
From: bruceashton@REISH.com
Sent: Thursday, July 05, 2007 9:30 PM
To: Campagna, Lou - EBSA
Cc: Sweeney, Erin - EBSA; Alexander, Lisa - EBSA; fredreish@REISH.com
Subject: QDIA Proposed Regulation

Lou:

Fred Reish and I wanted to give you one additional comment on the proposed regulation. We realize it is late in the process, but hopefully not too late for you to give this some consideration.

Our comment relates to the definition of an investment management service as a QDIA. An investment management service is described in subsection (e)(5)(iii) as a "service with respect to which an investment manager allocates the assets of a participants individual account ... through a mix of equity and fixed income exposures, *offered through investment alternatives available under the plan....*" Our comment relates to the highlighted words.

This definition appears to contemplate that the investment management service would only be able to use the investment alternatives which a participant could use to allocate his or her account if the participant actually exercised control. This is in contrast to the other qualified alternatives identified in subsections (i) and (ii), which indicate that the investment model may be created from among the investment alternatives available under the plan or may be a "stand alone" investment.

If our reading of the proposed regulation is correct, we believe that the definition is too restrictive and that it would be preferable to substitute for the highlighted language the following: "prudently selected and monitored by the investment manager." In other words, the investment manager would have the discretion to use appropriate investments to manage a participant's account regardless of whether the option is otherwise available.

Consider the following two examples in support of our comment:

1. Suppose a plan offers participants the opportunity to establish an individually directed brokerage account. Presumably, this would mean that participants could select from virtually any publicly available security in directing the investments in their accounts. Or suppose the plan offers a mutual fund window through which participants may select from an array of, say, 1,000 mutual funds in addition to the core funds that are available on the provider's platform. In this circumstance, it would appear that the words "offered through investment alternatives available under the plan" would include essentially any investments available in the public markets (in the case of the individually directed brokerage account) or 1,000 mutual funds (in the case of the mutual fund window). In this circumstance, it would seem that the "available under the plan" limitation would be no limitation at all.
2. Alternatively, consider a plan that offers a core list of 15 mutual funds and lifestyle or target date funds but does not offer, for example, an emerging markets fund on the theory that it is too volatile for use by participants who direct their own accounts. On the other hand, in the hands of a professional investment manager, it might be highly appropriate to include a small allocation in such a fund to enhance the long term appreciation and balance risk in a given participant's account. Under the proposed definition, however, it would appear that if the investment manager made use of such a fund, prudently selected and monitor by that investment manager, the arrangement would not be an "investment management service" and the plan would not be using a "qualified default investment alternative" for the defaulting participant accounts.

We submit that the apparent limitation on the definition of an investment management service is inappropriate and should be eliminated. Instead, the investment manager should be able to prudently select and monitor investments that assist in the management of the participant's account, regardless of whether they are otherwise available in the plan.

We have intentionally kept this comment short given where you are in the regulation process. We would be pleased to discuss this with you if that would be helpful, and thanks for your consideration.

Fred Reish and Bruce Ashton

Bruce Ashton
Reish Luftman Reicher & Cohen
11755 Wilshire Blvd, 10th Floor
Los Angeles, CA 90025

Telephone: 310-478-5656, Ext. 201
Fax: 310-478-5831
Direct Fax: 310-861-5102
Email: bruceashton@reish.com
Website: www.reish.com

IRS CIRCULAR 230 DISCLOSURE: Any tax advice contained in this communication (including any attachments) is neither intended nor written to be used, and cannot be used, to avoid penalties under the Internal Revenue Code or to promote, market or recommend to anyone a transaction or matter addressed herein.

"CONFIDENTIALITY NOTICE: E-mail may contain confidential information that is legally privileged. Do not read this e-mail if you are not the intended recipient. This e-mail transmission, and any documents, files or previous e-mail messages attached to it may contain confidential information that is legally privileged. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is prohibited. If you have received this transmission in error, please immediately advise us by reply e-mail, by forwarding this to postmaster@reish.com or by calling (310) 478-5656, extension 237 and destroy the original transmission and its attachments without reading or saving in any manner. Thank you."