

NEXUS338

EBSA - Advisory Opinion 2025-04A AllianceBernstein Lifetime Income Strategy

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AllianceBernstein L.P. (AB) requested for an DOL Advisory Opinion regarding if AB's **Lifetime Income Strategy (LIS)** program meets the requirements to be a qualified default investment alternative (QDIA) under ERISA section 404(c)(5) and the Department's regulation at 29 CFR 2550.404c-5 (the QDIA regulation).

INQUIRY

- (1) An advisory opinion is needed to provide plan sponsors with certainty when offering the LIS program and other similar programs as QDIAs.
- (2) Seeking guidance on fiduciary responsibilities under ERISA section 404(a)(1)(B) with regard to the selection and monitoring of insurers to provide lifetime income guarantees to the LIS program or a similar program.

BACKGROUND

The LIS program includes a guaranteed lifetime withdrawal benefit (GLWB) under which participants can receive a guaranteed lifetime income stream in retirement. GLWBs insure a portion or all of a participant's account balance. The insurance allows the participant to withdraw a specified amount during his or her retirement years, even if the participant's account has been exhausted due to poor investment returns or a participant's longevity.

The AB LIS

(1) What Is LIS?

- Designed for participant-directed defined contribution plans under ERISA
- Intends to provide investment management service described in paragraph (e)(4)(iii) of the QDIA regulation.
- AB acknowledges its status as an investment manager and fiduciary under ERISA section 3(38) with respect to the investment of participant accounts.

(2) What are the investments and processes?

- AB uses investments on the plan's lineup, including equity and fixed income investments, to construct multiple fixed allocation portfolios.

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- AB invests participant accounts among these fixed allocation portfolios in different proportions over time in order to create an asset allocation strategy unique to the participant.
- Participant's allocation to equities is high at a young age, but as the participant grows older, the allocations shift to increase investment in fixed income.
- AB maintains higher growth exposure in its asset allocations under the LIS program, including the SIP, than that reflected in a benchmark for target date investments, due to the protections afforded by the insurance guarantee.

(3) What is the Secure Income Portfolio (SIP)

- Offers guaranteed lifetime income to participants through the funding of a separate portfolio – the SIP - which is offered through a variable annuity contract.

(4) How does SIP get allocated in the LIS program

- AB gradually allocates participant funds to the SIP, beginning when a participant reaches age 50 (or such other age selected by a plan fiduciary), and ending two years before the participant's designated retirement age.
- Participants may specify the percentage of their account balance to be allocated to the SIP and that will receive lifetime income protection.
- Participants who do not make a selection, the plan sponsor selects a default allocation percentage.
- Once the participant reaches age 50, the program makes allocations on the participant's behalf to the SIP each calendar quarter until the selected percentage of income protection is met.
- AB will not allocate funds to the SIP for 90 days after a participant's first default investment in the LIS program. (meeting QDIA rule for a defaulted person to waive out)

(5) Participant communications and disclosures

- Communications consulting is available for all aspects of participant enrollment and education as well as ongoing communications, including LIS webinars and seminars, a dedicated call center, and a self-service LIS program website featuring video animations, participant communication materials, granular LIS account details and an income estimator.
- Before defaulted participants invest in the LIS program, they receive a notice meeting the requirements of the QDIA regulation, with a complete description of the LIS program including the SIP and GLWB components.
- Defaulted participants into the LIS program before reaching age 50, are also notified in writing closely in advance of their first allocation to the SIP.
- The notification reminds such participants that allocations to the SIP are about to commence, (a) the amount of income protection they selected or that was selected by default (e.g., ranging from 0-100 % of their account balance), (b) the target date when the selected percentage of income protection will be met, (c) they can increase or decrease their selected percentage of income protection, and (d) other critical information about their rights and obligations under the LIS program.

- To the extent that the investment returns of the SIP increase its account value above its “Income Base” (i.e., the sum of the participant’s contributions and transfers into the SIP), AB will inform the participant that the Annual Withdrawal Amount has increased to a new level (i.e. a high-water mark) and will not fall from that new level if the assets in SIP are exhausted due to poor investment returns or a participant’s longevity

(6) How does the multi-insurer SIP selected and operate?

- AB selects insurers for participation in the LIS program by first sending a request for proposals seeking information (a) about the insurers’ business (e.g., their lines of business and financials), (b) their ability to offer guarantees, and (c) the cost of such guarantees.
- AB selects the insurers to include in the LIS program based on the insurers’ claims paying ability and ability to provide quarterly guaranteed rates based on a fixed insurance fee.
- On a quarterly basis, AB reviews each insurer’s credit ratings and the guaranteed rates currently provided.
- AB also consults with an independent insurance research expert to assess the reasonableness of the guarantees provided given the fixed insurance fee and confirm each insurer’s ability to continue to meet their obligations.
- Each quarter, multiple AB-selected insurers submit bids to provide a guaranteed lifetime income stream based upon the total allocation amounts for that quarter.
- This bidding process is repeated on a quarterly basis as assets are allocated to the SIP, allowing for a “dollar-cost averaging” effect with regard to the insurance guarantees provided.
- AB uses an objective formula to allocate amounts across insurers with a goal of maintaining insurer diversification while maximizing the amount of guaranteed income for plan participants.

(7) SIP Liquidity

- Participants may transfer their account balance from the LIS Program to other plan options.
- Participants also may withdraw amounts from the SIP at any time, including after attaining their designated retirement age, without a termination or liquidity fee.
- To the extent participants on their own initiative withdraw assets from the SIP in excess of the Annual Withdrawal Amount, the insurance guarantees and Annual Withdrawal Amount will be reduced going forward.

(8) Fees Assessment

- The fee for the insurance guarantee is expressed as a set percentage of the assets allocated to the SIP.
- The asset-based fee is fixed across all participating insurers and may not be changed.
- although the SIP is offered through a variable annuity contract, there are no fees charged to participants for features that will not be used under the LIS program, such as mortality and expense charges.

(9) Portability

- If a participant leaves employment or retires and chooses to move his or her account balance out of the plan, the market value and accumulated guarantees of the GLWB contracts at each insurer may be rolled over into the respective insurer's IRAs. The costs, features, and investment options of each respective IRA will be established by each of the participating insurers.
- If a plan that offers the LIS program terminates, participants have the opportunity to maintain their accrued benefits by either rolling over the benefit to an IRA or receiving a direct distribution of an insurance certificate evidencing the participant's right to a guaranteed benefit under the annuity contract, which survives plan termination.

(10) Lifetime Income after Death

- Upon death of a participant (with a single-life election), a beneficiary will receive the LIS account value (including the balance of the SIP). Upon death of a participant (with a joint life election), the spouse will continue to receive the lifetime income payments for the rest of the spouse's life. Upon death of the participant and the participant's spouse, a beneficiary will receive the LIS account value (including the balance of the SIP).

ADVISORY OPINION - FAVORABLE

(1) QDIA Status

With regard to whether investment management services, described in paragraph (e)(4)(iii)ⁱ of the QDIA regulation, may incorporate lifetime income products and features in compliance with the regulation, it is the view of the Department that “such investment alternatives can be QDIAs provided they satisfy the transferability requirements and other provisions of the regulation.”

The discussion in the QDIA regulation's paragraph (e)(4)(vi) regarding variable annuity contracts in paragraphs (e)(4)(i) and (ii)ⁱⁱ was clarifying, in response to public comments on the proposal, and should not be read to preclude use of lifetime income strategies in an investment management service described in paragraph (e)(4)(iii). Accordingly, the LIS program would not fail to be a QDIA solely because it is offered through a variable annuity contract with a GLWB component, as described above. Thus, based on the information and representations provided, it is the view of the Department that the LIS program, if operating as described, would satisfy the requirements to be a QDIA as described in paragraph (e) of the QDIA regulation.

Whether a fiduciary has satisfied its duties under ERISA section 404(a) in selecting the LIS program, or any other investment alternative, as a QDIA for any particular plan would depend on the facts and circumstances.

(2) Fiduciary Duty with Respect to the Selection and Monitoring of Insurers

- The selection of an annuity provider **is a fiduciary decision** governed by the provisions of part 4 of title I of ERISA. ERISA section 404(a)(1)(B) requires that plan fiduciaries discharge duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

- There are two nonexclusive safe harbors available under ERISA for fiduciaries selecting annuity providers for defined contribution plans.
 - In 2008, the Department adopted a regulatory safe harbor for the selection of an annuity provider and contract for benefit distributions from defined contribution plans, codified at 29 CFR section 2550.404a-4ⁱⁱⁱ.
 - In 2019, Congress added a statutory safe harbor in a new paragraph (e) of ERISA section 404 for fiduciaries selecting annuity provider for a guaranteed retirement income contract for a defined contribution plan.
- Each safe harbor identifies appropriate considerations for the selecting fiduciaries to ensure they are meeting their obligations under ERISA section 404(a)(1)(B).
- It is the view of the Department that each of the annuity selection safe harbors sets forth relevant considerations with respect to the selection of the particular insurers to participate under the LIS program or a similar program. Consequently, it follows that AB would satisfy its fiduciary responsibilities^{iv} under ERISA section 404(a)(1)(B) if it makes the selections in accordance with the conditions of one of the respective safe harbors.
- The defined contribution plan's named fiduciary must prudently select AB as the investment manager and appropriately monitor the selection at reasonable intervals to assure the prudence of maintaining the appointment. After AB is appointed as the investment manager, however, AB is responsible for the prudent management of the defined contribution plan's assets and selection of the insurers. Assuming the defined contribution plan's named fiduciary appropriately discharges its selection and monitoring duties, it will not be liable for any acts or omissions of the investment manager, except for any potential co-fiduciary liability under ERISA section 405(a)^v.

ENDNOTES

ⁱ An investment management service with respect to which a fiduciary, within the meaning of paragraph (e)(3)(i) of this section, applying generally accepted investment theories, allocates the assets of a participant's individual account to achieve varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures, offered through investment alternatives available under the plan, based on the participant's age, target retirement date (such as normal retirement age under the plan) or life expectancy. Such portfolios are diversified so as to minimize the risk of large losses and change their asset allocations and associated risk levels for an individual account over time with the objective of becoming more conservative (i.e., decreasing risk of losses) with increasing age. For purposes of this paragraph (e)(4)(iii), asset allocation decisions are not required to take into account risk tolerances, investments or other preferences of an individual participant. An example of such a service may be a "managed account."

ⁱⁱ (4) Constitutes one of the following:

(i) An investment fund product or model portfolio that applies generally accepted investment theories, is diversified so as to minimize the risk of large losses and that is designed to provide varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures based on the participant's age, target retirement date (such as normal retirement age under the plan) or life expectancy. Such products and portfolios change their asset allocations and associated risk levels over time with the objective of becoming more conservative (i.e., decreasing risk of losses) with increasing age. For purposes of this paragraph (e)(4)(i), asset allocation decisions for such products and portfolios are not required to take into account risk tolerances, investments or other preferences of an individual participant. An example of such a fund or portfolio may be a "life-cycle" or "targeted-retirement-date" fund or account.

(ii) An investment fund product or model portfolio that applies generally accepted investment theories, is diversified so as to minimize the risk of large losses and that is designed to provide long-term appreciation and capital preservation through a mix of equity and fixed income exposures consistent with a target level of risk appropriate for participants of the plan as a whole. For purposes of this paragraph (e)(4)(ii), asset allocation

ⁱⁱⁱ § 2550.404a-4 Selection of annuity providers—safe harbor for individual account plans.

(a) **Scope.**

(1) This section establishes a safe harbor for satisfying the fiduciary duties under section 404(a)(1)(B) of the Employee Retirement Income Security Act of 1974 (ERISA), [29 U.S.C. 1104-1114](#), in selecting an annuity provider and contract for benefit distributions from an individual account plan. For guidance concerning the selection of an annuity provider for defined benefit plans see [29 CFR 2509.95-1](#).

(2) This section sets forth an optional means for satisfying the fiduciary responsibilities under section 404(a)(1)(B) of ERISA with respect to the selection of an annuity provider or contract for benefit distributions. This section does not establish minimum requirements or the exclusive means for satisfying these responsibilities.

(b) **Safe harbor.** The selection of an annuity provider for benefit distributions from an individual account plan satisfies the requirements of section 404(a)(1)(B) of ERISA if the fiduciary:

(1) Engages in an objective, thorough and analytical search for the purpose of identifying and selecting providers from which to purchase annuities;

(2) Appropriately considers information sufficient to assess the ability of the annuity provider to make all future payments under the annuity contract;

(3) Appropriately considers the cost (including fees and commissions) of the annuity contract in relation to the benefits and administrative services to be provided under such contract;

(4) Appropriately concludes that, at the time of the selection, the annuity provider is financially able to make all future payments under the annuity contract and the cost of the annuity contract is reasonable in relation to the benefits and services to be provided under the contract; and

(5) If necessary, consults with an appropriate expert or experts for purposes of compliance with the provisions of this [paragraph \(b\)](#).

(c) **Time of selection.** For purposes of [paragraph \(b\)](#) of this section, the “time of selection” may be either:

(1) The time that the annuity provider and contract are selected for distribution of benefits to a specific participant or beneficiary; or

(2) The time that the annuity provider is selected to provide annuity contracts at future dates to participants or beneficiaries, provided that the selecting fiduciary periodically reviews the continuing appropriateness of the conclusion described in [paragraph \(b\)\(4\)](#) of this section, taking into account the factors described in [paragraphs \(b\)\(2\), \(3\) and \(5\)](#) of this section. For purposes of this [paragraph \(c\)\(2\)](#), a fiduciary is not required to review the appropriateness of this conclusion with respect to any annuity contract purchased for any specific participant or beneficiary.

[[73 FR 58449](#), Oct. 7, 2008]

^{iv} Under the LIS program, AB acknowledges its status as an investment manager and fiduciary under ERISA section 3(38) with respect to the investment of participant accounts, including selecting the insurers that participate in the LIS program, allocating assets among them based on the described quarterly bidding process, and monitoring the insurers and contracts on an ongoing basis to determine their continuing appropriateness.

^v 29 U.S. Code § 1105 - Liability for breach of co-fiduciary

(a) Circumstances giving rise to liability

In addition to any liability which he may have under any other provisions of this part, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:

- (1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach;
- (2) if, by his failure to comply with section 1104(a)(1) of this title in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or
- (3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

(b) Assets held by two or more trustees

(1) Except as otherwise provided in subsection (d) and in section 1103(a)(1) and (2) of this title, if the assets of a plan are held by two or more trustees—

(A) each shall use reasonable care to prevent a co-trustee from committing a breach; and

(B) they shall jointly manage and control the assets of the plan, except that nothing in this subparagraph (B) shall preclude any agreement, authorized by the trust instrument, allocating specific responsibilities, obligations, or duties among trustees, in which event a trustee to whom certain responsibilities, obligations, or duties have not been allocated shall not be liable by reason of this subparagraph (B) either individually or as a trustee for any loss resulting to the plan arising from the acts or omissions on the part of another trustee to whom such responsibilities, obligations, or duties have been allocated.

(2) Nothing in this subsection shall limit any liability that a fiduciary may have under subsection (a) or any other provision of this part.

(3)

(A) In the case of a plan the assets of which are held in more than one trust, a trustee shall not be liable under paragraph (1) except with respect to an act or omission of a trustee of a trust of which he is a trustee.

(B) No trustee shall be liable under this subsection for following instructions referred to in section 1103(a)(1) of this title.

(c) Allocation of fiduciary responsibility; designated persons to carry out fiduciary responsibilities

(1) The instrument under which a plan is maintained may expressly provide for procedures (A) for allocating fiduciary responsibilities (other than trustee responsibilities) among named fiduciaries, and (B) for named fiduciaries to designate persons other than named fiduciaries to carry out fiduciary responsibilities (other than trustee responsibilities) under the plan.

(2) If a plan expressly provides for a procedure described in paragraph (1), and pursuant to such procedure any fiduciary responsibility of a named fiduciary is allocated to any person, or a person is designated to carry out any such responsibility, then such named fiduciary shall not be liable for an act or omission of such person in carrying out such responsibility except to the extent that—

(A) the named fiduciary violated section 1104(a)(1) of this title—

(i) with respect to such allocation or designation,

(ii) with respect to the establishment or implementation of the procedure under paragraph (1), or

(iii) in continuing the allocation or designation; or

(B) the named fiduciary would otherwise be liable in accordance with subsection (a).

(3) For purposes of this subsection, the term “trustee responsibility” means any responsibility provided in the plan’s trust instrument (if any) to manage or control the assets of the plan, other than a power under the trust instrument of a named fiduciary to appoint an investment manager in accordance with section 1102(c)(3) of this title.

(d) Investment managers

(1) If an investment manager or managers have been appointed under section 1102(c)(3) of this title, then, notwithstanding subsections (a)(2) and (3) and subsection (b), no trustee shall be liable for the acts or omissions of such investment manager or managers, or be under an obligation to invest or otherwise manage any asset of the plan which is subject to the management of such investment manager.

(2) Nothing in this subsection shall relieve any trustee of any liability under this part for any act of such trustee.

(Pub. L. 93–406, title I, § 405, Sept. 2, 1974, 88 Stat. 878.)