TIC International Corporation
Benefit Administrators and Consultants

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RESEARCH MEMO

DOL Publishes Proposed Regulations Under the PPA

On September 26, 2006, the Department of Labor (DOL) published proposed regulations in the *Federal Register* (71 FR 56806) under Section 624 of the *Pension Protection Act (PPA).* The proposed regulation may be accessed at: http://edocket.access.gpo.gov/2006/pdf/06-8282.pdf. The proposed regulation adds a new subsection (5) to *ERISA* regulation Section 2550.404(c).

Under the proposed regulations, a participant of a *participant-directed individual account pension plan* (such as a money purchase plan or 401k plan) will be deemed to have exercised control over assets in his or her account if, in the absence of investment directions from the participant, the plan invests in a qualified default investment alternative (QDIA). A fiduciary of a plan that complies with this proposed regulation will <u>not</u> be liable for any loss, or by reason of any breach that occurs as a result of such investments. The types of investments that qualify as default investment alternatives under section 404(c)(5) of *ERISA* are described in the proposal.

Plan fiduciaries <u>remain responsible</u> for the *prudent selection* and *monitoring* of the QDIA. The proposed regulation conditions relief upon advance notice to participants and beneficiaries describing the plan's provisions governing the circumstances under which contributions or other assets will be invested on their behalf in a QDIA, the investment objectives of the default investment alternative, and the right of participants and beneficiaries to direct investments out of the default.

<u>Summary of Conditions Qualifying Plan for PPA Section 624 Relief</u>

The proposed regulation establishes the following six conditions that must be met before the proposed fiduciary relief is available:

- Assets must be invested in a "QDIA" as defined in the proposal.

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- Participants and beneficiaries must have been given an opportunity to provide investment direction, but failed to do so.

- A notice must be furnished to participants and beneficiaries 30 days in advance of the first investment, and at least 30 days in advance of each subsequent plan year.

- Any material, such as investment prospectuses and other notices, provided to the plan by the QDIA must be furnished to participants and beneficiaries.

- Participants and beneficiaries must have the opportunity to direct investments out of a QDIA with the same frequency available for other plan investments, but no less frequently than quarterly, without financial penalty.

- The plan must offer a "broad range of investment alternatives" as defined in the Department's regulation under section 404(c) of *ERISA.*

Plan fiduciaries would not be relieved of liability for the prudent selection and monitoring of a QDIA.

Qualified Default Investment Alternatives (QDIA)

Under the proposed regulation, a QDIA must satisfy the following requirements:

- A QDIA may not impose financial penalties or otherwise restrict the ability of a participant or beneficiary to transfer the investment from the QDIA to any other investment alternative available under the plan.

- A QDIA must be either managed by an investment manager or an investment company registered under the Investment Company Act of 1940.

- A QDIA must be diversified so as to minimize the risk of large losses.

- A QDIA may not invest participant contributions directly in employer securities with two limited exceptions.

The proposed regulations give three examples of funds that could qualify as a QDIA: (1) a life-cycle or targeted-retirement-date fund; (2) a balanced fund; or (3) professionally managed account.

Contents of the Required Notice

The required notice must include:

- A description of the circumstances under which assets in the individual account of a participant or beneficiary may be invested on behalf of the participant and beneficiary in a QDIA;

- A description of the QDIA, including a description of the investment objectives, risk and return characteristics (if applicable), and fees and expenses applicable to the investment alternative;

- A description of the right of the participants and beneficiaries on whose behalf assets are invested in a QDIA to direct the investment of those assets to any other investment alternative under the plan, without financial penalty; and

- An explanation of where the participants and beneficiaries can obtain investment information concerning the other investment alternatives available under the plan.

The notice may be furnished in the plan's Summary Plan Description, as a summary of material modifications or separately.

Questions Or Comments On The Proposed Regulation

The proposed regulation indicates that any *questions* about the regulation should be directed to the Employee Benefits Security Administration's (EBSA) Office of Regulations and Interpretations at (202) 693-8500.

Comments on the proposed regulation should be directed to the U.S. Department of Labor, Employee Benefits Security Administration, Room N-5669, 200 Constitution Ave., N.W., Washington, D.C. 20210, *Attention: Default Investment Regulation*; or electronically to e-ORI@dol.gov or www.regulations.gov on or before November 13, 2006.

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