ABA Retirement Funds

IMPORTANT NOTICE – DEPARTMENT OF LABOR REGULATION REGARDING DEFAULT INVESTMENTS

ABA Retirement Funds Program ("the Program")
P.O. Box 5142 • Boston, MA 02206-5142

Plan Administrator Line: 800.752.6313
Website: www.abaretirement.com

This notice contains information concerning a regulation that can relieve you (and other plan fiduciaries) of liability with respect to "default" investments – investments made on behalf of participants who do not make their own investment elections.

As an employer who has adopted the ABA Retirement Funds Program ("the Program"), you selected, as a part of the adoption process, one of the Program's investment options as a "default" in which contributions are invested in the absence of investment elections by participants. The default investment option is also used for any forfeited employer contributions. Selection of a default investment option is subject to the fiduciary requirements of the Employee Retirement Income Security Act of 1974 ("ERISA").

The Pension Protection Act of 2006 amended ERISA to provide relief ("safe harbor") from fiduciary liability to plan sponsors (and other fiduciaries) for default investments in "qualified default investment alternatives," or "QDIAs," as prescribed by the Department of Labor ("DOL") by regulation. On October 24, 2007, the DOL published its final regulation regarding QDIAs. The QDIA regulation was effective December 24, 2007. **As explained below, by way of this communication, the Program provides to adopting employers the opportunity to take advantage of the QDIA safe harbor.**

TO QUALIFY FOR THE QDIA SAFE HARBOR, THE FOLLOWING REQUIREMENTS MUST BE SATISFIED:

(1) Invest default assets in a QDIA. The regulation defines a QDIA as an investment alternative that (a) generally does not invest contributions in employer securities, (b) permits the transfer of assets to any other investment alternative under the plan, (c) is managed by an investment manager as defined in ERISA, an investment company registered under the Investment Company Act of 1940, the plan trustee or the plan sponsor who is a named fiduciary and (d) is similar to a:

- "Life-cycle" or "target-retirement-date" fund or account;
- "Balanced" fund; or
- "Managed account" that emulates a "life-cycle" or "target-retirement-date" fund or account.

As explained below, the Program's Target Retirement Date Funds qualify as a QDIA for all Program plans, and the Program's Target Risk Funds also may qualify as a QDIA for some plans.

(2) Participant opportunity to direct investments. Participants and beneficiaries must have had the opportunity to provide investment direction, but failed to do so. **Plans adopted under the Program satisfy this requirement.**

(3) Notice to participants. Participants (and beneficiaries) must receive both an initial notice and their annual notices describing the Plan's QDIA and their rights to make their own investment elections. The initial notice must be distributed at least 30 days prior to plan eligibility or the date of the first investment on behalf of the participant (or beneficiary) in the QDIA. The annual notice must be distributed at least 30 days before the beginning of each subsequent plan year. The required notices cannot be included in a summary plan description or summary of material modification, but must be part of a separate, easy-to-understand communication, and must contain:

- A description of the circumstances in which contributions will be invested in the QDIA;
- An explanation of participants' (and beneficiaries') rights to direct investments;
- An explanation of participants' (and beneficiaries') rights to transfer assets from the QDIA to other investments under the plan and any restrictions, fees or expenses associated with such transfers;
- A description of the QDIA including its investment objectives, risk and return characteristics and fees and expenses associated with the QDIA; and
- A statement informing participants and beneficiaries of where to obtain investment information concerning the investment alternatives under the plan.

A form of initial notice to participants is provided for your convenience in the Literature section of the Program's website (see Plan Sponsor Resources). A description of the QDIA may be provided by including a copy of the ABA Retirement Funds Program Annual Disclosure Document, which is mailed to plan administrators annually. Participants receive a Summary of Annual Disclosure Document but can log on to their accounts through the Program's website or call 800.348.2272 to obtain a copy of the Annual Disclosure Document.

(4) Provision of investment materials. Participants (and beneficiaries) must be provided with the investment materials required to be furnished for purposes of section 404(c) of ERISA. **The enrollment package available through the Program satisfies this requirement.**

(5) Ability to transfer to other investments. Any participant (or beneficiary) whose account balance is invested in a QDIA must have the ability to transfer such balance, in whole or in part, out of a QDIA as frequently as those who affirmatively elect to invest in the investment option chosen as the QDIA, but at least quarterly. No penalty may be applied for the first 90 days of the individual's investment in the QDIA. Thereafter, no greater penalty may be assessed than otherwise applicable to those who elected to invest in the QDIA. **The Program satisfies this requirement by allowing transfers and changes to investment elections on a daily basis. No penalties or restrictions apply to these transactions.**

(6) Broad range of investment alternatives. The plan must offer a broad range of investment alternatives as defined in the DOL regulation under section 404(c) of ERISA. **The Program satisfies this requirement.**

SELECTING A QDIA:

Although the QDIA regulation provides safe harbor relief from fiduciary liability, it does not otherwise change existing law regarding fiduciary duties in selecting default investment funds, and the regulation makes clear that the safe harbor is not intended to be the only way plan fiduciaries can satisfy their ERISA fiduciary duties regarding default investments. It is also important to note that the QDIA safe harbor does not relieve plan fiduciaries from their duties to prudently select and monitor any QDIA or other default option under the plan. Employers should read the Annual Disclosure Document and, as stated in the preamble to the QDIA regulation, carefully consider investment strategies, fees and expenses when selecting a default option.

After reviewing the DOL guidance, we believe that the Retirement Date Funds meet the QDIA requirements. The Program maintains the demographic information necessary to implement a decision to use those funds as a QDIA. The Program's Target Risk Funds also can be a QDIA for those employers who believe that their asset allocation strategy is appropriate for the overall demographics of its employees.

In order to change the default fund you elected in your Adoption Agreement to the Retirement Date Funds or another investment alternative under the Program, you must amend your plan. Please contact the Program at 800.752.6313 or contactus@abaretirement.com and indicate the investment option that you wish to become the new default investment option for your plan. The Program will prepare a new Adoption Agreement for your signature.

If you elect the Retirement Date Funds or one of the Target Risk Funds to be your default investment in accordance with the DOL safe harbor, you also must decide whether to apply the new default solely to prospective contributions or to transfer existing "defaulted assets" (those assets for which the Program does not have an investment election on file) from the current default investment vehicle to the Retirement Date Funds or a Target Risk Fund, as the case may be, and indicate your choice with your amendment request along with the date on which the transfer is to take place (not less than 30 days from the date you provide notice to the participants and beneficiaries). Return the signed Adoption Agreement to the Program on the same day you provide notice to the participants. The transfer will be accomplished as soon as administratively practical following the effective date you have chosen. Please note that the transfer will only give plan sponsors safe harbor protection with respect to investment experience of the transferred assets subsequent to the date of transfer.

The QDIA regulation provides that certain stable value investment funds will be a QDIA for amounts invested therein *prior* to December 24, 2007. No fiduciary relief is provided for contributions to stable value products on or *after* December 24 2007.

PARTICIPANT NOTICE:

If you intend to comply with the DOL QDIA safe harbor, you must distribute to participants and beneficiaries the above described notice within the above described time frames. Attached is a form of initial notice that you may use for this purpose. Certain sections of the notice must be completed by you, including the name of the default investment option you have chosen. To the extent that you are providing information in conjunction with this notice, you may access the Annual Disclosure Document as noted above by going to **www.abaretirement.com** and logging on to your account, then referrring to the Investments section.

ADDITIONAL INFORMATION:

If you have any questions regarding this notice, please call our Plan Administrator Line at **800.752.6313**, Monday through Friday from 8 a.m. to 8 p.m., Eastern Time or send an email to **contactus@abaretirement.com**.