

MEMO# 35884

October 16, 2024

ICI Submits Written Statement to ERISA Advisory Council on QDIAs

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TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: ICI Submits Written Statement to ERISA Advisory Council on QDIAs

ICI submitted the attached letter to the ERISA Advisory Council (the "Council") on the topic "Qualified Default Investment Alternatives (QDIAs)—Start to Finish, Default to Payout," in connection with its October 22, 2024, meeting.[\[1\]](#) The Council's focus is on the effectiveness of QDIAs in both the accumulation and decumulation phases of retirement—starting with the Department of Labor's issuance in 2007 of final QDIA regulations through changes made by the Setting Every Community Up for Retirement Enhancement Act (the SECURE Act)[\[2\]](#) and the SECURE 2.0 Act.[\[3\]](#) The Council requested that ICI submit testimony and requested several specific data points related to plans' QDIA use and target date funds in particular.

In conjunction with the data our letter provides, we make the following points:

- The QDIA rules are working and are not in need of change at this time. Plan sponsors and financial services providers are innovating in the design of products and services offered as QDIAs. With technological advances, increasingly cost-effective personalization within the current QDIA framework is feasible.
- Often chosen to be the QDIA, target date funds offer a cost-effective, professionally managed diversified portfolio that rebalances over time. Although rising to be a significant share of 401(k) plan assets, target date funds are not a monolithic investment. Indeed, target date funds hold an array of funds and securities across investment objectives (e.g., stocks versus bonds), sectors (e.g., domestic versus global) and styles (e.g., passive versus active). A popular QDIA, target date funds are commonly offered as mutual funds or collective investment trusts (CITs), typically in a fund of funds, or CIT of CITs structure. Mutual fund target date funds are regulated under the Investment Company Act of 1940, including with respect to the selection of underlying funds, and target date fund managers, who are subject to a fiduciary duty under the Investment Advisers Act of 1940, take that selection responsibility seriously and thoughtfully. CIT target date funds are an institutional product falling under

banking regulation, and CIT trustees and investment managers are subject to fiduciary duties under ERISA.

- Plan sponsors and financial services firms are innovating to include the option of a variety of retirement income possibilities within QDIAs. These solutions range from systematic withdrawal/payout plans, to guaranteed income for a fixed time period, to deferred annuities, to immediate lifetime annuities. Many plan sponsors are interested in providing access and choice to their participants, sometimes including the income option inside the plan, sometimes outside, and in many cases relying on the SECURE Act's fiduciary safe harbor for selecting annuity providers.
- It would not be appropriate, and indeed, could be detrimental to default participants into an irrevocable retirement income decision. Irrevocably defaulting any portion of participants' accounts into a retirement income product or feature is not advisable because of:
 - the heterogeneity of workers at the point of retirement;
 - the important and varying role of Social Security in providing income replacement across the income distribution; and
 - the plan sponsor's limited insight into the worker's entire household situation and balance sheet.
- It would be a misstep to recommend that the Department of Labor make prescriptive changes that would stunt the innovation currently working to meet participants' needs under the current regulatory framework.

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Notes

[1] See 2024 ERISA Advisory Council Issue Statement, available at <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/about-us/erisa-advisory-council/2024-qdia-issue-statement.pdf>. The purpose of the October 22, 2024, meeting is for the members of the Council to discuss potential recommendations for the Secretary of Labor. The Council held hearings on the topic on July 8-10 and September 10-12, 2024.

[2] For a summary of the SECURE Act, see ICI Memorandum No. 32118, dated December 20, 2019, available at <https://www.ici.org/memo32118>. Section 204 of the SECURE Act provides a fiduciary safe harbor for satisfying the prudence requirement with respect to the selection of an insurer for offering guaranteed income contracts under a plan.

[3] For a summary of the SECURE 2.0 Act, see ICI Memorandum No. 34795, dated January 12, 2023, available at <https://www.ici.org/memo34795>. Section 101 of the SECURE 2.0 Act would require newly established 401(k) plans and 403(b) annuity contracts to automatically enroll participants, effective for plan years beginning after December 31, 2024.