Broadridge®

RETIREMENT INCOME CONSORTIUM

FREQUENTLY ASKED QUESTIONS

Incorporating retirement income solutions into defined contribution plans

Find the answers to the most common questions retirement plan professionals have been asking.

How do you plan to keep development of the due diligence process objective considering that product providers are supporters of the Consortium?

On December 30, 2022, we published the Prudent Practices for Retirement Income Solutions. These were developed with support of the Consortium and our industry subject matter expert partners, and reviewed and vetted by prominent ERISA counsel Fred Reish. Our goal is to increase the transparency and visibility of retirement income offerings so plan fiduciaries can objectively determine if one or more of those solutions make sense for a given plan's participants.

The Broadridge Fi360 Solutions Prudent Practices for Investment Advisors and Investment Stewards were used as the basis for the methodology. Those Practices are grounded in legislation, regulation, case law, and best practice. And, they're validated for technical accuracy by the financial planning group at the American Institute of Certified Public Accountants.

Can annuity products and solutions be included as a part of a 401(k) line-up?

Yes, a growing number of retirement income options are increasingly becoming available for the defined contribution (DC) marketplace and are also increasingly being considered by plan fiduciaries. We expect lifetime income options to primarily be available as the qualified default investment alternative (QDIA), a component of a target date fund, and in managed accounts, but also available as an individual investment election as part of the core plan line-up.

Can in-plan retirement income solutions be part of a target date fund?

Yes, lifetime income solutions (retirement income that is guaranteed for life) can be available in a DC plan as a stand-alone DIA or also as a target date fund or managed account. These options may be available as a QDIA.

Are there limitations on annuity contributions that could be made in-plan?

The SECURE Act 1.0 adjustments to the annuity safe harbor do not include any restrictions on contribution limits However, certain annuity types may have limitations associated with them. For example, contributions to a QLAC, Qualified Longevity Annuity Contract, are limited to the lesser of $145,000 or 25% of your qualified account balance. That limit was raised from $135,000 in 2021 as explained here. SECURE Act 2.0 includes a provision to remove the 25% cap but this is not yet the law.

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Isn't it better to purchase the annuity after retirement than during the accumulation years?

One benefit of providing retirement income options to plan participants during their accumulation years is access. Many participants, particularly those with lower income and lower savings, may not already work with a trusted advisor and may not have access to a trusted advisor. In the absence of a solution within their plans, many participants will not have any of the protections that these solutions offer.

Furthermore, an in-plan solution provides protection against market risk before retirement, potentially enabling a participant to retire despite significant market volatility that might otherwise cause them to delay retirement.

What if someone leaves their company? Can they take the in-plan retirement income solution with them?

Section 109 of the SECURE Act amended the Tax Code to allow provisions that make portability of lifetime income benefits possible so that participants in a plan won't lose their accumulated benefits if the plan moves to a new recordkeeper that doesn't support the previously selected retirement income solution (on the old recordkeeper) or if the participant switches jobs where the new retirement income solution is not available. Participants can move a retirement income investment via a direct rollover to an individual retirement account or convert to an individually owned contract.

Within the available solutions, portability options at separation vary and are likely to evolve along with the market. Fiduciaries will review the options for each solution evaluated.

Given the limited platform availability today, does that create liability when selecting and monitoring retirement income options (e.g., when there is only one retirement income option available with the plan's current recordkeeper)?

Plan fiduciaries should conduct a thorough fiduciary review process and demonstrate due diligence in the selection and monitoring of the retirement income solution. Plan fiduciaries should make comparisons beyond the one option with the plan's current recordkeeper. Plan fiduciaries may utilize the safe harbor under the SECURE Act as well as demonstrate reasonableness of fees and costs, relative to features and benefits. A reputable benchmark analysis is warranted which may include analysis beyond the one retirement income option available with the plan's specific recordkeeper.

Is the portability issue still a sticking point with in-plan retirement income solutions when a participant separates from service or retires?

Yes, portability is an important issue that plan fiduciaries should review and consider with retirement income solutions. Portability questions that a plan fiduciary should consider arise at both the plan level and the participant level. At the plan level, the transfer – or porting of the annuity – can occur from one recordkeeper to another through an intermediary, or a central repository for participant-level income benefits – called "middleware." At the participant level, the participant might move assets from a plan to an IRA. The participant can use the rollover to take their assets from the plan, but it is not always certain that the guarantee follows. Plan fiduciaries should include questions related to portability in their due diligence process for retirement income solutions.

Will advisors need insurance licenses to make recommendations regarding retirement income solutions?

No. Only those licensed to sell insurance products – or a licensed "insurance expert" can "sell" the product to the plan. However, recommending a new service provider, after sufficient due diligence of multiple annuity options, may fall under the roles and responsibilities of the fiduciary advisor under ERISA Section 3(21) or 3(38). Advisors should consult with their home office to determine appropriate licenses to perform the services.

What does the fiduciary safe harbor cover?

The fiduciary safe harbor applies to the selection of an insurance company that issues a guaranteed retirement income contract. Certain conditions must be met for the safe harbor to apply.

This means that if a participant suffers losses due to the insurer's inability to satisfy its financial obligations under the contract, the plan fiduciaries will not be liable. The statute provides: "A fiduciary which satisfies the requirements of this subsection shall not be liable following the distribution of any benefit, or the investment by or on behalf of a participant or beneficiary pursuant to the selected guaranteed retirement income contract, for any losses that may result to the participant or beneficiary due to an insurer's inability to satisfy its financial obligations under the terms of such contract."

Note, however, that the safe harbor does not cover the selection of the contract itself.

What is the feasibility of changing in-plan retirement income solutions today (e.g., a GMWB) if the plan sponsor determines it is no longer the prudent option?

Plan fiduciaries do have a duty to monitor in-plan retirement income solutions and replace, when necessary.

The duty to monitor with respect to the insurer, which is one part of the fiduciary's analysis, is met by receiving the written representations on an annual basis. However, the more holistic duty to monitor the in-plan retirement income solution is met by a prudent process that requires replacement of the solution if the criteria for monitoring the retirement income solution in the IPS (or other documented process) is not met. While historically the portability and replacement of retirement income options was difficult, it is becoming easier.

If the guaranteed option is no longer prudent, then it should be removed for participants who have not already received distributions from the plan. Having said that, there will likely be very few, if any, cases where the insurance company will be deemed to be imprudent under the safe harbor. On the other hand, if circumstances change for the particular contract (e.g., other quality competitors emerge with lower costs), then the product could become uncompetitive and therefore no longer a prudent choice.

What is the responsibility of the plan sponsor to monitor payouts to retirees that are no longer participants in the plan?

As described above, plan sponsors have a duty to monitor the insurer on an annual basis by receiving written representations and to continually monitor the overall in-plan retirement income solution on an ongoing basis in line with the IPS or other stated guidelines. The plan sponsor does not have a responsibility to monitor the individual participant payouts for participants that have utilized the portability features of the solution and are no longer in the plan. However, as noted above, there is a duty to monitor the prudence of the contract up to the point when payouts to retirees begin.

What are settlor decisions as it relates to retirement income solutions?

Settlor decisions are ones that a plan sponsor can make that are not subject to ERISA because they relate to the business judgments for the organization. Unlike when the planning committee assembles to oversee the plan, settlor decisions do not necessarily need to go through rigorous fiduciary decision-making processes. The primary decision a settlor should make is to have a retirement income solution in the plan. The second decision a settlor could make is to specify one or more types of retirement income solutions in the plan.

Sometimes guaranteed income solutions are negatively perceived. Can you offer a few suggestions for how to counter these notions?

The biggest advantage of annuities is what is known as the mortality credit that comes from risk-pooling. People who die before the normal mortality age subsidize the income of those who enjoy longer-than-normal lives. If you don't have an annuity, you need to plan to live a longer-than-normal life, and you don't get that mortality credit to help you accomplish that.

Another big advantage is the ability of an annuity to mitigate longevity risk, as it provides guaranteed lifetime income like a defined benefit plan. A third benefit (though not the final benefit) is that the marketplace has become very competitive; costs have come down and the solutions are far better than they used to be when some of these negative perceptions might have been formed.

What are some of the advantages of recommending in-plan solutions that advisors previously only recommending out-of-plan solutions may not be aware of?

For advisors and consultants, it is worthwhile to learn about in-plan retirement income solutions because in-plan is where the money is! Other reasons to consider recommending in-plan solutions versus out-of-plan solutions include the nature of in-plan annuities generally being lower cost than retail annuities; the unisex pricing; and the fact that it is more accessible in the sense that the solutions are vetted by the fiduciary plan committee and can simply be elected within the plan by participants (or even defaulted for participants).