

CLIENT ALERT

Opportunity of a Lifetime: DOL Approves Lifetime Income Product as a Default Investment Option in ERISA 401(k) Plans

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The Department of Labor (the “DOL”) recently issued [Advisory Opinion 2025-04A](#) (the “AO”) concluding that a lifetime income product can qualify as a qualified default investment alternative (a “QDIA”) under ERISA. The AO continues a recent trend by the DOL, Congress and plan sponsors to adapt certain features dominant in defined benefit pension plans to defined contribution 401(k) plans.

Background: Setting the Stage for a Hybrid Solution

As anyone attuned to the world of ERISA knows, defined benefit pension plans have largely been replaced by defined contribution plans. With employees living longer, there has been a corresponding renewed interest in offering lifetime income options to provide a fixed retirement income for life through a defined contribution plan. While these products are not funded like defined benefit pension plans, they offer some of the same certainty to participants and alleviate some of the investment decisions that participants would otherwise need to make. To that end, employers and insurance producers have long sought additional guidance on the use of lifetime income products in defined contribution plans.

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Congress took a significant step toward addressing these concepts with the Setting Every Community Up for Retirement Enhancement Act of 2019 (the “**SECURE Act**”), which:

- requires ERISA-governed defined contribution plans to issue annually, as part of a benefit statement, a lifetime income disclosure that shows plan participants the value of an annuity, based on mandated factors, that could be purchased using their account balance;
- provides a fiduciary safe harbor for ERISA plan sponsors selecting a lifetime income product; and
- requires an ERISA plan that offers a lifetime income product to make available a rollover option on and after the date as of which the product is no longer available.

However, since the passage of the SECURE Act, the availability and, consequently, the use of lifetime income products has remained limited. There has been some confusion as to whether such a product could satisfy the criteria to act as a QDIA—an investment option that applies in the absence of a participant’s selection—so as to protect fiduciaries from any investment losses related to the investment. Consequently, some ERISA plan fiduciaries have been reluctant to offer these products in their defined contribution plans, due to ERISA liability concerns.

The DOL long ago promulgated QDIA regulations under ERISA, pursuant to which certain categories of products that the DOL has determined are appropriate for default investments in the absence of affirmative investment elections by plan participants may be offered, with the most common being: (1) a product with a mix of investments that takes into account the individual’s age or retirement date (a target-date fund); (2) an investment service that allocates contributions among existing plan options to provide an asset mix that takes into account the individual’s age or retirement date (a professionally managed account); and (3) a product with a mix of investments that takes into account the characteristics of the group of employees as a whole, rather than each individual (a balanced fund). Although the DOL had previously confirmed that QDIA products could be offered through annuity and related contracts, it had not previously weighed in on the use of a lifetime income product as a QDIA.

New DOL Guidance

At issue in the AO was a managed account product, managed by an ERISA Section 3(38) investment manager, that invests a defined contribution plan participant’s account among a range of equity and fixed income portfolios, with allocations shifting over time based on participants’ ages. A portion of the account is allocated to a secure income portfolio, generally beginning at a designated age, that is funded through a variable annuity contract provided by insurers selected by the investment manager. The product provides a guaranteed income stream in retirement, even if the participant’s account decreases due to market performance.

The AO concluded that such a product could satisfy the requirements for a QDIA. In doing so, the DOL addressed an ERISA fiduciary’s obligation with respect to the selection and monitoring of the insurer and the underlying annuity product. While a fiduciary must always act prudently in the selection and monitoring of an investment manager or insurer, the AO highlighted certain safe harbors by which a fiduciary could select an annuity product. One such safe harbor is the one adopted as part of ERISA under the SECURE Act, described above.

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Implications of the Advisory Opinion

Ultimately, the AO applies only to the facts set forth therein and to the party to whom the AO was addressed. However, it is significant in that it resolves the uncertainty in the QDIA rules regarding whether this type of managed account could be a QDIA. Thus, the AO is likely to provide comfort to other managers looking to develop similar products, and to employers looking to incorporate such products.

While not explicitly tied to the [Executive Order](#) issued by the White House on August 7, 2025, regarding increased access to alternative investments by participants in ERISA-governed defined contribution plans, the AO also reflects an evolving view within the DOL, which has shown a willingness to more broadly rethink how 401(k) plans can look and operate while still complying with ERISA. As these lifetime income products become more widely available, there could be yet another evolution in how employees save for retirement.

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