

Fiduciary Protection and Automatic Enrollment Deadlines

The Pension Protection Act (PPA) has created opportunities for plan sponsors to improve the level of participation in their plans, as well as to improve the quality of participant investing. In addition, the law offers protection for fiduciaries who use “qualified default investment alternatives.”

However, those benefits come with a “cost.” The cost, or burden, is that plan sponsors and fiduciaries must provide reasonable and timely notices to the participants and beneficiaries. In order for either, or both, of those new features to be added to a plan on January 1, 2007, the notices should be given to participants by December 1, 2006--just days from now.

This Bulletin includes an article by Debra Davis discussing the automatic enrollment notice and one by Stephanie Bennett covering the notice for qualified default investment alternatives.

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Deadline for Notices for Automatic Enrollment



By Debra Davis (DebraDavis@Reish.com)

The Pension Protection Act preempts state laws that interfere with automatic enrollment plans . . . if certain requirements are met. These requirements include:

1. providing notices to participants who will be subject to automatic enrollment; and
2. placing their automatic deferrals in a “qualified default investment alternative” (known as a QDIA) if a participant does not direct the investment of his account.

In order to obtain the benefit of preemption of state payroll laws (such as in California, which prohibits withholding from an employee’s paycheck without written consent), the notices must be sent to participants within a reasonable period of time before the beginning of the plan year. Although a specific time period is not provided in the PPA, a period of 30 days has

been used by the PPA for other “reasonable” periods of time. For calendar year plans, this deadline would be December 1st.

The notice must be given to all the employees who will be covered by the automatic enrollment. It must be written in a manner that the average participant could understand and it must explain that:

- The participant has the right to change from the automatic deferral percentage or to opt out of the automatic enrollment arrangement.
- The participant’s account will be invested in a default account if he does not select a different investment(s) for his account.

Note that, in order for a default account to be considered a QDIA, an additional notice must also be provided. See the article below.

Additional details regarding automatic enrollment arrangements will be provided in a forthcoming bulletin. ❖

Deadline for Notice of Fiduciary Relief for Default Investments



By Stephanie Bennett (StephanieBennett@Reish.com)

The Pension Protection Act provides fiduciary relief for default investments. This change is effective for plan years beginning after December 31, 2006. The change was accomplished by adding a new section 404(c)(5) to ERISA. The new section protects fiduciaries who invest participant default accounts in specified investments. (A default occurs where a participant has a reasonable opportunity to direct the investment of his account, but does not do so.) The Department of Labor (DOL) has issued a proposed regulation which describes the investments that will qualify for fiduciary protection—those investments are referred to as “qualified default investment alternatives” (“QDIAs”).

In order for fiduciaries to receive this relief, participants must be defaulted in an investment that is a QDIA and participants must:

1. receive a notice, within a reasonable period of time, which explains their right to direct the investment of their accounts and explains how their accounts will be invested if they do not make an affirmative election; and

2. have a reasonable period of time after receiving the notice and before the default occurs to direct the investment of their accounts.

The proposed regulation defines “a reasonable period of time” as 30 days in advance of the first investment and annually thereafter. Thus, in order for the fiduciaries of a calendar year plan to take advantage of the new relief under 404(c)(5) on January 1, 2007, notice must be given to the eligible employees on or before December 1, 2006.

Unfortunately, the DOL has not issued a model notice; however we have prepared good faith notices for our clients in accordance with the guidance in the proposed regulation.

In the next two or three weeks, we will be sending you a more detailed Bulletin about the requirements and advantages of QDIAs. ❖

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