INSURED RETIREMENT INSTITUTE

June 1, 2026

Submitted Electronically via Regulations.gov

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

Re: Fiduciary Duties in Selecting Designated Investment Alternatives, RIN 1210-AC38

Dear Assistant Secretary Aronowitz:

The Insured Retirement Institute ("IRI")[1] respectfully submits these comments to the Department of Labor ("Department" or "DOL") in response to the proposed rule titled Fiduciary Duties in Selecting Designated Investment Alternatives ("Proposed Rule" or "Proposal").[2]

IRI is the leading association for the insured retirement industry. IRI's members include life insurers, asset managers, broker-dealers, banks, marketing organizations, law firms, and other solution providers that serve retirement savers, retirees, employers, plan sponsors, and financial professionals. IRI's members have substantial experience designing, manufacturing, distributing, administering, and supporting annuities and other lifetime income retirement solutions that help Americans build retirement savings and convert those savings into protected income they cannot outlive.

IRI appreciates the Department's leadership in proposing a process-based fiduciary safe harbor for the selection of designated investment alternatives in participant-directed defined contribution plans. IRI strongly supports the Department's recognition that ERISA's duty of prudence is fundamentally a process-based inquiry and that fiduciaries should be evaluated based on the prudence of their decision-making process at the time of selection, rather than through hindsight or isolated review of investment outcomes.[3]

---

[1] The Insured Retirement Institute (IRI) is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, broker-dealers, banks, marketing organizations, law firms, and solution providers. IRI members account for 90 percent of annuity assets in the U.S., include the foremost distributors of protected lifetime income solutions, and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, diversity, equity, and inclusion, and the advancement of digital solutions within a collaborative industry community.

[2] Fiduciary Duties in Selecting Designated Investment Alternatives, 91 Fed. Reg. 16088 (Mar. 31, 2026), RIN 1210-AC38.

[3] *Id*. at 16089–91, 16094–95; see also ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B); *Tibble v. Edison Int'l*, 575 U.S. 523, 529 (2015).

IRI also supports the Department's asset-neutral approach to investment selection.[4] Fiduciaries should be able to evaluate a broad range of products, strategies, and structures based on the facts and circumstances of the plan, the needs of participants and beneficiaries, and the role a particular investment alternative or feature is intended to serve within the plan's overall investment menu. The final rule should not place a regulatory thumb on the scale in favor of or against any particular asset class, investment structure, product design, or delivery mechanism.

For IRI, the Proposal presents an important opportunity to reduce fiduciary uncertainty, mitigate litigation-driven barriers to innovation, and support the prudent inclusion of annuities and other lifetime income products in defined contribution plans. These products serve a distinct retirement security function: they are designed not only to help participants accumulate savings, but also to help convert those savings into protected income in retirement. The final rule should therefore ensure that fiduciaries have a clear, flexible, and durable framework for evaluating and defending their selection of lifetime income solutions on their merits.

IRI's principal recommendations are as follows:

1. DOL should preserve the Proposal's process-based, asset-neutral approach and ensure fiduciaries retain flexibility to evaluate designated investment alternatives based on the plan's facts and circumstances, participant needs, and the role of the investment alternative or delivery mechanisms within the plan menu.
2. DOL should clarify that the proposed framework is a flexible, non-exclusive pathway to the proposed safe harbor, not a rigid checklist, mandatory sequence, exclusive prudence standard, or litigation roadmap. Further, the DOL should clarify that the safe harbor is not the only way a plan fiduciary can satisfy their obligations under ERISA when selecting plan investments.
3. DOL should confirm that the proposed safe harbor complements, and does not narrow, displace, replace, or add conditions to, existing statutory and regulatory annuity-related safe harbors and guidance.
4. DOL should preserve the practical utility of the examples while making explicit that they are illustrative, non-exclusive, non-prescriptive, not minimum standards, and not exclusive pathways for satisfying ERISA's duty of prudence. The examples should be framed to emphasize the fiduciary process rather than product specificity and should not be read as limiting the safe harbor's application to the specific facts, products, structures, or delivery mechanisms described. Regarding the placement of the examples, a number of our members are in favor of DOL moving the examples outside the operative regulatory text and making them available through sub-regulatory guidance, such as FAQs, a tip sheet, or similar explanatory materials.

---

[4] *Id*. at 91 Fed. Reg. 16088, 16107, 16134.

5. DOL should more clearly distinguish annuities and other lifetime income products and solutions from broader references to "lifetime income investment strategies, including longevity risk-sharing pools," and recognize their distinct retirement income purpose.
6. DOL should confirm that fees, liquidity, benchmarking, and complexity must be evaluated in light of a product's purpose, including guarantees, insurance protections, longevity-risk transfer, income stability, downside protection, sequence-of-returns risk mitigation, and retirement income outcomes.
7. DOL should revise the liquidity and valuation examples to avoid unintended product bias or litigation risk, including by avoiding any implication that SEC Rule 22e-4-like standards apply to non-SEC-regulated vehicles and replacing "conflict-free" valuation language with a workable conflict-identification, mitigation, and management standard.
8. DOL should revise the valuation examples to avoid suggesting that valuation processes for non-public investments must be entirely "conflict-free." Instead, the final rule should adopt a clear, workable, and principles-based standard that recognizes that identified, potential, or perceived conflicts should be appropriately identified, assessed, disclosed where appropriate, and mitigated or managed through established valuation and conflict-management practices, without creating duplicative, inconsistent, or product-biased obligations for fiduciaries or service providers.
9. DOL should confirm that the final rule is limited to the fiduciary process for selecting designated investment alternatives and does not create, define, expand, imply, or alter any separate post-selection obligation, including any obligation described as ongoing monitoring.
10. DOL should address individualized participant circumstances in the preamble as relevant to harm, causation, and class-wide proof in investment-selection litigation, rather than adding participant profiles or characteristics as a separate safe harbor element.

I. IRI Supports a Process-Based, Asset-Neutral Fiduciary Safe Harbor

IRI supports the Department's general approach to establishing a process-based safe harbor for fiduciaries selecting designated investment alternatives.[5] A clear and workable fiduciary framework is essential for plan sponsors and other fiduciaries seeking to evaluate investment options that may improve retirement outcomes for participants and beneficiaries.

The Proposal appropriately recognizes that ERISA prudence should be assessed through the fiduciary's objective and analytical process, rather than by hindsight-based review of subsequent performance.[6] This is particularly important in the defined contribution plan context, where plan

[5] *Id*. at 16088, 16095–96.

[6] *Id*. at 16091, 16095–96; see also ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

fiduciaries must make decisions under conditions of market uncertainty, evolving participant needs, product innovation, operational complexity, and litigation risk.

IRI also strongly supports the Department's asset-neutral approach.[7] The final rule should not favor traditional accumulation-only products over products designed to support retirement income, nor should it favor familiar structures over newer or differently structured solutions. Conversely, IRI does not recommend that DOL mandate or prefer annuities, insured products, private markets, delivery mechanisms, or any other particular product type. Rather, IRI urges DOL to ensure that fiduciaries have a clear, flexible, and durable process for evaluating and defending all appropriate lifetime income products on their merits.

This asset-neutral approach is especially important for annuities and other lifetime income products. These products may differ from traditional accumulation-only investments in purpose, structure, pricing, liquidity, benchmarking, and participant value. A final rule that appropriately recognizes those differences would advance an important retirement security objective without compromising ERISA's core fiduciary standards.

II. The Safe Harbor Framework Should Remain Flexible and Non-Exclusive, and Should Not Be the Only Permissible Way to Demonstrate Prudence Under ERISA

IRI supports the Department's inclusion of a framework to guide fiduciary analysis and provide a clear pathway for fiduciaries seeking the benefit of the proposed safe harbor.[8] To ensure the framework remains useful in practice, DOL should clarify that a fiduciary that reasonably applies the safe harbor framework through an objective and analytical process will obtain the intended protection of the safe harbor and should not be subject to hindsight-based second-guessing based on alleged technical deviations from a rigid checklist.

At the same time, DOL should make clear that the safe harbor framework is not the only permissible way to demonstrate prudence under ERISA. Fiduciaries should retain the ability to demonstrate a prudent process through other appropriate facts-and-circumstances analyses, particularly where a product's purpose, structure, or features require consideration of factors beyond traditional investment-review criteria.

Absent such clarification, plaintiffs, regulators, consultants, or courts may treat the factors either as a prescriptive checklist for every selection decision or as the exclusive means of demonstrating prudence. Either result would undermine the Department's process-based and asset-neutral objectives. It could discourage fiduciaries from considering products that do not fit neatly within traditional investment review frameworks, such as annuities and other lifetime income products.

IRI recommends that DOL state expressly in the final rule and preamble that:

---

[7] *See* supra Fn. 4.

[8] 91 Fed. Reg. 16088, at 16095–96

- The proposed framework is a non-exhaustive, flexible analytical pathway for obtaining the benefit of the proposed safe harbor;
- A fiduciary that reasonably considers and documents the relevant framework through an objective and analytical process will satisfy the proposed safe harbor, based on the facts and circumstances;
- No single factor is dispositive, and the factors need not be applied in a rigid, mechanical, formulaic, or sequential manner;
- Fiduciaries may consider additional relevant factors, including but not limited to, plan context, participant demographics, product design, retirement purpose, available expertise, product availability, and the role of the investment alternative within the plan's menu; and
- The proposed safe harbor is one appropriate means, but not the only means, of satisfying ERISA's duty of prudence.

The Department should also confirm that fiduciaries retain discretion to determine, based on the facts and circumstances, how best to consider, support, and document their evaluation of the relevant factors. The final rule should not prescribe a particular documentation format, evidentiary showing, sequencing requirement, or procedural template as a condition of obtaining the benefit of the safe harbor. Instead, the Department should make clear that a fiduciary may satisfy the safe harbor if it can reasonably demonstrate that it engaged in an objective and analytical process appropriate to the plan, participants, product design, and the role of the designated investment alternative within the plan's menu.

The Department should also recognize that fiduciaries, advisers, and service providers may reasonably use centralized, firm-level, or platform-level due diligence processes to support the evaluation of designated investment alternatives, where appropriate under the facts and circumstances. In many cases, firms evaluate approved products, product sponsors, investment structures, and platform offerings through centralized review processes designed to support consistent, informed, and well-documented recommendations. The final rule should not be read to require duplicative analysis of the same product, sponsor, or investment structure on a plan-by-plan basis where a reasonable platform-level review process has been conducted.

III. The Proposed Safe Harbor Should Complement Existing Annuity-Related Safe Harbors and Guidance

IRI requests that DOL confirm that the proposed safe harbor complements, and does not narrow, displace, or replace, existing statutory and regulatory annuity-related safe harbors and guidance.

Existing annuity-related protections, including the SECURE Act statutory annuity selection safe harbor and the regulatory annuity provider safe harbor, provide fiduciaries with an important framework for

evaluating annuity providers and contracts.[9] Fiduciaries considering annuities and other guaranteed retirement income products should not face uncertainty about how those protections interact with the new designated investment alternative safe harbor.

IRI recommends that DOL include language in the final rule or preamble confirming that:

- The proposed safe harbor addresses the fiduciary process for selecting designated investment alternatives and does not alter existing annuity provider selection safe harbors;
- Fiduciaries may continue to rely on existing statutory and regulatory annuity-related safe harbors and guidance where applicable;
- The final rule should be interpreted consistently with those protections; and
- The final rule is intended to build upon, not unsettle, existing federal policy supporting prudent access to lifetime income options in defined contribution plans.

This clarification is important because fiduciaries evaluating annuities may need to consider both the prudence of selecting the designated investment alternative and the prudence of selecting or relying on an insurer or guaranteed income feature. A clear statement from DOL would reduce confusion and support broader fiduciary confidence.

The final rule should also clarify how the proposed designated investment alternative safe harbor may work together with the statutory annuity selection safe harbor in ERISA section 404(e). The statutory safe harbor provides important protection with respect to the fiduciary's selection of an insurer for a guaranteed retirement income contract, including protection against claims that the fiduciary failed to select a financially capable annuity provider where the statutory conditions are satisfied. The proposed designated investment alternative safe harbor, by contrast, addresses the fiduciary process for selecting the investment alternative itself, including consideration of factors such as fees, liquidity, valuation, benchmarking, complexity, and other relevant facts and circumstances.[10]

These frameworks should be understood as complementary and capable of being used together. For example, a fiduciary evaluating an annuity product, a lifetime income solution, a target-date fund, or another asset-allocation product with an embedded annuity or guaranteed income feature may need to evaluate both the prudence of the designated investment alternative and the prudence of the insurer or guaranteed income component. In those circumstances, the fiduciary should be able to rely on the proposed designated investment alternative safe harbor for the investment-selection process, while also relying, where applicable, on the statutory annuity selection safe harbor for the insurer-selection component.

---

[9] See ERISA § 404(e), 29 U.S.C. § 1104(e); 29 C.F.R. § 2550.404a-4.

[10] *See* ERISA § 404(e), 29 U.S.C. § 1104(e); 91 Fed. Reg. 16088, 16095–96; U.S. Dep't of Labor, Advisory Opinion 2025-04A, at 6–8 (Sept. 23, 2025); U.S. Dep't of Labor, Information Letter to J. Mark Iwry, at 2–4 (Oct. 23, 2014).

Clarifying this interaction would serve two important purposes. First, it would reduce uncertainty regarding how fiduciaries may apply the proposed safe harbor alongside existing annuity-related protections. Second, it would confirm that the statutory annuity selection safe harbor remains available, where its conditions are satisfied, when an annuity or guaranteed retirement income contract is selected as part of, or embedded within, another designated investment alternative, such as a target-date fund, managed account, retirement tier, or other investment structure.

DOL should also avoid any suggestion that compliance with the proposed designated investment alternative safe harbor is a substitute for, or imposes additional conditions on, existing annuity-related safe harbors. These frameworks serve related but distinct functions and should be able to operate together in appropriate circumstances.

IV. DOL Should Preserve the Practical Utility of the Examples While Ensuring They Remain Illustrative, Non-Exclusive, and Focused on Fiduciary Process

IRI appreciates the Department's effort to provide examples illustrating how fiduciaries may apply the proposed prudence-based safe harbor. Properly framed, examples can provide meaningful practical value by helping fiduciaries, advisers, consultants, and service providers understand how a principles-based framework may apply in practice. Examples may be particularly useful where they demonstrate how fiduciaries may consider the relevant factors, apply reasoned judgment, document the basis for their decisions, and evaluate products or features that differ from traditional accumulation-only investments.

IRI's recommendation, however, is that DOL remove the examples from the operative text of the final rule. Examples embedded in regulatory text are more likely to be treated as controlling standards rather than illustrations, particularly in the current ERISA litigation environment, where plan sponsors and fiduciaries may reasonably seek to align their decisions as closely as possible with the specific facts described in a regulation. As a result, examples in operative text may create anchoring effects, narrow fiduciary decision-making, and discourage consideration of otherwise appropriate products, structures, delivery mechanisms, or features not expressly reflected in the examples.

This concern is not merely theoretical. Regulatory examples frequently exert a normative effect and may be relied upon by regulated parties as de facto benchmarks, even when intended as illustrative. Historical experience following the enactment of the Pension Protection Act of 2006 is instructive. In the automatic enrollment context, three (3) percent default deferral rates became prevalent after early regulatory and interpretive guidance used that percentage in model examples. One example observed that, when the Pension Protection Act was enacted, three (3) percent was the most common default rate among its clients using automatic enrollment, with sixty-one (61) percent of those clients selecting that rate, likely influenced by Internal Revenue Service rulings that used a three (3) percent default in examples. Over time, higher default rates, including six (6) percent, gained greater traction, likely influenced in part by the qualified automatic contribution arrangement safe harbor and related best-practice effects. This experience illustrates the tendency of plan

sponsors and fiduciaries to treat examples as practical reference points, even when not formally mandatory.

In light of this dynamic, IRI is concerned that examples addressing only a limited subset of products or structures within the lifetime income marketplace could cause fiduciaries to interpret the rule narrowly. Fiduciaries may perceive the safest course as adhering closely to the enumerated examples, potentially advantaging the specific product structures referenced in the rule and discouraging consideration of products, structures, delivery mechanisms, or features that are not described. That result would be inconsistent with the Department's process-based and asset-neutral objectives.

IRI recommends that DOL preserve the practical usefulness of the examples while making it more explicit that they are illustrative, non-exclusive, non-prescriptive, and not minimum standards or exclusive pathways for satisfying ERISA's duty of prudence. Examples can provide helpful context for fiduciaries, plan sponsors, advisers, service providers, participants, and courts regarding how the proposed factors may apply in common fiduciary decision-making scenarios. However, they should not be read to limit the application of the safe harbor to the specific facts, products, structures, or delivery mechanisms described.

To that end, any examples included or published by the Department should be framed at a sufficiently high level to balance clarity with flexibility. Overly specific examples may unintentionally narrow or distort the scope of the rule by leading fiduciaries, plaintiffs, regulators, or courts to assume that the safe harbor applies only in circumstances that closely mirror the examples. Examples should therefore illustrate fiduciary process rather than product specificity, focusing on the fiduciary's demonstrated consideration of relevant factors, the proportionality of the analysis to the complexity and purpose of the investment alternative, and the reasoned basis for the fiduciary's decision.

This approach would preserve the practical usefulness of the examples while reducing the risk that they could be viewed as favoring particular products, structures, delivery mechanisms, or fact patterns. It would also reinforce that the proposed safe harbor is process-based, asset-neutral, and flexible, and that fiduciaries may satisfy ERISA's duty of prudence through a documented, facts-and-circumstances-based process that reflects the plan's objectives, participant needs, product design, and the role of the investment alternative or delivery mechanisms within the plan's menu.

A number of our members are in favor of placing any examples outside the operative regulatory text and making them available through sub-regulatory guidance, for example, in the form of FAQs, a tip sheet, or similar explanatory materials. Such a format would preserve the value of examples while reducing the risk that they may be treated as controlling standards, exclusive pathways, or minimum conditions for satisfying the safe harbor. If DOL retains examples in the operative text, the final rule should expressly state that the examples are illustrative only; do not establish minimum standards; do not limit application of the safe harbor to the specific facts, products, structures, or delivery

mechanisms described; and are not the exclusive means by which a fiduciary may satisfy ERISA's duty of prudence when selecting designated investment alternatives.

IRI acknowledges that additional examples could enhance the rule's usefulness. However, it would not be practical for the Department to capture the full range of current and future lifetime income solutions, alternative assets, investment structures, and delivery mechanisms that may be prudently considered by plan fiduciaries. For that reason, any examples should be framed at an appropriate level of principle and should expressly permit broader application beyond the specific facts presented.

In particular, any examples should:

- Be expressly described as illustrative, non-exclusive, non-controlling, and not minimum requirements;
- Demonstrate how fiduciaries may consider the relevant factors through an objective and analytical process;
- Focus on the fiduciary's reasoned basis for the decision, including appropriate documentation, rather than on rigid factual predicates or product-specific features;
- Avoid implying that products included in examples are preferred, safer, or presumptively prudent;
- Avoid implying that products not included in examples are disfavored, riskier, or less likely to satisfy the safe harbor;
- Be capable of application across a range of investment structures and delivery mechanisms, including annuities, lifetime income products, collective investment trusts, managed accounts, target-date structures, retirement tiers, and other evolving product designs;
- Reinforce that fiduciaries may prudently consider products and features not specifically described in the examples; and
- Clarify that the safe harbor is focused on the prudence of the fiduciary's process, not on whether a product fits within the precise facts of an example.

IRI further recommends that DOL provide additional examples addressing more of the safe harbor framework in the context of annuities and other lifetime income products, provided those examples are framed in a principles-based manner. Lifetime income solutions may differ from traditional accumulation-only investments in purpose, structure, pricing, liquidity, benchmarking, complexity, delivery mechanisms, and participant value. Examples that address these considerations in a practical and appropriately flexible manner would help fiduciaries understand how to evaluate lifetime income products consistent with their income-generating purpose and the role they are intended to serve within a participant-directed defined contribution plan.

Such examples should not reduce annuities or other lifetime income products to accumulation-focused, return-only metrics. Rather, they should illustrate how fiduciaries may evaluate factors such as fees, liquidity, benchmarking, valuation, complexity, and related considerations in light of the product's purpose, including the value of guarantees, insurance protections, longevity-risk transfer, income stability, downside protection, sequence-of-returns risk mitigation, and retirement income outcomes.

This approach would preserve the practical benefit of the DOL's examples while avoiding the risk that examples become a new pleading roadmap, product preference, or de facto checklist for fiduciary decision-making. A final rule intended to promote fiduciary confidence and asset-neutral decision-making should not cause plan sponsors to favor only those products that appear in regulatory examples or avoid innovative products that fall outside an example's specific facts. Rather, the Department should use examples to reinforce that fiduciaries may satisfy the proposed safe harbor through a prudent, documented, and facts-and-circumstances-based process that reflects the plan's objectives, participant needs, product design, and the role of the investment alternative or delivery mechanisms within the plan's menu.

V. The Final Rule Should More Clearly Recognize Annuities and Other Lifetime Income Products

IRI appreciates that the Proposal recognizes lifetime income investment strategies within the broader universe of alternatives. However, DOL should more clearly distinguish annuities and other lifetime income products from broader references to "lifetime income investment strategies, including longevity risk-sharing pools."[11]

Annuities and other lifetime income products serve a distinct retirement security function. They are not merely alternative investments or pooled longevity arrangements. They may provide contractual guarantees, insurance protections, income certainty, longevity-risk transfer, guaranteed minimum withdrawal benefits, fixed or variable payout structures, death benefit features, or other protections designed to help participants convert savings into income that may continue for life.

Conflating lifetime income products with broader longevity risk-sharing structures could create confusion for plan fiduciaries, consultants, and service providers. It could also obscure important distinctions in product design, regulatory oversight, participant protections, fee structures, liquidity features, portability considerations, and fiduciary analysis.

IRI recommends that DOL revise the final rule or preamble to expressly recognize "annuities and other lifetime income products and solutions" as an important category of retirement income tools that fiduciaries may prudently consider as designated investment alternatives, as components of designated investment alternatives, or as part of default investment pathways, where appropriate under the facts and circumstances of the plan.

---

[11] 91 Fed. Reg. 16088, 16093, 16138–39; see also Exec. Order No. 14,330, 90 Fed. Reg. 38921, 38922 (Aug. 12, 2025).

This clarification would support the broader objective of helping defined contribution plans address not only the accumulation of retirement savings, but also the adequacy and sustainability of retirement income. As defined contribution plans increasingly serve as the primary retirement vehicle for American workers, plan fiduciaries should have a clear framework for evaluating products that help participants manage longevity risk and access income they cannot outlive.

VI. Fees, Liquidity, Benchmarking, and Complexity Should Be Evaluated in Light of the Product's Retirement Income Purpose

IRI supports the Department's recognition that fiduciaries are not required to select the lowest-cost investment alternative and that fees must be evaluated in relation to value.[12] This principle is critical for annuities and other lifetime income products.

For these products, fees may reflect features that are fundamentally different from those offered by accumulation-only investments, including guaranteed income, longevity-risk transfer, payment certainty, downside protection, guaranteed minimum benefits, insurer claims-paying obligations, participant education, administrative services, or portability infrastructure. A fee comparison focused only on expense ratios or accumulation-phase performance may undervalue or mischaracterize products designed to provide protected income.

DOL should also reaffirm the distinction between the pricing of an insurance guarantee and compensation for plan services. In prior guidance addressing Schedule C reporting, the Department recognized that, where an insurance company general account investment contract promising a guaranteed rate of return is not combined with plan services, the insurer's costs and expenses taken into account in establishing the guaranteed crediting rate do not involve the insurer receiving reportable compensation for providing plan services. That distinction remains important in evaluating insurance-based lifetime income products. The cost of providing a guarantee, income protection, or other insurance feature should not automatically be characterized as a separate plan-service fee merely because the insurer prices the guarantee or accounts for related costs in the product's crediting rate, benefit formula, or overall economics. At the same time, separate plan services, commissions, or other compensation paid to agents, brokers, service providers, or intermediaries should continue to be evaluated under applicable disclosure, reporting, fiduciary, and prohibited transaction rules.[13]

---

[12] *Id* at 16096–98, 16137–39 ((providing that fiduciaries must determine that fees and expenses are appropriate in light of risk-adjusted expected returns and "any other value" the designated investment alternative brings to furthering plan purposes; defining "value" to include benefits, features, or services other than risk-adjusted returns net of fees; and clarifying that ERISA section 404(a)(1)(B) is not violated solely because the fiduciary does not select the alternative with the lowest fees and expenses).

[13] U.S. Dep't of Labor, Employee Benefits Sec. Admin., *Supplemental Frequently Asked Questions About the 2009 Schedule C*, Q9 (Oct. 2010) (explaining that, where an insurance company general account investment contract promising a guaranteed rate of return is not combined with plan services, insurance company costs and expenses taken into account in establishing the guaranteed crediting rate do not involve the insurer receiving reportable compensation for providing

Insurance-based lifetime income products may also help participants manage sequence-of-returns risk, particularly as they approach retirement or begin drawing down retirement assets. For participants nearing or entering retirement, adverse market conditions can have an outsized effect on the adequacy and sustainability of retirement income. Products that provide guaranteed income, downside protection, or other insurance-based protections may help mitigate that risk by reducing participants' exposure to the timing of market declines during a critical transition from accumulation to decumulation. Fiduciaries should therefore be permitted to consider the value of these protections as part of a holistic assessment of fees, liquidity, benchmarking, and product value.

IRI recommends that DOL confirm that:

- Higher fees do not weigh against prudence where the fiduciary reasonably determines that those fees reflect meaningful participant benefits;
- Fee analysis for lifetime income products should account for guarantees, longevity-risk transfer, income adequacy, income stability, payment certainty, and related participant protections;
- Fiduciaries may compare products with lifetime income features against products without such features, but the comparison must account for the additional value and purpose of the lifetime income feature; and
- Fiduciaries are not required to reduce all products to accumulation-only metrics when evaluating fees.

Liquidity likewise should be evaluated in context. Certain liquidity limits, withdrawal restrictions, surrender adjustments, market value adjustments, installment features, or other long-term design elements may be integral to a product's ability to provide higher income, more stable payments, guaranteed benefits, or longevity-risk protection. Liquidity constraints should not, standing alone, make a product imprudent. The appropriate inquiry is whether the fiduciary has evaluated the product's liquidity characteristics in relation to the product's purpose, the plan's anticipated liquidity needs, participant demographics, available investment alternatives, portability considerations, participant communications, and the value of the income-related benefits provided.

The Department should also confirm that market value adjustments commonly used in annuities and other insurance-based products should be evaluated in light of the product's structure and purpose. In many products, amounts are valued and supported on a book-value basis, with the insurer providing a guarantee designed to protect participants who use the product as intended. Where a participant instead elects to redeem, transfer, or surrender the product rather than use the guarantee, the product may provide for redemption at market value or otherwise apply a market value adjustment. Such features should not be viewed as inherently inconsistent with fiduciary

---

plan services, while commissions and other compensation to agents, brokers, and other persons in connection with the placement or retention of the insurance contract remain reportable compensation to the recipients).

prudence, inadequate liquidity, or deficient valuation. Rather, fiduciaries should be permitted to consider whether the market value adjustment is reasonably related to the product's guarantee, long-term income purpose, investment structure, and the circumstances under which participants may access or transfer their assets.[14]

Benchmarking should also reflect retirement income objectives. Traditional benchmarks focused on account balance growth, risk-adjusted returns, volatility, or historical performance may be insufficient for products designed to generate protected income. IRI recommends that the Department clarify that fiduciaries should benchmark lifetime income products using measures that reflect their income-generating purpose, rather than relying solely on traditional accumulation metrics.

Specifically, the Department should confirm that:

- Fiduciaries are not required to benchmark lifetime income products against market indices or accumulation-focused performance metrics alone.
- Appropriate benchmarking may include retirement income projections, the likelihood of meeting annual income goals, cumulative income through a standard planning horizon or life expectancy, and median legacy values.
- Fiduciaries may use scenario analysis, stochastic modeling, or other forward-looking tools to assess a product's ability to support retirement income.

Benchmark comparisons should account for the presence or absence of guarantees and risk management features, rather than treating all products as directly comparable on return metrics.

Finally, product complexity should not operate as an implicit product bias. Some annuities and lifetime income products require more tailored fiduciary analysis because they include guarantees, insurance components, withdrawal or income features, portability provisions, or other design elements that differ from traditional accumulation-only investments. The fact that a product requires more detailed evaluation does not mean it is imprudent or inappropriate. The relevant inquiry should be whether the fiduciary can understand the product, evaluate its costs and benefits, use qualified

---

[14] *See* 91 Fed. Reg. 16088, 16098–99, 16140 (recognizing that fiduciaries are not required to select only fully liquid products; providing a lifetime income liquidity example involving a deferred annuity contract under which early withdrawals before age 65 result in a penalty and market value adjustment; and explaining that the fiduciary must balance liquidity restrictions under the annuity contract against the value of guaranteed monthly payments and the insurer's guarantee); *See also* Nat'l Ass'n of Ins. Comm'rs, *Annuity Disclosure Model Regulation* § 4. I, Model No. 245 (2021) (defining a "Market Value Adjustment" feature as a positive or negative adjustment that may be applied to the account value or cash value of an annuity upon withdrawal, surrender, contract annuitization, or death benefit payment under specified circumstances); Registration for Index-Linked Annuities and Registered Market Value Adjustment Annuities; Amendments to Form N-4 for Index-Linked Annuities, Registered Market Value Adjustment Annuities, and Variable Annuities; Other Technical Amendments, 89 Fed. Reg. 59978, 60083 (July 24, 2024) (defining a registered market value adjustment annuity to include an annuity whose contract value may reflect a positive or negative adjustment if amounts are withdrawn before the end of a specified period).

expertise where appropriate, and determine whether the product provides value to participants in light of the plan's objectives and participant needs.

IRI has included, as an Appendix to this letter, a set of generalized examples designed to reflect the retirement income purpose and structure of annuities and other lifetime income products. These examples are intended to offer principles-based illustrations that may be applied across product types, structures, and delivery mechanisms, rather than more prescriptive examples focused on specific product features or factual scenarios. The Appendix includes examples addressing fees, liquidity, benchmarking, and complexity, and illustrates how fiduciaries may evaluate lifetime income products in a manner aligned with their income-generating objectives, the value of guarantees and insurance protections, and the role of the product or feature within the plan's overall investment menu. Collectively, these examples reinforce that fees, liquidity, benchmarking, and complexity should be evaluated in light of a product's purpose and participant value, rather than through accumulation-focused, return-only, or one-size-fits-all frameworks.

VII. DOL Should Revise Specific Liquidity and Valuation Examples to Avoid Unintended Product Bias or Litigation Risk

IRI recommends that DOL revise certain liquidity and valuation examples to avoid unintended consequences that could undermine the Proposal's asset-neutral and process-based approach.

IRI is concerned that the liquidity examples may inadvertently import SEC Rule 22e-4-like liquidity risk management expectations into non-SEC-regulated vehicles, including collective investment trusts and other pooled vehicles that are not registered open-end investment management companies.[15] SEC Rule 22e-4 is part of the Investment Company Act regulatory framework and applies to funds covered by that SEC rule. It was not designed as a general fiduciary standard under ERISA or otherwise, nor was it designed to regulate collective investment trusts, bank-maintained vehicles, insurance separate accounts, or other non-registered retirement plan vehicles.

The proposed liquidity example could be read to suggest that, if a designated investment alternative is not a registered open-end investment management company subject to the Investment Company Act liquidity-risk-management requirements, the fiduciary must obtain a representation or otherwise perform due diligence that the vehicle has adopted and implemented a liquidity risk management program substantially similar to the SEC framework. Although IRI appreciates the Department's intent to provide practical guidance, this example could be read as imposing a new de facto liquidity-program standard on non-SEC-regulated vehicles.

That result would be inconsistent with the Proposal's asset-neutral approach. It could create an unintended bias in favor of registered mutual funds and against collective investment trusts or other vehicles that may be appropriate, cost-effective, and widely used in defined contribution plans. Litigation-wary plan sponsors and fiduciaries may reasonably conclude that the safest course is to

---

[15] *See* 17 C.F.R. § 270.22e-4.

prefer vehicles already subject to SEC Rule 22e-4, even where other vehicles may be prudent and beneficial for participants.

IRI recommends that DOL revise these examples to avoid suggesting that non-SEC-regulated vehicles must adopt liquidity risk management programs substantially similar to SEC Rule 22e-4 as a condition of satisfying the proposed safe harbor. At a minimum, DOL should clarify that the examples are illustrative only, do not impose SEC liquidity risk management standards on non-SEC-regulated vehicles, and do not disfavor collective investment trusts or other non-registered pooled vehicles relative to mutual funds solely because they are not subject to SEC Rule 22e-4.

IRI also recommends that DOL revise the valuation examples to avoid suggesting that valuation processes for non-public investments must be entirely "conflict-free."[16] IRI supports the Department's objective of ensuring that plan fiduciaries appropriately consider whether a designated investment alternative has adequate measures to support timely and accurate valuation. Fiduciaries should be attentive to valuation-related conflicts of interest, particularly where assets do not have readily observable market prices.

However, the term "conflict-free" may be read to establish an unrealistic or impractical standard, particularly for investment structures involving non-public assets, affiliated service providers, proprietary models, investment managers, valuation committees, third-party pricing services, auditors, or other market participants with defined roles in the valuation process.

The more traditional and workable standard is not that every valuation process must be entirely "conflict-free," but that identified, potential, or perceived conflicts of interest should be appropriately identified, assessed, disclosed where appropriate, and mitigated or managed through reasonable policies, procedures, governance, independent review, documentation, and other safeguards.[17]

IRI is concerned that the use of the term "conflict-free" in operative text could be cited to challenge otherwise prudent fiduciary processes whenever any potential, perceived, or structural conflict can be alleged. That result would be inconsistent with the Proposal's process-based framework and could discourage fiduciaries from considering otherwise appropriate designated investment alternatives that include non-public investments, even where robust valuation controls are in place.

IRI recommends that DOL replace "conflict-free" with language focused on identifying, mitigating, and managing conflicts. For example, DOL could refer to a valuation process that is "subject to policies and procedures reasonably designed to identify, assess, and mitigate material conflicts of interest that could adversely affect valuation accuracy." Alternatively, DOL could clarify in the

---

[16] 91 Fed. Reg. 16088, at 16099–100, 16141–42 (identifying valuation as a fiduciary consideration; providing examples in which non-publicly traded securities are valued through a "conflict-free, independent process"; and requiring the fiduciary, in a valuation-conflicts example, to assess whether assets "have been or will be valued through a conflict-free and independent process").

[17] 17 C.F.R. § 240.15l-1(a)(2)(iii)–(iv); cf. *Fiduciary Duties in Selecting Designated Investment Alternatives*, 91 Fed. Reg. 16088, 16099–100, 16141–42

preamble that "conflict-free" is not intended to require the absence of any potential, perceived, or structural conflict, but instead refers to a process reasonably designed to prevent conflicts from compromising valuation accuracy.

VIII. Additional Guidance Is Needed for QDIAs and Default Investment Pathways That Include Lifetime Income

IRI appreciates that the Proposal's definition of designated investment alternative includes qualified default investment alternatives. However, the Proposal does not fully resolve longstanding questions regarding the incorporation of annuities and other lifetime income products into QDIAs or other default investment pathways.[18]

Default investment design is central to the defined contribution system. Many participants remain invested in default options for substantial portions of their working lives. If lifetime income features are not meaningfully available through default structures, many participants may never access products designed to help convert savings into protected retirement income.

IRI recommends that DOL expressly acknowledge and address, through appropriate regulatory or interpretive guidance, how fiduciaries may evaluate lifetime income features in default investment contexts under the proposed prudence framework, existing QDIA regulations, and prior DOL guidance. In particular, such guidance should address how fiduciaries should evaluate the following factors in the context of QDIAs:

- Fees and expenses associated with insured income features;
- Participant-level and plan-level liquidity restrictions;
- Insurer selection considerations;
- Portability;
- Participant notices and education;
- Withdrawal restrictions or market value adjustments;
- Participant demographics and retirement income needs;
- Income adequacy and income stability;
- Use of managed accounts, target-date funds, asset-allocation products, retirement tiers, or other default pathways; and
- The relationship between QDIA transferability requirements and product features designed to support long-term income.

[18] See 29 C.F.R. § 2550.404c-5.

IRI also recommends that DOL consider whether separate regulatory or interpretive updates to the QDIA framework are needed to better support the prudent use of lifetime income products in default investment structures. At a minimum, DOL should provide additional examples or guidance illustrating how annuities and other lifetime income features may be evaluated in QDIAs or default investment pathways.

IX. The Final Rule Should Remain Limited to Selection and Should Not Create or Imply Any Separate Post-Selection Obligation

IRI understands the Proposed Rule to be focused on the fiduciary process for selecting designated investment alternatives in participant-directed defined contribution plans. The Proposal does not specifically address the scope, timing, application, or existence of any separate post-selection obligation, including any obligation described by others as ongoing monitoring.

IRI recommends that the Department preserve that limited scope in the final rule. The final rule should make clear that the proposed safe harbor addresses the selection of designated investment alternatives and should not be interpreted to create, define, expand, imply, or otherwise alter any separate post-selection obligation. Maintaining this distinction is important to ensure that a rule intended to provide fiduciaries with greater clarity and confidence in the selection process does not inadvertently introduce new uncertainty or litigation risk.

This clarification is particularly important for annuities, lifetime income products, and other solutions designed to serve long-term retirement income objectives. These products may involve features such as guarantees, income protection, liquidity trade-offs, portability considerations, insurer-related considerations, and participant communication needs that differ from traditional accumulation-only investments. The final rule should avoid any implication that these features give rise to new or different post-selection requirements as a condition of satisfying the proposed selection safe harbor.

IRI is not asking the Department to address post-selection issues in this rulemaking. To the contrary, IRI recommends that DOL expressly confirm that such issues are outside the scope of the final rule and that the selection safe harbor should not be read to impose requirements beyond the fiduciary selection process it is intended to address. IRI does not, through these comments, concede or assume the existence, scope, timing, or application of any obligation outside the Proposed Rule's investment-selection framework.

If the Department separately considers related issues in a future proceeding, IRI would evaluate that effort on its own terms and would consider providing input at that time. For purposes of this rulemaking, however, IRI urges DOL to maintain the Proposed Rule's focus on investment selection and avoid language that could be cited as creating, expanding, or implying any separate post-selection obligation.

X. DOL Should Address Participant Profiles Through Preamble Guidance on Harm and Causation, Not Through a Separate Safe Harbor Element

The Department has requested comments on whether the final rule should include an additional safe harbor element that takes into account individual participant profiles or characteristics.[19] IRI does not recommend adding a separate factor focused on participant profiles. Adding such a requirement could unintentionally convert a process-based, asset-neutral safe harbor into a more individualized suitability-like inquiry, increasing fiduciary uncertainty and litigation risk rather than reducing it.

Instead, IRI recommends that the Department address participant characteristics in the preamble as part of the broader discussion of harm, causation, and class-wide proof in litigation challenging the selection or retention of designated investment alternatives. In participant-directed defined contribution plans, alleged injury from the inclusion of a particular investment option often depends on individualized circumstances, including a participant's elections, holding period, timing of contributions and withdrawals, allocation decisions, risk tolerance, and use of available plan features.

Recognizing this principle in the preamble would reinforce the Department's process-based approach and provide helpful context for courts and litigants. The inclusion of a particular investment option in a plan menu should not, without more, be treated as establishing class-wide harm where participants exercise meaningful choice and participant-level outcomes may differ materially. This is especially important in the defined contribution context, where the plan menu is designed to support a range of participant preferences, time horizons, and retirement objectives.

Such clarification would support the Department's goal of reducing unwarranted litigation without imposing a new safe harbor element or constraining fiduciaries' ability to design thoughtful, diversified plan menus. It would also help ensure that the final rule remains focused on the prudence of the fiduciary's selection process, rather than inviting litigation theories that assume harm or causation on a class-wide basis merely from the availability of a particular investment alternative.

XI. Conclusion

IRI appreciates the Department's Proposal and supports its overarching goal of establishing a clearer, process-based fiduciary safe harbor for selecting designated investment alternatives in participant-directed defined contribution plans. IRI also strongly supports the Department's asset-neutral approach, which appropriately preserves fiduciary discretion and avoids placing a regulatory thumb on the scale in favor of, or against, particular asset classes, investment structures, product designs, or delivery mechanisms.

---

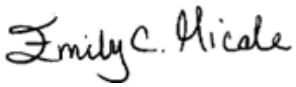
[19] 91 Fed. Reg. 16088 at 16095–96 (identifying the proposed safe harbor's six factors and specifically requesting comment on whether "participant profiles or characteristics should be included in the final rule as a stand-alone factor," including whether such a factor should apply to all designated investment alternatives or only to target date funds and managed accounts).

With targeted clarifications and refinements, the final rule can meaningfully improve fiduciary confidence, reduce litigation-driven barriers to innovation, and help plan fiduciaries evaluate products that support both retirement savings and protected retirement income. In particular, IRI urges DOL to preserve the Proposal's process-based and asset-neutral framework; confirm that the proposed safe harbor is flexible, non-exclusive, and not the only permissible way to demonstrate prudence under ERISA; clarify the interaction between the proposed safe harbor and existing annuity-related safe harbors; preserve the practical utility of the examples while making explicit that they are illustrative, non-exclusive, non-prescriptive, not minimum standards, and focused on fiduciary process rather than product specificity; more clearly recognize annuities and other lifetime income products; ensure that fees, liquidity, benchmarking, and complexity are evaluated in light of a product's retirement income purpose; revise the liquidity and valuation examples to avoid unintended product bias or litigation risk; address QDIAs and default investment pathways through appropriate regulatory or interpretive guidance; confirm that the final rule is limited to investment selection and does not create or imply any separate post-selection obligation; and address participant profiles through preamble guidance on harm and causation rather than through a new safe harbor element.

IRI also encourages the Department to consider the principles-based examples included in the Appendix to this letter, which are intended to illustrate how fiduciaries may evaluate annuities and other lifetime income products in a manner aligned with their retirement income purpose, the value of guarantees and insurance protections, and the role of the product or feature within the plan's overall investment menu.

IRI appreciates the opportunity to provide these comments and would welcome continued engagement with the Department as it develops the final rule.

Respectfully submitted,



Emily Micale
Director, Federal Regulatory Affairs
Insured Retirement Institute

emicale@irionline.org

APPENDIX

Proposed Revision:
Fees; Lifetime income

i. **Facts**. The named fiduciary selects annuity contracts offering guaranteed lifetime income options. Before participants elect a lifetime income option, the contracts include an "accumulation" phase during which participants' accounts grow through interest or earnings, with options to allocate funds among various investment or crediting strategies. The plan already includes other investment options prudently selected by the sponsor that are materially similar to those available under the annuity contract. However, annuity contracts also offer unique features, such as options tied to underlying investments or market indexes, along with protections against losses. These contracts impose fees not present in other plan investments, covering insurance and risk-mitigation features like lifetime income guarantees and protection against market volatility. The named fiduciary consults with an investment advice fiduciary within the meaning of section 3(21)(A)(ii) of ERISA. The investment advice fiduciary analyzes the annuity market generally, focusing primarily on annuity products that are available to participant-directed individual account plans, which analysis the named fiduciary critically evaluates and adopts in determining, within its discretion, that the designated investment alternative with the lifetime income benefit and other risk-mitigation features provides commensurate value for the fees charged.

ii. **Analysis**. The named fiduciary must act prudently when selecting a particular annuity contract to implement the plan sponsor's decision to add an annuity option to the plan. The decision to offer an annuity is intended to provide an option to protect participants from longevity risk and other financial risks in retirement. While the fiduciary must consider a reasonable range of similar alternatives, the existing mutual fund designated investment alternative on the plan's investment menu satisfies this requirement for the mutual fund options available under the annuity contract, as they are materially similar except for the additional benefits provided by the annuity contract. Furthermore, the named fiduciary has prudently determined that the fees associated with the annuity contract's additional benefits, which are not available under the plan's existing designated investment alternatives, are justified by the commensurate value they provide. These additional benefits enhance the plan's offerings and justify the higher total fees compared to designated investment alternatives without these features.

iii. **Conclusion**. In this example, the named fiduciary acted prudently by adding an annuity as a designated investment option to the plan's investment menu, as the higher fees are justified by the additional benefits provided by the annuity contract, which are not included in the similar designated investment alternative. To meet the requirements under paragraph (h) of this section and section 404(a)(1)(B) of ERISA, the named fiduciary appropriately considered and determined that the additional fees under the annuity contract are reasonable in light of the value they provide in advancing the plan's objectives.

Proposed Revision:
Liquidity; Lifetime income

i. **Facts**. The investment policy statement of a participant-directed individual account plan requires the plan's investment menu to include a life annuity distribution option and other features that protect participants against longevity and financial risks. The named fiduciary selects several deferred annuity contracts offering various forms of lifetime income. These annuity contracts include an "accumulation" period where the annuity earns interest or returns based on a fixed rate, crediting methods, or mutual fund options. The contracts impose restrictions on withdrawals from the accumulation account before annuity payments begin, such as withdrawal charges, market value adjustment, or reductions in future lifetime income benefits. These liquidity constraints are designed to support higher crediting rates, annuity payments, or both.

ii. **Analysis**. Paragraph (i) of this section requires plan fiduciaries to consider potential participant-level events that may necessitate immediate liquidity and to ensure that the designated investment alternative, at the time of selection, has sufficient liquidity to meet the plan's anticipated needs. In this example, the fiduciary must weigh the liquidity restrictions of the annuity contracts against the value of their lifetime income and risk-mitigation features, recognizing that these guarantees help participants manage investment and longevity risks. The selection of an investment alternative with liquidity constraints, such as annuity contracts, is permissible if the fiduciary determines that any constraints are justified by the additional value provided by the products.

iii. **Conclusion**. In this example, the named fiduciary would meet the requirements of paragraph (i) of this section and section 404(a)(1)(B) of ERISA. The named fiduciary concluded that the potential increase in annuity payments or crediting rates justifies the liquidity restrictions imposed by the annuity contracts.

Proposed Additional Example:
Benchmark: outcomes-based approach to evaluate lifetime income options

i. **Facts**. The named fiduciary of a participant-directed individual account plan selects an in-plan annuity as a designated investment alternative to provide participants with guaranteed lifetime income during retirement. To evaluate the in-plan annuity product, the fiduciary reviews output from stochastic modeling tools to evaluate the impact of the annuity on participant outcomes. This modeling tool simulates thousands of potential market scenarios using reputable long-term capital market assumptions to assess the likelihood of achieving a specified income goal with and without the annuity. The analysis also includes stress testing under adverse market conditions, such as a significant equity market decline followed by a prolonged low-return environment, to evaluate the resilience of the annuity's income guarantees and its ability to protect participants' retirement outcomes. The named fiduciary carefully reviews the analysis, which demonstrates the annuity's ability to improve the

likelihood of meeting income goals, protecting against longevity risk, or providing income stability under varying market conditions. All modeling assumptions, methodology, and results are documented, and the fiduciary does not know, or have reason to know, of any information that would call into question the analysis or its conclusions.

ii. **Analysis**: By focusing on participant outcomes, the fiduciary ensures that the evaluation is centered on the annuity's ability to achieve key retirement goals, such as providing sustainable income, mitigating longevity risk, or maintaining stability during adverse market conditions. The use of stochastic modeling ensures a robust and data-driven evaluation of the annuity's performance across a wide range of potential market conditions. This methodology allows the named fiduciary to compare the annuity's outcomes to those of alternative retirement income solutions, providing valuable insights into the annuity's relative effectiveness in meeting participants' needs.

iii. **Conclusion**: The named fiduciary in this example satisfies paragraph (k) and ERISA section 404(a)(1)(B). The critical review of the outcomes analysis and documentation of the methodology and assumptions used demonstrates that the named fiduciary fulfilled their fiduciary duties and appropriately benchmarked the annuity to support participants' long-term financial security.

Proposed Additional Example:
Complexity; Lifetime income example

i. **Facts**. The named fiduciary of a participant-directed individual account plan considers whether to add a lifetime income option to the plan's investment menu. As part of this process, the fiduciary evaluates a range of annuity-based products designed to provide lifetime income, incorporate risk mitigation features, and offer varying degrees of liquidity and flexibility. These products may include contractual guarantees, insurance-based protections, and other design elements that differ from traditional accumulation-only investments and may require more tailored analysis. The fiduciary recognizes that, although such features may initially appear to increase complexity, they are intended to manage risk more effectively, improve participant outcomes or usability, and support income sustainability consistent with the plan's objective of meeting participants' retirement income needs.

The fiduciary undertakes a prudent, deliberative, and well-documented evaluation process that includes both quantitative and qualitative considerations, including:

- **Outcome Improvements Net of Fees**: The fiduciary reviews output from stochastic modeling tools to analyze the probability of participants achieving specified income goals. This includes projections of guaranteed income levels, median legacy values, and overall retirement readiness under various market and economic conditions.
- **Qualitative Comparison**: The fiduciary carefully examines product features, such as liquidity provisions and the flexibility to adjust income payments, and compares these to other annuity

products. The fiduciary considers how these features align with the plan's objectives and the range of participants' needs within the plan.

- **Insurer Financial Strength**: The fiduciary evaluates the financial strength and claims-paying ability of the insurer offering the annuity. To ensure compliance with fiduciary obligations, the fiduciary relies on written attestations from the insurer, as permitted under the safe harbor provisions of 29 USC § 404(e) (introduced by SECURE 1.0).[20] These attestations confirm the insurer's financial capacity and compliance with state insurance regulations.

ii. **Analysis**: The fiduciary determines that the selected annuity-based product is appropriate for inclusion in the plan. Although the product includes features that require a more detailed evaluation, the fiduciary concludes that those features are reasonably understood and are designed to provide meaningful benefits aligned with the plan's retirement income objectives. The fiduciary further determines that the product's structure supports the management of key retirement risks and may enhance participant outcomes when considered in light of the plan's objectives.

iii. **Conclusion**: The fiduciary's decision reflects a prudent process consistent with ERISA section 404(a)(1)(B). The fiduciary evaluates complexity as one factor among many and does not treat it as determinative. Instead, the fiduciary reasonably determines that the product's features, costs, and expected benefits, considered in their totality, support its selection. The process demonstrates that complexity, when appropriately understood and evaluated, does not indicate imprudence.

ALTERNATIVE NON-GENERIC COMPLEXITY EXAMPLE
Complexity: Fixed Index Annuity with Guaranteed Lifetime Withdrawal Benefit (GLWB)

i. **Facts**. The named fiduciary of a participant-directed individual account plan seeks to add a lifetime income option to the plan's investment menu. As part of this process, the fiduciary evaluates several annuity products, including a fixed index annuity (FIA) with a Guaranteed Lifetime Withdrawal Benefit (GLWB). The FIA offers principal protection, growth tied to a market index up to a cap, and a guaranteed income stream for life, along with flexibility and liquidity through the GLWB. While some features, such as index-linked growth and flexible income payments, may initially appear to add complexity, these features are designed to efficiently manage risk and improve participant outcomes by balancing growth potential, income security, and flexibility.

The fiduciary conducts an evaluation of the FIA and other products under consideration, focusing on the following key factors:

[20] *See also*, 29 CFR §2550.404a-4.

- **Outcome Improvements Net of Fees**: The fiduciary reviews output from stochastic modeling tools to analyze the probability of participants achieving specified income goals. This includes projections of guaranteed income levels, median legacy values, and overall retirement readiness under various market and economic conditions.
- **Qualitative Comparison**: The fiduciary carefully examines product features, such as liquidity provisions and the flexibility to adjust income payments, and compares these to other annuity products. The fiduciary considers how these features align with plan objectives and the range of participant needs within the plan.
- **Insurer Financial Strength**: The fiduciary evaluates the financial strength and claims-paying ability of the insurer offering the FIA. To ensure compliance with fiduciary obligations, the fiduciary relies on written attestations from the insurer, as permitted under the safe harbor provisions of 29 USC § 404(e) (introduced by SECURE 1.0).[21] These attestations confirm the insurer's financial capacity and compliance with state insurance regulations.

Analysis. The fiduciary ultimately determines that the FIA with the GLWB is an appropriate addition to the plan's investment menu. The product's combination of guaranteed lifetime income, principal protection, and index-linked growth potential aligns with the needs of the plan's participant population, which includes individuals nearing retirement who value income security and flexibility. While the FIA's structure is more sophisticated than some other options, the fiduciary concludes that its features are well-suited to managing key retirement risks, such as longevity risk and market volatility, and to delivering improved participant outcomes.

Conclusion. The fiduciary prudently selects the FIA with the GLWB following a well-documented evaluation process. The decision reflects a careful consideration of the product's complexity, fees, and ability to enhance outcomes for participants and their beneficiaries. By using robust analytical tools and focusing on plan objectives and participant needs, the fiduciary satisfies the requirements of the complexity factor under the six-factor framework and ERISA section 404(a)(1)(B).

[21] *See also*, 29 CFR §2550.404a-4.