Signed at Washington DC, this 18th day of June, 2025.

Timothy D. Hauser,

Employee Benefits Security Administration, Department of Labor.

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

RIN 1210–AC33

Selection of Annuity Providers—Safe Harbor for Individual Account Plans

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Direct final rule; request for comments.

SUMMARY: This direct final rule (DFR) removes 29 CFR 2550.404a–4 from the Code of Federal Regulations, which is a regulation published in 2008 that provides a fiduciary safe harbor for the selection of annuity providers for the purpose of benefit distributions from individual account retirement plans covered by title I of the Employee Retirement Income Act of 1974 (ERISA). The regulatory safe harbor became unnecessary in 2019 when Congress amended ERISA to add a more streamlined fiduciary safe harbor covering the same activity. Although the statutory safe harbor did not technically nullify or repeal the regulatory safe harbor, its existence offers an unnecessary and inefficient alternative and may inadvertently be a trap for the unwary. This action improves the daily lives of the American people by reducing unnecessary, burdensome, and costly Federal regulations.

DATES: The final rule is effective September 2, 2025, unless significant adverse comments are received by July 31, 2025. Significant adverse comments are ones which oppose the rule and raise, alone or in combination, a serious enough issue related to each of the independent grounds for the rule that a substantive response is required. If significant adverse comments are received, notification will be published in the **Federal Register** before the effective date either withdrawing the rule or issuing a new final rule which responds to significant adverse comments.

ADDRESSES: Interested persons are encouraged to submit their comments on this direct final rule online. You may submit comments, identified by RIN 1210–AC33, by either of the following methods:

Federal eRulemaking Portal: www.regulations.gov. Follow the instructions for submitting comments.

Mail: Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, Attn: Selection of Annuity Providers—Safe Harbor for Individual Account Plans Direct Final Rule RIN 1210–AC33.

Instructions: All submissions must include the agency name and Regulatory Identifier Number RIN 1210–AC33 for this rulemaking. If you submit comments online, do not submit paper copies.

Warning: Do not include any personally identifiable or confidential business information that you do not want publicly disclosed. Comments are public records that are posted online as received and can be retrieved by most internet search engines.

Docket: Comments will be available to the public, without charge, online at the Federal eRulemaking Portal at *http://www.regulations.gov,* on the Department's website at *http://www.dol.gov/agencies/ebsa,* and at the Public Disclosure Room, Employee Benefits Security Administration, Room N–1513, 200 Constitution Ave. NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Jason DeWitt, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

This DFR is being taken pursuant to Executive Order 14192, titled Unleashing Prosperity Through Deregulation.[1]

Individual account retirement plans such as 401(k) plans typically provide benefit distributions in the form of a lump sum payment. However, under certain circumstances, these plans are required to provide payments in the form of an annuity, and some plan sponsors offer an annuity as a matter of voluntary plan design.[2] For individual account retirement plans covered by title I of the Employee Retirement Income Security Act (ERISA) that offer an annuity, the selection of annuity provider is a fiduciary act governed by the standards in ERISA section 404.[3] ERISA section 404(a)(1)(B) requires fiduciaries to discharge their duties with the care, skill, prudence, and diligence under the prevailing circumstances that a reasonable person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

In the Pension Protection Act of 2006, Congress directed the Department to clarify that the selection of an annuity contract as an optional form of distribution from an individual account retirement plan is not subject to the safest available annuity standard under Interpretive Bulletin 95–1 but is subject to all otherwise applicable fiduciary standards.[4] The Department responded in 2008 by issuing a regulatory safe harbor for the selection of annuity providers for the purpose of benefit distributions from individual account retirement plans, codified at 29 CFR 2550.404a–4.[5] The safe harbor made clear that it did not establish minimum requirements or the exclusive means for satisfying the responsibilities.

More recently, in the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), Congress made several amendments to ERISA related to lifetime income options.[6] SECURE Act section 204 added a statutory safe harbor in a new paragraph (e) of ERISA section 404 for fiduciaries selecting an annuity provider for an individual account retirement plan.

II. Discussion

This DFR removes the regulatory safe harbor (29 CFR 2550.404a–4) because the statutory safe harbor in ERISA section 404(e) provides a more streamlined, less costly safe harbor than the regulation, but with the same level of safe harbor relief. Unlike the regulatory safe harbor, the statutory safe harbor streamlines compliance by allowing the plan fiduciary to rely on a written representation of the annuity provider's compliance with applicable state insurance law regarding the financial capability of the insurer.[7] This provision both streamlines the safe harbor[8] and offers a level of certainty

[1] 90 FR 9065 (Feb. 6, 2025).

[2] *See* ERISA section 205.

[3] 29 U.S.C. 1104.

[4] Pension Protection Act of 2006 section 625, Public Law 109–280, 120 Stat. 780 (2006).

[5] 73 FR 58447 (Oct. 7, 2008).

[6] Division O of the Further Consolidated Appropriations Act, 2020, Public Law 116–94, 133 Stat. 2534 (2019).

[7] 29 U.S.C. 1104(e)(2).

[8] Permitting a fiduciary to rely on written representations from the insurer as consideration of the insurer's financial capability streamlines the fiduciary's process as compared to the regulatory safe harbor, which requires the fiduciary to

Continued

not available under the regulatory safe harbor. Moreover, removing the regulatory safe harbor also eliminates situations in which a plan fiduciary might waste time and resources in analyzing and comparing the pros and cons of the two safe harbors to determine which safe harbor is best. Finally, allowing the regulatory safe harbor to remain in the Code of Federal Regulations presents a risk that an unwary fiduciary may inadvertently rely on it instead of seeking out the more streamlined, less costly, and more certain safe harbor in the statute. Put differently, the continued appearance in the CFR could mislead interested parties into believing that no other safe harbor exists or that there are benefits to using the regulatory safe harbor rather than the statutory safe harbor. The regulatory safe harbor is removed prospectively as of the effective date and has no effect on its legal effectiveness prior to that date.[9] The Department welcomes comments on the conclusions in this DFR.

III. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866

Executive Order (E.O.) 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits; (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this direct final rule does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this direct final rule was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

The Department reviewed this rescission under the provisions of the Regulatory Flexibility Act. This rule eliminates a duplicative safe harbor in favor of one that is less burdensome and that offers greater certainty. Therefore, the Department has concluded that the impacts of the rescission would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of an FRFA is not warranted. The Department will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

This rescission imposes no new information or record-keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*).

D. Review Under Executive Order 13132

E.O. 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.

The Department has examined this rescission and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

E. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General.

Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department has completed the required review and determined that, to the extent permitted by law, this rescission meets the relevant standards of E.O. 12988.

F. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the

''appropriately consider[ ] information sufficient to assess the ability of the annuity provider to make all future payments under the annuity contract.'' *See* 29 CFR 2550.404a–4 (b)(2). The statutory safe harbor further streamlines the process by omitting the expert consultation provision contained in the regulatory safe harbor. *See* 29 CFR 2550.404a–4(b)(5).

[9] As is the case with legal safe harbors generally, the statutory safe harbor in section 404(e) of ERISA is not the exclusive method a fiduciary could use to comply with their statutory duty of prudence in section 404(a)(1)(B) of ERISA. Consequently, the removal of the regulatory safe harbor by the Department is not to be construed as the Department's disavowal of its principles. Thus, if a fiduciary were to satisfy (intentionally or otherwise) the conditions in the regulatory safe harbor notwithstanding its removal from the CFR, the Department would not challenge the selection of the annuity under section 404(a)(1)(B) of ERISA.

private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. 2 U.S.C. 1532(a), (b)). The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them.

The Department examined this rescission according to UMRA and its statement of policy and determined that the rescission does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. As a result, the analytical requirements of UMRA do not apply.

G. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rescission would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, the Department has concluded that it is not necessary to prepare a Family Policymaking Assessment.

H. Review Under Executive Order 12630

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), the Department has determined that this rescission would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

I. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002). The Department has reviewed this rescission under the OMB and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Additional Executive Orders and Presidential Memoranda

The Department has examined this rescission and has determined that it is consistent with the policies and directives outlined in E.O. 14154, ''Unleashing American Energy,'' E.O. 14192, ''Unleashing Prosperity Through Deregulation,'' and Presidential Memorandum, ''Delivering Emergency Price Relief for American Families and Defeating the Cost-of-Living Crisis.'' This rescission is expected to be an Executive Order 14192 deregulatory action.

K. Congressional Notification

As required by 5 U.S.C. 801, the Department will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Fiduciaries, Foreign investments in U.S., Investments, Pensions, Reporting and recordkeeping requirements, Securities, Surety bonds, Trusts and Trustees.

For the reasons set forth in the preamble, the Department amends 29 CFR part 2550 as follows:

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

■ 1. The authority citation for Part 2550 is revised to read as follows:

Authority: 29 U.S.C. 1135, sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App. at 727 (2012) and Secretary of Labor's Order No. 1–2011, 77 FR 1088 (Jan. 9, 2012). Sections 2550.404a–2 and 2550.404a–3 also issued under sec. 657, Pub. L. 107–16, 115 Stat. 38. Sections 2550.404a–5, 2550.404c–1 and 2550.404c–5 also issued under 29 U.S.C. 1104. Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b)(1). 2550.408b–19 also issued under sec. 611, Pub. L. 109–280, 120 Stat. 780, 972. Sec. 2550.412–1 also issued under 29 U.S.C. 1112.

§ 2550.404a–4 [Removed]

■ 2. Section 2550.404a–4 is removed.

Signed at Washington, DC, this 18th day of June, 2025.

Timothy D. Hauser,

Employee Benefits Security Administration, Department of Labor.

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

RIN 1210–AC34

Removal of Definition of ''Plan Assets''—Insurance Company General Accounts

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Direct final rule (DFR); request for comments.

SUMMARY: This DFR removes 29 CFR 2550.401c–1 from the Code of Federal Regulations, which the Department of Labor (DOL) believes is obsolete. The regulation applies only to certain insurance policies or contracts issued to (or on behalf of) employee benefit plans on or before December 31, 1998. Given the unlikelihood that any of these policies or contracts remain in effect, the DOL believes the regulation is no longer needed and, if left on the books, could add confusion and unnecessary complexity. Removing obsolete regulations eliminates the burden on the public of having to determine whether they need to comply with the regulations. This action is being taken pursuant to Executive Order 14192, titled Unleashing Prosperity Through Deregulation.[1] This action improves the daily lives of the American people by reducing unnecessary, burdensome, and costly Federal regulations.

DATES: The final rule is effective September 2, 2025, unless significant adverse comments are received by July 31, 2025. Significant adverse comments are ones which oppose the rule and raise, alone or in combination, a serious enough issue related to each of the independent grounds for the rule that a substantive response is required. If significant adverse comments are received, notification will be published in the **Federal Register** before the effective date either withdrawing the rule or issuing a new final rule which responds to significant adverse comments.

[1] 90 FR 9065 (Feb. 6, 2025).