June 1, 2026

Via Electronic Submission: http://www.regulations.gov

Daniel Aronowitz
Assistant Secretary, Employee Benefits Security Administration
Office of Regulations and Interpretations
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Re: Proposed Rule Concerning Fiduciary Duties In Selecting Designated Investment Alternatives (RIN 1210-AC38)

Dear Mr. Aronowitz:

MFA[1] appreciates the opportunity to submit comments on the notice published by the U.S. Department of Labor ("**Department**" or "**DOL**") of a proposed regulation concerning fiduciary duties under the U.S. Employee Retirement Income Security Act of 1974, as amended ("**ERISA**") in selecting designated investment alternatives (the "**Proposal**")[2].

MFA strongly supports the Department's efforts to provide a safe harbor for a fiduciary's duty of prudence under ERISA in connection with the selection of designated investment alternatives for a participant-directed individual account plan. We similarly support the inclusion in the safe harbor of asset allocation funds that include investments in alternative assets. Including those funds and assets should alleviate certain regulatory burdens and litigation risk that interfere with the ability of American workers to achieve, through their retirement accounts, the competitive returns and asset diversification necessary to secure a comfortable retirement.[3] We believe that this effort advances the objectives of the President's Executive Order 14330, titled

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[1] Managed Funds Association (**MFA**), based in Washington, D.C., New York City, Brussels, and London, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest it, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 fund manager members, including traditional hedge funds, private credit funds, and hybrid funds, that employ a diverse set of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors diversify their investments, manage risk, and generate attractive returns throughout the economic cycle.

[2] 29 CFR Part 2550 ("**Proposing Release**").

[3] Empirical analyses demonstrate that diversifying portfolios through the inclusion of investment alternatives both reduces volatility and improves returns. Managed Funds Association, *Adding alts to your 401(k) mitigates risk, reduces volatility, and makes it more resilient*, https://www.mfaalts.org/industry-research/adding-alts-to-your-401k-mitigates-risk-reduces-volatility-and-makes-it-more-resilient/. Managed Funds Association, *Adding alternative assets materially improves portfolio performance in a 25-year back-test*, https://www.mfaalts.org/issue/expanding-access-to-alternative-investments-in-401ks/.

Democratizing Access to Alternative Assets for 401(k) Investors (the "**Executive Order**"). MFA shares the Department's commitment to afford American workers the opportunity to save for a secure retirement, including through increased access to alternative assets and professional managers in their retirement accounts. To that end, MFA adopted five principles (the "**MFA Principles**"), which it hoped could be used in furtherance of not only the specific goals of the Executive Order, but also the broader future security of American retirement savings.[4] We applaud the Department for a Proposal that is consistent with these MFA Principles and provides meaningful guidance to plan fiduciaries. The Proposal will allow them the flexibility to select designated investment alternatives that enable plan participants and beneficiaries to maximize risk-adjusted returns on investments net of fees and expenses.

MFA members have long been concerned by "[b]urdensome lawsuits that seek to challenge reasonable decisions by loyal, regulated fiduciaries, and stifling Department of Labor guidance . . . [which] have denied millions of Americans opportunities to benefit from investment in alternative assets."[5] MFA appreciates the DOL's continued desire to decrease plan fiduciary uncertainty on how to ensure they meet the duty of prudence required by ERISA when selecting investments for the plan and reducing the associated litigation risks. We support the DOL's safe harbor approach to allow such fiduciaries to rely, without undue fear of opportunistic litigation, on determinations they make when they "objectively, thoroughly, and analytically" consider any or all of the six factors laid out in the Proposal; this is much like how plan fiduciaries can rely on the judicial deference the Supreme Court acknowledged in the circumstances addressed in *Firestone Tire & Rubber Co. v. Bruch.*

MFA is also appreciative of the DOL's attention to ensuring broader access to alternative assets. We echo both the Executive Order's and the Proposal's belief that "every American preparing for retirement should have access to funds that include investments in alternative assets when the relevant plan fiduciary determines that such access provides an appropriate opportunity for plan participants and beneficiaries to enhance the net risk-adjusted returns on their retirement assets".

Currently, we note that products that involve asset allocation exposure are generally offered under a target date, life cycle, or other similar allocation product (referred to herein as an "**allocator**" product). At present, such products are offered where the allocator manager either acts as an ERISA fiduciary or is subject to the Investment Company Act of 1940, as amended (the "**40 Act**"). These two regimes have very robust

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[4] Managed Funds Association, *MFA Principles: Alternative Assets in 401(k) Plans*, https://www.mfaalts.org/issue/mfa-principles-alts-assets-in-401k-plans/.

[5] Exec. Order No. 14330, 90 Fed. Reg. 38921 (Aug. 12, 2025). We also wish to acknowledge the Department's advocacy in several recent *amicus curiae* briefs. *See, e.g.*, Brief for the United States as Amicus Curiae, *Pizarro v Home Depot*, No. 24-620 S. Ct, p. 3. (arguing that plan participants should be required to prove harm when accusing plan sponsors or investment committees of breaches of fiduciary duty); Brief for the United States as Amicus Curiae*, Parker-Hannifin Corp. v. Johnson*, No. 24-1030 S. Ct; U.S. Amicus Br. at 7-12, *Putnam Invs., LLC v. Brotherston*, 587 U.S. 959 (2019) (No. 18-926); U.S. Amicus Br. at 8-11, *RJR Pension Inv. Comm. v. Tatum*, 575 U.S. 902 (2015) (No. 14-656). The Department was also invited to submit an amicus brief in *Anderson v. Intel Corp. Inv. Pol'y Comm.*, 137 F.4th 1015, 1021 (9th Cir. 2025) (asking about the circumstances under which a plan sponsor can be held liable for a breach of fiduciary duty as a result of including nontraditional investment strategies in the plan's investment lineup and considering what constitutes a "meaningful benchmark" in connection with a fiduciary's review of such strategies).

investor protections. The 40 Act products are regulated by the U.S. Securities and Exchange Commission ("**SEC**") and other allocator products, such as managed accounts or collective investment trusts ("**CITs**"), hold "plan assets" subject to ERISA.[6] Notably, managed accounts are also governed by the SEC, including under the Investment Advisers Act of 1940 ("**Advisers Act**"), and CITs are also subject to substantial oversight by the Office of the Comptroller of the Currency and/or applicable state banking or trust regulatory authorities.[7]

We also concur with the Proposal's principles-based emphasis and the DOL's agnostic approach as to product, strategy and governing legal regime(s) of any designated investment alternative under consideration.[8]

I. Executive Summary

MFA appreciates the Department's efforts to provide a safe harbor that gives defined contribution plan fiduciaries greater certainty in selecting designated investment alternatives and helps reduce litigation risk that may deter prudent investment decisions. MFA supports the Proposal's principles-based and asset-neutral approach and its recognition that fiduciaries should have flexibility to select investment alternatives that can improve participants' retirement outcomes through enhanced diversification and stronger risk-adjusted returns net of fees and expenses.

To strengthen these objectives and the Proposal, MFA suggests the following:

A. **Use clear "safe harbor" language** in the form of traditional safe harbor formulations and avoid language that is susceptible to undesired hindsight challenges.

B. **Ensure meaningful comparisons for three similar investment alternatives so** that a plan fiduciary is deemed to meet the relevant factor when it compares a potential investment alternative by evaluating (a) risk adjusted returns, and (b) costs in light of those that are present for the asset class or strategy; and in the context of target-date, life-cycle, or similar allocators, where such comparables have similar asset class exposures (counting the presence of alternative assets exposure generally as one asset

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[6] We also note that managed accounts are prominent across Plans, both widely across many strategies as well as through Qualified Default Investment Alternatives ("**QDIAs**"). For the avoidance of doubt, since some may come away with the unintentional impression that the safe harbor is available only in the context of managed accounts that are QDIAs, it may be helpful for the DOL to clarify this point.

[7] For a discussion of the regimes that apply to each of these products, and the regulatory and compliance related parameters associated with them see, Steven W. Rabitz, "Will the Trump Administration Re-'Order' 401(k) Plan 'Alternatives'? -- Part 1," 32 Investment Lawyer No. 12 (Dec. 2025); Steven W. Rabitz, "Will the Trump Administration Re-'Order' 401(k) Plan 'Alternatives'? -- Part 2." 33 Investment Lawyer No. 1 (Jan. 2026); and Steven W. Rabitz, "Will the Trump Administration Re-'Order' 401(k) Plan 'Alternatives'? -- Part 3." 33 Investment Lawyer No. 2 (Feb. 2026).

[8] We note that the Proposal appears to lean heavily on open-ended registered funds in the examples; however, elsewhere in the Proposal the DOL makes clear that the Proposal is intended to be legal regime-neutral. In addition to strengthening that neutrality in the operative provisions, we recommend that DOL refine the examples to demonstrate the prudent selection of designated investment alternatives that are structured as CITs, as they themselves are subject to ERISA's fiduciary duties as noted above.

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class). (As discussed below, where there are not three such similar alternatives, a fiduciary may consider a lesser amount it considers reasonable).

C. Ensure that the examples are illustrative and not exclusive, by indicating that the "Examples," "Analysis," and "Conclusions" sections are meant to be merely illustrative – and are not intended to be exclusive or limiting with respect to the application of the provisions contained in the operative paragraphs.

D. Clarify the potential role of independent fiduciaries by referring to their use only in the operative language rather than the examples and by confirming that plan fiduciaries are entitled to rely on their recommendations.

E. For "allocator" products that are subject to the 40 Act or ERISA, focus the plan fiduciary's consideration of the valuation, liquidity and complexity factors at the allocator product level and to its investment manager and provide that a plan fiduciary will be deemed to meet those factors where (1) the assets of the designated investment alternative into which the plan makes its direct investment are subject to the 40 Act or ERISA, as applicable, and thus the investment manager of the designated investment alternative is subject to the 40 Act or ERISA, as applicable – given the substantial protections each such regime provides on each of these fronts and (2) the plan fiduciary considers the terms and disclosure of these factors for the designated investment alternative.

F. Adjust the focus of the liquidity factor in "allocator" products with exposure to alternative assets on product objectives and the expectations for the asset class.

G. Clarify the benchmark factor so that a fiduciary using a benchmark (or combination of benchmarks) or methodology commonly used by investment professionals for the product under consideration is deemed to satisfy the factor.

II. Strengthen the Safe Harbor Framework

A. The Proposal Should Use Clear "Deemed to Meet" Safe Harbor Language

The Proposal would be materially improved if the operative provisions expressly stated that a plan fiduciary "will be deemed to meet" each factor where the regulation's specified requirements are satisfied. The current draft repeatedly describes the Proposal as a safe harbor and emphasizes the Department's goal of reducing fiduciary uncertainty and litigation risk, but parts of the operative language still read more like open-ended standards than administrable safe harbor provisions. Clarifying this point in the text of the rule would better align the operative language with the Proposal's stated purpose.[9]

B. The Safe Harbor Should Focus on Fiduciary Process Rather Than Particular Outcomes

[9] The Department notes that "[i]n carrying out EO 14330's directives, the Department is to prioritize approaches that are designed to curb litigation risk that may constrain fiduciaries from applying their best judgment in offering investment opportunities to plan participants." MFA wholeheartedly agrees with such an approach and offers the following suggestions in greater detail to help ensure it has the greatest effect.

The Proposal should also make it clearer that the safe harbor depends on the fiduciary's prudent consideration of relevant factors, not on the fiduciary reaching any single prescribed conclusion. Several provisions currently refer to concepts such as an "appropriate" number of alternatives, an "appropriate" time horizon, or an "appropriate" level of risk. MFA is concerned that this phrasing could unintentionally invite uncertainty and litigation risk by encouraging arguments that there was one objectively correct answer in a particular circumstance and inviting hindsight challenges to inherently judgment-based fiduciary decisions.

A more effective approach would be to frame the safe harbor around whether the fiduciary ***considered*** the relevant elements in a prudent and disciplined manner. Such approach is more consistent with ERISA's focus on fiduciary process and would preserve fiduciary flexibility while still requiring robust analysis. In practice, that means the regulation should emphasize that the fiduciary must consider relevant alternatives, the product's objectives, the appropriate time horizon for the strategy, and the level of risk in light of the product under review, rather than imply that relief depends on proving that the fiduciary selected the one correct outcome. This clarification is particularly important in the context of time horizon, risk, and performance comparisons, where multiple reasonable approaches may exist depending on the product and investment strategy under review.

This process-based approach would be especially helpful for long-term retirement products, including allocator strategies. For those products, the rule should recognize that long-term evaluation periods and product-specific considerations will often be appropriate, and that a prudent fiduciary review requires reasoned analysis rather than rigid formulae. Making that point expressly in the safe harbor would better promote fiduciary choice while reducing avoidable ambiguity.

III. Clarify Comparisons and Benchmarks.

A. The Proposal Should Promote Comparisons by Reference to Similar Investment Alternatives

Among similar language in other places, the "performance" factor requires that a plan fiduciary "appropriately consider a reasonable number of similar alternatives." As noted above, in Part III, B., MFA believes that the focus should be placed on consideration rather than a determination of "appropriateness" of the considerations. Nevertheless, MFA does believe that plan fiduciaries can and should make comparisons among similar investment alternatives. MFA believes that the Proposal would benefit from clearer guidance on how fiduciaries should compare a designated investment alternative with other investment options under consideration so that these comparisons can help inform a more robust evaluation and thus support the presumptions intended by meeting each such factor.

MFA recommends that the Department clarify that a fiduciary satisfies the applicable factor where it considers three or more similar investment alternatives having a substantially similar asset class as the designated investment alternative under consideration (or, where the fiduciary considers that there may not be three such similar products, such other number the plan fiduciary considers to be reasonable under the circumstances). Providing this type of clarification would establish a clear, administrable pathway for fiduciaries

to demonstrate compliance with the safe harbor, while reducing the risk of second-guessing based on ex post judgments.

In the case of target date, life-cycle or similar "allocator" products, MFA would suggest that the concept of similar investment alternative be defined with respect to a comparable product having similar asset class exposure (counting the presence of alternative assets exposure as one asset class) to the "allocator" product that is the designated investment alternative. This would better enable fiduciaries to compare similar products.

B. The Proposal Should Permit Use of Benchmarks and Methodologies Commonly Used by Investment Professionals

The benchmark factor should likewise be clarified to focus on whether the fiduciary considered a meaningful benchmark or methodology that is commonly used by investment professionals for the product under consideration. The current language risks inadvertently suggesting that there is a single correct benchmark in any single case, when in practice the appropriate benchmark (or combination of benchmarks) or methodology may depend on the structure and objectives of the investment alternative being reviewed. A more flexible standard grounded in market practice would better reflect how prudent fiduciaries and investment professionals evaluate products. Anchoring the analysis in methodologies commonly used by investment professional would further ensure that fiduciary evaluations are aligned with established industry practice rather than with a single prescribed approach.

This same clarification would be particularly important for products that involve alternative assets or broader allocator strategies, where benchmark construction may require professional judgment. The rule should therefore make clear that a fiduciary will satisfy this factor where it uses a benchmark or methodology commonly used by investment professionals, or an appropriate combination of such tools, with respect to the product under consideration. That approach would strengthen the safe harbor by making the benchmark analysis more workable and less vulnerable to hindsight challenge.

IV. Clarify the Role of Examples and Independent Fiduciaries

A. The Proposal Should Confirm That Examples Are Illustrative Only

The Proposal would be strengthened by making clear in the operative text that the "Examples," "Analysis," and "Conclusions" sections are illustrative only and do not limit the broader application of the rule. While the Department's discussion suggests that the examples are intended to demonstrate how fiduciaries might apply the six factors, the current structure creates a risk that readers will infer that the examples define or constrain acceptable outcomes. Our recommended clarification would also be consistent with the Department's description of the Proposal as identifying relevant factors and providing examples of how fiduciaries might prudently consider them.

Providing an explicit statement in the operative provisions that the examples are non-binding would reduce potential confusion and better align with the Department's goal of decreasing fiduciary uncertainty. It

would also help ensure that fiduciaries focus on the underlying factors and their own prudent process, rather than attempting to analogize their specific facts to particular fact patterns included in the examples.

Clarifying the limited role of examples would therefore reinforce the Proposal's principles-based approach and avoid unintended signaling about when certain approaches are required, preferred, or disfavored.

B. The Proposal Should Clarify the Role of Independent Fiduciaries

The Proposal would also benefit from clarifying the role of independent fiduciaries. References to independent fiduciaries currently appear primarily in the examples, which may unintentionally suggest that their use is required or expected in certain scenarios. MFA believes that this framing risks creating uncertainty about whether engagement of an independent fiduciary is necessary to achieve a favorable outcome under the rule.

To address this concern, the Department should instead address the role of independent fiduciaries only in the operative provisions. In particular, it would be clearer, as it is in currently proposed Sections E and F, that the decision to engage an independent fiduciary remains facts-and-circumstances dependent and is not required in any specific context. At the same time, the Department may wish to indicate that the prudent use of a properly selected independent fiduciary can support a fiduciary's compliance with the rule to the extent a plan fiduciary believes it lacks the necessary expertise to engage in a prudent process.

The Proposal should also expressly confirm that a plan fiduciary may rely on the recommendations of a prudently selected independent fiduciary. Clarifying this point would align the rule with established fiduciary principles and would reinforce the value of expert advice while preserving fiduciary autonomy.

Taken together, these changes would promote the appropriate use of independent fiduciaries without creating unintended expectations or ambiguity about when their involvement is required.

V. Align the Safe Harbor with Existing Regulatory Frameworks

A. The Proposal Should Recognize Existing Protections Under ERISA and the 40 Act

The Proposal would be more workable and more consistent with market practice if it more explicitly recognized the robust protections already provided under ERISA and the 40 Act. Investment products available to defined contribution plans—including CITs, managed accounts, and registered funds—are already subject to comprehensive regulatory and fiduciary regimes that govern issues such as valuation, liquidity, and conflicts of interest.

These regimes impose significant obligations on product sponsors and managers, including fiduciary duties under ERISA and extensive oversight under the federal securities laws. As a result, plan fiduciaries

evaluating these products are able to rely, in significant part, on the protections embedded in those frameworks when assessing key factors such as valuation, liquidity, and complexity.

Recognizing this reality in the safe harbor would help ensure that the rule aligns with established market practices and avoids imposing duplicative or unnecessary analytical burdens on plan fiduciaries. A product-level approach (meaning evaluation at the level of the "designated alternative investment") would also help avoid importing requirements developed for one regulatory regime into products governed by another regime with its own established safeguards.

B. Evaluation of Allocator Products Should Occur at the Product Level

The Proposal should also clarify that, for allocator products such as target-date, life-cycle, or similar strategies, fiduciary evaluation of factors such as liquidity, valuation, and complexity will appropriately occur at the allocator product level. The current draft creates uncertainty about whether fiduciaries are expected to evaluate these factors both at the level of the allocator product and at the level of the underlying components selected by the product manager. Requiring such component-level analysis would be inconsistent with existing market practice and duplicative of the regulatory and fiduciary obligations already imposed on the allocator product manager.

MFA believes that a product-level approach is more appropriate where the allocator product is subject to ERISA or the 40 Act. And, at present, allocator products are largely offered in such structures. In these cases, the allocator manager is already subject to fiduciary and regulatory obligations that require it to evaluate glidepaths and performance, including with respect to issues concerning valuation, liquidity, and conflicts.[10] We believe the rule should further provide that a fiduciary will be deemed to satisfy the valuation,

[10] See Rabitz, n. 6, supra. This approach not only aligns with the goals of the Proposal and the Executive Order, but it also avoids the possibility of exporting specific legal requirements designed for one regime to another. We understand that references to SEC Rule 22e-4 and FASB Rule 820 were offered as illustrations in examples, but MFA believes that by focusing on the appropriate level of the product, and then leveraging each such regime's fully developed protocols and best practices will be consonant with plan fiduciaries' historic practice, comport with the generally understood duties of plan fiduciaries, and continue to safeguard the interests of plan participants and beneficiaries through strong investor protections. Funds registered under the 40 Act are subject to substantial oversight by the SEC and CITs and managed accounts are per se subject to ERISA's strict fiduciary responsibility and prohibited transaction rules. In each case, the assets of the allocator product will be subject to either the 40 Act or ERISA, and those provisions will govern the fiduciary behavior of the allocator product manager. Similar to the many fund-of-funds products that have been in the market for decades – whether those structured as mutual funds registered under the 40 Act or CITs or managed accounts subject to ERISA – the allocator product manager will already have substantial regulatory burdens to assure the consideration and mitigation of conflicts.

In the case of a CIT or managed account allocator, which will by definition be subject to ERISA, not only would the allocator be required to act in accordance with ERISA's prudence standards, which is the "highest at law," but it would be precluded from valuing the assets of the portfolio in a manner that manipulates its performance-based fees. Where the allocator product's ERISA fiduciary utilizes third-party components, no conflict would generally arise with respect to the allocator product manager's reliance on the third party component managers' valuations. And, as a prudent fiduciary, the allocator fiduciary would be required to act prudently under ERISA and evaluate liquidity, valuation and other standards, considering both the objectives of the allocator product, and the legal regime to which the allocator manager is subject (i.e., the 40 Act or ERISA).

liquidity, and complexity factors where the plan's direct investment is in an allocator product subject to ERISA or the 40 Act and the fiduciary considers that product terms and disclosures concerning those factors.

Clarifying that fiduciaries may focus on the characteristics of the product into which plan assets are directly invested would provide clearer guidance and reduce unnecessary complexity, while continuing to protect plan participants and beneficiaries through the existing regulatory framework.

C. The Proposal Should Avoid Implicit Constraints on Evaluating New or Differentiated Products

Finally, the Proposal should avoid suggesting that fiduciaries may evaluate certain products—such as those offering alternative asset exposure—only by comparison to existing options already included in a plan. While some examples appear to frame the analysis in this manner, such an approach could inadvertently limit fiduciary flexibility and discourage innovation.

Instead, the rule should make clear that fiduciaries may evaluate investment alternatives on their own merits, including based on whether the product is expected to improve risk-adjusted returns, enhance diversification, or otherwise advance plan objectives. Clarifying this point would ensure that the safe harbor supports, rather than constrains, the expansion of investment options available to plan participants and beneficiaries. This clarification is particularly important for products offering exposure to alternative assets, which should not be treated as prudent only when compared against an existing designated investment alternative already on the plan menu.

VI. Refine Key Factors in the Safe Harbor Framework

A. Liquidity Should Be Evaluated in Light of Investment Objectives and Asset Class Expectations

The Proposal would also benefit from clarifying how fiduciaries should evaluate liquidity and related factors, particularly in the context of allocator products that include exposure to alternative assets. The Proposal appropriately recognizes that defined contribution plans are long-term retirement vehicles and that a prudent fiduciary process may lead to the selection of investment alternatives that are not fully liquid when doing so is expected to enhance risk-adjusted returns. Building on this principle, the Department should clarify that liquidity considerations should be evaluated in light of the investment's objectives and the general expectations of the relevant asset class.

In particular, fiduciaries evaluating allocator products—such as target-date or life-cycle strategies that include exposure to alternative assets—should be permitted to assess whether the product's liquidity profile is consistent with how similar products are designed and used in the market. A uniform or overly restrictive

interpretation of liquidity could inadvertently discourage the inclusion of investments that may improve diversification and long-term performance for plan participants and beneficiaries.

Clarifying this point would better align the safe harbor with the realities of investment product design and would reinforce the Proposal's goal of expanding access to a broader range of investment alternatives where appropriate.

B. Liquidity Analysis Should Focus on the Role of the Investment Option in the Plan

The Proposal would also benefit from clarifying that liquidity should be evaluated in the context of the role that a particular investment alternative is intended to play within the plan's investment menu. For allocator strategies in particular, the relevant inquiry should focus on whether the addition of the product is expected to help participants and beneficiaries maximize risk-adjusted returns net of fees and expenses over an appropriate time horizon.

This framing recognizes that different investment options serve different purposes within a diversified menu and that liquidity should not be assessed in isolation from those broader objectives. For example, an allocator product designed to deliver long-term growth through diversified exposure may appropriately operate with a different liquidity profile than a capital preservation or daily liquidity option.

By emphasizing the functional role of the investment option, the Department would provide fiduciaries with clearer guidance that is consistent with established investment principles and current fiduciary practice.[11]

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[11] The Proposal indicates that a plan fiduciary is required to assess liquidity at both the participant and the plan level. Consistent with our broader recommendations above with respect to the construction of the operative language in each of the factors, MFA believes that this approach poses unintended challenges both for plan fiduciaries and product manufacturers. We appreciate the operative language's nod to the fact that "participant-directed individual account plans are long-term retirement savings vehicles, particularly for participants early in their careers" and that accordingly, that "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 some plan- or individual-level liquidity, or both, in pursuit of additional risk-adjusted return". However, particularly in the case of allocator products, it would be most helpful if the DOL made it clear that considerations of liquidity should be made considering the product's stated objectives. For example, MFA believes that it is reasonable that a fiduciary should consider whether the product's disclosures concerning liquidity meet general expectations of the asset class (i.e., a target-date fund, life-cycle fund or similar allocator strategy). Such an adjustment could help promote the stated goals of decreasing plan fiduciary uncertainty on how to ensure satisfaction of the duty of prudence required by ERISA when selecting investments for the plan, ensuring increased access to alternative assets for plan participants and beneficiaries, and reducing undue litigation risks.

Once that determination is made, MFA believes the salient questions then become what the liquidity parameters of the products under consideration are and the extent to which they are consistent for the use for which they are intended. It reinforces rigor, maximizes the considerations which are most relevant (i.e., whether the liquidity parameters are consistent with the general expectations of the asset class) and provides greater certainty for plan fiduciaries in the things they need to evaluate. This approach also has the added benefit of reinforcing the stated objective of plan fiduciaries' consideration of risk-adjusted returns net of fees and expenses while avoiding the introduction of subjective discretion that can allow for potential second guessing.

MFA also suggests that the operative language should make clear that the liquidity factor will be deemed to be met with respect to allocator products if the fiduciary determines that the addition of the allocator product would help plan participants and beneficiaries maximize risk-adjusted returns on investments net of fees and expenses. Allocator funds serve a special purpose in a plan's investment menu, and the primary consideration should be whether the investment alternative adopted by a plan fiduciary promotes the maximization of risk adjusted returns net of fees and expenses.

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C. The Safe Harbor Should Reinforce a Flexible, Principles-Based Approach

Consistent with the broader recommendations above, the Department should ensure that the liquidity factor—and related considerations such as valuation and complexity—are framed in a manner that supports a principles-based, process-oriented approach. Rather than implying rigid or prescriptive requirements, the rule should make clear that the fiduciary satisfies these elements where it has undertaken a thoughtful and disciplined evaluation of the relevant characteristics of the investment alternative in light of its objectives and expected use.

This clarification would reduce the risk of hindsight-based challenges and would better position the safe harbor to achieve its stated objective of providing meaningful protection for fiduciaries who engage in a prudent process. At the same time, it would ensure that plan participants and beneficiaries continue to benefit from strong fiduciary oversight and access to a broad and evolving range of investment opportunities.

VII. Other Areas for Consideration - Amendment to Prohibited Transaction Exemption 77-4

One additional area that the Department may wish to consider concerns a prohibited transaction class exemption ("**PTE**"). PTE 77-4 provides relief from ERISA's (and the Internal Revenue Code's) prohibitions on fiduciaries when they cause plan assets under their charge to be allocated to affiliated open-end registered mutual funds. This exemption has been well utilized since its release in 1977, as it allows plans to obtain access to certain assets on a more efficient basis than if they otherwise were prohibited from doing so. It also conditions relief on the plan paying only one level of investment management, investment advisory and similar fees (i.e., no "double dipping"), so investors save money on fees. For example, in many cases purchasing each and every component of a given portfolio for a specific plan account may become prohibitive and inefficient, and certainly cumbersome. Owning a share of a pooled vehicle that holds that identical portfolio promotes easier and more efficient access for many investors, including plan investors.

In keeping with the desire to be neutral across legal regime, strategy, and product type in the Proposal, MFA recommends that PTE 77-4 be expanded to cover other types of pooled investment vehicles beyond open-end registered investment companies. Nearly fifty years after its release, PTE 77-4 needs an update. There is little reason in an evolving world of products for plans to be denied access to such products. The Department should expand it to level the playing field across fund types, especially given other vehicle structures provide exposure to additional asset classes. Otherwise, by excluding certain kinds of funds from PTE 77-4 relief, the Department would be effectively disfavoring the asset classes primarily accessed through those excluded fund types.

In addition to providing greater structural alternatives, particularly for allocator products with alternative assets strategies – a primary goal of the Executive Order – an updated PTE 77-4 could also preserve core investor protections that have being operating effectively for 50 years. First and foremost, as exemptions only provide relief from ERISA's highly restrictive prohibited transaction rules, fiduciary duties would continue

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to apply to the investment fiduciary's conduct. An allocator fiduciary that chose to allocate plan assets to an unregistered affiliated fund would still need to prudently consider the same factors it does with respect to unaffiliated unregistered funds, including the component's complexity, liquidity and valuation parameters. Next, the protections of PTE 77-4 could be preserved and modernized, such as the "no double dipping" rule on fees, the need for independent fiduciary consent and full disclosure to such independent fiduciary. Theseattributes of the PTE amendment would benefit plan participants and beneficiaries. Certainly, the allocator fiduciary would not abrogate its traditional responsibilities under ERISA; rather it would have more opportunities to faithfully express them.

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We appreciate the opportunity to provide our comments to the Department regarding the Proposal, and we would be pleased to meet with the Department and your staff to discuss our comments. If the Department has any questions or comments, please do not hesitate to contact Jill R. Whitelaw at JWhitelaw@mfaalts.org or the undersigned at Jhan@mfaalts.org with any questions regarding this letter.

Respectfully submitted,

/s/ Jennifer W. Han

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MFA