

Publications

DOL Proposes to Rescind Annuity Selection Safe Harbor, Insurance Company General Account Transition Policy Relief, and Other “Obsolete” Guidance

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Today, the U.S. Department of Labor (“DOL”) published a set of three direct final rules (“DFRs”) in the Federal Register. DOL indicates that the DFRs are intended to be deregulatory in nature and are being undertaken pursuant to President Trump’s Executive Order 14192, titled “Unleashing Prosperity Through Deregulation.” Each DFR removes a regulation or interpretive bulletin that DOL has identified as unnecessary or obsolete. However, it is likely that some plan sponsors and service providers will want to continue to rely on some of the guidance the DOL proposes to rescind. Accordingly, we are urging clients to assess whether the items scheduled for removal may have continuing value and, if so, to consider submitting comments to that effect.

The use of DFRs marks a notable shift in DOL’s approach, but is generally consistent with a trend we are observing across the federal government as agencies seek to implement Executive Order 14192. Direct final rulemaking is a streamlined technique that agencies sometimes use to adopt rules that are considered non-controversial and unlikely to generate significant opposition. Absent the agency’s receipt of significant adverse comments within a prescribed notice period following publication, a DFR will take effect automatically. However, if significant adverse comments are received, the DFR will be withdrawn and may be re-published as a proposed rule for public comment. DOL’s DFRs are scheduled to become effective on Friday, August 29, 2025 (60 days from publication in the Federal Register). A 30-day period that ends on Wednesday, July 30, 2025, is allowed for the submission of comments.

Below, we describe each of the DFRs (found [here](#), [here](#), and [here](#)) and their effect. While certain items targeted for removal appear to have unquestionably outgrown their usefulness, in other cases that conclusion may not be fully shared by the regulated community. Please let us know if your organization is relying on any of the targeted items or otherwise perceives value in preserving them.

1. Removal of Regulatory Safe Harbor for the Selection of Annuity Providers for Individual Account Plans Under 29 CFR §2550.404a-4 (RIN 1210-AC33)

Currently, retirement plan fiduciaries responsible for selecting benefit distribution annuity providers for defined contribution plans may seek to satisfy their duty of prudence under ERISA section 404(a)(1)(B) by availing themselves of either or both of two safe harbors. In 2008, DOL complied with a Congressional mandate to develop a regulatory safe harbor setting forth the issues a fiduciary generally should consider when selecting an annuity for a defined contribution plan. The SECURE Act of 2019 added a statutory safe harbor under ERISA section 404(e) largely to help fiduciaries meet their obligation to assess the financial capability of the insurer, which is a condition of the 2008 regulatory safe harbor. The two safe harbors were intended to work together, so they both remained on the books affording fiduciaries the opportunity to take a “belt and suspenders” approach by satisfying both safe harbors should they wish.

DFR RIN 1210-AC33 would remove the regulatory safe harbor. DOL’s rulemaking notice expresses the view that the continued existence of the regulatory safe harbor offers an “unnecessary and inefficient alternative [to the statutory safe harbor] and may inadvertently be a trap for the unwary.” Presumably, DOL would also withdraw related guidance such as Field Assistance Bulletin 2015-02.[\[1\]](#)

2. Removal of Interpretive Bulletins 75-2, 75-6 and 75-10 (RIN 1210-AC32)

- I.B. 75-2 addresses two topics. Paragraph (a) addresses the identification of “plan assets” for purposes of applying ERISA’s prohibited transaction rules to plan investments for transactions entered into prior to the November 13, 1986 effective date of DOL’s plan assets regulation at 29 CFR §2510.3-101. Paragraph (c) addresses “indirect prohibited transactions” (e.g., investment transactions not directly prohibited but undertaken with an understanding that the counter-party will engage in a related transaction to benefit a party in interest). With respect to paragraph (c), DOL cites two 2006 advisory opinions as indications that other sub-regulatory guidance adequately addresses the topic and that I.B. 75-2 no longer serves a useful purpose.
- I.B. 75-6 relates to ERISA Section 408(c)(2), which is widely relied upon to allow plan reimbursements of direct, “but for” expenses incurred by plan sponsors. It was replaced in 1977 upon DOL’s adoption of regulations at 29 CFR §2550.408c-2.
- I.B. 75-10 contains a set of cross-references for purposes of clarifying the applicability of certain IRS guidance items to Title I of ERISA during the time period that DOL and the IRS shared jurisdiction with respect to the parallel provisions in Title I and the Code. DOL notes that Reorganization Plan No. 4 of 1978, which transferred the Treasury’s interpretive authority over those provisions to DOL, renders I.B. 75-10 unnecessary.

3. Removal of the Regulation at 29 CFR §2550.401c-1, Implementing ERISA Section 401(c), Clarifying the Application of ERISA to Insurance Company General Accounts with Respect to Policies Issued on or Before December 31, 1998 (“Transition Policies”)(RIN 1210-AC34)

To address uncertainties confronting the life insurance industry following the U.S. Supreme Court’s 1993 *Harris Trust* decision interpreting the meaning of the term “guaranteed benefit policy” under ERISA section 401(b)(2), Congress amended the statute to add section 401(c). Section 401(c) directed DOL to issue regulations providing guidance as to when an insurer will hold plan assets in its general account with respect to Transition Policies. DOL’s implementing regulations allow insurers to avoid the presence of plan assets within their general accounts by reason of having issued Transition Policies by furnishing Transition Policy contract holders with initial and annual disclosures, and by providing for contract termination and withdrawal rights that meet certain minimum standards.

DOL expresses the view that since only policies issued on or prior to December 31, 1998, may qualify as Transition Policies, it is unlikely that any such policies remain in effect more than 25 years later. DFR RIN 1210-AC34 would remove the 401c-1 regulation and would, therefore, also remove the protections available under ERISA section 401(c) for a life insurance company if it still has Transition Policies in effect.

We hope that this is helpful. Please contact your Groom relationship attorney if there are any questions or if you would like additional information.