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Is Your DC Plan Retirement Ready?

Helping Participants Get To And Through Retirement

May 20, 2024

Executive Summary

- Participating in Defined Contribution ("DC") plans such as 401(k), 457, and 403(b) plans is the primary way most people save for retirement, so it is important for DC plans to be designed with a focus on participant outcomes. **A well-designed plan can provide participants with an effective means of not only accumulating assets but also generating income in retirement.**

- Incorporating lifetime income options into a DC plan can help fiduciaries improve participant outcomes. **Fiduciaries have access to more lifetime income options than ever before**, and they have the ability to design lifetime income programs that both achieve the desired outcomes for participants and mitigate fiduciary risk.

- Being a fiduciary is about more than just avoiding lawsuits—it is about improving participant outcomes. Lifetime income options can help participants convert their savings into retirement income, and **a fiduciary's selection of a lifetime income option is not fundamentally different from the selection of any other DC plan investment**. The primary difference is that many lifetime income options come with guarantees from insurers that need to be evaluated.

- Fiduciaries have a number of tools at their disposal to mitigate risk, including delegating responsibility to investment managers or trustees and relying on the growing body of regulatory guidance. Many lifetime income options incorporate these tools into the product design, and **fiduciaries should understand how design choices impact overall legal risk**.

- **Lifetime income options come in a variety of flavors, and fiduciaries can determine which approach will result in the best outcomes for participants.** Some lifetime income options simply provide guidance to participants in drawing down their balances while other options provide guarantees backed by state-licensed life insurance companies. Different options require different levels of participant engagement with some requiring participants to make decisions for themselves and others using a more "do it for me" approach.

- Providers have taken a number of different approaches to designing guaranteed lifetime income options, and now, there are options that can accommodate fiduciaries' preferences and risk tolerances while also achieving optimal participant outcomes.

- See page 13 for a chart summarizing some of the key issues for plan fiduciaries considering the incorporation of lifetime income options into their DC plans.

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Focus on Retirement Income

Participating in DC plans such as 401(k), 457, and 403(b) plans is the primary way most people save for retirement, and there is considerable sponsor and participant interest in making DC plans more effective at their primary goal: providing income in retirement. In the past, this could seem like a daunting challenge, but today, there are more options than ever before, and fiduciaries have the ability to design a lifetime income program that both achieves the desired outcomes for participants and mitigates fiduciary risk.

Over the course of a single generation, DC plans have evolved from being supplemental savings programs to becoming the primary – and typically the only – retirement plan for most employees. As employees and retirees have come to rely more and more on DC plans, sponsors and policymakers have made great strides to improve the DC system by increasing participation (*e.g.*, auto-enrollment), expanding access, improving transparency (*e.g.*, fee disclosure), and professionalizing management and administration. Now, there is a growing focus on providing opportunities to participants to not only save for retirement but to convert their savings into a reliable source of income in retirement.

It is understandably difficult for participants to make their DC plan savings last a lifetime, and even investors with substantial assets may not understand how to transform their portfolios into retirement income. Consequently, many participants are acutely aware that they are at a real risk of outliving their savings. Approximately half of participants are concerned about running out of money in retirement, and "85% of plan participants wish their employer's retirement plan had an option designed to help generate a stream of income in retirement." [1]

More than 80% of sponsors feel a strong sense of responsibility to help participants generate income in retirement, so it is not surprising that plan sponsors are increasingly considering products and features to help participants convert their savings into a reliable source of retirement income.[2] This can have important benefits for participants, including simplifying the overall retirement experience, reducing risk, and improving trading behaviors.[3] Adding lifetime income features to a plan may also help employers manage their workforces. For example, research indicates that "[i]ncreased participant satisfaction can help promote employee loyalty."[4]

For fiduciaries looking at lifetime income options, it is important to understand that the products and services available in the market today have evolved significantly from those available in the past. There are now options available to achieve almost every goal and accommodate most fiduciaries' risk tolerances. This paper provides background to help fiduciaries better understand their legal obligations when considering lifetime income options and the products and services available.

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Fiduciary Basics

Being a fiduciary is about more than just avoiding lawsuits. It is about improving participant outcomes. Lifetime income options can help participants convert their savings into retirement income, and a fiduciary's selection of a lifetime income option is not fundamentally different from the selection of any other DC plan investment. The primary difference is that many lifetime income options come with guarantees from insurers that need to be evaluated.

Under ERISA, a person generally becomes a fiduciary if he or she exercises discretion over the management or administration of a plan, including selecting plan investments.[5] Fiduciaries are required to –

- Carry out their duties "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;"
- Discharge their duties with respect to a plan "solely in the interest of the participants and beneficiaries;" and
- Act for "the exclusive purpose of providing benefits and defraying reasonable expenses of administration."[6]

To satisfy these duties, fiduciaries need to engage in a prudent process.[7] Although there is no one-size-fits-all process for fiduciaries, it is important, as applicable to the specific situation, to gather relevant information, consider available courses of actions, consult experts when necessary or helpful, and make reasoned decisions based on all relevant facts and circumstances that they know or should know.[8] It is equally important to document this process to create evidence of ERISA compliance in the event decisions are questioned.

Notably, ERISA provides fiduciaries considerable discretion in designing investment programs for their DC plans. For example, no particular investment is required or per se imprudent under ERISA.[9] Therefore, while a fiduciary is not required to select the lowest cost investment, the fiduciary must ensure that the benefits provided justify the costs.

A fiduciary's selection of a lifetime income option is not fundamentally different from the selection of any other DC plan investment. The primary difference is that many lifetime income options come with guarantees from insurers that need to be evaluated. This means that a fiduciary must understand the costs of the annuity or annuities and how the underlying insurance contracts work, including any rights of policyholders. In addition, fiduciaries may also evaluate the insurer's financial wherewithal to make good on its payment obligations, which may span decades.

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Mitigating Risk

Fiduciaries have a number of tools at their disposal to mitigate risk, including delegating responsibility to investment managers and relying on the growing body of regulatory guidance. Many lifetime income options incorporate these tools into the product design, and fiduciaries should understand how those design choices impact overall legal risk.

Investment Managers

ERISA allows the named fiduciary of a DC plan to appoint an investment manager to manage some or all of a DC plan's assets.[10] This feature of ERISA was intended to allow a fiduciary to delegate some or all of their responsibilities to a professional with relevant expertise, and a properly appointed investment manager can materially reduce a fiduciary's risk. Both courts and the Department of Labor ("DOL") have recognized that a named fiduciary is generally not liable for the acts of an investment manager unless the named fiduciary participated in, enabled, or failed to remedy the manager's breach.[11] While the plan's named fiduciary remains responsible for selecting and monitoring the investment manager, it is generally not responsible for the manager's day to day decisions.

Regulatory Guidance & Safe Harbors

Over the years, the Department of Labor and Congress have provided a fair amount of guidance to assist fiduciaries interested in incorporating lifetime income options into their DC plans. This guidance includes the following:

- ***DOL's Annuity Selection Regulation.*** DOL issued a regulation in 2008 to provide guidance to fiduciaries considering the addition of annuities in their DC plans. The regulation provides that fiduciaries satisfy their duty of prudence if they satisfy five conditions, including that fiduciaries engage in objective and thorough searches for providers and assess insurance companies' claims-paying ability.[12]

- ***The Secure Act Safe Harbor.*** The Secure Act of 2019 included a new fiduciary safe harbor to provide relief for a fiduciary's selection of annuities for DC plans. Notably, the safe harbor makes it explicit that a fiduciary is not required to select the lowest cost annuity and may consider the value of the annuity, including taking into consideration the features and benefits of the contract and the insurer's attributes. Specifically, the provision was intended to "eliminate[] . . . roadblock[s] to offering lifetime income benefit options."[13] Fiduciaries are deemed to have satisfied their duty of prudence if they engage in an objective, thorough, and analytical search for the purpose of identifying insurers and conclude that, among other things, the insurer is financially capable of satisfying its obligations under the contract (based on certain written

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representations by the insurer) and the relative cost is reasonable taking into consideration the benefits, features, and services provided under the contract.[14]

- ***The Default Investment Safe Harbor.*** In 2006, Congress created a safe harbor to limit liability for fiduciaries who invest accounts for participants without investment elections (*e.g.*, automatically enrolled participants) in certain types of default investments, referred to as qualified default investment alternatives ("QDIA"). DOL regulations specify the specific types of investments that qualify as QDIAs and certain other eligibility conditions (*e.g.*, investment strategy, management, and liquidity).[15] DOL guidance lends support for the position that investment options intended to be QDIAs may be insurance products or contain features of an insured product.

Other Expertise

Not every fiduciary is an expert in all subjects, so it is sometimes useful for a fiduciary to engage outside experts to supplement their knowledge. Advisors and consultants often help educate fiduciaries on the options available, plan optimization, and investment selection. Similarly, lawyers and other professionals can assist fiduciaries in developing, executing, and documenting a prudent decision-making process that, if necessary, can withstand scrutiny.

Highlight: Product Design

Many of the lifetime income options available on the market today have been designed to take advantage of one or more of these risk mitigation tools. For example, some products are structured to alleviate the plan's named fiduciary of the responsibility for selecting insurers and annuities by delegating those decisions to an investment manager or trustee. In fact, product design can be one of the most important drivers of risk. Fiduciaries should carefully consider three key questions:

- What types of decisions does the plan's fiduciary have the knowledge and experience to make?
- Does the product delegate any fiduciary responsibility to an investment manager?
- What investment responsibilities are left for the plan sponsor and fiduciary?

Refer to page 12 for additional discussion about the most common design options.

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Types of Lifetime Income Options

It is important for fiduciaries to understand the lifetime income options available as they come in different flavors. Some options provide guidance to participants in drawing down their savings while others provide income guarantees. Different options also require different levels of participant engagement with some requiring participants to make decisions for themselves and others using a more "do it for me" approach.

Sponsors, fiduciaries, and providers have developed a number of different approaches to helping people convert their savings into retirement income. The "non-insured" approaches are intended to assist participants with the drawdown of their savings to decrease (but not eliminate) the risk that participants outlive their savings. These approaches often come in the following two flavors:

- ***Drawdown Strategies***. Some plans assist participants in drawing down their accounts in retirement by providing educational tools intended to decrease the risk that a person will outlive their savings (*i.e.,* longevity risk). For example, a participant may receive information about the percentage of one's account that can be withdrawn annually to minimize longevity risk. This approach – sometimes referred to as a "systemic withdrawal" – allows participants to retain full control over their accounts, which are subject to market gains and losses, and the benefit payments are not guaranteed.

  Example: Plan X provides Participant Z with educational materials discussing common strategies such as the 4% rule, which says people can generally take distributions equal to 4% of the value of their account upon retirement (indexed for inflation in subsequent years). This education guides Participant Z, but they are free to disregard the information. Participant Z remains responsible for managing their investments and is in complete control of their account.

- ***Managed Payout Funds***. Managed payout funds are pooled investments or managed accounts that use a manager or advisor to make periodic payments in a manner intended to minimize longevity risk. The payment amount may be adjusted from time to time to reflect market experience, and the payments are not guaranteed. Managed payout funds generally seek to minimize investment risk and volatility. Participants retain full control over their account.

  Example: Participant Z invests their savings in Fund Y. Fund Y invests in a conservative portfolio. Every year, Fund Y sets a target distribution rate (e.g., 4% of the account). Fund Y then makes periodic distributions to Participant Z based on the target distribution rate. Participant Z can take additional distributions, and the value of their account can increase or decrease based on the performance of the underlying investments.

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The "insured" or "guaranteed" approaches to lifetime income are intended to eliminate the risk that participants outlive their savings by providing guaranteed payments for life through annuity contracts issued by a licensed life insurer. These approaches can generally be grouped into the following three categories:

- ***Fixed Annuities.*** Fixed annuities resemble a traditional pension benefit in that participants are guaranteed to receive a fixed payment for life. A participant retains control of his or her account and is subject to market experience until the time that the participant pays a premium to an insurer. At that point, the insurer becomes obligated to make periodic payments that generally do not change over time, though some fixed annuities have cost-of-living adjustments. Fixed annuities may allow the participant to liquidate the annuity before payments begin, but there may be charges or penalties. Many traditional fixed annuities do not permit cash-outs after the start of benefit payments.

  Example: Participant Z pays the balance of their account to an insurer upon retirement and, in exchange, receives a set monthly payment for the remainder of their life.

- ***Guaranteed Lifetime Withdrawal Benefits ("GLWBs").*** GLWBs and related products (*e.g.*, guaranteed minimum withdrawal benefits) address longevity risk by guaranteeing periodic payments while allowing participants to retain some control over their accounts and benefit from gains. Participants, through their plan accounts, pay insurance premiums on amounts invested, and in exchange, one or more insurers guarantee that the participants can take distributions from their account at prescribed rates, even if the participants draw down the full value of the account. The amount of the guaranteed distribution is usually based on the account's "high-water-mark," measured at specified times. The assets in the account remain invested, typically in a strategy managed by a third-party fiduciary, and market gains can cause a participant's high-water-mark to increase, thereby increasing the amount of the guaranteed distribution. Participants generally retain the right to withdraw amounts in excess of the prescribed rate at any time, though excess withdrawals generally result in guarantee reductions.

  Example: Participant Z invests in balanced portfolio and begins to pay premiums to one or more insurers at age 55. Upon retirement at age 65, Participant Z begins to withdraw an amount equal to a percentage of the highest value of their account. The account continues to be invested, and if the account ever runs out of assets, one or more insurers will continue to make the retirement income payments. Participant Z can take extra distributions if necessary, though this would decrease the guaranteed monthly payment.

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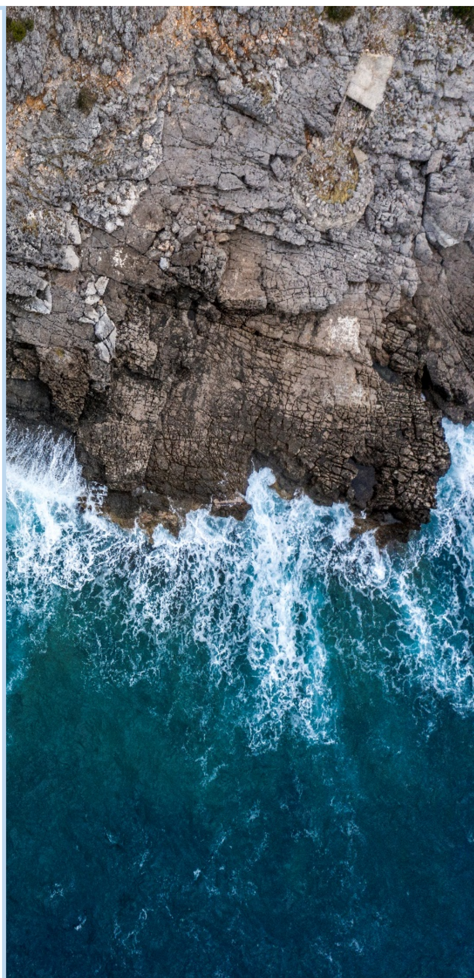
- ***Qualified Longevity Income Contracts ("QLACs").*** QLACs are a type of deferred annuity intended to protect participants against longevity risk while allowing participants to retain control over most of their savings. A portion of a participant's account is paid as a premium to an insurer, and the insurer promises to make benefit payments at some point in late retirement (typically at age 80 or 85). Participants keep control of the remainder of their DC plan account and can invest it and draw it down as they see fit. QLACs can be used in conjunction with a drawdown strategy or a managed payout fund.

  Example: Participant Z retires and pays a percentage of their account to an insurer in an exchange for a promise that the insurer will begin to make monthly payments in an fixed amount for the remainder of Participant Z's life once they turn 80. Before reaching 80, Participant Z is responsible for managing their own investments and drawdown.

Highlight: Understanding the Options

- **Drawdown strategies** are typically educational programs provided by the employer (or other third-party) to help participants understand how to spend their savings in retirement.
- **Managed payout funds** are usually standalone funds that make periodic payments to participants in retirement. The payments are not guaranteed.
- **Fixed annuities** make fixed, guaranteed payments to participants for life. They are typically (but not always) offered as standalone options selected by participants.
- **GLWBs** are typically added to an investment portfolio to guarantee that a participant can take distributions from their account for life while still providing participants with control over their savings.
- **QLACs** generally provide fixed, guaranteed payments beginning later in retirement age (*e.g.*, 80 years) and can be purchased as standalone investments or incorporated into an investment portfolio or fund.



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Overview of Lifetime Income Options

The chart below provides a summary of some of the most common lifetime income options. However, each product is unique, and some may provide features different from those outlined below.

	Non-Guaranteed Options		*Guaranteed Options*		
	Drawdown Strategies	Managed Payout	GLWB	Fixed Annuity	QLAC
Are benefit payments guaranteed?	No	No	Yes	Yes	Yes
Do participants benefit from investment gains?	Yes	Yes	Yes	No	No
Are participants insulated from market losses?	No	No	Yes	Yes	Yes
Is the benefit amount determined based on the value of an investment portfolio?	Yes	Yes	Yes	No	No
Can participants liquidate their account *before* payments start?	Yes	Yes	Yes	Yes	No
Can participants liquidate their account *after* payments start?	Yes	Yes	Yes	No	No
Can the option be embedded in a larger investment portfolio?	No	Yes	Yes	Yes	Yes

Common Design Structures

Over the years, providers have taken a number of different approaches to designing guaranteed lifetime income options, and now, there are options that can accommodate fiduciaries' preferences and risk tolerances while also achieving optimal participant outcomes.

Standalone Annuities

Some DC plans make an annuity option available directly on the plan's investment lineup. These annuities can be either immediate (*e.g.*, a fixed annuity) or deferred (*e.g.*, a QLAC). The annuities and insurers are selected by a fiduciary for the plan, and the fiduciary is responsible for determining that the annuities are a prudent investment option. The fiduciary may engage an investment manager, adviser, or consultant to assist with the annuity selection and/or monitoring, though it is not required. Participants are generally responsible for deciding when to purchase the annuity and how much of their savings to annuitize.

Adding Guarantees to a Fund or Managed Account

Some fiduciaries incorporate lifetime income into their DC plans by allowing participants to elect to add guarantees – typically GLWBs – to a fund or strategy often already on the plan's investment lineup. This commonly, but not always, takes the form of a managed account that utilizes the investment options on the DC plan's platform to construct portfolios for individual participants based on their age and/or retirement date. The portfolios often resemble target date funds in that they become more conservative as the participant nears retirement. The investments, annuities, and glide path (if any) must be prudently selected by a fiduciary for the plan, and fiduciaries often engage investment managers to assist with some portion of the lifetime income program. This approach is often intended to qualify as a QDIA.

Target Date Funds with Embedded Guarantees and Other "Bundled" Funds

The newest type of lifetime income options are single funds that offer "bundled" asset management services and lifetime income guarantees. These funds typically offer GLWBs or QLACs and are structured as collective investment trusts ("CITs"), though they can take other forms. The funds often operate as target date funds, and if they are CITs, the trustee for the CIT is appointed as an investment manager and fiduciary for the investing DC plans. This means the trustee is primarily responsible for selecting the investments, setting the glide path (if any), and selecting the annuities. The plan's fiduciary remains responsible for determining whether the plan's overall investment in the fund is prudent. This approach is typically intended to qualify as a QDIA.

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Fiduciary Considerations

The chart below is intended to provide an overview of some (but not all) of the key issues for fiduciaries to consider when evaluating lifetime income options.

Issue	Why it Matters	Questions to Consider
Plan Goals	Fiduciaries are often most effective when they have a vision for their plan and understand the goals they hope to achieve, including participant outcomes. They can then implement their vision by engaging in prudent processes to, among other things, select plan investments to achieve the desired results.	• Is the DC plan the primary retirement plan for employees or supplemental to pension or other retirement programs? • What does the workforce need from the DC plan? • What are the desired outcomes for plan participants? • Can the plan be designed in a way that increases the likelihood that participants will make better decisions and have better outcomes?
Internal Expertise	Fiduciaries are not required to be experts on all subjects, but they are required to seek out relevant expertise to the extent necessary to make prudent decisions.	• Does the plan's investment fiduciary have experience with lifetime income options and/or annuities? • To what extent are external experts necessary to assist with a prudent process?
Guarantees	There are a variety of approaches to lifetime income, and each approach has its own unique benefits and risks. It is important that fiduciaries consider what approach works best for plan participants and is expected to have the best overall outcomes.	• What is the likelihood that participants using a lifetime income option will run out of money in retirement? • Are guarantees important for participant outcomes? • Would participants benefit from longevity risk protection?

Design & Structure	Guaranteed lifetime income options can be standalone annuities, annuities added onto existing investment options, or annuities embedded within a CIT or other pooled fund. Each approach has a different risk profile.	• What decisions do participants need to make and are they generally capable of making those decisions? • Is it beneficial to incorporate guarantees into a broader investment strategy? • Is the fiduciary capable of being the individual primarily responsible for investment and annuity selection or should core functions be delegated to an investment manager or incorporated into the product structure? • To what extent does product design help participants mitigate risk by, for example, providing downside protection or locking in future income payments? • Is there an opportunity for better outcomes through pooled approaches that can achieve economies of scale and/or spread risk?
Fees	Fiduciaries must always consider fees, but they are not required to select the lowest cost option. Instead, fiduciaries must ensure that the fees are reasonable in light of services being provided. This includes consideration of the types of fees charged as well as the impact those fees have on participant outcomes.	• What are the direct and indirect fees and how do they impact participant outcomes? • What benefits are derived from the lifetime income option and are the fees reasonable in light of those benefits? • How do those fees compare to similar products and services in the market? • What are the costs of incorporating a lifetime income benefit into an investment program or portfolio?
Administration	Fiduciaries will likely want to evaluate how particular lifetime income options integrate within the plan and determine whether they are supported by key	• How does the lifetime income option meet plan qualification requirements (*e.g.*, the required minimum distribution rules)? • Does the plan's recordkeeper support the lifetime income option? Are there any limitations?

	service providers (including plan recordkeepers). Options can also affect plan qualification requirements.	• How is the data used to administer the lifetime income shared between key plan service providers?
Investments	To the extent a lifetime income option incorporates an investment component, it is important that plan fiduciaries understand how the assets are invested and who is ultimately responsible for making investment decisions.	• Are participants exposed to the markets and to what extent? • Is the investment strategy age-appropriate? • Does the investment strategy help participants grow their savings over the course of their working lives or is the investment strategy overly conservative, resulting in lower growth? • What are the investments and is there a glide path or other strategy to adjust the asset mix over time? • Who is responsible for selecting the investments and is there an investment manager? • Are there restrictions on the investments (*e.g.*, limitations put in place by the insurer), and if so, how do those limitations affect outcomes for participants?
Guarantee Operation	Guaranteed lifetime income options come in a number of different forms, and the primary difference is how annuities are incorporated into the plan. Fiduciaries need to have a clear picture of how the guarantees operate and who makes key decisions. This will help fiduciaries determine the approach most appropriate for their plan and their participants.	• Do participants have the ability to make sound decisions about annuities, including when to annuitize and how much of their savings to annuitize? • Would participants benefit from having the guarantees embedded into a more comprehensive investment program that automates some or all of the annuity-related decisions? • How do the guarantees operate (*i.e.*, when do the guarantees apply and are there any limitations)?

		• Who determines the allocation of accounts to the annuity? • Is the lifetime income benefit calculated on the entire portfolio value or just on the premium amount? • How are the guarantees priced (*e.g.*, on a group basis with unisex pricing)?
Allocation of Fiduciary Responsibility	Some fiduciaries want to remain hands-on and manage all aspects of a lifetime income option while others prefer to delegate key functions to third parties. Either approach can work, but fiduciaries should make decisions about the allocation of fiduciary responsibility carefully and take into consideration their unique circumstances.	• To what extent is the fiduciary capable of making prudent decisions regarding the management and administration of a lifetime income option? • Does the fiduciary want to be responsible for decisions about the day-to-day operation of the lifetime income option? • Does the fiduciary want to be responsible for insurer selection or is it necessary or appropriate to delegate that function to a third party (*e.g.*, an investment manager)?
Participants' Role & Experience	As the DC system has developed over time, plans have begun to incorporate automatic features to simplify the participant experience and encourage better overall outcomes.	• To what extent do participants have to make affirmative choices and decisions? • Are participants more likely to have optimal outcomes with a "do it for me" approach (*e.g.*, one that incorporates auto features)? • Could the participants benefit from being automatically enrolled in a lifetime income option or do they need to opt in? • Is it appropriate to utilize a lifetime income option with automatic initiation of the benefits or should participants be required to take affirmative steps to begin receiving retirement income? • How are benefits communicated to participants over the course of their lives?

		• To what extent must the employer provide supplemental information? • Does the lifetime income option complement any existing retirement education programs?
Communications	Sponsors have to meet certain statutory reporting and disclosure obligations. It is important to understand what additional obligations come with a lifetime income option and what support is available.	• What disclosure obligations are there? • Are there model communications or does the provider communicate directly with participants? • Do participant communications align with key life events?
Liquidity	Liquidity is an important consideration because it can materially impact participants' ability to access their savings and that can affect participant behavior and outcomes.	• How important is liquidity to participant outcomes? • Are participants able to liquidate some or all of their accounts after investing in the lifetime income option or is the decision revocable? • Are there any penalties, fees, or other consequences of liquidating some or all of an account?
Portability	Fiduciaries will likely want to consider to what extent a lifetime income option is portable, meaning whether a participant can retain the benefit when they leave the plan or the plan can no longer support the option. Portability is an important consideration because it can have a direct impact on participants and it also can impact the ability of sponsors to change their plans.	• What options are available for participants to retain their benefits in the event they leave the plan? • What are the implications for the plan and participants if a fiduciary decides to stop offering the lifetime income option?

[1] Greenwald Research, Plan Participants Want Options That Generate Retirement Income in Their Workplace Retirement Plans (Jan. 12, 2022) (link).

[2] J.P. Morgan Asset Management, *Continued Progress Through Partnership: Expanding the Trend of Doing More for Participants* (2023) (link). *See also* Nationwide Retirement Institute, 2021 In-Plan Lifetime Income Survey (Sept. 10, 2021) (link).

[3] PGIM, *Stay the Course* (Feb. 2022) (link).

[4] EY, *Protected Retirement Income Solutions: What Plan Sponsors Need to Know About a New Generation of Offerings* (Feb. 22, 2024) (link).

[5] The rules applicable to fiduciaries are discussed in more detail in our Practical Guide for Selecting DC Plan Lifetime Income Options and our analysis of the Lifetime Income Provisions Under the SECURE Act.

[6] ERISA § 404(a).

[7] *See, e.g., Donovan v. Mazzola*, 716 F.2d 1226, 1232 (9th Cir. 1983), cert. denied, 464 U.S. 1040 (1984) (prudence involves an examination of whether the trustees "employed the appropriate methods to investigate the merits of the investment and to structure the investment"); *Donovan v. Walton*, 609 F.Supp, 1221, 1238 (S.D. Fla. 1985), *aff'd sub nom., Brock v. Walton*, 794 F.2d 586 (11th Cir. 1986); *Eyler v. Comm'r of Internal Revenue*, 88 F.3d 445, 454 (7th Cir. 1996); *DiFelice v. U.S. Airways, Inc.*, 497 F.3d 410, 420 (4th Cir. 2007).

[8] *In re Unisys Sav. Plan Litig.*, 74 F.3d 420, 434–35 (3d Cir. 1996).

[9] 44 Fed. Reg. 37221, 37225 (June 26, 1979).

[10] ERISA § 3(38)

[11] *See, e.g., Harris Bank and Trust v. Saloman Bros.*, 17 EBC 1390 (N.D. Ill. 1993).

[12] 29 CFR § 2550.404a-4.

[13] The Setting Every Community Up For Retirement Enhancement Act of 2019, Pub. L. 116-94, §§ 101-404, 133 Stat. 3137-3180 (page 4 of section-by-section summary of Richard E. Neal, Chairman, H. Comm. on Ways and Means).

[14] ERISA § 404(e)(6).

[15] 29 C.F.R. § 2550.404c-5.

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