Great-West
RETIREMENT SERVICES®

8515 East Orchard Road
Greenwood Village, CO 80111
(303) 737-3000
Address mail to: P.O. 173764
Denver, CO 80217-3764

July 5, 2011

Submitted Electronically – **Re: Target Date Disclosure (RIN 1210-AB38)**

Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210
e-ORI@dol.gov

Ladies and Gentlemen:

We respectfully submit our comments on the Department's proposed rule (the Proposal)[1] requiring the disclosure of certain information regarding target date and similar investments when such investments are Qualified Default Investment Alternatives (QDIAs) or designated investment alternatives (DIAs) in participant-directed, individual account plans. Given the significance of these disclosures in helping participants understand target date and lifecycle investments, we very much appreciate the opportunity to share our thoughts with you.

**About Us:**

Great-West Retirement Services®, a business unit of Great-West Life & Annuity Insurance Company, is the fourth-largest retirement plan record-keeper in the United States based on total participant accounts at year-end 2011, according to *Pensions & Investments*, April 2012. We provide 401(k), 401(a), 403(b) and 457 retirement plan services to 25,000 plans representing 4.5 million participant accounts and $166 billion in assets at March 31, 2012.[2] We offer several different investment "platforms" that include both proprietary and unaffiliated investment products. In addition, we offer tools to our platform customers to assist their decision-making, including Fund Performance Reviews that provide information about the performance of platform investment options against

[1] 75 FR 73987 (November 30, 2010)

[2] Great-West Retirement Services® refers to products and services provided by Great-West Life & Annuity Insurance Company, its wholly owned subsidiary FASCore, LLC, and other subsidiaries. Recordkeeping numbers reflect all FASCore customers: those of institutional clients, third-party administrator clients, and Great-West Retirement Services.

selected criteria. Our services and products are marketed both by employees of Great-West and also by independent broker-dealers, Registered Investment Advisors, insurance agents and other financial advisers. Our extensive experience in assisting retirement plan fiduciaries and participants informs our analysis of the Proposal.

## Overview:

We believe target date, lifecycle and similar investments offer significant benefits to plans and participants who understand and use them correctly. These options are widely used in part because they can "simplify" the process by which participants manage their retirement assets, preventing participants from having to make frequent and potentially difficult investment decisions. However, despite their simplicity in concept, target date and similar investments can be very complex in operation, and may have very different investment philosophies. For example, two target date investments with the same target date may be quite different from one another, utilizing very different "glidepaths" or asset allocation strategies, and presenting very different profiles in volatility, risk, and expense. Accordingly, we agree with the Department that plans and participants should receive the information necessary to understand and evaluate these investments, and we support the goal of the Department's proposed regulation.

However, we are very concerned that recent guidance issued by the Department in Field Assistance Bulletin 2012-02 (FAB 2012-02) Q. 28 may inadvertently limit the scope of the Proposal, excluding from its coverage certain target date investments operated as so-called "non-DIA" model portfolios—target date model portfolios that allocate only among the plan's current designated investment alternatives (DIAs) and therefore are not DIAs themselves. While the Proposal clearly applies to model portfolios,[3] it is limited to target date investments that are QDIAs or that are DIAs under the participant disclosure regulation.[4] Thus, a target date model portfolio that is not a DIA by virtue of FAB 2012-02 Q. 28 would not be covered by the Proposal, even though it presents the same issues to plans and participants as any other kind of target date fund or model.

We applaud the Department for reopening comments on the Proposal, as the regulatory and market environments continue to change. For example, this issue presented by the recent guidance in FAB 2012-02 is the product of final implementation efforts related to the participant disclosure regulation—this concern could not have been readily anticipated in 2010. Thus, while we are raising this issue for the first time, it is nonetheless timely, and could not have been addressed during the original comment period.

We do not believe our concern is merely technical—in fact, the potential "loophole" is quite significant. Custom target date model portfolios are very common investment

---

[3] The Proposal defines target date investments for disclosure purposes by referencing the first type of QDIA described in the QDIA regulation at "29 CFR § 2550.404(c)-5(e)(4)(1) [sic]." This type of QDIA is an "investment fund product or <u>model portfolio</u>...[emphasis added]" (We assume the reference to "5(e)(4)(1)" is a typographical error in the published Proposal at 75 FR 73994 and that the intended reference is "5(e)(4)(i)").

[4] *See* Proposal's amendments to 404a-5(i)(4) and to 404c-5(c)(4) at 75 FR 73994 (November 30, 2010).

options for the participant-directed, individual account plans subject to the Proposal. In January 2011, a survey by *PlanSponsor* magazine specifically examined plan interest in building a customized target date series utilizing the plan's current fund line-up (in other words, a model portfolio operating much as a target date mutual fund but composed of existing plan investment options—a "non-DIA" target date model portfolio under Q. 28). Nearly 1 in 5 plans had adopted or were considering adopting such model portfolios. The largest plans were nearly twice as likely to embrace the custom model portfolios, with about 38% of the largest plans either already using this investment option or considering doing so. This represents a significant fraction of plan participants.

It is unlikely the Department intended to permit some target date investments to avoid the Proposal's disclosure requirements, as, from the participant's perspective, there is no difference between a "non-DIA" target date model portfolio and any other target date investment—the participant needs to understand the significance of the target date and the underlying investment philosophy. The issue for the participant is not whether he or she can, with enough effort, look up the separate information about each of the underlying DIA investments to which the model portfolio allocates. The issue for the participant is how the underlying DIA investments fit together, the decisions the model operator made in determining what the allocations should be, and how these allocations will change over time relative to the target date. None of this information is available simply because the underlying investments are individually DIAs.

**The Scope of the Proposal:**

The Proposal separately amends the participant disclosure regulation and the QDIA regulation to require additional target date investment information. However, both use the same definition of target date investment, the description of the first type of eligible QDIA found at 29 CFR § 2550.404(c)-5(e)(4)(i). For the purposes of the Proposal, this defines a target date investment as:

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

As a result, the Proposal would always apply to a model portfolio that was used as a QDIA. However, the language used in the Proposal to require disclosure from target date investments in the participant disclosure regulation is limited to those investment options that are DIAs. The Proposal amends the participant disclosure regulation by inserting language into 29 CFR § 2550.404c-5(i)(4) (a location reserved for this purpose in the participant disclosure regulation) that reads, "In the case of a <u>designated investment</u>

alternative that is [a target date investment under the QDIA regulation]...[emphasis added]."

Q. 28 of FAB 2012-02 offers new guidance interpreting when a model portfolio is a DIA and when it is not. While the new guidance determined that many model portfolios are DIAs, it stated that:

> "A model portfolio ordinarily is not required to be treated as a designated investment alternative under the regulation if it is clearly presented to the participants and beneficiaries as merely a means of allocating account assets among specific designated investment alternatives...When a model portfolio is simply a means of allocating account assets among specific designated investment alternatives, the plan administrator also must clearly explain how it differs from the plan's designated investment alternatives. [emphasis added]..."

While this guidance suggests that there is some additional disclosure required for a "non-DIA" target date model portfolio beyond the minimum (the "clearly presented" and "clearly explain" language of Q. 28), it is not clear what this disclosure would entail, or that it would be the same as the information required by the Proposal. The lack of uniform standards in the guidance for such target date portfolios raises significant concerns that participants would not receive the information needed to evaluate target date model portfolios that utilize only DIAs for asset allocation.

What is clear from the guidance is that a target date model portfolio that is "merely allocating assets among specific designated investment alternatives" is not itself a DIA. Therefore, as currently written, the Proposal would not apply to such a model portfolio.

Accordingly, we offer our suggestions below for ensuring that all target date investments, regardless of their technical descriptions or DIA status, provide participants and plans with the information necessary to understand and evaluate the target date options available to them.

**Recommendations for Modifications to the Proposal:**

To achieve the Department's objective in the Proposal, we offer the following suggestions to modify the Proposal:

- Modification of 404a-5(i)(4): Rather than limiting the application of the participant disclosure requirements to DIAs, the final regulation should broadly apply to target date and similar investments. We recommend replacing "In the case of a designated investment alternative described in..." with "In the case of an investment option available in the plan (other than investments made through a brokerage window or similar investment alternative) described in..." This description would ensure that any target date investment selected by the plan would be covered by the proposal, regardless of its status as a DIA, while excluding those options not selected by the plan. Investments made by participants through a brokerage window should not be covered by the participant disclosure regulation—whether target date investments, mutual funds, individual securities, or any other kind of investment—because they have not been selected for participants by the plan. We would be happy to meet with the Department to discuss specific language for the final regulation that would best address these issues.

- Clarification of FAB 2012-02 Q. 28—Q. 28 should be clarified with further guidance to establish uniform disclosure requirements to "clearly present" and "clearly explain" non-DIA target date and other complex model portfolios. We recommend adopting the target date disclosure requirements of the Proposal, and further, that composite investment performance, a composite performance benchmark, and composite fees of such target date portfolios be presented in the same comparative format required of a DIA model portfolio.

**Conclusion:**

We believe that target date investments serve an important purpose in plan investment menus. However, we do not believe that participants can make informed choices about using target date investments unless they have the information necessary to evaluate and compare them to other similar investments available. The potential for non-DIA target date model portfolios to be misused, or to provide inadequate information to participants is high unless the Department modifies the Proposal, and clarifies the guidance in FAB 2012-02 Q. 28.

Thank you for the opportunity to comment on the Proposal. We look forward to working with you to improve the retirement security of America's workers, and we would be happy to meet with you to discuss our concerns. Please feel free to call me at (303) 737-3086 with any questions you may have.

Sincerely,

Charles P. Nelson
President, Great-West Retirement Services