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The Department of Labor Paves the Way for Lifetime Income for 401(k) Participants

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The Department of Labor provided long-requested guidance on certain aspects of the use of insured lifetime income in a recent Advisory Opinion. The move increases clarity on satisfying fiduciary duties and

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signals a favorable environment for plan sponsors to use annuities as retirement plan investment options.

Baby Boomers are reaching retirement age at a rate of over 10,000 per day, also referred to as "Peak 65." [Jason Fichtner, Retirement Income Institute, "The Peak 65 Generation: Creating a New Retirement Security Framework," March 30, 2021] Some are fortunate to receive a retirement paycheck from their employers in the form of a pension. However, the many who have saved in 401(k) plans are often left to their own devices to make crucial decisions about retirement income planning.

In an era where auto features such as auto-enrollment and auto-escalation have driven growth in defined contribution assets, the shift into retirement can be a shock. A minority of well-to-do retirees will have outside guidance from a trusted financial professional. However, most participants are ill-equipped to navigate the planning challenges of life expectancy, inflation, and investment risk, all complicated by the possibility (probability) of cognitive decline.

Defined contribution programs fit the needs of a mobile workforce that will most likely enjoy a long and diverse employment history, but few 401(k) plans incorporate lifetime income options for participants that replicate a defined benefit plan. Given that Social Security covers essential spending needs for few retirees, annuities can add to this by establishing an appropriate baseline of retirement security.

However, if the annuities are offered through a 401(k) plan, the plan sponsor is responsible for fiduciary oversight of cost, quality, and conflicts. Unfortunately, many plan sponsors are concerned about potential fiduciary liability for the selection of an insurer and the particular guaranteed product. The industry continues to seek clarity and got satisfaction in the wake of an Executive Order on alternatives that surprisingly included lifetime income [The White House, Executive Order 14330, "Democratizing Access to Alternative Assets for 401(k) Investors," August 7, 2025].

Lifetime income has been a policy priority for legislators and the Department of Labor (DOL) and the fiduciary burden on plan sponsors has been materially reduced by the trifecta of legislation, regulation, and an Advisory Opinion (AO). The legislation, the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), created an easy-to-satisfy fiduciary safe harbor for the selection of the insurance company [Employee Retirement Income Security Act (ERISA) § 404(e)]. A pre-existing Labor regulation from 2008 provides a safe harbor for both the selection of the company and the product [Labor regulation § 2550.404a-4].

In the latest move that we detail here, a recently issued AO explains that a 3(38) investment manager that selects the insurance company and product can satisfy the safe harbor [DOL, Advisory Opinion 2025-04A, September 23, 2025]. Of course, the plan sponsor must still prudently select and monitor the investment manager, but that is a considerably easier task than selecting and monitoring insurance companies and their products.

The Advisory Opinion

In the AO, the DOL explains the legislative and regulatory safe harbors and how a plan sponsor can appoint an investment manager who will select and monitor a target date fund suite, with associated income guarantees, to serve as a 401(k) plan's Qualified Default Investment Alternative (QDIA).

Background

Before getting into the details of the AO, here is some background on how we arrived at the facts in the AO.

The Pension Protection Act of 2026 and a subsequent regulation created the concept of a safe harbor for 401(k) fiduciaries to invest the accounts of defaulting participants—QDIA. We have since seen the QDIA safe harbor drive the use of target date funds. In more recent years, we have seen insured lifetime income products included with QDIAs.

Advances in the use of annuities in retirement plans reflect the importance of this issue as a policy matter (for example, the fiduciary safe harbor for the selection of insurance companies in the SECURE Act). However, the possibility of lawsuits creates fiduciary reluctance and has stifled both adoption and innovation.

Because of these concerns, existing guidance often errs on the side of broadness. For example, the term "insured lifetime income" is used, but the guidance does not specify what this term means. The term does not explicitly limit solutions to traditional annuitization, which is otherwise known as the classic annuity. However, neither does it explicitly include the guaranteed lifetime withdrawal benefit (GLWB), which also provides insured lifetime income, not through annuitization but via an annuity provision that assures that a retiree can take (contractually defined) withdrawals from the participant's account and the insurer will continue to make payments if the assets in the retiree's account are depleted.

The language in existing guidance that permits the use of annuities may reasonably be viewed as including the GLWB. [DOL, Information Letter 10-23-2014] However, the absence of express wording to that effect leaves room for doubt, creating an air of uncertainty that has made some plan sponsors hesitant to make a move.

The AO concerns AllianceBernstein's Lifetime Income Strategy (LIS), which includes an allocation to the Secure Income Portfolio. On its face, it may look like good news primarily for AllianceBernstein and its clients who are entitled to rely on the AO. However, the opinion should ease fiduciary concerns for a broad range of insured products because, among other things, it reflects the policies of the current White House. [DOL, "U.S. Department of Labor Continues to Boldly Implement President Trump's Executive Order on Alternative Assets in 401(k) Plans," September 23, 2025]

The AO addresses two key issues:

1. The use of a GLWB as the product guaranteeing the lifetime income; and
2. The role of the investment manager, as a 3(38) fiduciary [ERISA § 3(38) defines discretionary fiduciary providers for purposes of relieving the primary plan fiduciaries of their investment responsibilities], to rely on the two available safe harbors mentioned above to select and monitor insurers.

The GLWB is not unique to LIS and has been a prominent option for plans for decades. In a comprehensive database of annuities available within 401(k) plans, lifetime income is provided through a GLWB in more than half of the products (12 out of 22). [401(k) Annuity Hub, December 14, 2025] Nevertheless, this is the first opinion that has explicitly stated that a GLWB can be used within a QDIA that, like LIS, are available to participants as for savings.

In 2014, before the existence of the safe harbor for selecting insurance companies provided through the SECURE Act, the DOL held that an investment manager could rely on the safe harbor in discharging its responsibilities as a 3(38) fiduciary for the selection of a provider and annuity contracts. [DOL, Information Letter 10-23-2014, October 23, 2014 (2014 Letter)] That concept provides relief for plan sponsors who may be concerned that they lack the expertise to select and monitor insurers and their contracts.

The AO augments that earlier 2014 Letter by holding that the investment manager can rely on either or both of the two fiduciary safe harbors and receive their protections.

While the primary plan fiduciaries will be relieved from fiduciary responsibility for the selection of the insurer and the particular insured contract, they will still have the responsibility to prudently select and monitor the 3(38) investment manager. Retirement plan advisers can help plan fiduciaries fulfill that responsibility by reviewing and reporting on the experience and qualifications of the 3(38) manager to perform that task.

How the AO Paves the Way to Adoption of Lifetime Guarantees

The AO is a major development for retirement income planning for 401(k) plans and participants. We highlight six takeaways that provide greater assurance to retirement plan fiduciaries that have hesitated to use insured lifetime income because of litigation risk:

1. *Green light by DOL for use of a GLWB feature within a QDIA*. Prior to this, there was uncertainty whether a default investment could include or be paired with the use of GLWBs as lifetime income guarantees. The QDIA regulation says that investment guarantees or annuity features may be *ancillary* to the investment, but the QDIA regulation did not explicitly say that an in-plan strategy with a GLWB could itself qualify as a QDIA. The AO provides that clarity.
2. *Encouragement for plan sponsors to adopt lifetime income solutions*. Many sponsors have hesitated to add lifetime income options as investments in their plans because of regulatory and fiduciary uncertainty. This AO signals regulatory openness to guaranteed lifetime income solutions in participant-directed plans and for QDIAs. Significantly, the AO acknowledges that investment managers can serve as fiduciaries for selection and monitoring of insurers and the particular contracts, relieving plan sponsors and fiduciaries of that fiduciary responsibility and concerns about liability for the specific investment choice.

3. *Affirmation of fiduciary flexibility and continuity with safe harbors*. The AO does not impose new obligations; instead, it explains the use of existing safe harbor frameworks for this scenario. Importantly, the AO affirms that investment managers can rely on the regulatory and statutory safe harbors when selecting and monitoring insurance companies and the contracts.
4. *Support for innovation and product development*. The AO and the Executive Order reduce "regulatory drag" and encourage innovation. The AO also encourages the design of guaranteed products that are tailored for defined contribution defaults by signaling that its rationale also applies to products beyond the arrangement described in its discussion.
5. *Momentum for policy change and regulatory reform*. The AO comes on the heels of the Executive Order on alternative assets in 401(k) plans that includes "lifetime income strategies." The DOL's press release about the AO and the AO itself underline that this is part of a broader push to modernize retirement plan regulation. The AO may also presage future rulemaking to further clarify fiduciary responsibilities related to lifetime income.
6. *Implications for litigation and fiduciary risk*. This AO will be helpful if there are disputes over the prudence of default investments or annuity selections in retirement plans. Plan sponsors and 3(38) investment managers can point to the guidance as support for the prudent inclusion of retirement income products in 401(k) plans.

Concluding Thoughts

The AO, together with the Executive Order, signals promising policy implications on at least two fronts. First, there is public policy favoring the availability of guaranteed retirement income in plans. Second, the explicit approval of a process for selecting the insurers and products, including the use of third-party investment managers to relieve the burden on plan sponsors, provides a roadmap for the prudent selection and monitoring of insured lifetime income by plan sponsors and fiduciaries. ■