

Key Compliance Considerations

Key considerations to maintain compliance from implementation through ongoing plan management

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Is your recordkeeping system ready to take-on compliant QDIAs, including a re-enrollment process?

Let's start with the requirements for facilitating QDIA and build on that for re-enrollment. Recall, there are seven basic conditions that a plan sponsor must meet to obtain safe harbor relief from fiduciary liability for the investment options selected as the QDIA. Some of these conditions are likely conditions that are facilitated by the recordkeeper and articulated in the agreement between the recordkeeper and the plan sponsor.

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QUICK REMINDER OF THE 7 CONDITIONS:

1. Assets must be invested in a “qualified default investment alternative” (QDIA) as defined in the regulation.
2. Participants and beneficiaries must have been given an opportunity to provide investment direction, but have not done so.
3. A notice generally must be furnished to participants and beneficiaries in advance of the first investment in the QDIA and annually thereafter. The rule describes the information that must be included in the notice.
4. Material, such as investment prospectuses, provided to the plan for the QDIA must be furnished to participants and beneficiaries.
5. Participants and beneficiaries must have the opportunity to direct investments out of a QDIA as frequently as from other plan investments, but at least quarterly.
6. The rule limits the fees that can be imposed on a participant who opts out of participation in the plan or who decides to direct their investments.
7. The plan must offer a “broad range of investment alternatives” as defined in the Department’s regulation under section 404(c) of ERISA.

Conditions 3, 4 and 5 are likely facilitated by the recordkeeper.

When a plan sponsor or their advisor/investment manager determines that it is in the best interest of the plan and its participants to add re-enrollment, then additional compliance considerations are at play, including initially and on an ongoing basis.

Initial Compliance Considerations

PREPARE FOR PLAN DOCUMENT AMENDMENTS.

Most basic plan documents and associated adoption agreements don’t contemplate the re-enrollment process as a standard provision. To ensure compliance, the plan document should be amended to allow for a re-enrollment process. Such an amendment should make clear the timing and population of participants to be included in the re-enrollment.

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DEVELOP NOTICES AND UPDATES TO SPD/SMM.

As discussed in more detail in the notices section of the Re-enrollment Blueprint, participants must receive a notice at least 30 days prior to when the re-enrollment will take place. The SPD/SMM also needs to be updated if there is an amendment to the plan document.

- Recordkeepers may want to coordinate the package of notices for re-enrollment into a seamless communication package for the plan sponsor and their advisor partners.
- See the Notices/Employee Communication Templates section of the Re-enrollment Blueprint.

UPDATES TO THE RECORDKEEPING AGREEMENT.

Depending on how the recordkeeping agreement is structured, a change in the QDIA and utilizing a re-enrollment feature, may require changes in the recordkeeping amendment. For example, will the fees change or will the list of investment options change as an appendix to the recordkeeping agreement?

- When preparing the timeline for implementation, ensure that there is enough time for the updates to this agreement in preparation for the next steps.

PREPARE FOR UPDATES TO THE ENROLLMENT PLATFORM OR OTHER FORMS FOR PARTICIPANT ELECTIONS.

The recordkeeping platform may need updates depending on how the participants will make their elections. Ensure that there is communication early and often with the plan sponsor as it relates to how participant elections for re-enrollment will be made and if participants will make other updates at the same time (e.g., change contribution rates and whether payroll should be involved).

ENSURE PROCESS TO TEST AND AUDIT FOR ELIGIBLE PARTICIPANTS FOR RE-ENROLLMENT.

If changes are made to the recordkeeping, payroll or any file feeds, ensure there is testing before go-live to the extent necessary.



Annual Compliance Considerations

RE-CHECK THE PLAN

Re-enrollment doesn't have to be a one-and-done. Re-check the plan and consider whether re-enrollment should be conducted on a periodic basis.

NOTICES

As discussed in the notices/Employee Communication Templates section of the Re-enrollment Blueprint, annually, there is a QDIA notice requirement to distribute a notice to participants.

SAFE HARBOR CHECK

On an annual basis, check the conditions of the safe harbor that the recordkeeper is contractually responsible for and determine if such requirements continue to be met. Consider communicating with plan sponsors regarding their ongoing fiduciary obligations and whether those requirements continue to be met as a general reminder.

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