The Qualified Deferred Investment Account

It Acts as a Fiduciary 'Get Out of Liability Free' Card

By CHARLES EPSTEIN

In the game of Monopoly, no one ever wanted to get sent to jail and miss out on the $200. Everyone loved to get the 'get out of jail free' card. When it comes to managing their company's 401(k) retirement plan, every plan sponsor fiduciary would love to stay out of the Department of Labor's (DOL) crosshairs and have a fiduciary 'get out of liability free' card.

However, that's becoming increasingly harder. The DOL has added 300 new employees focused on auditing qualified retirement plans to make sure you, the plan sponsor fiduciary, are meeting your responsibilities under ERISA. With increased government scrutiny, the value of this card has just gone up.

One such card does exist. It's called a qualified deferred investment account (QDIA). It's not only good for protecting you, the plan sponsor, but it's even better for the average 401(k) participant who has little investment knowledge and should not be picking their investments and managing their money.

QDIAs have become all the rage in 401(k) plans, and may account for 60% to 70% of total assets in all retirement plans. So what is a QDIA, and why is it such a good alternative? The following Q & A is meant to assist you, as the fiduciary plan sponsor, to protect you, and to help your employees better manage their retirement outcomes.

Why is it important for plan sponsors to know about QDIAs?

ERISA section 404(c) and the corresponding DOL regulations define how a plan sponsor can establish protective relief as a fiduciary for investment decisions made by employees in participant-directed 401(k) plans. As introduced in the Pension Protection Act of 2006 and effective Dec. 24, 2007, plan sponsors have the option to designate a default fund, qualifying as a QDIA. If the plan complies with the requirements of the regulation, the fiduciary will not be liable for losses that result from investments in the QDIA (your fiduciary 'get out of liability free' card).

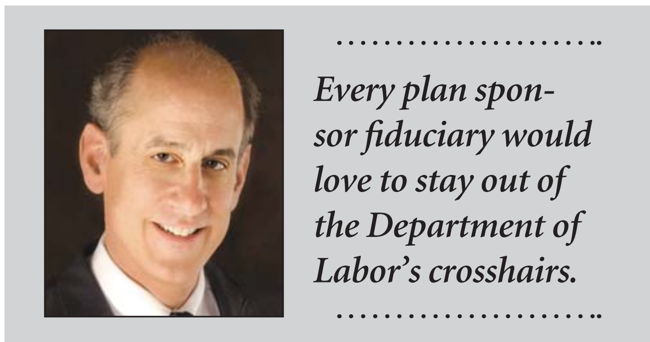
What is a default investment?

When participants fail to make investment elections and a decision must be made to invest their participant-directed contributions (either employer profit sharing or employee deferrals), plan fiduciaries must step into the decision-making role and invest their contributions in a default investment.

What is an approved QDIA?

The DOL has approved these types of QDIAs:

• *Lifestyle or target-date fund:* Creates an investment model based on a participant's age, retirement date, and life expectancy. Is not professionally managed for individual investors.



Every plan sponsor fiduciary would love to stay out of the Department of Labor's crosshairs.

• *Professionally managed account:* Is actively managed by investment managers. Provides an appropriate asset mix of equities and fixed income for each individual participant. Takes into account the primary decision factors of age, retirement date, and life expectancy.

• *Balanced fund:* Offers a mix of equity and fixed-income investments. Is based on group demographics of the plan as a whole. May not consider risk tolerances of individual participants.

A stable value fund, or money market, by definition is not a QDIA because it does not provide investments in equities and fixed income. The DOL was specific in its definition of a QDIA, noting that it is a long-term investment and therefore must have a percentage of its assets invested in equities and fixed-income securities to qualify for protection. A stable value fund product may be used for the first 120 days of a participant's participation in the plan, but no longer to qualify for relief.

What happens if a plan sponsor doesn't designate an approved QDIA?

Without an approved QDIA, plan fiduciaries remain potentially liable for losses when a participant fails to actively direct investments.

When is a QDIA appropriate for a plan?

A QDIA is appropriate for any plan with participant assets that lacks participant-investment direction. Plans with automatic enrollment features, obviously, have default investments, but situations frequently occur in the life of a 401(k) that may result in the need for a QDIA, including:

• Incomplete enrollment forms;
• Beneficiary/alternative payee balance;
• Qualified domestic relations order (QDRO);
• Removal of investment options;
• Rollovers;
• Missing persons; or
• Disputes.

What role do plan sponsors play in selecting QDIAS?

Plan sponsors are responsible for prudent selection of appropriate QDIAs for their plan, as well as for monitoring QDIAs. The plan sponsor should also be able to demonstrate the due-diligence process followed when selecting QDIAs. While QDIAs offer a 'set it and forget it' investment option for participants, this is not the case for plan sponsors.

How do plan sponsors determine what type of QDIA is appropriate?

Plan sponsors should consider either the age of individual participants or the average age of the group of participants. Participant investment knowledge and education, or lack thereof, is appropriate to consider as well. Today, target-date funds make up the largest percentage of QDIAs in 401(k) plans.

Are cost and fees, as well as performance, important QDIA selection criteria?

DOL regulations specify that cost and fees should be an important consideration in the selection of QDIAs. It is also important that the plan sponsor fiduciaries have an ongoing due-diligence process for selecting and

monitoring their QDIA and documenting that process.

How can plan sponsors receive safe harbor relief from QDIAS?

Merely selecting a QDIA alternative alone does not give fiduciary relief to a plan sponsor. Plan sponsors can receive safe-harbor relief from fiduciary liability for default outcomes when default investments are of the three QDIA types discussed above and meet the following criteria:

• Participants and beneficiaries must have been given an opportunity to provide investment direction, but failed to do so;

• A notice must be furnished to participants and beneficiaries 30 days in advance of the first investment in the QDIA and 30 days prior to every plan year thereafter;

• All material — such as investment prospectus and other notices — provided to the plan for the QDIA must be provided 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;

• The plan may not impose financial penalties or otherwise restrict the ability of a participant or beneficiary to transfer the investments from the QDIA to any other investment alternative available under the plan; and

• The plan must offer a broad range of investment alternatives as defined in the DOL's regulation under section 404(c) of ERISA.

When it comes to managing your qualified retirement plan, no plan sponsor fiduciary should leave their fiduciary processes to chance. The QDIA option provides one of the few protective reliefs from liability-free cards under ERISA. Every plan sponsor should take advantage of a QDIA. ■

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