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Mailed Electronically

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Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

**Attention: Target Date Amendments (RIN 1210-AB38)**

Dear Sir or Madam:

On behalf of the American Council of Life Insurers (“ACLI”), we are writing to comment on the proposed rule regarding disclosures required for target date funds and qualified default investment alternatives (“QDIAs”), which was published at 75 Fed. Reg. 73987 (November 30, 2010) (“Proposed Rule” or “Rule”). The Proposed Rule contains amendments to the QDIA regulation to provide more specificity as to the information that must be disclosed. The Proposed Rule also contains a proposed amendment to the participant-level fee disclosure regulation that would require the disclosure of the same information concerning target date or similar investments to all participants and beneficiaries in participant-directed individual account plans.

The American Council of Life Insurers represents more than 300 legal reserve life insurer and fraternal benefit society member companies operating in the United States. These member companies represent over 90% of the assets and premiums of the U.S life insurance and annuity industry. ACLI member companies offer insurance contracts and other investment products and services to qualified retirement plans, including both defined benefit pension, 401(k) and 403(b) arrangements, and to individuals through individual retirement arrangements (IRAs) or on a non-qualified basis. ACLI member companies also are employer sponsors of retirement plans for their own employees.

ACLI appreciates the Department's work on this Proposed Rule and agrees that improvements can be made in the information that is disclosed to participants and beneficiaries concerning their plan investment in target date funds. In our comments below, we suggest a number of specific changes and clarifications to the Proposed Rule. We would welcome the opportunity to speak with the Department and supplement our comments as the Department considers these issues.

**1. The Proposed Rule creates difficulties for asset allocation models that are offered under the "investment management service" category of QDIA.**

The Department added investment management services as a QDIA category (section 2550.404c-5(e)(4)(iii)) in response to plan sponsors' desire to offer managed accounts, and we respectfully request that this Proposed Rule be modified so as not to frustrate the use of this type of QDIA. Under the proposed amendment to the QDIA regulation, disclosure of various new items (including the issuer, objectives, strategies and historical performance) must be made with respect to each QDIA, not just the target date fund category of QDIAs. These disclosures work for single investment fund QDIAs, but won't work for QDIAs that are investment management services that allocate assets among more than one investment option offered under the plan (i.e., are not a single investment fund). While these disclosures could be made at the level of an individual investment option, it would be costly and difficult to prepare them at the asset allocation or managed account level. In addition, provision of some of this information could risk duplicating or conflicting with disclosure prepared under requirements of the federal securities laws and advertising standards of self-regulatory organizations, such as FINRA.

**2. Disclosure that there is no adequate retirement income guarantee.**

In general, proposed section 2550.404c-5 requires a statement to advise a plan participant that the QDIA is not guaranteed and that it is possible to lose money, etc. ACLI agrees that this information would be helpful to plan participants. We note that the same requirement applies under proposed section 2550.404a-5, but only for target date QDIAs. It would be helpful to align these requirements. So that participants are not led into thinking that this risk is unique to QDIAs or target date funds, it may also be helpful to also include a general statement that this risk generally applies to investment funds with respect to which the return is not fixed.

Furthermore, many target date funds are described as "retirement" funds to be used throughout "retirement." Plan participants typically cease purchasing shares of target date

funds at retirement. At that time, plan participants typically shift to orderly withdrawals to support their retirement income needs. In order to develop or evaluate a retirement income plan, a plan participant needs to understand longevity, market, and other risks that can affect the retirement income potential of their investment in the target date fund.

In light of these risks, ACLI recommends that the proposed sections 2550.404a-5 and 2550.404c-5 should require a statement that advises plan participants that, in the absence of an insurance guarantee, the fund does not guarantee that the plan participant could support a particular rate of redemptions from the fund over the participant's life or for any other period (i.e., the fund does not guarantee income in retirement).

### **3. Clarification that some new disclosures are provided upon request.**

One condition for obtaining fiduciary relief under the QDIA regulation is that the fiduciary must provide participants the material described in:

- 29 CFR 2550.404c-1(b)(2)(i)(B)(1)(viii) (a copy of the most recent prospectus),
- 29 CFR 2550.404c-1(b)(2)(i)(B)(1) (ix) (information related to the exercise of voting, tender or other similar rights) and
- 29 CFR 404c-1(b)(2)(i)(B)(2) (additional investment information upon participant request).

The Proposed Rule amends this condition to require fiduciaries to provide the comparable materials that are described in 2550.404a-5(d)(3) and (d)(4) of the participant-level disclosure regulation instead of referring to the other sections of 2550.404c-1. However, because all participants in participant-directed individual account plans must receive the participant fee disclosure notice and have access to the materials to be provided upon request as required under ERISA §2550.404a-5, the reference in ERISA §2550.404c-5(c)(4) is duplicative and the section should be removed.

### **4. Avoid duplication between the QDIA notice and the participant-level fee disclosure.**

All participant-directed individual account plans subject to ERISA will have to comply with the final participant fee disclosure regulations. The same plans can choose to comply with the QDIA rules. The proposed amendment to the QDIA rule adds more specific information to these disclosures. Much of the information described in the proposed amendment already must be either automatically provided or made accessible on a website under the final participant fee disclosure regulation. From a practical perspective, we would anticipate that the plan fiduciary would want to distribute the QDIA notice with the fee disclosure notice, since they have similar content requirements and similar (though not the same) distribution frequencies.

The QDIA rules should not require that information that is already required to be disclosed under the fee disclosure rule be disclosed again on the QDIA notice. Requiring inclusion of the same information in two places is duplicative and will inundate the plan participant. The QDIA notice should also not be required to include information that the participant level fee disclosure regulation simply allows to be accessible on a website.

Instead, we suggest that the QDIA notice requirements conform to the participant fee disclosure requirements, and the QDIA notice simply refer to the most recent fee disclosure notice. The QDIA regulation should be modified to include a provision that, to the extent information is already required to be disclosed in the participant fee disclosure notice, that information is not required to be included in the QDIA notice, provided that the QDIA notice suggests that participants also refers to the most recent participant fee disclosure notice. The QDIA regulation could also be modified to allow reference to the same website that is required under the participant level fee disclosure regulation to satisfy certain requirements (e.g., the information in ERISA §2550.404c-5(d)(3)(i) through(iii), which the participant fee disclosure regulation only require to be made available by website). This would greatly simplify the QDIA notice, making it more readable, without sacrificing participant disclosure and would remove some of the burden to plan sponsors.

## **5. Compliance with SEC Requirements.**

In the preamble to the Proposed Rule, the Department specifically requested comments as to whether, and to what extent, the final rule should include the disclosure elements and concepts included in the SEC's Commission Release Nos. 33-9126, 34-62300, IC-29301. If the Department does elect to incorporate those items into the QDIA regulation, then we would urge the Department to avoid duplication by making clear that satisfaction of the SEC rules will be deemed to satisfy the Department's requirements. In addition, we would suggest avoiding duplication of any items that are already required under the participant level fee disclosure regulation. In addition, if the Department does incorporate these items into the regulation, it would be helpful if they provided a sample chart or model disclosure for use by nonregistered investment options which would be deemed to meet these additional requirements.

## **6. Effective Date.**

The proposed effective date of the Rule is 90 days after the final rule is published in the Federal Register. The Rule will require all QDIA notices to be modified. Ninety days is not sufficient time to make all of the system changes that will be necessary for compliance. We request that the effective date be no sooner than six months after publication. Ideally, the final rule would be released no later than May 1, 2011, and the effective date could be the same as the applicability date for the final participant fee disclosure regulation (i.e., plan years beginning on or after November 1, 2011).

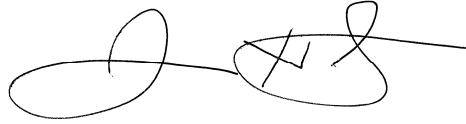
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On behalf of the ACLI member companies, thank you for consideration of these comments. We welcome the opportunity to discuss these comments and engage in a productive dialogue with the Department on these important issues.

Sincerely yours,



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