

**QUESTIONS AND ANSWERS
REGARDING
QUALIFIED DEFAULT INVESTMENT ALTERNATIVE (QDIA)**

I. What Is A QDIA?

Under ERISA section 404(c)(5), plans that permit participants to direct the investment of their accounts may now gain additional fiduciary protection by including a Qualified Default Investment Alternative (“QDIA”). The QDIA regulations provide a safe harbor for the investment of participant contributions in the absence of an affirmative investment election by the participant.

A plan is not required to offer a QDIA. Given the complex requirements associated with a QDIA, the Employer should carefully consider whether the additional safe harbor protection outweighs the increased administrative burden. In most cases, a balanced fund that is prudently selected and maintained will meet fiduciary requirements without having to comply with QDIA procedures.

II. What Fiduciary Relief Does A QDIA Provide?

If a participant fails to provide investment instructions, the fiduciary of a participant-directed plan will not be liable for any loss that is the direct and necessary result of (i) investing all or part of a participant’s account in any QDIA, or (ii) investment decisions made by a “permitted manager” in connection with the management of a QDIA. Fiduciaries of a plan that adopts a QDIA remain subject to the prohibited transaction rules and the duty to prudently select and monitor plan investment alternatives. The term “permitted manager” means:

- an investment manager as defined in ERISA section 3(38);
- a trustee of the plan that meets the requirements of ERISA section 3(38);
- the plan sponsor who is a named fiduciary within ERISA section 402(a)(2); or
- an investment company registered under the Investment Company Act of 1940.

III. What Are The QDIA Requirements?

To qualify as a QDIA, the investment alternative must have the following characteristics:

- the participant had an opportunity to direct investments but chose not to;
- the participant is given appropriate notice of the QDIA in a timely manner;
- the participant’s account is invested in a qualified alternative (“QA”), which is an investment that:
 - does not hold or permit the acquisition of employer securities unless an exception applies;
 - is managed by a “permitted manager;” and

- is a Target Date Fund, a Census Fund, or an Investment Management Service (unless an exception applies).
- the participant receives any material relating to the QA’s investments;
- the participant has an opportunity to transfer assets out of the qualified alternative with the same frequency available for other plan investments (but not less than quarterly); and
- the plan offers the opportunity to invest in a broad range of investment alternatives (as described in ERISA section 404(c) regulations) in lieu of the QDIA.

IV. What Are The Three Types Of QAs?

A. Target Date Fund.

A Target Date Fund is a product or portfolio that (i) applies generally accepted investment theories, (ii) is diversified to minimize the risk of large losses, and (iii) provides varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures **based on the participant’s age, target retirement date, or life expectancy**. The Target Date Fund must change asset allocations and associated risk levels over time with the objective of being more conservative as the participant’s age increases. Examples of a Target Date Fund are a life cycle fund or a targeted retirement date fund.

The Target Date Fund may, but is not required to, consider risk tolerance, investments, or other preferences of the individual participant. The Fund may also, but is not required to, consider other factors in selecting investments, such as the benefits provided under an employer-provided defined benefit plan. The Target Date Fund may be a stand-alone product or use a “fund of funds” approach and may be provided through a variable annuity or pooled investment fund without regard to ancillary features such as annuity purchase rights or death benefit guarantees.

B. Census Fund.

A Census Fund must meet the same requirements as a Target Date Fund with two exceptions. First, the target level of risk is not based on the age of the individual participant but rather **the plan participants as a whole**. Second, the Census Fund is not required to change asset allocations with the goal of becoming more conservative over time. An example of a Census Fund is a balanced fund.

C. Investment Management Service.

An Investment Management Service is an actively and professionally managed fund that meets the requirements described above for Target Date Funds, i.e., it is based on the participant’s age, retirement date, or life expectancy and becomes more conservative over time.

V. When Can Investments Be Held In A Stable Value Fund?

Certain funds (referred to collectively as Stable Value Funds) that do not qualify as a Target Date Fund, Census Fund, or Investment Management Service may nevertheless be deemed a QA in certain circumstances. There are two types of Stable Value Funds: a Short-Term Fund and a Grandfathered Fund.

A. Short Term Fund.

A Short Term Fund is a product or portfolio that (i) is designed to preserve principal and provide a reasonable rate of return, whether or not such return is guaranteed, consistent with liquidity, (ii) seeks to maintain the dollar value that is equal to the amount invested in the product, (iii) is offered by a state or federally regulated financial institution, and (iv) is used only during **the first 120 days** after the date of the participant's first elective contribution to the plan. The use of Short Term Funds is limited to those participants who have been enrolled through an automatic contribution arrangement and is intended to allow the plan to "park" a participant's contribution during the initial stages of the contribution arrangement. If investments remain in a Short Term Fund after the 120-day period has expired, fiduciary relief is no longer available.

B. Grandfathered Fund.

A Grandfathered Fund is a product or portfolio that (i) is designed to guarantee principal and a rate of return generally consistent with that earned on intermediate investment grade bonds, (ii) allows participants to withdraw funds or transfer funds to other plan investments, (iii) does not impose fees or surrender charges in connection with participant-initiated withdrawals, and (iv) guarantees the principal and the rate of return through a state or federally regulated institution. This alternative is deemed a QA only with respect to assets invested prior to December 24, 2007.

VI. How And When Is Notice Of The QDIA Provided To Participants?

Participants whose assets will be invested in a QDIA in the absence of an affirmative election must receive a notice at the beginning of the QDIA and annually thereafter. The Initial Notice must be provided:

- at least 30 days in advance of the date of plan eligibility (for automatically enrolled participants) or at least 30 days in advance of the date of any first investment in a QDIA (for rollovers or actively enrolled participants); or
- on or before the date of plan eligibility, provided the participant has the opportunity to make a permissible withdrawal.

The annual notice must be provided at least 30 days in advance of each subsequent plan year if any portion of participant's account is invested in a QDIA. The notice may not be provided in a Summary Plan Description or a Summary of Material Modifications. The notice may be provided with other materials, may be combined with a Qualified Automatic Contribution Arrangement notice, and may be provided using electronic media in accordance with DOL guidance.

The Initial Notice and the Annual Notice must contain the following:

- a description of the circumstances under which assets may be invested in a QDIA;
- a description of the circumstances under which elective deferrals will be made on behalf of the participant, the deferral percentage, and the right to change or opt out of the election (if the plan has an automatic enrollment feature);
- an explanation of the right to direct the investment of assets in their account;

- a description of the investment objectives, risk and return characteristics, and fees and expenses of the QDIA;
- a description of the right of participants to direct the investment of those assets to any other alternative of the plan (and the fees, restrictions, or expenses related to such transfer); and
- an explanation of where the participant can obtain investment information concerning other alternatives available under the plan.

VII. What Investment Information Must Be Given To Participants?

A fiduciary must provide the participant with material relating to a participant's investment in a QDIA. The information may be provided by the plan or by a third party directly to the participant. It has not yet been determined as to whether this information must be automatically furnished or furnished upon request (and referred to in the QDIA notice). However, information that must be passed through to the participant includes the following:

- prospectuses, financial statements, and reports related to the alternative and provided to the plan;
- materials related to voting, tender, or similar rights (if such rights are passed through to participants under the plan) and a reference to relevant plan provisions;
- a description of the annual operating expenses (and their percentage of the average net assets of the QDIA) of each alternative, including investment management fees, administrative fees, and transaction costs;
- information concerning the value of the shares or units of the QDIA held in the participant's accounts and the past and current investment performance of each alternative determined on a reasonable and consistent basis (net of expenses);
- a list of assets comprising the portfolio of the QDIA which constitute "plan assets" and the value of each (note that the underlying assets of a mutual fund are not plan assets); and
- if the assets of an alternative include a fixed rate investment contract issued by a bank, savings and loan, or insurance company, the name of the issuer, the term of the contract, and the rate of return.

VIII. How Should A Plan Transition To A QDIA?

In transitioning to a QDIA, the plan may treat current participants as failing to give investment direction once they receive the required QDIA notice. In considering whether to transfer assets out of a current alternative into a QDIA, the fiduciary must take into account transfer fees and other applicable penalties. Once a participant directs any portion of his or her account balance, the participant is considered to have exercised control over the entire account and is no longer subject to QDIA procedures.

IX. Can Participants Transfer Out Of A QDIA?

A participant whose account is invested in a QDIA must have the opportunity to transfer, in whole or in part, assets out of the QDIA to any other investment alternative under the plan with the same frequency available for participants who directed investment in the QDIA (but no less frequently than quarterly). Any transfer or withdrawal that is elected within 90 days of the participant's first elective contribution or other first investment in a QDIA may not be subject to any restrictions, fees, or expenses. Following the end of the 90-day period, any election to transfer or withdrawal may only be subject to the fees and expenses otherwise applicable to all participants in the QDIA. The 90-day window applies regardless of whether the fee is imposed by the plan, the sponsor, or the underlying investment product.

X. How Do I Get Additional Information?

For additional information regarding QDIA compliance requirements, please contact us at:

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