

JOURNAL *of* PENSION BENEFITS

ISSUES IN ADMINISTRATION, DESIGN, FUNDING, AND COMPLIANCE
Volume 33 • Number 1 • Autumn 2025

PLAN DISTRIBUTIONS

Decumulation-Friendly 401(k) Retirement Plans

Plan sponsors of defined contribution retirement plans, such as 401(k) plans, strive to design their plans in a manner that can offer eligible employees attractive features to save for retirement. Plan communications often focus on the benefits of saving and accumulating assets for retirement, as well as understanding plan terms and investment options. Yet, there is much work to be done to include features in these plans, and related plan communications, to assist plan participants in managing their retirement assets in the decumulation phase. Plan sponsors should take the time to consider how they might be able to improve their retirement programs to address this important plan participant need.

BY MICHELLE CAPEZZA

Michelle Capezza is Of Counsel with Mintz in the Employee Benefits & Executive Compensation practice. For more than 25 years, she has represented a range of clients in ERISA, employee benefits, and executive compensation matters including qualified retirement plans, ERISA fiduciary responsibilities, nonqualified deferred compensation arrangements, employee welfare benefit plans, equity/incentive programs, and benefits issues that arise in corporate transactions, across various industries. She also advises clients on the implications of increased automation and artificial

intelligence in the workplace and the related employee benefits and compensation considerations for a changing workforce. Ms. Capezza is a Fellow in the American College of Employee Benefits Counsel and has been recognized for her work in Chambers USA, The Legal 500 United States, *The Best Lawyers in America*®, and selected to the New York Metro Super Lawyers and New York Metro Top Women.

The retirement savings debate often centers on the retirement savings gap. The question of whether employees have sufficient access to

retirement savings plans with meaningful features that will enable them to accumulate sufficient savings for retirement, and the manner in which greater access to retirement savings plans can be accomplished, is a primary challenge in solving the retirement savings crisis. The decline in employee access to employer-provided defined benefit pension plans has contributed to this savings gap. Companion challenges in solving the savings gap concern the varying financial literacy levels of employees, determining the appropriate scope of plan education, and provision of retirement plan investment advice. The discussions on these issues often focus on the retirement savings accumulation phase, however, and not the plan decumulation or distribution phase.

An important part of the retirement savings debate concerns how defined contribution retirement plans that are not otherwise required to offer annuity distribution options can be designed to facilitate distribution of retirement savings to participants in a manner that will actually support them in retirement so that they do not outlive their savings, such as by offering lifetime income distribution options. Proponents of these types of options advocate that it is necessary to offer participants a way to obtain an ongoing retirement income stream from a defined contribution plan in the same manner as is possible to be obtained from a traditional pension plan. Yet, in addition to grappling with the plan fiduciary decisions related to prudently selecting and monitoring the various types of lifetime income products available in the marketplace that can be offered through defined contribution retirement plans, plan sponsors and fiduciaries recognize that the financial literacy challenges of employees further complicate the decision to offer such distribution options, or investment-related options, in such plans. It often is argued that lifetime income distribution options such as in-plan annuities or decumulation options inside qualified default investment alternatives (QDIAs) that automatically allocate a portion of a participant's account towards an annuity purchase as the participant nears retirement age are too complex to explain to participants, and that participants lack sufficient skills to assess their value and costs.

Certainly, many individuals may be challenged when it comes to understanding financial products, as well as how to manage budgets and gauge the impact of inflation on savings. Automatic plan enrollments into default investments will assist employees in their accumulation of retirement savings, but individuals who historically have not successfully managed

budgets will likely not fare well when it comes to managing a lump sum distribution from a retirement plan. Participants in defined contribution retirement plans that can offer lifetime income distribution options to them, as well as robust educational materials, would be afforded a great option to assist them in addressing the management of their retirement savings and their plan distributions. Recent participant surveys actually indicate that 401(k) plan participants, for example, desire options to convert their retirement savings into guaranteed monthly payments and they have a growing awareness of options such as fixed annuities. [Nuveen and TIAA Institute Survey May 19, 2025]

A 2025 survey of 22 plan sponsors with \$108 billion in plan assets found that a major concern of plan sponsors is participant engagement, as well as financial literacy and educational gaps involving retirement income, and concerns related to fiduciary risks in offering retirement income solutions, overall complexity, and internal resource constraints to develop a decumulation strategy. [Decision-Maker Voices on Retirement Income Opportunities and Obstacles, Defined Contribution Institutional Investment Association (2025)] Despite such concerns, in a 2024 MFS DC Plan Sponsor Survey, 166 plan sponsors representing over one million participants were asked whether they have evaluated any in-plan retirement income solutions as part of a QDIA, as a standalone offering, or with or without guaranteed income. Almost half of the respondents to the survey noted that they have been educated by their investment consultants on the retirement income landscape and were moderately to extremely likely to implement a retirement income solution within 12 to 18 months of taking the survey. [2024 MFS DC Plan Sponsor Survey, Building Better Outcomes]

Plan sponsors that are evaluating whether to offer their defined contribution retirement savings plan participants lifetime income distribution options, or related types of products, and plan fiduciaries that are weighing the related implementation concerns, have a lot to consider. The purpose of this column is to provide an overview of the key available guidance that can be analyzed to make decisions regarding these issues, and outline the types of questions that plan sponsors and fiduciaries should discuss with their plan investment advisors and service providers in order to determine how to best assist their plan participants with the decumulation of their retirement plan assets and management of these funds in retirement.

What Key Background Guidance Should Plan Sponsors and Fiduciaries Consider?

Safe Harbors for Selection of an Annuity or Annuity Provider for Individual Account Plans

Fiduciary safe harbors for the selection of an annuity provider for plan distributions or insurers for guaranteed retirement income contracts, have evolved since 2008. On October 7, 2008, the Department of Labor (DOL) published regulations that established, effective as of December 8, 2008, a safe harbor for the selection of annuity providers for the purpose of benefit distributions from individual account plans covered by Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA) (2008 Fiduciary Safe Harbor). The 2008 Fiduciary Safe Harbor established criteria for satisfying the fiduciary duties under Section 404(a)(1)(B) of ERISA in selecting an annuity provider and contract for benefit distributions from an individual account plan. In contrast, the guidance for selection of annuity providers for defined benefit plans is set forth in Interpretive Bulletin 95-1. [Labor Regulation § 2550.404a-4(a)(1)]

The DOL clarified that the 2008 Fiduciary Safe Harbor does not establish minimum requirements or the exclusive means for satisfying the responsibilities under Section 404(a)(1)(B) of ERISA with respect to the selection of an annuity provider or contract for benefit distributions, but rather, the DOL's intention for the 2008 Fiduciary Safe Harbor was to provide useful safe harbor criteria for plan fiduciaries to demonstrate that they satisfied their fiduciary duties when selecting annuity providers and contracts for distributions from individual account retirement plans. In Field Assistance Bulletin 2015-02, the DOL further clarified that the prudence of a fiduciary's selection and monitoring of an annuity provider is determined based on the information available at the time of selection and each periodic review, the frequency of which depends on the facts and circumstances, such as becoming aware of a financial health rating downgrade by a major insurance rating service or complaints by annuitants. Despite this 2008 Fiduciary Safe Harbor, there were still uncertainties related to fiduciary liability and the scope of fiduciary protection once an annuity provider had been selected.

The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) enacted Section 404(e) of ERISA as a new safe harbor for the prudent selection of a guaranteed retirement income contract for an individual account plan (ERISA Safe

Harbor), which includes many similar fiduciary considerations as the regulatory 2008 Fiduciary Safe Harbor, but provides greater clarity with respect to the fiduciary assessment of an insurer's financial strength. The ERISA Safe Harbor can be followed with respect to not only selection of annuity providers and contracts for benefit distributions but also with regard to the selection of in-plan products, such as guaranteed retirement income contracts.

Although there are nuances, conceptually the 2008 Safe Fiduciary Harbor and the ERISA Safe Harbor criteria at least require that the plan fiduciary:

1. Engage in an objective, thorough and analytical search for the purpose of identifying and selecting insurers or providers from which to purchase contracts or annuities (which the 2008 Fiduciary Safe Harbor indicates is through a process that avoids self-dealing, conflicts of interest or other improper influence, and to the extent feasible, involves consideration of competing annuity providers);
2. Consider information sufficient to assess the ability of the insurer to satisfy its obligations under the contract or the annuity provider to make all future payments under the annuity contract;
3. Consider the cost of the guaranteed retirement income or annuity contract, including fees and commissions, in relation to the benefits and administrative services to be provided under the contract; and
4. Conclude that, at the time of the selection, the insurer or annuity provider is financially able to meet its obligations under the contract or make all future payments under the annuity contract, and the cost of the contract is reasonable in relation to the benefits and services to be provided under the contract.

With regard to differences in these safe harbors, the 2008 Fiduciary Safe Harbor included a criterion that, if necessary, the fiduciary should consult with an appropriate expert or experts for purposes of complying with the requirements of the safe harbor. [Labor Regulation § 2550.404a-4(a)(b)] The Preamble to the 2008 Fiduciary Safe Harbor also noted that, although an annuity provider's ratings by insurance ratings services are not part of that final safe harbor criteria, in many instances, fiduciaries may want to consider them, particularly if the ratings raise questions regarding the provider's ability to make future payments under the annuity contract.

Further, the DOL noted that some information regarding additional protections that might be available through a state guaranty association for an annuity provider would be useful information to a plan fiduciary, even if limited to that information that generally is available to the public and easily accessible through such associations, state insurance departments, or elsewhere. The ERISA Safe Harbor clarifies that the fiduciary can obtain a specific set of representations from the insurer related to its financial health at the time of selection and over the last seven years, and satisfy its fiduciary diligence so long as the fiduciary has not thereafter received notice of any change in the insurer's circumstances or other concerning information.

With regard to timing of selection of the annuity provider for benefit distributions, the 2008 Fiduciary Safe Harbor, and the ERISA Safe Harbor, similarly provide, essentially, that the time of selection may be the time that the fiduciary selects the annuity provider and contract for distribution of benefits to a specific participant or beneficiary or, the fiduciary may meet the safe harbor conditions when the fiduciary selects an annuity provider to provide annuity contracts at future dates to participants or beneficiaries, provided that the selecting fiduciary periodically reviews the continuing appropriateness of the conclusion that the annuity provider is financially able to make all future payments under the annuity contract and the cost of the annuity contract is reasonable in relation to the benefits and services to be provided under the contract.

Under these rules, a fiduciary is not required to review the appropriateness of this conclusion with respect to any annuity contract purchased for any specific participant or beneficiary. [Labor Regulation § 2550.404a-4(a)(c) and ERISA § 404(e)] Importantly, the ERISA Safe Harbor clarifies that, when the fiduciary satisfies the conditions of this safe harbor, it is relieved of liability for any losses that may result from an insurer's inability to satisfy its financial obligations under a plan distribution contract following the distribution of any benefit or the investment in a contract.

On July 1, 2025, the DOL issued a direct final rule (DFR) scheduled to be effective August 29, 2025, unless withdrawn, that would eliminate the 2008 Fiduciary Safe Harbor. This DFR was issued in accordance with the Executive Order 14192 of January 31, 2025, which required agencies to eliminate at least 10 prior regulations for each regulation it issues. The DFR asserts that the 2008 Fiduciary Safe Harbor

became an unnecessary alternative to the ERISA Safe Harbor once the latter was enacted. In the event that adverse comments were made to oppose this DFR, the DFR could be withdrawn or a new final rule could be issued.

Yet, at the time the DFR was issued, it raised a question as to whether the 2008 Fiduciary Safe Harbor's historic guidance may still be useful even if the DFR is withdrawn. Plan fiduciaries that are charged with implementing a plan sponsor decision to make annuity distribution options available to plan participants from the defined contribution plan, or who are exploring other investment-related products with guaranteed income features, could follow the ERISA Safe Harbor, which provides some comfort regarding the scope of fiduciary liability, and might also consider the historic criteria from the 2008 Fiduciary Safe Harbor to guide their selection process.

Ultimately, effective as of August 11, 2025, the DFR was withdrawn due to the receipt of significant adverse comments. Thus, it would be prudent to establish diligence procedures specifically based on the ERISA Safe Harbor, and the 2008 Fiduciary Safe Harbor, criteria to evaluate products and providers, and to work with plan service providers and advisors to make the necessary evaluations based on such procedures and other historic or new guidance that may be useful. It will also be important to monitor the issuance of further guidance or a new final rule.

Qualified Longevity Annuity Contracts

Plan sponsors and fiduciaries may find that the types of products that qualify as qualified longevity annuity contracts (QLACs) could be offered as general, noncontroversial, lifetime income distribution options. In 2014, the Internal Revenue Service (IRS) published final regulations, effective on July 2, 2014, relating to the use of QLACs in tax-qualified plans, including plans under Sections 401(a), 403(b), 408, and 457(b) of the Internal Revenue Code of 1986, as amended (Code), as well as related compliance with the required minimum distribution rules under Section 401(a) (9) of the Code. These regulations provide guidance to facilitate the purchase of deferred income annuities where distributions commence no later than age 85, and where, prior to annuitization, the value of the QLAC is excluded from the account balance used to determine the required minimum distributions. This allows for deferral of required minimum distributions of the plan account assets used to purchase the QLAC. Section 202 of the SECURE 2.0 Act of 2022

(December 29, 2022) (SECURE 2.0 Act) also modified for plan years after December 29, 2022, certain QLAC rules concerning limits on premiums paid for the contract to provide for a lifetime limit of \$200,000 as indexed (where the 2025 limit is currently \$210,000), and provided for other rules related to QLACs including those to address divorce situations.

To qualify as a QLAC, the annuity contract must provide an employee with a predictable stream of lifetime income, and the income under the contract must be primarily derived from contractual guarantees. The regulations note that a QLAC does not include a variable annuity contract or an equity indexed contract that provide a substantially unpredictable level of income. The QLAC contract is not permitted to make available any commutation benefit, cash surrender value, or similar feature. The QLAC can provide a return of premium feature. QLAC exchange regulations were effective September 17, 2024, to allow an individual to exchange one QLAC for another so long as they do not contribute more than the applicable lifetime premium limit to the new QLAC. When an existing QLAC is exchanged for a new QLAC, the fair market value of the exchanged contract will be treated as premium paid for the QLAC.

Thus, a goal of the QLAC was to make easy to understand QLAC options available for purchase that would enable employees to compare the products of multiple providers. Plan sponsors and fiduciaries may wish to discuss with their plan advisors the types of products that satisfy the QLAC requirements that can be offered as QLAC options, or simply used as a general, more immediate, type of lifetime income distribution option from the defined contribution plan. It might be desirable to offer QLACs that can provide the deferred annuity and that can help lower required minimum distributions, as well as offer a similar product not intended to be the QLAC but to serve as a separate available option for those with very large balances who want to annuitize their income stream.

Plan fiduciaries may conclude that the most appropriate type of option to make available at this time is the simplest type of contractual guarantee product until there are appropriate benchmarking tools that would enable meaningful comparison of different annuity products given their various product features and cost-shifting approaches. The ability to benchmark and compare different types of products will likely evolve as new tools are created, and such development should be monitored.

ERISA Advisory Council Reports

Since 2008, the Advisory Council on Employee Welfare and Pension Benefit Plans (Council), which was established under Section 512 of ERISA to advise the Secretary of Labor on matters related to welfare and pension benefit plans, has examined various issues related to income replacement from defined contribution retirement plans. Thus, for more than 15 years, the Council has made recommendations in various reports with a common thread calling for simplification of the selection process of lifetime income options, plan fiduciary protections, development of education materials, and model communications. A review of these reports, which include comments from industry experts, may serve as a helpful background for plan sponsors and fiduciaries to holistically evaluate the issues at hand and assess where more guidance is needed. For example, after discussing expert testimonies over the years, the Council has identified issues and made many recommendations, which include:

- The 2008 Council Report on Spend Down of Defined Contribution Assets at Retirement, where the Council recommendations included (i) a call for simplification of the proposed annuity provider selection rules (noting the DOL's 2008 Fiduciary Safe Harbor); (ii) a call to amend Interpretive Bulletin 96-1 by adapting it to address information, education, and advice related to the spend-down of retirement plan assets; (iii) request to clarify that QDIA treatment with respect to default options incorporating guarantees that extend into the distribution phase so that fiduciaries receive the same fiduciary protection under the QDIA regulation for amounts that remain invested in guaranteed lifetime income products; and (iv) allowance of additional participant disclosures and communications that would estimate the annual retirement income from converting the account balance and enhance education regarding distribution options.
- The 2012 Council Report on Examining Income Replacement During Retirement Years In a Defined Contribution Plan System, where the Council recommendations included a call to develop (i) regulatory guidance/clarification with respect to decumulation of retirement assets, including a defined contribution plan annuity safe harbor, participant education, and investment advice; and (ii) educational materials to assist employers and plan sponsors in evaluating and

selecting income replacement options and to assist individuals in understanding and choosing income replacement options to best suit their retirement needs.

- The 2014 Council Report on Issues and Considerations Surrounding Facilitating Lifetime Plan Participation, where the Council recommendations included (i) the provision of education to participants and plan sponsors regarding asset retention; (ii) development of model plain language communications to participants on decumulation of retirement assets and materials to plan sponsors on plan designs that encourage lifetime participation; (iii) an updated, defined contribution plan annuity selection safe harbor; and (iv) new options to make the DOL's Lifetime Income Calculator available while integrating existing tools such as those in My Social Security account.
- The 2015 Council Report on Model Notices and Plan Sponsor Education on Lifetime Plan Participation, where the Council recommendations included requests to the DOL to publish (i) sample communications that encourage lifetime plan participation; and (ii) tips and FAQs to educate plan sponsors about plan design features that encourage lifetime plan participation; and to create plain language communications promoting lifetime plan participation, while encouraging innovation and customization by sponsors and providers.
- The 2016 Council Report on Participant Plan Transfers and Account Consolidation for the Advancement of Lifetime Plan Participation, where the Council recommendations included a Request for Information on how to support the adoption of secure electronic data standards to expedite the processing of eligible rollovers, plan sponsor education to support participant-initiated plan to plan transfers, and sample participant communications for consolidating accounts. It also recommended updates to the Section 402(f) notice to promote lifetime plan participation.
- The 2018 Council Report on Lifetime Income Solutions as a Qualified Default Investment Alternative (QDIA)—Focus on Decumulation and Rollovers, where the Council recommendations included (i) amending the QDIA regulations to address using Lifetime Income in a QDIA; (ii) that the DOL clarify that sponsors may default participants into different options based on participant demographics because plan populations may not be sufficiently similar for a single default to be

universally appropriate; and (iii) encouraging plan sponsors to adopt plan design features that include allowing participants to take ad hoc distributions, enabling installment payments, and providing social security bridge options.

Most recently, the Council published a December 2024 Report on Qualified Default Investment Alternatives—Start to Finish, Default to Payout (December 2024 Report), which includes recommendations to the DOL to promote successful decumulation of retirement savings such as DOL's (a) creation of Tips for plan fiduciaries when selecting and monitoring both non-guaranteed and guaranteed retirement income options, including those inside a QDIA; (b) provision of guidance to improve participant education, notices, and disclosures regarding QDIAs; and (c) amendment of the automatic rollover safe harbor to individual retirement plans to allow use of QDIAs as an acceptable investment safe harbor option for involuntary automatic rollovers. It will be important to monitor the outcome of this December 2024 Report.

Other SECURE Act and SECURE Act 2.0 Provisions

The SECURE Act and SECURE 2.0 Act enacted other provisions to assist defined contribution plan participants in their attainment of lifetime income distributions related to their defined contribution plan account balances:

- Section 203 of the SECURE Act amended the pension benefit statement rules under Section 105 of ERISA to require that individual account plans add a lifetime income disclosure to at least one pension benefit statement furnished to participants during a 12-month period. This disclosure estimates the monthly income that could be achieved if the account were paid in a single life annuity stream or qualified joint and survivor annuity rather than a lump sum payment. The DOL issued an interim final rule that became effective September 18, 2021, setting forth the factors and assumptions that must be used to calculate the estimates and explanations that must be provided to participants. The DOL's Temporary Implementing FAQs issued July 26, 2021, stated that the first lifetime income illustration for participant-directed plans would be due on a participant's quarterly statement by June 30, 2022. The SECURE Act also amended ERISA to provide fiduciaries with liability protection for providing these estimates of lifetime income

stream so long as they were derived in accordance with the DOL rules.

- Effective for plan years after 2019, the SECURE Act enhanced the portability of lifetime income investment options by enacting Section 401(a)(38) of the Code to apply in the event that a lifetime income investment is no longer held as an investment option under a defined contribution plan. This provision would allow a plan to provide for either qualified distributions of a lifetime income investment, or distribution of a lifetime income investment in the form of a qualified plan distribution annuity contract. With this feature, participants in defined contribution plans, 403(b) plans, and governmental 457(b) plans would be able to make a direct rollover of a qualified distribution from the plan to another qualified retirement plan or IRA, regardless of their age, if the lifetime income investment is no longer authorized to be held as an investment option in the distributing plan. Any distribution under these rules must occur within the 90-day period that ends on the date when the lifetime income investment is eliminated as a plan investment.
- For calendar years ending after December 29, 2022, the SECURE 2.0 Act also encourages annuities: (i) with Section 201 of the SECURE 2.0 Act, which permits a plan distribution (other than from a defined benefit plan) that satisfies required minimum distribution requirements by purchasing a commercial annuity that can provide such features as a death benefit and inflation protection cost of living adjustments that may increase at a rate that is less than five percent annually; and (ii) with Section 204 of the SECURE 2.0 Act, which allows for aggregation of the annuitized portion of an account balance with the overall account balance to determine required minimum distributions.

Other Guidance

Plan sponsors and fiduciaries also should familiarize themselves with guidance set forth in IRS Notice 2014-66 and IRS Revenue Ruling 2012-3 as they further analyze plan compliance issues. IRS Notice 2014-66 provides a special rule that enables qualified defined contribution plans to provide lifetime income by offering, as investment options, a series of target date funds (TDFs) that include deferred annuities among their assets, even if some of the TDFs within the series are available only to older participants. This

special rule provides that, if certain conditions are satisfied, a series of TDFs in a defined contribution plan is treated as a single right or feature for purposes of the nondiscrimination requirements of Section 401(a)(4) of the Code, which permits the TDFs to satisfy those nondiscrimination requirements as they apply to rights or features even if one or more of the TDFs considered on its own would not satisfy those requirements.

IRS Revenue Ruling 2012-3 outlines scenarios illustrating how the qualified joint and survivor annuity and the qualified preretirement survivor annuity rules, described in Sections 401(a)(11) and 417 of the Code, apply when a deferred annuity contract is purchased under a profit-sharing plan, and illustrates designs that may qualify for the exception in Section 401(a)(11)(B)(iii) of the Code, and not be subject to such requirements with respect to a participant's deferred annuity contract until the annuity starting date under the contract.

In Light of the Available Guidance, What Steps Can Plan Sponsors and Fiduciaries Take to Offer Decumulation-Friendly 401(k) Plans?

Equipped with an understanding of the issues addressed in the available rules and guidance, as well as familiarity with plan design features that are available under the plan, plan sponsors and fiduciaries can proceed to make well-informed decisions with respect to the plan design and fiduciary considerations associated with offering lifetime income distribution options and similar types of investments options in a 401k or other applicable defined contribution plan. Plan sponsors should start by evaluating current plan design and withdrawal features, plan participant demographics and account balance size to assess suitability of distribution options, and an offer of a lifetime income solution. Plan sponsors should determine any necessary plan amendments and related document changes to facilitate offerings of lifetime income options, and determine when to direct the plan fiduciaries to proceed with implementation steps.

Topics for plan fiduciary consideration, in consultation with plan investment advisors and service providers in order to make informed decisions, might include:

- Review of the 2008 Fiduciary Safe Harbor and ERISA Safe Harbor and establishment of prudent selection and monitoring procedures of annuity

and lifetime income products and providers based on the safe harbor criteria.

- Request for an overview from plan investment advisors of the various types of annuity products, guaranteed living withdrawal benefit riders, guaranteed lifetime income contracts, target date funds, and investments with guaranteed income components available in the marketplace that can be offered, and comparisons of their features, fees, and cost shifting mechanisms.
- Assessment with plan investment advisors of the available benchmarking methods and developments of new tools to compare investment and annuity products and review of typical disclaimers from annuity providers regarding their guarantees, and assessment of the State variations of product availability and features.
- Evaluation of conflicts of interest among advisors and product providers.
- Assessment as to whether investment advisor relationships should be changed from an ERISA 3(21) relationship to an ERISA 3(38) relationship, with a 3(38) investment manager delegated responsibility to prudently select and monitor an annuity provider.
- Updates to the plan's investment policy statement.
- Evaluation of current plan recordkeeper limitations, as well as those, at a minimum, of the recordkeepers that have been previously compared, for services with respect to these types of distribution options and investments, including assessment of any difficulties in conversions of services from any one provider.
- Updates to summary plan descriptions, as well as 402(f) special tax notices (in light of forthcoming updates to the model notice), and evaluation of the design of plan communications and related enhancements to address lifetime income distribution options and investment products, including the utility of adding any disclaimers for participants to consider in their direction of their account balances related to annuity and lifetime income options.
- Consideration of impact to applicable plan testing, and plan reporting and disclosure requirements.

- Updates to procedures for qualified domestic relations orders, location of missing participants, automatic rollovers, and determination of other impacted processes.
- Assessment of the scope of plan education services and participant access to investment advisors and managed account services that can assist with selection and monitoring of lifetime income options.
- Documentation of the diligence and decision-making in meeting minutes.
- Coordination with plan service providers to monitor development of new legislation and compliance guidance.

The foregoing is not an exhaustive list, but rather, is intended to assist plan sponsors and fiduciaries in project planning and development of prudent processes and procedures related to the undertaking of offering plan participants a decumulation friendly plan.

Concluding Thoughts

Designing a decumulation-friendly 401(k) retirement savings plan, or similar plan, certainly comes with many challenges and responsibilities. Ironically, in some ways it may seem easier and more straightforward to offer employees a defined benefit pension plan, which already has annuity distribution requirements and long-standing guidance to follow. Yet, the guidance, products, and legalities related to defined contribution plan lifetime income options and related investments will likely evolve more rapidly in the near future, given the importance of the issues at hand, and the increased focus on them.

Plan sponsors and fiduciaries should spend the time to consider and address the issues involved in these offerings, develop best practices policies and procedures to implement reasonable solutions, create robust educational materials and participant communications, and continue to monitor new legislation and guidance. The emphasis on lifetime income distribution options as part of the retirement preparedness debate will continue to grow, and plan sponsors and fiduciaries should ensure that they are prepared to offer their plan participants a meaningful benefit that includes these features. ■

Copyright © 2025 CCH Incorporated. All Rights Reserved.
Reprinted from *Journal of Pension Benefits*, Autumn 2025, Volume 33, Number 1,
pages 34–41, with permission from Wolters Kluwer, New York, NY,
1-800-638-8437, www.WoltersKluwerLR.com



® Wolters Kluwer