provide investment direction, but failed to do so.
- o A notice must be furnished to participants and beneficiaries in advance of the first investment in the QDIA and annually thereafter. The notice must contain the information outlined in the regulation and must be given in advance of the investment in the QDIA.
- o Materials provided to the plan for the QDIA must be furnished to participants.

- o Participants must have the opportunity to direct investments out of the QDIA as frequently as afforded to participants who affirmatively invested in the QDIA, but no less frequently than once in any three month period.
- o Transfer fees or restrictions cannot be imposed upon a defaulted participant who opts out of the QDIA within 90 days of the first investment in the QDIA. This prohibition includes mutual fund redemption fees. After the 90-day period, the default investment may be subject to the same transfer fees and restrictions that generally apply to all participants.
- o The plan must offer a "broad range of investment alternatives" as that is defined in the existing regulation under section 404(c) of ERISA.