

# INVESTMENT WITH LIFETIME INCOME ELEMENTS MAY BE A PRUDENT DEFAULT INVESTMENT ALTERNATIVE

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**Practices & Industries**

Employee Benefits

In a recent information letter, the Department of Labor (“DOL”) opined that a plan fiduciary’s selection of a default investment with lifetime income elements may be prudent, even if the investment has liquidity and transferability restrictions preventing it from being a Qualified Default Investment Alternative (“QDIA”). The DOL’s information letter was issued in response to a request from TIAA for guidance regarding whether its Income for Life Custom Portfolios (“ILCP”), a target-date fund product with a fixed guaranteed annuity feature (“Annuity Sleeve”), may be selected by a plan fiduciary as a default investment alternative for a participant-directed individual account plan. As an initial matter, DOL noted that the ILCP would not qualify as a QDIA because of its liquidity and transferability restrictions. The regulations governing QDIAs set out various conditions for default investment options that, if satisfied, provide the fiduciary selecting the investment with protection from liability for losses or breaches resulting from investment in it (although the plan fiduciary remains responsible for prudent selection and monitoring of the QDIA). While QDIAs may generally be preferable from a plan fiduciary standpoint because of the protections afforded, DOL explained that QDIAs are not the exclusive option for a plan fiduciary to satisfy its obligation to prudently select default investments. Accordingly, a plan fiduciary may choose to forgo the QDIA protections and prudently select a default investment alternative for a plan that is not a QDIA. DOL specifically expressed its view that an investment with lifetime income elements that meets all other QDIA requirements except for those related to liquidity and transferability could be prudently selected by a plan fiduciary as a default investment. Evaluating whether selection of such an investment is prudent would require “an objective, thorough and analytical process that considers all relevant facts and circumstances” of the given investment in the context of the specific plan. Some important considerations DOL noted include the investment’s guarantees related to interest rates, the expected lifetime income to be provided during retirement, costs associated with the investment, and whether selection of the investment would warrant additional notice to participants to ensure they are aware of liquidity and transferability restrictions on the investment. (DOL Information Letter No. 2016-12-22)