CARLTON FIELDS

Treasury Department and IRS Allow Lifetime Annuity Contracts as Investments by Target Date Funds

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Last week, the IRS issued Notice 2014-66, providing a special rule that allows defined contribution pension plans to give participants a lifetime annuity income option by offering target date funds ("TDFs") that include deferred annuities among their assets, even if certain TDFs are available only to older participants. The TDFs can be offered as either an investment option under a plan or used as the Qualified Default Investment Alternative ("QDIA"). The Department of Labor has confirmed that TDFs serving as QDIAs may include annuities among their fixed income investments. If the special rule is satisfied, the TDF will be deemed to satisfy the IRS nondiscrimination requirements as they apply to rights or features even if one or more of the TDFs, considered on its own, would not satisfy those requirements. To satisfy the rule:

1. The series of TDFs must be designed to serve as a single integrated investment program under which the same investment manager manages each TDF using the same generally accepted investment theories. The only difference between each TDF must be the mix of assets selected by the investment manager resulting solely from the intent to achieve the level of risk appropriate for the participants in that TDF;

2. None of the annuity contracts in the TDFs available to older participants provide a Guaranteed Lifetime Withdrawal Benefit or a Guaranteed Minimum Withdrawal Benefit;

3. None of the TDFs hold employer securities that are not readily tradeable on an established securities market; and

4. Each TDF must be treated in the same manner regarding its rights or features other than the mix of assets, *e.g.*, the fees and administrative expenses for each TDF are determined in a consistent manner and, to the extent those fees and expenses are paid from participants' accounts, they are the same

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