June 1, 2026

VIA ELECTRONIC SUBMISSION

Assistant Secretary Aronowitz
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

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

Dear Assistant Secretary Aronowitz:

The Securities Industry Financial Markets Association[1] and its Asset Management Group [2] (collectively, "SIFMA") submit comments to strengthen the Department of Labor's (the "Department") proposed rule on Fiduciary Duties in Selecting Designated Investment Alternatives.[3] Adopting our comments will enable fiduciaries to better help plan participants attain their retirement savings goals.

[1]SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

[2] SIFMA AMG brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms that manage more than 50% of global AUM. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds. For more information, visit http://www.sifma.org/amg.

[3] 91 Fed. Reg. 16088. March 30, 2026.

I. Executive Summary

SIFMA members support the Department's goal to adopt an asset-neutral, process-based approach in the proposal. The proposal reflects ERISA's fundamental principles by emphasizing the importance of a prudent fiduciary process when selecting advisors and investment products, while preserving broad discretion for plan fiduciaries to determine which options best serve the interests of their plans and participants.

We make the following recommendations to the Department to provide plan sponsors and fiduciaries greater flexibility to ensure that their plan participants have access to the investment opportunities they need to meet their retirement goals:

- Improve the safe harbor by further emphasizing fiduciary discretion;
- Harmonize conflict language with other regulatory standards;
- Change liquidity requirements to be asset class neutral;
- Collective Investment Trusts ("CITs") are well regulated and should receive equal treatment;
- Be clear that the examples are only guideposts; and
- Modernize Class Exemption PTE 77-4.

II. We support the Department's asset-neutral, process-based safe harbor approach

Helping Americans save for retirement is a core function of our capital markets. But with more companies staying private for longer, private markets have become an important driver of growth and innovation.

Late-stage startups are raising larger amounts of capital in the private markets from a growing pool of traditional and new investors, including dedicated private equity funds, mutual funds, and hedge funds, which has given late-stage companies the ability to continue to raise capital without going public. This trend is apparent in data showing that U.S. companies are remaining private for longer periods: the median age at IPO has increased meaningfully over time (6 years in 1980 vs. 12 years in 2025).[4] SIFMA supports broadening access to all categories of investments while also supporting regulatory efforts facilitating companies' ability to become public. We believe both public and private markets have an important role to play in the capital market system.

A. Private assets can improve investor outcomes

Investments in private assets are not a replacement for investments in publicly traded securities, but a complement to the traditional building blocks of stocks and bonds, which offer access to long-term returns, risk diversification, and new sources of yield. A likely first step for many defined contribution plan sponsors that decide to include private assets in their investment offerings is adding a sleeve of private strategies through a professionally managed target date fund ("TDF"). The resulting mix of public and private asset classes can help provide tangible

[4] Jay R. Ritter. Initial Public Offerings: Median Age of IPOs Through 2025. December 31, 2025.

benefits to participants, allow for optimal portfolio allocation across time and maintain prudent scale and liquidity.[5]

Industry stakeholders considering the addition of private market solutions to professionally managed assets can look to examples from other institutional investors in the U.S. market (e.g., state and local defined benefit plans) and retirement programs in international markets (e.g., Australia, United Kingdom, Netherlands) where such efforts are recognized as highly successful and may be beneficial for understanding best practices and potential outcomes.[6]

Trust companies, asset managers, and private markets managers have developed, and continue to refine, solutions that will provide participants with liquidity by managing illiquidity features of private market strategies that are embedded in a professionally managed participant investment option.[7] In addition, a diversified TDF structure allows for including illiquid assets while still meeting the liquidity demands of the DC plan environment by adjusting the private assets allocation in the glidepath as liquidity needs dictate, as well as by the structure of a TDF which has assets being added on an ongoing basis as cash at regular intervals from plan participants.

The Department's proposed rule on Fiduciary Duties in Selecting Designated Investment Alternatives is a welcome development in the effort to incorporate private market assets into defined contribution plans. The clear articulation of ERISA's statutory structure and its fundamental underlying principles of asset neutrality, a process-based approach to meeting the duty of prudence, and fiduciary discretion to consider and select investments that are appropriate for their participant populations provide greater transparency around prevailing interpretations of fiduciary prudence. The safe harbor's list of factors for plan fiduciaries to consider in establishing and maintaining plan investment menus will be helpful to plan fiduciaries in fulfilling their fiduciary duties. Importantly, the proposed rule structure leaves room for innovation and development of new products and investments, which is an important benefit to plan participants. We recommend the Department emphasize that the examples are not intended to preclude the flexibility of plan fiduciaries to use other prudent approaches when considering innovative and newly developed investment products.

Importantly, the Department's discussion around the harms of frivolous litigation and the aim of supporting judicial deference to plan sponsors and fiduciaries is crucial. The Department correctly points out that ERISA is a law of process and plan fiduciaries should have discretion and flexibility to act in the best interests of their plan participants. Decisions made using sound and prudent fiduciary processes should not be second-guessed by the plaintiffs' bar with the luxury of hindsight. Since 2016, more than 500 ERISA class actions have been filed, producing average settlements of $5.6 million each. But this number is deceiving because the typical employee receives just $198, less than $5 a year when annuitized. The real cost of litigation falls on employers and ultimately reduces savings and stifles innovation for employees.[8] Nearly 70 proposed class actions were filed under the Employee Retirement Income Security Act in the

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5 JP Morgan. From complexity to clarity: A measured approach for evaluating private investments in DC plans (account required). September 24, 2025.
6 Forbes. Private Markets and the Liquidity Tradeoff. January 6, 2023.
7 Cerulli, DCALTA, Great Gray. Unlocking the Potential of Private Investments in DC Plans. September 29, 2025.
8 Protect Retirement Plans

first three months of 2026, up from less than 40 during the same periods in both 2025 and 2024, a Bloomberg Law analysis found.[9] This proposal will improve participant outcomes by encouraging plan sponsor innovation which becomes easier after addressing frivolous litigation.

B. Safe harbor factors are appropriate and could be improved by further emphasizing fiduciary discretion

The Department's proposal introduces a process-based safe harbor for plan fiduciaries to use when selecting designated investment alternatives ("DIA"), considering a list of factors, including:

- performance,
- fees,
- liquidity,
- valuation,
- benchmarking, and
- the complexity of the designated investment alternative.

The proposal states that a fiduciary's judgment regarding the factor or factors is presumed to be reasonable and is entitled to significant deference.

We recommend the Department make clear that not all factors require evaluation in every situation. Fiduciaries should have discretion to determine whether a particular factor is relevant and should have deference in making this determination in light of the plan's particular design, participant demographics, and investment menu architecture, so long as they document the rationale for the determination. We suggest adding a statement to the language of the regulation that a fiduciary's decision not to follow the safe harbor framework — or to deviate from any of its factors or examples — does not create a presumption of imprudence or otherwise establish a standard of care for fiduciary investment selection under ERISA §404(a).

The Department should also confirm that fiduciaries are not required to review each of an investment alternative's underlying holdings according to the safe harbor's factors either initially or on a continual basis. Fiduciaries should be able to evaluate the designated investment alternative as a whole without needing to analyze underlying holdings or underlying investment products across each factor. Applying such a look-through approach would be inconsistent with how fiduciaries evaluate diversified DIA products in practice, create an unmanageable and inefficient investment process, increase litigation risk, and undermine the viability of asset-allocation products, including those with private asset investment sleeves.

Additionally, the level of documentation specificity contemplated by the safe harbor reflects an analytical framework calibrated to novel or complex investment products. For plan fiduciaries selecting well-understood, long-established designated investment alternatives such as index mutual funds, actively managed equity and fixed income funds, and CITs, these requirements could impose documentation obligations that are disproportionate to the nature of the investment decision and inconsistent with established fiduciary practices. We recommend the Department avoid prescriptive documentation requirements across all factors. Finally, sponsor and manager

[9] Bloomberg Law. ERISA Class Actions Soar in 2026 as New Legal Theories Emerge. April 13, 2026.

experience, scale, operational capabilities, and track record are all relevant considerations when evaluating expected performance and prudence.

SIFMA also recommends that the Department consider whether benchmarking should be a standalone factor. While the benchmark concepts are generally reasonable, identifying a "performance benchmark" should not be treated as an independent safe harbor factor. Benchmarking is one of many tools that fiduciaries use to evaluate performance and fees, rather than a separate prudence factor.

We propose that benchmarking be a potential element a fiduciary could use in meeting its obligations to consider performance and fees. If benchmarking is retained as a standalone factor, references to "as meaningful as possible" and "best possible" should be removed since the standard should be one of prudence and not absolutes. With respect to new or innovative products in particular, the Department should clarify that there are other ways a fiduciary may evaluate those investments in addition to comparators, such as, but not limited to, analyzing risk-adjusted expected returns using a combination of methodologies commonly used by investment professionals, including modern portfolio theory methods and appropriate capital market assumptions and/or public markets equivalent indices.

The Department requested comments on whether an additional safe harbor element should be added that takes into account individual participant profiles or characteristics. Rather than adding a separate participant profile factor, we encourage the Department to address this concept more broadly in the preamble, highlighting the individualized nature of harm determinations in class action cases, as reinforced in the *Genworth*[10] decision. Addressing the concept in the preamble would be consistent with the Department's process-based approach, provide helpful context to courts and litigants, and support the goal of alleviating litigation risk.

SIFMA's recommendations below are intended to improve the rule to make it more practical for real world application and to achieve the stated goal of reducing litigation risk.

III. Harmonize conflict language with other financial regulatory standards

Multiple times in the discussion related to the safe harbor valuation factor, the Department contemplates a "conflict-free" valuation process. It is very rare to find a situation that is entirely conflict-free, which could be read to suggest no potential conflict exists, and such language in the proposal is inconsistent with SEC and other legal standards. Instead, SIFMA suggests that the proposal recognize that potential conflicts are already significantly regulated —for example, other frameworks may require mitigation and disclosure. This would be achieved by requiring plan fiduciaries to determine that asset managers have in place controls and procedures reasonably designed to manage conflicts in valuation.

We recommend that the Department add language to the valuation discussion providing clarity that, while not necessary, the use of a third-party valuation agent to help support the valuation of securities for which there is not a generally recognized market would allow a plan fiduciary to satisfy this factor where selected as part of an arm's length arrangement. Such third-party

[10] *Trauernicht v. Genworth Financial Inc.*, No. 24-1880, – F.4th –, 2026 WL 667917 (4th Cir. Mar. 10, 2026).

valuation assistance may be part of the process depending on the framework and controls the investment manager has put in place. Often the third-party valuator provides a range or assessment on only a portion of the assets. The investment manager takes that information into account when determining a valuation. The proposal should make clear that valuation should be evaluated at the fund level. Harmonizing the proposal with pre-existing rules and [1112] would create a level playing field across agencies and regulatory frameworks.

In addition, we recommend removing example (j)(4) on continuation funds because it does not reflect a real-world scenario. It is highly unlikely that a continuation fund would ever constitute a stand-alone designated investment alternative.

IV. Change liquidity requirements to be asset class neutral

SIFMA believes that liquidity should operate as a balancing factor, not a categorical bar to structures that prudently manage liquidity risk. In particular, tools commonly used in private asset vehicles, such as notice periods, periodic redemption windows, caps/repurchase limits, and percentage caps on redemptions should not be viewed as per se inconsistent with the liquidity factor where a fiduciary reasonably concludes that the product's overall redemption structure is appropriate and clearly disclosed to participants.

We recommend that the Department reconsider the examples stating that liquidity requirements should be substantially similar to Securities and Exchange Commission Rule 22e-4 for funds or entities not already subject to that requirement. The expansion of Rule 22e-4 requirements to funds or entities not subject to such rule may lead to a bias both by plan fiduciaries and regulators for open-end mutual funds and may undermine the Department's asset-neutral principle. In addition, the "substantially similar" standard is vague and could be misinterpreted, leading to increased litigation risk and increased costs and burdens on advisers and ultimately plans. Different regulatory regimes reflect intentional design choices among varying structures that should be respected, but, irrespective of the regime, they have various controls in place to address liquidity risk management. References to Rule 22e-4 should be removed and the Department should instead require that plan fiduciaries confirm that the investment manager has controls and procedures reasonably designed to identify, manage, and mitigate liquidity risk.

Recognizing and giving appropriate weight to existing liquidity risk management frameworks, and to collective investment trust managers' ERISA-based duties of prudence and loyalty, would avoid creating a duplicative or inconsistent overlay and would promote regulatory coherence across the securities and retirement plan regimes. When evaluating liquidity for purposes of applying the safe harbor, a plan fiduciary should be able to properly take into account an open-end fund's liquidity risk management program, the liquidity rules or fiduciary requirements applicable to closed-end investment companies and/or their investment advisers or to a collective investment trust along with any ERISA-based obligations when assessing whether the product's redemption features, including any limits, gates or windows, are sufficient to meet the plan's reasonably anticipated participant-level liquidity needs.

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[12] See FASB ASC 850-10, FASB ASC 820-10, and SEC Regulation Best Interest.

The rule should specifically state that liquidity of the DIA as a whole should be the focus of fiduciaries, and that fiduciaries are expected to balance the liquidity characteristics of the underlying sleeves against the fund's long-term, risk-adjusted return objectives, rather than to avoid structures that use tools such as notice periods, periodic redemption windows, caps/repurchase limits, or percentage caps. Certain underlying private asset investment sleeves may be relatively less liquid, but the DIA manages this with other, more liquid, asset sleeves.

The first scenario in example (i)(3) should be adjusted to remove the suggestion that plan fiduciaries must evaluate and monitor the target date fund manager's ability to sell the underlying investment for full value, the time until such investments will return capital, etc. This approach is impractical, particularly where the underlying vehicle is itself a fund-of-funds, which will often be the case. Instead, we recommend clarification that fiduciaries evaluate the target date fund's overall redemption structure, including any caps/repurchase limits or other controls the manager uses to manage liquidity risk at the fund level.

Lastly, we recommend refining the liquidity examples[13] to avoid any implication that commonly used structural features (e.g., notice periods, periodic redemption windows, caps/repurchase limits, or percentage caps) may, standing alone, cause an investment to fail the liquidity factor.

V. Collective Investment Trusts are well regulated and should receive equal treatment

SIFMA would like to highlight the importance of CITs as an investment vehicle for participants through ERISA plans. In recent years, CITs have grown to pass mutual funds as an investment vehicle for 401(k) plans.[14]CITs have steadily grown their market share from 23% of assets in 2015 to 42% in 2024. CITs are available only to plans and are subject to ERISA, regulation and oversight of the Office of the Comptroller of the Currency ("OCC"), and certain state regulators.

In fact, the OCC has a regulation that governs CITs.[15] In addition, OCC has created a handbook that covers CITs.[16] The handbook lays out for investment managers the areas a CIT needs to be focusing on, including compliance, operational and strategic risk. The handbook highlights the various risks associated with serving as the fiduciary for the participating interests in the fund, including investment risk. The handbook also provides additional details regarding each of these risks, and the various reviews and oversight necessary to hedge against these risks.

When banking regulators conduct examinations of these funds, they also look to the Retirement Plan Products and Services, Conflicts of Interest, Asset Management Handbook, and Investment Management Services Handbooks.[17] It is worth noting the banking regulators conduct examinations every 12 to 18 months. For the risks listed in these handbooks, financial institutions must have written policies and procedures that address these fiduciary activities, which regulators review when they conduct their examinations. [18]

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[13] See Appendix A
[14] Morningstar. 2026-Retirement-Plan-Landscape-Report. March 2026.
[15] 12 CFR 9.18 -- Collective investment funds.
[16] OCC. Comptroller's Handbook. Collective Investment Funds.
[17] OCC. Comptroller's Handbook: Retirement Plan Products and Services, Conflicts of Interest, Asset Management, Investment Management Services.
[18] 12 CFR 9.5 -- Policies and procedures.

Furthermore, CIT managers and trustees are subject to ERISA's fiduciary duties and prohibited transaction rules when they have discretion over the management of the CIT. Existing ERISA-based obligations include managing the CIT's investments, costs, valuation and liquidity for the benefit of investing plans, and should be explicitly recognized when the Department evaluates how the safe harbor's factors apply to CITs.

VI. Be clear that the examples are intended only as guideposts

While the examples may clarify what actions may be considered to be part of a prudent process in evaluating each safe harbor factor, they may also lead to stifled innovation if plan fiduciaries become uncomfortable venturing beyond the four corners of the specific fact patterns. Some of the language used in the examples is also subjective, leaving room for plaintiffs to challenge fiduciaries' process for evaluating the factors. We recommend the Department add language throughout making it explicitly clear that examples are for illustrative purposes only and that other situations and fact patterns will meet the safe harbor requirements. The Department may also consider whether there is another way to deemphasize the specific fact patterns.

With respect to certain examples, we recommend the following:

- We support the inclusion of references in the preamble and proposed rule and examples to the benefit of analysis of professional advisors like 3(21) fiduciaries, where appropriate. To discourage interpretation of the examples as suggesting that 3(21) fiduciaries are required to meet the requirements of the safe harbor, we suggest including an additional example showing a sophisticated plan sponsor relying on their own knowledge and resources to evaluate the safe harbor factors to show that a 3(21) fiduciary will not always be required.
- The proposal appears to lean heavily on open-end registered funds in its examples of DIAs with exposure to private asset investments. We recommend refining the examples that demonstrate the prudent selection of DIAs to expressly include DIAs structured as other investment vehicles, including [19], which are commonly used in retirement plans and are themselves subject to ERISA's fiduciary duties as plan asset vehicles, and stable value funds to maintain product neutrality.
- The examples suggest that a plan sponsor reviews a reasonable number of alternatives. As there is no magic number that is "reasonable," the Department should make it clear that the reasonable number of alternatives that should be considered is determined at the fiduciary's reasonable discretion. The Department should also make clear that evaluating reasonable benchmarks may satisfy this expectation. In some cases, benchmarks are an appropriate tool to evaluate performance and fees in lieu of reviewing a specific set of reasonable alternatives.
- Example (h)(1) should be revised to remove the specific fee difference. In the alternative, the Department should include clarification that specific numbers are not intended to suggest the Department's insistence on those numbers, but that fiduciaries need to follow the prudent process and evaluate individual facts and circumstances.

[19] See Appendices A and B

- Example (h)(2) should be revised. It should be clarified that the two share classes are completely identical, with the sole difference being the fees.
- Example (h)(4) should be revised to allow for additions of private asset sleeves without automatically resulting in an analysis comparable to picking a new fund, taking into account, for example, how much is allocated to the private asset sleeve. The example should make it clear that the level of analysis required when adding a private asset sleeve will be a facts and circumstances analysis.
- Example (h)(5) should be revised to remove the impression given by the Department that active funds standing alone may be imprudent menu options.

VII. Diversified menu guidance not necessary

In the preamble of the proposed rule, the Department requested feedback on issuing future guidance addressing the question of what process is required to curate a prudent menu of investments. There are seemingly countless ways to construct an overall plan menu that would be considered prudent, taking into account the diversity of asset classes, fund/product types, participant needs and sophistication, plan education and advice tools, etc. Therefore, we do not recommend issuing future guidance in this area and recommend that the Department delete paragraph (d) of the proposed regulation referencing investment asset menu selection.

VIII. Address monitoring through an RFI

In response to the Department's request as to whether they should address monitoring in this rulemaking, SIFMA recommends that the Department not address it in this particular rulemaking. While we understand the Department's interest in addressing monitoring, we recommend the Department issue a request for information with respect to the duty to monitor, which will allow for robust stakeholder input.

IX. Modernize PTE 77-4

In order to fully realize the goals of the August 2025 Executive Order, "Democratizing Access to Alternative Assets for 401(k) Investors," providers need a way to pair private asset investments with public markets within affiliated fund structures. We raise the issue here because of its interconnectedness with the Executive Order and encourage the Department to promptly propose an amendment to Prohibited Transaction Exemption (PTE) 77-4 to modernize the exemption.

PTE 77-4 is a commonly used class exemption that permits the purchase or sale of open-end mutual funds by a Retirement Plan where the investment manager to the fund is also a fiduciary with respect to the Retirement Plan (or an affiliate of such fiduciary). The exemption reflects a protective framework designed to safeguard the interests of plan participants and beneficiaries through disclosure, approval, and fee conditions. Since the Department issued PTE 77-4 in 1977, the retirement investing landscape has changed dramatically, including the development and widespread adoption of new investment vehicles that were not contemplated at the time the exemption was issued. Over the years, the Department has approved the expansion of PTE 77-4 for certain investment managers who have applied for individual exemptions. However, PTE 77-4 has not been updated on a class-wide basis to incorporate decades of modernizations in the

market or to reconcile the myriad individual exemptions that have been granted since PTE 77-4 was issued.

The Department should amend PTE 77-4 to reflect these market modernizations and expand its scope to transactions with respect to funds other than open-end mutual funds, while retaining its protective framework. The amendment should also make other modernizing changes consistent with similar individual exemptions granted by the Department since the class exemption was granted.

By modernizing and expanding PTE 77-4 to encompass a broader range of investment vehicles while preserving its longstanding protective framework, the proposed amendments would increase investment choice for retirement plans, enabling fiduciaries to construct more diversified and flexible portfolios that can better support improved investment outcomes for plan participants and beneficiaries.

X. Conclusion

Addressing the issues outlined above would significantly improve the proposed rule on Fiduciary Duties in Selecting Designated Investment Alternatives and its intended purpose of providing clarity and confidence to plan fiduciaries.

We look forward to working with the Department as they consider our comments regarding the proposed rule. Please do not hesitate to contact me at lbleier@sifma.org or (202) 962-7329 or Nicole Swift at nswift@sifma.org or (202) 962-7317 if you have any questions.

Sincerely,

Lisa J. Bleier

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Appendix A – Liquidity Examples

(i) Liquidity. The fiduciary must appropriately consider and reasonably determine that the designated investment alternative will have sufficient liquidity to meet the anticipated needs of the plan at both the plan and ~~individual~~ participant levels. For example, because participant-directed individual account plans are long-term retirement savings vehicles, particularly for participants early in their careers, there is no requirement that a fiduciary select only fully liquid products. Indeed, a prudent fiduciary process may regularly lead to a decision to ~~sacrifice~~ tradeoff liquidity at the~~some~~ plan- or ~~individual~~participant-level ~~liquidity~~, or both, ~~in pursuit of additional~~to ~~optimize~~increase expected risk-adjusted returns. Consistent with the proposal's asset-neutral approach, the presence of less liquid or non-traditional assets in a designated investment alternative does not categorically preclude it from satisfying the safe harbor, so long as the fiduciary's evaluation of the six factors is prudent ~~and well-documented~~.

(1) Example. Participant-level liquidity—(i) Facts. Certain participant-level events, depending on the terms of the plan, may trigger a plan's need for immediate liquidity. Examples of these events include, but are not limited to, participant benefit withdrawals due to retirement, separation from service, or financial hardship, asset reallocations or reinvestments to other designated investment alternatives in the case of plans intended to meet the requirements of section 404(c) of ERISA, and plan loans.

(ii) Analysis. Plan fiduciaries must give consideration to the potential for such events when selecting designated investment alternatives, especially qualified default investment alternatives (as defined in 29 CFR 2550.404c–5), for a plan investment menu. Further, on the basis of such consideration, the plan fiduciary must reasonably determine that the designated investment alternative, at the time of selection, will have sufficient liquidity to meet the reasonably anticipated liquidity needs of the plan.

(iii) Conclusion. The participant-level liquidity needs of a given plan depend on the type of plan at issue, its features, and the overall profile of the participants and beneficiaries of the plan as a whole, particularly with respect to a qualified default investment alternative (as defined in 29 CFR 2550.404c–5), ~~as well as,~~and to the extent they ~~are different~~differ, the participants and beneficiaries likely to select the particular designated investment alternative under review. A plan fiduciary, however, is deemed to have met the consideration and determination requirements of paragraph (i) of this section, and section 404(a)(1)(B) of ERISA, with respect to the participant-level liquidity needs of a given plan in connection with a given designated investment alternative ~~(including one that holds a percentage of assets that are not securities, non-publicly traded securities, or securities acquired in exempt offerings)~~ that is designed to provide daily, monthly or quarterly liquidity at the participant-level, such as a mutual fund or exchange-traded fund ("ETF") registered as an open-end management investment company with the U.S. Securities and Exchange Commission ("SEC") under the Investment Company Act of 1940 (the "1940 Act"), ~~is~~ an interval fund or tender offer fund registered as a~~n~~ closed-end ~~management~~

investment company with the SEC under the 1940 Act, or a collective investment trust. Mutual funds and ETFs are required by rules under the 1940 Act ~~such Act~~ to adopt and implement a written liquidity risk management program that is designed to assess and manage their liquidity risk. Interval funds are required by rules under the 1940 Act to adopt written procedures that are reasonably designed, taking into account current market conditions and the fund's investment objectives, to ensure that the fund's assets are sufficiently liquid so that the fund can meet its periodic obligation to repurchase its shares. Although not subject to specific liquidity rules, investment advisers to tender offer funds are subject to a fiduciary duty with respect to their services to a tender offer fund and must maintain adequate liquidity in the tender offer portfolio to fulfill the fund's discretionary tender offers. Further, the liquidity of a tender offer fund's portfolio and the setting of the fund's discretionary tender offers is overseen by the fund's independent board of trustees. Collective investment trusts are themselves plan asset vehicles~~,~~ subject to ERISA. As such, c~~C~~ollective investment trust managers and trustees are subject to ERISA's duty of prudence and have their own obligations to ensure sufficient liquidity ~~to meet the needs of investing plan participants~~ in accordance with the terms of the ~~designated investment alternative~~trust and participation agreement. In the case of a designated investment alternative that is not such ~~an open-end or closed-end registered investment company, intercal fund, tender offer fund, mutual fund or collective investment trust~~a fund or trust, a plan fiduciary will be deemed to have met the consideration and determination requirements of paragraph (i) of this section and section 404(a)(1)(B) of ERISA if three conditions are met. First, the fiduciary ~~obtains a written representation from the person responsible for managing the designated investment alternative, or otherwise~~ performs appropriate due diligence~~, ~~, including consideration of product disclosures and other information provided by the ~~fund sponsor or~~ person sponsoring or responsible for managing the designated investment alternative, and concludes that the designated investment alternative, when considered in light of the plan's reasonably anticipated participant-level liquidity needs and other available designated investment alternatives, ~~provides~~is expected to provide sufficient liquidity to meet such participant-level liquidity needs ~~has adopted and implemented a liquidity risk management program that is substantially similar to a program that meets the requirements of such Act~~. Second, the fiduciary ~~reads, critically reviews, and understands any written representation and consults a qualified professional where appropriate. Third, the fiduciary does not know, or have reason to know, other information which would cause the fiduciary to question any written representation~~ensures that participants ~~receive~~have access to ~~plain-English~~ disclosures, ~~written in plain English and~~ reasonably designed to be understood by the plan's participants, regarding any limitations on the designated investment alternative's liquidity and their ability to withdraw or transfer their interests ~~from~~in the designated investment alternative. Third, the fiduciary does not know ~~, or and does not have reason to know,~~ other information that would cause ~~the~~a prudent fiduciary to ~~question~~conclude that those disclosures are materially inaccurate or misleading in describing the investment alternative's liquidity and withdrawal features.

(2) Example. Participant-level liquidity; lifetime income—(i) Facts. The investment policy statement of a participant-directed individual account plan calls for lifetime income options on the plan investment menu. The named plan fiduciary selects several designated investment alternatives with such features, including a deferred annuity contract. Allocations to this contract, which are made on a monthly basis, grow at a rate specified under the contract, and monthly payments for life begin when the participant reaches age 65. Allocations to this contract become fully committed after 90 days and any immediate withdrawals by a participant before age 65 result in a penalty and a market value adjustment to the value of the annuity that begins at age 65. The restrictions on liquidity throughout the growth period enable greater monthly payments at age 65.

(ii) Analysis. Paragraph (i) of this section clarifies that plan fiduciaries must appropriately considergive consideration to the potential participant-level events that may trigger a plan's need for immediate liquidity, and must reasonably determine that the designated investment alternative, at the time of selection, will have sufficient liquidity to meet the reasonably anticipated liquidity needs of the plan. When assessing the liquidity needs of the plan, the plan fiduciary in this example must balance the restrictions on liquidity under the annuity contract with the value of the guaranteed monthly payments under the annuity contract, recognizing that such guarantees help plan participants manage investment and longevity risk. The fThe fact that a designated investment alternative is fully allocated to an illiquid product, like an annuity, does not foreclose its selection, including, for example, where the fiduciary determines within its discretion that the lack of liquidity is justified by a commensurate expected risk-adjusted increase in return on investment, certainty with respect to future payments, or both.

(iii) Conclusion. In this example, the named plan fiduciary would satisfyis deemed to have met the consideration and determination requirements of paragraph (i) of this section, and section 404(a)(1)(B) of ERISA, with respect to the designated investment alternative in question if the named plan fiduciary concluded reasonably determined that the increase in the value of the monthly payments and the certainty of the insurer's guarantee under the annuity contract justified the restrictions on liquidity.

(3) Example. Plan-level liquidity—(i) Facts. Plan terminations, changes in plan recordkeepers or investment providers, and corporate sponsor mergers and acquisitions are examples of circumstances that may impose relatively short-term liquidity demands on a plan's designated investment alternatives, particularly where the designated investment alternative invests withand those demands may be more difficult to manage when a designated investment alternative has strategies that allocate all or a portion of their assets to illiquid investments. This is especially true in the case of a designated investment alternative (such as a pooled investment vehicle) with a strategy involving a target position in certain private assets along with public assets (e.g., publicly traded securities). With such designated investment alternativesUnder some circumstances, ,a specific plan's (or, in a pooled investment product, other plan's or non-plan investors') need for relatively short-term liquidity (e.g., when the investor wants to exit the

investment) ~~may present significant liquidity risk to the~~may result in the designated investment alternative ~~as a whole such that it cannot~~not being able to maintain its asset allocation targets. ~~Thus, in such circumstances, d~~Designated investment alternatives may ~~temporarily or must impose temporal restrictions~~restrictlimit ~~on~~ redemptions~~-~~ to help maintain asset allocation targets~~(e.g., they might require advance notice and permit only incremental redemptions over a period of time)~~. When fulfilling withdrawals, particularly large withdrawals, diversified designated investment alternatives may temporarily deviate from their target asset allocations. ~~The presence of redemption gates, notice periods, percentage limits on redemptions or other structural liquidity tools in a designated investment alternative does not, standing alone, cause the investment to fail the liquidity factor, provided that the fiduciary determines that the overall redemption structure is appropriate in light of the plan's reasonably anticipated liquidity needs and the product's investment objectives.~~ For example, a designated investment alternative that is designed to have a 90 percent allocation to fully liquid instruments may have to temporarily accept a lower allocation to fully liquid instruments to satisfy a large withdrawal. The presence of temporary restrictions, as well as ~~redemption gates~~caps/repurchase limits, notice periods, percentage limits on redemptions or other structural liquidity tools in a designated investment alternative, do~~es~~ not, standing alone, cause the investment to fail the liquidity factor, provided that the fiduciary determines that the overall redemption structure is appropriate in light of the plan's reasonably anticipated liquidity needs and the ~~product's~~designated investment alternative's investment objectives.

(ii) Analysis. Plan fiduciaries must give consideration to, and reasonably determine, that the scope and duration of redemption restrictions at the plan level meet the reasonably anticipated needs of the plan. This includes whether the designated investment alternative has a ~~sufficient~~ process ~~in place~~designed to balance the plan's potential need for withdrawals against the plan's desire for the designated investment alternative to maintain ~~smooth and consistent~~its investment strategy and target ~~positions~~allocations, including following ~~a~~ significant withdrawals ~~of investors~~ by other ~~than the plan~~investors. ~~The examples recognize that d~~Designated investment alternatives ~~investing in less liquid assets~~ may use ~~redemption gates~~caps/repurchase limits, notice periods, percentage limits on redemptions or other structural liquidity tools~~appropriately use tools such as notice periods, periodic redemption windows and percentage capslimits to achieve that balance~~, so long as ~~those tools are calibrated to the plan's anticipated liquidity profile~~the plan fiduciary reasonably determined that the designated investment alternative's overall redemption structure is appropriate in light of the plan's reasonably anticipated liquidity needs and the designated investment alternative's investment objectives.

(iii) Conclusion. A plan fiduciary is deemed to have met the consideration and determination requirements of paragraph (i) of this section, and section 404(a)(1)(B) of ERISA, with respect to the plan-level liquidity needs of a given plan in connection with a given designated investment alternative (including one that holds a percentage of assets that are not securities, non-publicly

traded securities, or securities acquired in exempt offerings) in either of the two following scenarios.

(A) In the first scenario, the plan fiduciary ~~evaluates~~gives consideration to, including, if appropriate, with the advice of a third-party investment advice fiduciary within the meaning of section 3(21)(A)(ii) of ERISA, ~~in concert,~~ the maximum that the designated investment alternative will allocate to illiquid investments, the time until such investments could likely be sold without reducing their value, the time until such investments will return capital to their investors, and the required advance notice plans must give before exiting the designated investment alternative. After this ~~evaluation~~consideration, the plan fiduciary ~~concludes~~ reasonably determines that the designated investment alternative will appropriately balance the future liquidity needs of the plan, the ability of the designated investment alternative to achieve increased risk-adjusted return on investment, and the ability to maintain its asset allocation targets even if there were redemptions from multiple plans or non-plan investors.

(B) In the second scenario, the plan fiduciary relies on the fact that the designated investment alternative is a (i) mutual fund or ETF registered as an open-end management investment company with the SEC under the 1940 Act ~~Investment Company Act of 1940~~, which is required by rules under such Act to adopt and implement a written liquidity risk management program that is designed to assess and manage their liquidity risk, (ii) an interval fund registered as a closed-end investment company with the SEC under the 1940 Act that is required by 1940 Act rules to adopt written procedures to ensure that the fund's assets are sufficiently liquid so that the fund can meet its periodic obligation to repurchase its shares, (iii) a tender offer fund registered as a closed-end investment company with the SEC under the 1940 Act whose investment adviser is a SEC-registered investment adviser and whose board is composed of a majority of independent trustees; or (iv) ~~or~~ a collective investment trust. If the designated investment alternative is not such fund or trust~~a fund or collective investment trust~~, the fiduciary must meet three conditions. First, the fiduciary ~~obtains a written representation from the person responsible for managing the designated investment alternative, or otherwise~~ performs appropriate due diligence, including consideration of product disclosures and other information provided by the person sponsoring or responsible for managing the designated investment alternative,~~,~~ and ~~concludes~~reasonably determines that, in light of the plan's reasonably anticipated plan-level liquidity needs and other available designated investment alternatives, the designated investment alternative is expected to ~~has adopted and implemented a liquidity risk management program that is substantially similar to a program that meets the liquidity risk management requirements under such Act~~provide~~s~~ sufficient liquidity to meet ~~anticipated~~such plan-level liquidity needs. Second, ~~ensures~~the fiduciary ensures that participants ~~receive~~have access to ~~plain English~~ disclosures, ~~written in plain English and~~ reasonably designed to be understood by the plan's participants, regarding any limitations on the designated investment alternative's liquidity and the plan's ability to withdraw or transfer its ~~investments in that alternative~~interests in the designated investment alternative~~the fiduciary reads, critically reviews, and understands any written~~

~~representation and consults a qualified professional where appropriate. Third, the fiduciary does not know, or have reason to know, other information which would cause the fiduciary to question any written representation~~. Third, the fiduciary does not know~~, and does not have reason to know,~~ other information that would cause a prudent fiduciary to conclude that those disclosures are materially inaccurate or misleading in describing the designated investment alternative's liquidity and the plan's ability to withdraw or transfer its investments.

(4) Example. Participant and plan-level liquidity—(i) Facts. A participant-directed individual account plan offers a designated investment alternative that is a pooled investment vehicle with an investment strategy involving target positions in particular types of assets, including holdings in private assets. According to written ~~representations~~ product disclosures ~~or~~and other ~~representations~~information provided by ~~from~~ the person sponsoring or responsible for managing the designated investment alternative~~product~~, it is structured so that the timing of the designated investment alternative's ~~product's~~ ability to liquidate private-asset investments aligns generally with the redemption rights of plans investing in the designated investment alternative~~product~~. Representations also are made that the designated investment alternative ~~product~~ permits ~~quarterly~~ periodic redemptions by investors ~~and does not otherwise impose any specific limits or restrictions on timing or payment of redemptions~~. ~~For individual participants, representations are made to the plan fiduciary that the designated investment alternative has adopted and implemented a liquidity riskmanagement program that imposes requirements substantially similar to the requirements related to liquidity risk management programs for mutual funds registered as open-end management investment companies with the SEC under the Investment Company Act of 1940.~~ The fiduciary ~~reads, critically reviews, and understands the written representations and consults a thirdparty investment advice fiduciary within the meaning of section 3(21)(A)(ii) of ERISA. The fiduciary does not know, or have reason to know, other information which would cause the fiduciary to question the written representations~~ensures that plan participants ~~are fully informedhave access to~~ have access to -information on any limitations on their ability to withdraw their assets from the designated investment alternative.

(ii) Analysis. The example in paragraph (i)(1) of this section clarifies that plan fiduciaries must ~~appropriately consider~~give consideration to the potential participant-level events that may trigger a plan's need for immediate liquidity, and must reasonably determine that the designated investment alternative, at the time of selection, will have sufficient liquidity to meet the reasonably anticipated liquidity needs of the plan. Similarly, the example in paragraph (i)(3) of this section clarifies that plan fiduciaries must ~~appropriately consider~~give consideration to, and reasonably determine, that the scope and duration of redemption restrictions at the plan level meet the reasonably anticipated needs of the plan.

(iii) Conclusion. A plan fiduciary is deemed to have met the consideration and determination requirements of paragraph (i) of this section, and section 404(a)(1)(B) of ERISA, with respect to the participant-level and plan-level liquidity needs of a given plan in connection with a given designated investment alternative when the fiduciary reasonably determines ~~within its discretion~~

that the redemption structures under the product (including any limits, ~~gates~~caps/repurchase limits, notice requirements or periodic redemption windows) are appropriate to the needs of the plan after giving ~~due~~ consideration~~, including, where applicable, with the benefit of analysis of professional advisors,~~ to the specific needs of the plan, including its need to ~~maximize~~ increase risk-adjusted return on investment.

Appendix B – TDF/CIT Example

This example is a target-date fund (TDF) structured through a collective investment trust (CIT) that includes an allocation to private markets through private evergreen investment vehicles.

The allocation to private markets would vary depending on the participant's time to retirement, with younger participants generally maintaining higher exposure over longer investment horizons.

Performance: a fiduciary may prudently evaluate the expected long-term, risk-adjusted performance of a TDF that includes a private markets sleeve. A newer TDF is not imprudent simply because it lacks a lengthy operating history. The fiduciary may consider, among other things:

- The experience and track record of the TDF manager, if applicable;
- The TDF manager's process for selecting underlying investment vehicles, including the experience and scale of the managers of such vehicles;
- Expected net-of-fee returns of the TDF over the relevant participant time horizon; and
- Diversification benefits associated with including private markets exposure within a diversified retirement product.
- A fiduciary may use a blended or composite benchmark when evaluating a diversified TDF with private markets exposure. Rather than requiring a single comparator, the fiduciary may evaluate, for example:
    - Public market benchmarks for the liquid sleeves of the portfolio; appropriate private market benchmarks or peer comparisons for the private markets sleeve; and a composite benchmark reflecting the overall asset allocation strategy of the TDF.
- Fiduciaries are not required to identify the single "best" benchmark.

Fees: Fiduciaries may evaluate TDF fees in the context of expected value provided to participants. Although the TDF may have somewhat higher fees due to factors such as active management, private market access, liquidity management, and valuation oversight, the fiduciary may reasonably conclude the TDF fees are appropriate in light of:

- Expected net-of-fee returns for the TDF; diversification benefits; risk management benefits; and professional management of the private markets allocation.
- ERISA requires fees to be reasonable — not necessarily the lowest available.

Liquidity: Liquidity should be evaluated at the TDF level, rather than based on the liquidity profile of each underlying investment.

Valuation: Fiduciaries may reasonably rely on the valuation processes implemented by the TDF manager. The fiduciary would review whether the TDF manager has:

- Established valuation policies and procedures.
- For example, safeguards in valuation processes involving alternative assets might include written valuation policies, established accounting standards (FASB 820 or similar), valuation committees, periodic testing or review of valuation practices, third-party

valuation reviews, and independent audits. The plan fiduciary should not have to itself evaluate the valuation process for every underlying investment or asset.

Complexity: Complexity alone should not make a TDF imprudent. Instead, the relevant inquiry is whether the fiduciary:

- Understands the TDF's overall structure and investment strategy, including the identities and scale, experience, and track record of the TDF manager and the basis for selecting managers of underlying vehicles;
- Understands the role of the private markets sleeve within the diversified portfolio;
- Has access to appropriate expertise, whether internally or through outside advisers; and
- It should be sufficient for the fiduciary to understand how underlying fees are reflected in the overall cost of the TDF and the net returns of the TDF.