

CLIENT ALERT

November 2009

**Annual Notice Requirements for Pension Plans with a Qualified Default
Investment Alternative and/or Auto-Enrollment**

The Pension Protection Act of 2006 completed the previously enacted protection afforded fiduciaries under Section 404(c) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) by introducing the qualified default investment alternative (“QDIA”). Providing a QDIA under an ERISA pension plan provides protection to fiduciaries when a participant fails to provide investment direction for their plan account.

To receive the full protection afforded by a QDIA, two notices must be provided to participants and beneficiaries: first, a notice with respect to the initial investment and secondly, an annual notice before the beginning of each succeeding plan year.

This annual notice must be furnished to participants and beneficiaries at least 30 days before the beginning of each plan year. Participants and beneficiaries must be afforded a reasonable period of time after the receipt of this notice to make investment changes.

The annual notice must explain the participant’s or beneficiary’s right under the plan to determine how contributions and earnings will be invested, and how contributions and earnings will be invested in any case that the participant or beneficiary does not provide investment instructions including a description of investment objectives, risk and return characteristics, and fees and expenses related to the QDIA.

If your plan also contains an automatic contribution arrangement, you must also provide an annual notice of such arrangement “a reasonable period” before the beginning of the plan year. Although not specifically defined in ERISA, the regulations promulgated to implement the QDIA notice requirements specifically state that issuing the annual automatic contribution arrangement notice together with the annual QDIA notice satisfies the requirements of Section 514(e)(3) regarding “a reasonable period”.

ERISA pension plans with a calendar plan year that include a QDIA must provide the QDIA notice by December 2nd.

If you have any questions or comments, or wish additional information, please contact any of the members of our Tax Practice Group.

This memorandum has been prepared for informational purposes only. It is not intended as, and does not constitute legal advice.