



DOL clarifies annuity selection safe harbor rules for defined contribution plans

On July 13, 2015, the Department of Labor (DOL) issued Field Assistance Bulletin (FAB) 2015-02 to provide clarification on the annuity selection safe harbor rules for defined contribution plans from [2008](#).

Background and overview

In October 2008, the DOL published final rules regarding the selection of annuity providers and annuity contributions for defined contribution plans. Those final rules established a safe harbor in selecting an annuity provider for benefit distributions.

In the recently released FAB, the DOL stated that questions continue to be raised about how to reconcile the “time of selection” standard in the 2008 safe harbor rule with ERISA’s duty to monitor and review certain fiduciary decisions. To prevent confusion or a lack of clarity regarding fiduciary responsibilities, which could lead to disincentives for plan sponsors to offer an annuity as a lifetime income option, the DOL issued the FAB for additional guidance.

FAB 2015-02 clarifies that:

- A fiduciary’s selection and monitoring of an annuity provider is judged based on information available at the time of the selection and each periodic review, and not in light of subsequent events; and
- The periodic review requirement doesn’t mean a fiduciary must review the prudence of retaining an annuity provider each time a participant or beneficiary elects an annuity. The frequency of the periodic review depends on the facts and circumstances. *For example, if a “red flag” about the provider or contracts comes to the fiduciary’s attention between reviews (e.g., there is a downgrade in the financial health rating of a provider, or several annuitants submit complaints about untimely payments), the fiduciary would need to determine whether an immediate review is needed.*

The FAB also includes examples to confirm that a plan sponsor’s fiduciary responsibilities regarding a specific annuity provider end when annuities from the provider are no longer offered by the plan. This applies to both immediate and deferred annuities.

Next steps

The FAB mentions that the DOL and Treasury are working together on a joint initiative to encourage the use of lifetime income alternatives, including annuities, in retirement plans. As part of its project to evaluate possible amendments to the existing annuity selection safe harbor, the DOL is considering guidance on fiduciary selection and monitoring of annuity providers and contracts that are offered as investment options under defined contribution plans.

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