



May 3, 2010

Office of Regulations and Interpretations  
EBSA Room N-5655  
Department of Labor  
200 Constitution Ave. N.W.  
Washington, DC 20210  
**Re: RIN 1210-AB33**

Internal Revenue Service  
Room 5205  
PO Box 7604  
Ben Franklin Station  
Washington DC 20044  
**Re: REG-148681-09**

Submitted electronically

**Re: Request for Information Regarding Lifetime Income Options**

Ladies and Gentlemen:

AllianceBernstein L.P. welcomes the opportunity to provide our views and comments on the Department of Labor and Department of Treasury request for information regarding whether and how the Agencies should enhance the retirement security of participants in employer-sponsored retirement plans by facilitating arrangements that provide a lifetime stream of income after retirement.

AllianceBernstein is a registered investment adviser and global asset management firm with \$501 billion in assets under management as of March 31, 2010. AllianceBernstein provides investment services to defined benefit (DB) and defined contribution (DC) plans in the US and abroad. For DC plans, AllianceBernstein or its affiliates offer mutual funds, collective investment funds and separate accounts for a wide range of investment services, including more than \$9.3 billion in target-date retirement portfolios.

In lieu of responding to each of the questions in the Request for Information, we would like to make the following key points:

- DB plans, once a cornerstone of secure retirement income for a large segment of workers, have become too expensive for many sponsors to continue to offer, creating a potential retirement income gap for future generations of retirees;
- While DC plans offer participants advantages absent in DB plans, including ownership of their retirement assets, portability and access to cash, DC plans have

- traditionally not been designed to deliver secure lifetime income to participants—and policies have not encouraged such a design;
- DC plans *can* be designed to preserve their beneficial aspects while also replicating the core benefits of DB plans; we will discuss one example of such a design, secure income target-date portfolios;
  - Unfortunately, plan sponsors have little incentive to offer lifetime income products within their plans, and actually face significant obstacles to doing so.

Policymakers can help by enacting policies to motivate employers to offer lifetime income products within their plans. We believe the following actions could spark widespread use of secure lifetime income strategies within DC plans:

- Provide plan sponsors with protections, and possibly incentives, to offer well-designed lifetime income products within their plans—and consider incentives for participants to use them;
- Ensure that current and future policies, including qualified default investment alternative (QDIA) protections, clearly address the broad spectrum of lifetime income products now available, not just traditional fixed annuities;
- Clarify rules surrounding qualified joint and survivor annuities (QJSA) and minimize the sponsor’s administrative requirements;
- Encourage participant education by clarifying the extent to which plan assets can be used to pay for providing information to participants and clarifying that providing certain information would not constitute advice.

### **An Overview of the Problem**

For many years, employer-sponsored DB plans have provided an important source of secure retirement income for a large part of the population. These plans have provided a vital benefit to employees and have been useful for employers to help recruit, retain and reward employees.

Participation in DB plans is easy, when offered: employees just do their jobs, and they automatically accumulate valuable benefits over time. Most employees are unaware of the sophisticated investment management put in place by the sponsor to support the promised lifetime retirement income.

Unfortunately, the DB model appears to be headed for retirement, at least in the private sector. Few new private sector DB plans have been launched over the past three decades, and an increasingly large number of companies have closed or frozen existing plans, because they found they couldn’t afford them. More recently, financially strapped state and local governments have begun to consider freezing or closing their DB plans.

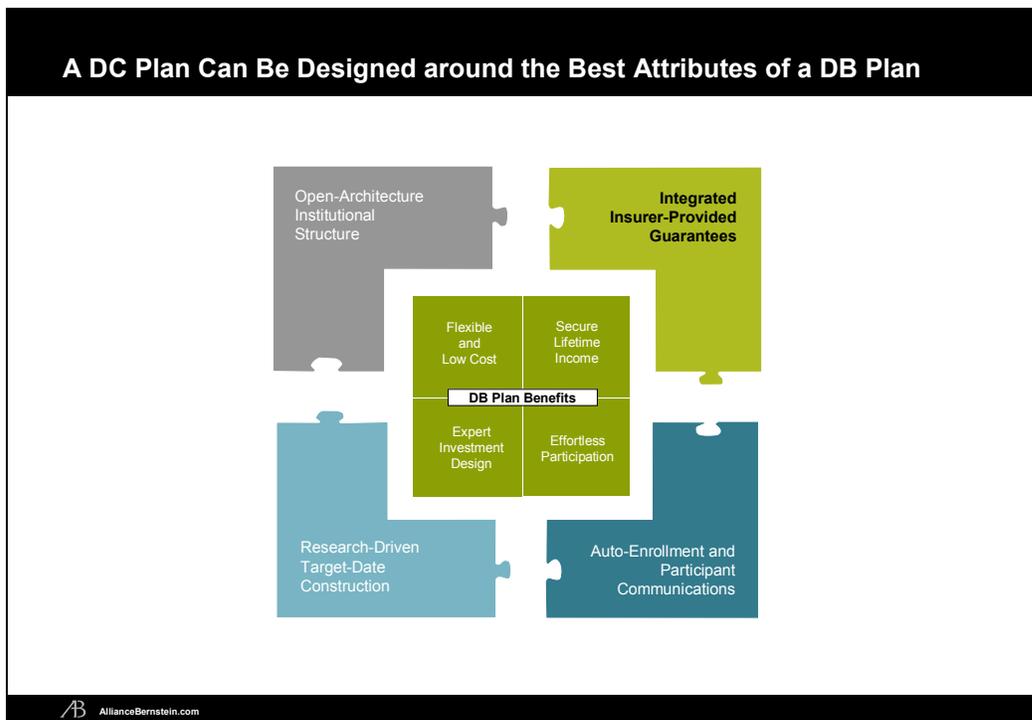
### **DC Plans Can Incorporate the Best Attributes of DB Plans**

DC plans are increasingly expected to fill the gap created by diminishing DB plan availability. DC plans have many excellent features of their own—most notably portability, participant access to funds, participant control and upside potential from their investments. Motivated by the desire to offer superior employee benefits and encouraged

by the protections and incentives offered in the Pension Protection Act of 2006 (PPA), US DC plan sponsors have invested an enormous amount of time and effort to improve their plans in recent years.

In fact, sponsors of large DC plans are increasingly interested in adopting the best practices honed from years of experience in DB plan management. We see four core attributes of DB plans that stand out in this context, illustrated in the center four boxes in the display, below:

- Effortless employee participation
- Expert investment design
- Flexible and low-cost management
- Secure lifetime retirement income



Three of these benefits—effortless employee participation, expert investment design and flexible and low-cost management—are readily replicable in today’s DC plans and fit together nicely.

A DC plan can achieve simple, widespread employee participation by automatically enrolling new and perhaps existing employees and requiring them to proactively opt out of the plan, rather than proactively opt in. Endorsed by the PPA, automatic enrollment of new employees has rapidly become standard practice among DC plans. Furthermore, many plan sponsors are, or are considering, automatically escalating participant

contributions in order to increase savings rates, which can have a significant positive impact on accumulated assets at retirement.

With effortless participation achieved through automatic enrollment, the remaining DB-like attributes must be provided through the plan's default option—and innovations are moving DC default options closer to replicating the best features of DB plans.

We believe one of the best ways to provide expert investment design in a DC context is through target-date retirement portfolios, which offer a complete asset allocation within a single portfolio and automatically adjust the allocation over time to remain age appropriate. Of the available QDIA choices, plan sponsors have shown an overwhelming preference for target-date portfolios.

Sponsors of large DC plans—particularly those that have experience in DB plan management—are increasingly adopting custom target-date portfolios as their default investment options. Custom, or “open-architecture,” target-date portfolios are flexible and efficient—and tend to be less expensive than mutual funds for large plans since they are delivered in institutional vehicles offering asset-based pricing. The trend to custom target-date portfolios shows little sign of abating: a recent study suggests that over \$1 trillion in DC assets are likely to be invested in custom target-date portfolios over the next decade.<sup>1</sup>

The fourth characteristic of DB plans—delivering secure retirement income to participants—also appeals to many DC sponsors, but to date they have been reluctant to provide such products to participants due to a lack of adequate incentives and protections, which we will discuss below. But first, let's review what participants might want and need, and different ways in which a DC plan could provide secure retirement income.

### **Lifetime Income in DC Plans: What Do Participants Want and Need?**

Since DB plans generally provide lifetime income by purchasing annuities for participants, it certainly seems reasonable for DC plans to at least offer participants the chance to buy them.

Many academic papers make a persuasive case that a traditional annuity offers much higher income potential and security than giving participants a lump sum at retirement. For plan participants, the advantages would seem to be appealing: they will be assured of income and won't have to worry about investing. But when plan sponsors offer participants the choice between a lump sum and an income stream, the overwhelming majority of participants choose the lump sum. Why?

Academic papers on annuities typically assume, with mathematical convenience, that the sole motivation of a retiree is to maximize their own annual lifetime consumption in the form of level annuity income. But it is well known and documented that retiree needs and circumstances are far from uniform. How much retirement income participants require,

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<sup>1</sup> Casey Quirk, “*Target-Date Retirement Funds: The New Defined Contribution Battleground*,” October 2009.

when they require it and whether they would like to leave money to their beneficiaries vary widely from participant to participant—and for any one participant over time, since unexpected health issues or other life events can radically alter a participant’s financial circumstances.

The fact is: many retirees or near-retirees simply don’t want to lose control of their investments or access to their cash. Buying a fixed annuity requires the participant to make an extremely complicated and difficult emotional decision to surrender lifelong savings—perhaps the most important financial decision of their lives and one that most are unwilling to make.

Giving participants a “trial period” of, say, two years after retirement, in which they would receive a monthly check before automatically annuitizing unless they opt out, as some have suggested, does not solve these problems. In fact, it actually creates an additional issue: retirees would get a tangible sense of the benefit and convenience of a monthly income check, but may not be given a tangible sense of what it is like to lose control, unless they happen to need access to their savings during the trial period. Retirees who need access to cash after the trial period and discover they have been automatically annuitized, with no access to their saving, are likely to be quite unhappy.

Moreover, waiting to annuitize until retirement—whether the annuity is purchased automatically or by choice—creates enormous timing risk: Participants who are unlucky enough to retire just after a sharp market drop has reduced the value of their assets, or at a time when interest rates are very low (or both), would obtain much lower guaranteed income than participants with similar contribution and investment histories who were lucky enough to retire after a period of strong market returns and when interest rates are high (or both).

Fortunately, it’s not necessary to choose between giving participants full control of their savings (with no secure income) versus an irrevocable annuity (with no liquidity or control). A range of annuity contracts exist that offer varying degrees of control, typically at the cost of a reduction in the level of guaranteed benefit provided. This would seem a sensible balance to meet the needs of DC plan participants who desire a baseline of secure retirement income but also value control and cash access.

We believe that one such benefit, known as a Guaranteed Lifetime Withdrawal Benefit (GLWB), is particularly appropriate for use in DC plans. A GLWB provides annual lifetime income, preserves participant control and allows participant assets to remain invested in the capital markets, providing the potential for capital appreciation.

Furthermore, gradual investment in GLWBs over, say, the 10 to 15 years before retirement, could greatly reduce timing risk while providing participants with peace of mind, as they systematically build a lifetime income stream. GLWBs are also ideally suited for use within the default investment option in DC plans, where they can help participants automatically establish secure retirement income while providing complete control and revocability.

We illustrate below our solution, which embeds insurer-backed GLWBs within a target-date portfolio. Other providers are actively developing or offering other guaranteed income products that may also be suitable solutions to providing DC plan participants with secure retirement income while preserving control.

### **Secure Income Target-Date Portfolios**

Dubbed “secure income target-date portfolios,” the combination of a target-date portfolio with income guarantees could provide secure lifetime income similar to that offered by a traditional DB plan or annuity, but with the control and upside potential of a DC plan.

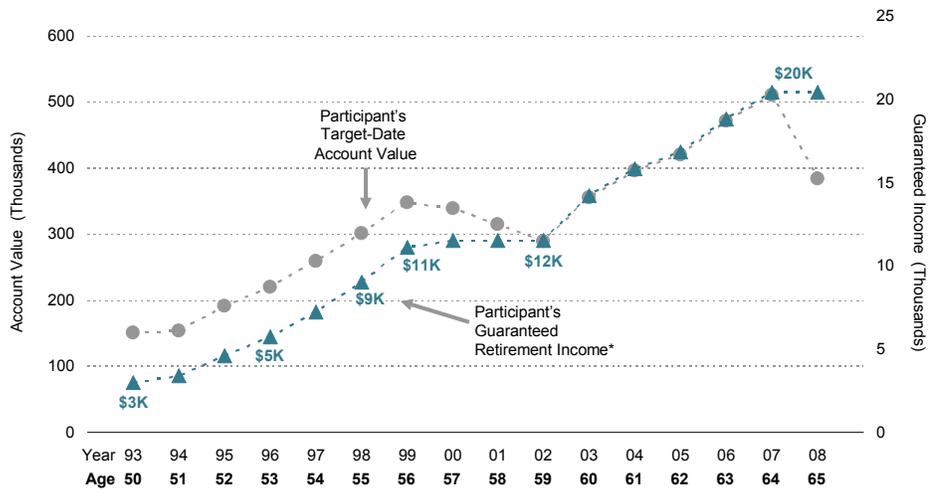
The guarantee is built into the target-date portfolio’s asset allocation, starting at around midlife. Gradually, more and more of the portfolio’s assets are automatically covered by guarantees. The guarantees can be backed by multiple insurers to promote price competition and to address the risk that that one insurer might default or run out of capacity to guarantee more assets.

Establishing guaranteed income before retirement can foster a sense of retirement security. Quarterly statements for participants could include the annual income for life that has accrued so far, as well as estimates of the annual income they might accrue by retirement, along with the actual account balance. DC plan investing and communications would move from a focus on account value alone toward focusing on both retirement income and account value.

As with a traditional target-date portfolio, account values would go up and down with market returns, but the secure retirement income would only go up: The display below illustrates a secure income target-date portfolio’s account value and guaranteed lifetime income for a hypothetical 50-year-old participant over 15 years starting in 1993. The account value and guaranteed retirement income amount at that point are \$150,000 and \$3,000, respectively; both values would appear on the participant’s quarterly statement.

## Securing Income Target-Date Portfolios Can Provide Peace of Mind

Hypothetical Example of a Portfolio with 4% Guaranteed Lifetime Withdrawal



\*Hypothetical example assuming from 50% to 100% allocation to 4% Guaranteed Lifetime Withdrawal Benefit (GLWB) with birthday ratchet from ages 50 to 60 invested in a 60/40 stock/bond mix. Past performance does not guarantee future results. Investors cannot invest directly in an index and its results are not indicative of any AllianceBernstein product.

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The account value and the guaranteed income go up steadily through the 1990s as a result of ongoing contributions and favorable capital markets, with the account value reaching about \$350,000 in 1999. The account loses value in the bear market of 2000 to 2002, but the guaranteed income level increases slightly as contributions continue and more assets are covered by the guarantee—rising to \$12,000 in 2002. As the market recovers, the account value and the guaranteed income start rising again. A year before retirement, in 2007, the account is worth just over \$500,000, and the guaranteed retirement income is \$20,000.

In 2008, however, the hypothetical account value plunges 25%, just as the participant was about to retire. But the guaranteed income doesn't go down; it's still \$20,000. When the market recovers in 2009, the account value rises. The guaranteed income would continue to grow if and when the account value passes \$500,000 again.

Note that secure income target-date portfolios also have a significant implication for asset allocation. The security of guaranteed income gives participants greater risk capacity to maintain a higher exposure to stocks through retirement than what otherwise might be prudent without such a guarantee. This can provide the growth needed to help combat inflation. Secure income target-date portfolios can provide a simple and effective lifetime asset allocation and income solution within DC plans.

## **How Policymakers Can Help**

We believe DC plans featuring automatic enrollment and using default investment strategies that incorporate lifetime income guarantees, such as the secure income target-date portfolios described above, can offer workers the best attributes of DB plans within a DC plan framework. In fact, many plan sponsors have told us they would be interested in the possibility of changing their default option to a secure income target-date portfolio when such products become more widely available. These products would be good for the participants who chose them, they say, by enabling them to build secure income prior to retirement while preserving control and choice prior to—and through—retirement. In addition, with retiree assets remaining in DC plans longer, participants would benefit from greater pricing power, which would likely decrease fees.

Despite these potentially transformative advantages for DC participants, few plans today offer investment strategies with lifetime income guarantees, and even fewer offer them as their plan default. Why? Historically, DB plan sponsors had little reason to offer lifetime income strategies in their DC plans, and therefore service providers—insurers, record keepers and asset managers alike—had little impetus to develop appropriate guaranteed income solutions for use in DC plans.

More recently, however, as DC plans have supplanted DB plans as the primary retirement savings vehicle, service providers and sponsors alike have been acutely focused on providing higher-quality accumulation products in DC plans. Intense competition has led to rapid innovation in a short amount of time, and service providers are now offering higher-quality solutions at a lower cost. DC plan sponsors have acted quickly to adopt innovative investment strategies for their participants, such as custom open-architecture target-date portfolios, which were just made available in the past few years.

Thus, we believe it is essential for policymakers to avoid stifling innovation or promulgating rules that favor one type of secure lifetime income arrangement over others. There are several positive ways, however, that policymakers could help promote wider use of lifetime income strategies within DC plans.

### *Safe harbor provision*

Widespread adoption of products that offer lifetime income is unlikely without a safe harbor provision protecting plan sponsors from liability in the event that an insurance provider fails, as long as the plan sponsor conducted appropriate due diligence in selecting the insurer.

The safe harbor under 29 CFR 2550.404a-4 appears to relate directly only to traditional distribution annuities and does not clearly extend safe harbor protection to other types of guaranteed lifetime income products. We believe it would be appropriate to revise the regulation to clarify that the safe harbor protection would also apply to the selection of lifetime income products that incorporate a broader class of guarantees provided by insurance companies.

### *Clarifying that QDIAs can include a broader class of guarantees*

We also believe that the Department of Labor regulation (29 CFR 2550.404c-5(e)(4)(vi)) contemplates the incorporation of guarantees within a qualified default investment alternative (QDIA). Nonetheless, it would help remove uncertainty for DC plans if the Department would clarify the various forms of guarantees that a QDIA could provide, such as guaranteed lifetime withdrawal benefits, and if the Department clarified that the safe harbor protection under ERISA Section 404(c)(5) extends through the payout phase of a QDIA that provides guaranteed lifetime income.

*Clarifying the rules related to qualified joint and survivor annuities and spousal consent*

We believe that the rules and procedures for complying with the qualified joint and survivor annuity requirements pose significant burdens on sponsors of 401(k)s and other types of profit sharing plans.

The qualified joint and survivor annuity (QJSA) rules are intended to serve an important policy objective: to ensure that surviving spouses have a meaningful opportunity to protect themselves against loss of income when retired participants make irrevocable decisions to annuitize benefits over their lifetime. But for the secure income target-date portfolio we described above, and other solutions that provide participants with control, the participants do *not* make an irrevocable election when they begin to receive distributions from the plan. In our view, the secure income target-date portfolio we describe should not be considered an annuity that would trigger QJSA requirements for several reasons:

- The participant is able to make withdrawals from his or her account invested in the secure income target-date portfolio at any time and in any amount, or make none at all;
- Upon the death of the participant, payments do not simply cease. The participant's designated plan beneficiary (his or her spouse, unless the spouse has consented to another beneficiary) would be entitled to any balance remaining in the participant's account;
- The participant retains the ability to simply transfer any or all of the account value invested in the secure income target-date portfolio to any other investment option available under the plan;
- The insurer will never make a payment if the participant does not outlive his/her account or if the participant transfers to another plan investment option or takes a lump sum distribution.

We believe it would be extremely beneficial and promote the use of secure income target-date portfolios and similar products if Department of the Treasury regulations clarified that such products are not annuities for the purpose of the QJSA. However, if the Department believes such products should trigger the QJSA rules, it would be beneficial if the regulations clarified that no additional elections or waivers would be required after the initial waivers and consents are obtained.

*Clarifying the extent to which plan assets can be used to pay for providing information to help participants make informed decisions*

We believe that expenses related to providing information to help participants make informed decisions about lifetime income options are, arguably, already legitimate expenses of the plan under current law and Department of Labor guidance, so such expenses should be payable out of plan assets. However, specific guidance from the Department of Labor that confirms this understanding would be helpful.

*Clarifying that providing certain information is not advice*

When plan sponsors provide information or education to plan participants about plan benefits, investments, distribution options or other matters, they are often uncertain what would cause actions to “cross the line” and become advice for which they will be deemed responsible as an ERISA fiduciary.

The DOL’s Interpretative Bulletin 96-1 has been helpful because it helps define what plan sponsor activities would be considered investment education rather than investment advice. But IB 96-1 does not specifically address the extent to which plan sponsors can provide education to participants about lifetime income options.

We think it would be helpful if the Department were to clarify that furnishing the following categories of information and materials to participants about lifetime income options will not constitute rendering investment advice:

- General information about longevity risk and how lifetime income options help mitigate that risk, including a discussion of the benefits of choosing such options;
- Descriptions of lifetime income options;
- Information and materials (e.g., graphs, charts or case studies) that illustrate how lifetime income options work, including information and materials that show sample projections based on hypothetical participants, contribution rates, earnings assumptions and other relevant factors;
- Projections on participant benefit statements or elsewhere that illustrate the amount of annual (or other period) benefit the participant has accrued based on the participant’s account balance and other assumptions, such as the rate of the participant’s future contributions;
- Interactive materials (e.g., worksheets, software programs or websites) that allow participants to model the projected income they could derive from lifetime income options based on specific information the participant provides, such as account balance, future contributions, assumed earnings rates and assumed life expectancy.

The enactment of the DC provisions in the Pension Protection Act of 2006 led to plan sponsors’ rapidly adopting a host of practices that have helped improve the retirement security of participants. We think that similarly well-designed new regulations and protections pertaining to lifetime income could have a similarly positive impact.

We look forward to working with both Agencies as they continue to explore this topic. Please don’t hesitate to contact us at if you have any questions or need additional information. You can reach me at (212) 969-2242.

Cordially yours,

A handwritten signature in black ink that reads "Daniel A. Notto". The signature is written in a cursive style with a large, looping initial 'D'.

Daniel A. Notto  
Senior Vice President  
Senior Retirement Plan Counsel