

DOL FINALIZES REGULATIONS ON ANNUITY SELECTION FOR DEFINED CONTRIBUTION PLANS

The Pension Protection Act of 2006 directed the Department of Labor to publish regulations clarifying that the selection of an annuity contract as an optional form of distribution under a defined contribution plan is not subject to the "safest available annuity" standard under the Department's Interpretive Bulletin 95-1. The DOL published an interim final regulation in September 2007 and has now finalized that regulation. Some of the highlights and clarifications under the final regulation include the following:

- Clarification that the regulation provides a safe harbor for annuity selection, rather than a set of minimum requirements or the exclusive means for satisfying the plan fiduciary's responsibility under ERISA.
- Clarification that an independent expert need only be engaged if necessary, and not in every case, to evaluate proposed annuity providers. The interim regulation had required a fiduciary to determine in every case that the fiduciary himself had the expertise necessary to evaluate annuity providers or that the advice of an independent expert was necessary. Commenters observed that fiduciaries would rarely risk certifying their own expertise, which would lead to hiring an independent expert in virtually every case.
- Elimination of the detailed list of factors included in the interim regulation for a fiduciary to consider in evaluating an annuity. The final regulation allows the fiduciary to determine the appropriate factors to consider.
- Confirmation that the regulation and its safe harbor apply only to an annuity contract selected as an optional form of distribution under a defined contribution plan, and not to an annuity product that is used only as an investment option by the plan.
- Clarification that the safe harbor may be satisfied either (i) when the fiduciary selects an annuity contract for immediate distribution to a specific participant or (ii) when the fiduciary selects an annuity provider to furnish annuity contracts at future dates for participants. In the latter case, the fiduciary must monitor the annuity provider to ensure that the provider remains an appropriate selection.

If you have questions or would like additional information about the standards for selection of an annuity contract under a defined contribution plan, please feel free to contact Brian Dougherty at 215-587-5919 or bdougherty@postschell.com.

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