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U.S. Department of Labor Issues Guidance on Default Investments in Guaranteed Lifetime Income Products in Defined Contribution Plans

This update provides a summary of the DOL Opinion and key takeaways for plan sponsors and fiduciaries in implementing this DOL guidance.

The Employee Benefits Security Administration (EBSA) of the U.S. Department of Labor (DOL) recently issued Advisory Opinion 2025-04A (the Opinion), explaining that an investment management product with a guaranteed lifetime income option can meet the requirements for a qualified default investment alternative for defined contribution plans under the Employee Retirement Income Security Act of 1974 (ERISA). The Opinion also addresses how fiduciaries can comply with their duties under ERISA when selecting and monitoring insurers to provide these products.

I. Background on QDIAs

Most defined contribution plans allow participants to elect how to invest their accounts from among investment options made available by the plan fiduciary. In the absence of an investment election, a participant's account will be invested in the plan's qualified default investment option (QDIA) in accordance with 29 CFR § 2550.404c-5 (the QDIA regulation). When a plan complies with the QDIA regulation, plan fiduciaries remain responsible for the prudent selection and monitoring of the QDIA, but they are not liable for any loss that occurs as a result of an investment in the QDIA.

To qualify as a QDIA, an investment must fit within one of the five categories that the DOL has determined are appropriate to achieve meaningful retirement savings. In the Opinion, the DOL discusses the following three categories: "paragraph (e)(4)(i) describes an investment product with a mix of investments that takes into account the individual's age or retirement date (e.g., a target date fund); paragraph (e)(4)(ii) describes an investment product with a mix of investments that takes into account the characteristics of the group of participants as a whole, rather than each individual (e.g., a balanced fund); and paragraph (e)(4)(iii) describes an investment management service that allocates contributions among existing plan options to provide an asset mix that takes into account the individual's age or retirement date (e.g., a professionally-managed account)."

II. The AllianceBernstein Lifetime Income Strategy Program

The Opinion responds to a request from AllianceBernstein L.P. for clarification regarding whether its Lifetime Income Strategy (LIS) program satisfies the requirements to be a QDIA under ERISA. The LIS program as described by the Opinion is an investment option for participant-directed defined contribution plans, such as 401(k) plans, that uses investments in the plan's lineup to create a portfolio unique to each participant (e.g., a professionally-managed account). Beginning when a participant reaches age 50 and ending two years before a participant's designated retirement age, the LIS program allocates funds to a Secure Income Portfolio (SIP) that provides guaranteed lifetime income through a variable annuity contract. Participants may select the amount to be allocated into the SIP. If a participant does not make a selection, the plan sponsor selects a default allocation percentage. Participants can transfer their account balance from the LIS program to other plan options and can withdraw amounts from the SIP at any time.

According to the opinion, selected insurers submit bids for the guaranteed lifetime income allocations on a quarterly basis. Insurers are selected to be included in the LIS program based on their ability to pay claims and to provide quarterly guaranteed rates based on a fixed insurance fee. AllianceBernstein consults with an independent insurance research expert to assess the reasonableness of the guarantees and to confirm each insurer's ability to meet their obligations.

III. DOL Guidance on Guaranteed Lifetime Income Products

The DOL concluded that investment management services like the LIS that incorporate lifetime income products and features may qualify as QDIAs, so long as they satisfy the transferability requirements and other provisions of the QDIA regulation. The Opinion confirmed that the DOL did not intend the language in the QDIA regulation to preclude the use of lifetime income products as QDIAs. Accordingly, the DOL determined that the LIS program, if operating as AllianceBernstein described, would satisfy the requirements of the QDIA regulation.

The DOL also addressed more generally how a fiduciary can comply with the fiduciary responsibilities set forth in ERISA § 404(a)(1)(B) when selecting and monitoring an insurance company to provide lifetime income products. The DOL explained that fiduciaries may qualify for two safe harbors—under either 29 CFR § 2550.404a-4 or ERISA § 404(e)—when selecting annuity providers for defined contribution plans. The Opinion further states that if a fiduciary complies with the conditions of one of these safe harbors in selecting and monitoring insurance

companies selected to provide lifetime income products, it will satisfy its fiduciary obligations under ERISA.

IV. Takeaways

While the Opinion allows plan fiduciaries to consider providing guaranteed lifetime income options in defined contribution plans, it does not alter a plan fiduciary's responsibility to prudently select and monitor investment options and plan service providers, including in designating the plan's QDIA. The DOL made clear that whether a fiduciary has satisfied its duties under ERISA in selecting the LIS program, or any other investment alternative, continues to depend on the facts and circumstances with respect to each such investment. Furthermore, the DOL offered no opinion on the reasonableness of the fees associated with AllianceBernstein's LIS program, stating only that a plan fiduciary must balance the fees and costs of the income protection offered by guaranteed lifetime income benefits against the payout rates and level of risk associated with the assets covered by the guarantees.

The Opinion follows President Trump's Executive Order 14330, "Democratizing Access to Alternative Assets for 401(k) Investors," which directed the DOL to reexamine its guidance regarding fiduciary duties under ERISA in connection with making asset allocation funds that include alternative asset investments available to participants. In an accompanying press release, the DOL stated that it intends to issue a notice of proposed rulemaking that clarifies the duties that a fiduciary owes to plan participants under ERISA when deciding whether to make available to plan participants an asset allocation fund that includes investments in alternative assets.

V. Practical Considerations for Plan Sponsors and Fiduciaries

The Opinion, like all Advisory Opinions, applies only to the particular facts presented. While the Opinion may have some persuasive impact on legal challenges, it is not dispositive.

QDIA selections have been increasingly targeted in recent litigation. This can be an attractive area of focus for plaintiffs because QDIA selection requires a plan fiduciary to consider the interests of a diverse group of participants who may not have otherwise indicated their investment preferences. Because such decisions at times can be fact specific, plaintiffs often seek to rely on sparse and conclusory allegations when challenging QDIA selections and other plan investment option decisions in an effort to survive initial pleading challenges and gain access to burdensome and expensive discovery. Where even tenuous claims survive to discovery and class certification, plan sponsors and administrators may feel compelled to pursue settlement over protracted plan litigation.

Broadening the range of potential financial products that can be considered to serve as a plan's QDIA may create additional opportunities for plaintiffs to pursue even weak claims in the hope of surviving a threshold pleadings challenge. With the benefit of hindsight to second-guess plan administrator decisions, for example, lifetime income options could be criticized as underperforming and/or overly expensive during a bull market period. Alternatively, in a volatile market, failing to incorporate a lifetime income option could be criticized in retrospect as not taking an appropriately conservative approach to the default investment of passive plan participants' balances. While a challenged plan administrator may have compelling responses to

such claims, they may turn on the ability readily to demonstrate the administrator's diligence in making prudent QDIA selection decisions. Accordingly, the inclusion of lifetime income options, or any other alternative asset investment, must be part of a carefully considered, appropriately balanced, and well documented strategy by plan fiduciaries.

Plan sponsors and fiduciaries should continue to monitor developments in this area, including any proposed regulations.

The following Gibson Dunn lawyers prepared this update: Karl Nelson, Ashley Johnson, Jennafer Tryck, and Rachel Iida.

Gibson Dunn lawyers are available to assist in addressing any questions you may have about these developments. Please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any leader or member of the firm's ERISA Litigation, Labor & Employment, or Executive Compensation & Employee Benefits practice groups:

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