

Firms scramble for safe harbor

Look to meet Labor Department regulations for qualified default investment alternatives

By [Lisa Shidler](#)

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With the Department of Labor's new regulations for qualified default investment alternatives slated to go into effect next week, companies are scrambling to obtain "safe harbor" protection from liability as soon as possible.

Under the Pension Protection Act of 2006, qualified companies can receive protection from liability anytime after next Monday. The landmark law even provides a retroactive safe harbor for companies that comply with the regulation's standards after the deadline.

But if a company is sued before obtaining safe-harbor status, it may find itself liable, industry experts said.

For some companies, one of the biggest headaches in complying with the law involves stable-value funds.

The law prohibits stable-value funds from being used as QDIAs after the Monday deadline. However, since many plan sponsors adopted such funds as their default investment prior to the PPA, the regulation "grandfathers" such arrangements by exempting contributions in such products prior to that day.

The problem is that many of the stable-value funds already being used as QDIAs don't meet the DOL's strict interpretation of a stable-value fund and, as a result, won't be grandfathered.

STRICT DEFINITION

For a fund to be considered a stable-value fund, it must guarantee principal and a rate of interest. Many of the funds being used as stable-value alternatives guarantee principal, but not a steady rate of interest, said Fred Reish, a lawyer and managing director of the Los Angeles law firm Reish Luftman Reicher & Cohen.

"That's proven to be the most difficult part of the new regulation," he said. "I didn't fully appreciate how many different types of investments there are in the 401(k) world that people have been calling stable value but weren't traditional stable value."

Larry Goldbrum, general counsel of The SPARK Institute Inc. of Simsbury, Conn., submitted a letter to the DOL asking it to issue more guidance on the definition of a stable-value account. The institute represents the retirement plan services industry.

"I think there's some uncertainty there," Mr. Goldbrum said. "If you're a plan sponsor working with an adviser to implement this safe harbor, particularly by Dec. 24, you may not know [whether that plan qualifies to be grandfathered] absent some guidance."

Meanwhile, advisers are hurrying to ink consulting agreements with plan sponsors, said Lou Harvey, president of Dalbar Inc., a financial services research firm in Boston.

"When we talk to advisers, most of the time, the discussion is about compensation, and what works and what doesn't work because of the very select requirements," he said.

Even though employers may qualify for safe-harbor treatment down the road, many are trying to get it as soon as possible, said Ann Combs, a principal with The Vanguard Group Inc. in Malvern, Pa.

RUSH FOR PROTECTION

"I think there's a lot of interest among employers in being able to take advantage of the safe harbor as soon as possible," said Ms. Combs, who served as assistant secretary of labor for employee benefits security from 2001 to 2006.

Even so, it's better to proceed slowly, she said.

"This is the first time that safe harbor is available," Ms. Combs said. "It's important that you go through the right processes, as opposed to rush to adopt it."

Companies interested in the safe harbor first need to identify the funds in their plan that meet the DOL's guidelines for QDIAs. After that, they need to pass along that information to their employees.

Already, Stephanie Napier, a vice president for record keeper Marshall & Ilsley Trust Co. NA in Milwaukee, has been busy making changes for clients.

"The urgency varies from client to client," said Ms. Napier, who is based in Kansas City, Mo. "There are some who waited at the edge of their seats and wanted relief the first day it was available."

Her firm's biggest challenge is developing a system to ensure that funds with redemption fees are not counted as QDIAs. That's because the final regulations issued by the DOL prohibit funds that charge redemption fees from being used as QDIAs (*InvestmentNews*, Nov. 5).

Charlie Nelson, senior vice president of Great-West Retirement Services in Greenwood Village, Colo., said most of the fund companies with which he works that offer default investments don't charge redemption fees. In fact, of the 100 or so funds with which he is familiar, only about five charge a redemption fee, he said.

WORKING WITH PARTNERS

"We've been working very fast with our partners," Mr. Nelson said. "It's just a few; it's not everyone. We don't have it all complete, but we're working very fast on this."

While most advisers affected are those who advise 401(k) plans, even advisers who work mostly with clients have seen an increase in questions concerning this issue, said Jim Suits, president of Summit Capital Advisors in Tacoma, Wash.

So far, more than a dozen clients — or prospective clients — have visited him in recent weeks because their companies are changing the default investment option, which previously had been stable-value accounts.

Most of Mr. Suits' clients have had short deadlines to finalize which new account they want to use for their 401(k) plan. He's been advising them to put money in a variety of funds.

"We have clients who have called us and asked what they should do," Mr. Suits said. "We've suggested that they should not have been wholly invested in stable-value accounts."

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