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Guaranteed Lifetime Income Products: The Federal Regulatory Framework and Their Growing Demand

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Traditional defined benefit pension plans (DB plans), which promise a lifetime pension for employees upon retirement, have been on a steady decline.[1] In 1975, 27.2 million private sector employees were enrolled in DB plans.[2] By 2019, only 12.6 million private sector employees were enrolled in DB plans.[3] By contrast, in 2019 85.5 million private sector employees were enrolled in defined contribution plans (DC plans), including 401(k) plans, which by their terms generally do not provide for lifetime income.[4]

With the rise in life expectancies, it is increasingly possible that retirees will live for more than 25 years in retirement.[5] Without the benefit of traditional DB plans, many employees fear they will deplete their retirement savings during retirement.[6]

In response, the retirement industry has been developing new products specifically designed to provide guaranteed lifetime income (referred to hereinafter as "guaranteed lifetime income products") in defined contribution plans.[7] The new guaranteed lifetime income products are structured to fit neatly as an investment option on a plan's investment menu and to address employer concerns about the administrative and regulatory burdens associated with the direct purchase of annuities.[8] At the same time, these are complex products, often involving several types of financial services companies and products, including insurance products, collective investment trusts, investment managers, intermediaries, and specialized recordkeepers.[9]

Due to this complexity, the federal regulatory framework governing guaranteed lifetime income products includes up to four different regulatory regimes. Depending on the entities involved in the product, a product can be subject to banking law under the Office of the Comptroller of Currency (OCC) (or comparable state banking authorities for state-chartered banks), securities law under the Securities and Exchange Commission (SEC), the Employee Retirement Income Security Act of 1974 (ERISA) under the Department of Labor (DOL), and federal income tax law under the Internal Revenue Service (IRS).

This article begins by providing an overview of guaranteed lifetime income products and the increasing market for these products. It next explains the federal regulatory framework (including summaries of applicable banking laws, securities laws, ERISA, and federal income tax law). This article also

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addresses the opportunities and challenges of structuring and marketing guaranteed lifetime income products.

Recent Increase in Demand and Development of Guaranteed Lifetime Income Products

Employers have been moving away from DB plans for a variety of reasons. As background, a DB plan promises participants guaranteed retirement income in the form of a defined retirement benefit, typically based on a formula that includes a percentage of compensation multiplied by years of service.[10] The employer must adequately fund the plan on an ongoing basis to meet the benefit obligations, using actuarial assumptions and sophisticated investment management techniques.[11] As a result, DB plans incur additional administrative expenses as compared with DC plans.[12] In addition, employers are required to pay premiums to the Pension Benefit Guaranty Corporation (PBGC), a federal agency that takes over severely underfunded pension plans.[13] Finally, DB plan obligations appear as a liability on the sponsoring company's financial statements.[14] Such liabilities could impact stock analysts' view of the profitability and going concern value of the company offering the plan.

In contrast, DC plans are funded by employee contributions, or in some cases a combination of employer and employee contributions. There are no PBGC premiums and the plans have little if any impact on the employer's financial statements.[15] They do not, however, guarantee that any specific amount of retirement income will be available to the employees.

A Note on Collective Investment Trusts and Managed Accounts

Guaranteed lifetime income products generally are structured through a collective investment trust (CIT) or a managed account investment option within the plan. This section provides background on CITs and managed accounts.

For many years, mutual funds predominated as the typical investment option for DC plans. Increasingly, however, CITs are replacing mutual funds on retirement plan investment option menus.[16]

CITs are like mutual funds in that they are both pooled investment vehicles.[17] However, while mutual funds are sponsored by conventional investment management firms and are heavily regulated by the SEC under the Investment Company Act of 1940 (1940 Act), CITs are sponsored and maintained by banks or trust companies governed by the OCC, for federally-chartered banks, or state banking authorities for state-chartered banks.[18] CITs are not regulated by the SEC because of applicable provisions discussed below.[19] Because CITs are not subject to the extensive regulatory and compliance requirements imposed by the 1940 Act and their associated costs, CITs tend to have lower fees and costs.[20]

CITs *differ* from mutual funds in a number of other significant ways. Unlike mutual funds, for tax and securities law reasons, only specified retirement plans can invest in CITs.[21] Further, in most cases CIT trustees and investment managers are ERISA fiduciaries and must operate the CIT in accordance with ERISA.[22] Managers of mutual funds, however, are carved out of fiduciary status regarding the management and operation of the mutual funds.[23] In this regard, while CITs have been criticized because they are not subject to SEC regulation, it can be argued that ERISA fiduciary law is a more rigorous regulatory regime.

In the context of a DC plan, a managed account can be described as an investment account option, established directly within a plan and professionally managed. While managed accounts do not have the advantage of pooling assets from various plans, they are able to provide a more personalized model for individual plans and their participants. The management of the account is subject to ERISA.

Development of Lifetime Income Features within DC Plans

The only way that a DC plan can provide guaranteed income is through an annuity contract issued

by an insurance company. A plan can include an annuity as an investment option for accumulation of assets or provide for the purchase of an annuity as a distribution option.

Historically, employers have been hesitant to offer annuities within plans due to perceived ERISA regulatory and litigation risks.[24] The selection of an annuity contract is a fiduciary act under ERISA, and the DOL guidance can be intimidating for a fiduciary without in-depth knowledge of annuities. Guaranteed lifetime income products fill the need for lifetime income in DC plans without requiring a direct annuity purchase by the plan, thereby relieving the plan-level fiduciary from responsibility of the annuity selection.

Lifetime income products with embedded annuities typically are designed using a target date fund (TDF) strategy. Traditional TDFs have been structured within mutual funds but also can be structured within a CIT or managed account. With a TDF, the employee selects or is assigned a fund based on the year of their anticipated retirement. Each fund will have a glide path that allocates assets more aggressively in the early ages, then gradually shifts investments to a more conservative strategy over time. In a guaranteed lifetime income product, amounts gradually can be allocated to a guaranteed lifetime income component.

In 2012, the first of the modern guaranteed lifetime income products was introduced.[25] The Lifetime Income Strategy program (LIS) is structured as an investment management service that can be adopted through a managed account on a 401(k) plan's investment menu. The managed account includes multiple asset allocation portfolios, including equity and fixed income investments. A higher percentage is allocated to equities at a younger age, and then the investments will shift into fixed income investments as the participants get older. Once a participant reaches age 50 (or another age determined by a plan fiduciary) funds are gradually allocated to a separate portfolio that provides lifetime income through a variable annuity contract. Participants can choose the percentage of their account balance to be allocated to the separate portfolio, but the plan sponsor can select a default allocation percentage. Based on the insurance guarantees provided by the annuity contract, a calculation is made to determine the amount the participant can annually withdraw to ensure that lifetime income is provided. The DOL recently opined that the LIS program qualifies for use as the Qualified Default Investment Option under a 401(k) plan.[26]

Product development increased after the passage of the Secure Act in 2019.[27] The SECURE Act addressed portability concerns about guaranteed income options by allowing a DC plan to distribute a "lifetime income investment" even if the participant would not otherwise be eligible to take a distribution under tax qualification rules.[28] A "lifetime income investment" generally is defined as an investment option with a "lifetime income feature," which in turn is defined as a "feature which guarantees a minimum level of income annually (or more frequently) for at least the remainder of the life of the employee or the joint lives of the employee and the employee's designated beneficiary" or "an annuity payable on behalf of the employee under which payments are made in substantially equal periodic payments (not less frequently than annually) over the life of the employee or the joint lives of the employee and the employee's designated beneficiary."[29] Moreover, if a lifetime income investment is removed as an investment option under a DC plan, a plan is now able to allow (1) a distribution of the investment in a trustee-to-trustee transfer to another employer-sponsored retirement plan or individual retirement account (IRA), or (2) a distribution of the investment in the form of an annuity contract purchased for the participant.[30]

Following the Secure Act, the next product innovation was a design similar to the LIS program but based within a CIT. The CIT provides a TDF strategy that offers a guaranteed lifetime withdrawal benefit (GLWB), backed by an annuity contract issued to the CIT.[31] The TDF glidepath begins to

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allocate money to the GLWB component beginning at a certain age (generally 50-55), increasing as the participant approaches normal retirement age. The payout mechanism varies between specific products. In some designs, the CIT itself pays the GLWB payments out of the participant's account until the account balance reaches zero. After that, the insurance company continues making GLWB payments for the remainder of the participant's life. In other designs, a group annuity contract is issued to the plan, which then continues the GLWB payments to the participant. At least one program is designed so that upon retirement the participant's GLWB allocation is rolled over to a carrier's IRA that contains the same GLWB, and payments are then made from the IRA.

Some of the more complex CIT-based products are TDFs with allocations to multiple insurers. Each carrier issues essentially the same annuity contract, typically a Fixed Indexed Annuity (FIA), to the CIT.[32] Through a third-party intermediary, the insurance companies follow a periodic blind bidding process to receive allocation of new premiums. The insurers compete through different bids such as participation rates, floors, or caps. The CIT trustee, as an ERISA fiduciary, allocates amounts to the insurers based on the best interest of the participating plans. Generally, the insurance guarantees offered by annuity contracts run to the CIT, so that upon retirement the insurers pay the GLWB to the CIT, which then pays out to the plan or participant.[33]

Managed account solutions with imbedded annuities continue to be developed. These products are offered to plans generally in the form of custom TDFs, often using the plan's existing investment options with the addition of an annuity contract or a CIT-based lifetime income product. The manager of the account is appointed as an ERISA investment manager and selects the annuity contract or guaranteed lifetime income product.

Employee demand for guaranteed retirement income in DC plans is therefore on the rise.[34] As of June 2025, target-date products with embedded annuities had climbed to $103 billion in assets under management.[35] This is up from $68 billion in 2024.[36] Further, large industry players believe that the $4.5 trillion target-date market is expected to double in the next decade with a large part of that increase coming from target-date products with annuities.[37]

To be sure, these guaranteed lifetime income products will continue to face headwinds. Employers have been hesitant to offer guaranteed lifetime income products within their qualified retirement plans.[38] Research has shown that employers are concerned that the products are complex and difficult to understand.[39] The DOL has issued proposed regulations that are intended to address these concerns by providing a safe harbor that plan fiduciaries may rely on to demonstrate their prudence in the selection of investment alternatives, including guaranteed lifetime income products.[40] As of the date of this writing, the regulations are still in proposed form and have not been adopted as final. Moreover, some investors' concerns about running out of money in retirement historically have been overshadowed by a fear of being locked into an annuity.[41] Plan participants may worry about converting part or all of their retirement savings to an annuity out of concern that they will lose control of their savings and may not live long enough to experience any benefit from the annuity.[42] Guaranteed lifetime income products may be more attractive to participants because they are not locked into an annuity contract and can transfer in and out of the investment.

Federal Regulatory Framework

Guaranteed lifetime income products are governed by both federal and state law, given the variety of regulated financial services entities necessary to make the products work.[43] Because a lifetime guarantee can be provided only through an insurance company, state insurance regulations are at the heart of product development.[44] Insurance regulatory issues vary by state, and a discussion of those issues

is beyond the scope of this article,[45] which focuses on federal laws governing the product.

As noted, the federal regulatory framework for guaranteed retirement income products encompasses potentially four different regulatory regimes: (1) banking, (2) securities, (3) ERISA, and (4) tax.

The Banking Regulatory Framework

Guaranteed lifetime income products often involve CITs as the investment vehicle.[46] Because a CIT is a bank product, it is regulated by either state or federal banking authorities.[47] For federally chartered banks, the OCC regulates the CIT and the bank that establishes and operates the CIT.[48] As discussed, while mutual funds are regulated by the SEC, the OCC (or comparable state banking authority) is the primary regulator of CITs.[49]

CITs are authorized under OCC regulations that permit banks to establish collective funds that consist "solely of assets of retirement, pension, profit sharing, stock bonus, or other trusts that are exempt from federal income tax."[50] A bank establishes a CIT by a written plan containing "appropriate provisions" regarding the manner in which the bank will operate the fund and approved by the bank's board of directors.[51] The CIT must meet other regulatory requirements for collective investment funds.[52] In particular, a bank administering a CIT must "have exclusive management of the fund, except as a prudent person might delegate responsibilities to others."[53] Additional regulations govern items such as management fees and valuation.[54] The OCC (or state banking authority) will periodically examine the bank's compliance with the regulations and seek corrective action for any failures.

The Federal Income Tax Framework

Guaranteed lifetime income products in the form of a CIT must meet certain federal tax conditions so that participating plans (and the CIT itself) maintain their tax-qualification status.[55] Specifically, a CIT must meet the requirements for group trusts described in Rev. Rul. 81-100 and its amendments.[56] As background, under the Internal Revenue Code's (IRC) plan qualification rules, retirement plan money must be held in trust (or certain insurance contracts or custodial accounts treated as trusts) for the exclusive benefit of participants/beneficiaries and may not be commingled with any other assets.[57] In Rev. Rul. 81-100, the IRS ruled that, subject to specified conditions, specific types of retirement plans may pool their trust assets for investment in a group trust without violating the exclusive benefit rule, and the group trust would qualify for the same tax exemption as the trusts for the participating plans.

In general, under these requirements the group trust must:

- be a United States domestic trust;
- by its terms, limit trust participation to eligible plan investors (Section 401(a) plans, individual retirement accounts, governmental Section 457(b) plans, Section 403(b)(7) custodial accounts, Section 403(b)(9) retirement income accounts, Section 401(a)(24) governmental plans, commingled trust funds maintained by the PBGC as statutory trustee for terminated tax-qualified plans, Puerto Rico qualified plans described in ERISA Section 1022(i)(1), and insurance company separate accounts under which only the above types of are investors);
- be adopted as a part of each participating plan;
- prohibit the assignment by a participating plan of any part of its interest in the group trust;
- by its terms, prohibit violation of the exclusive benefit rule; and
- expressly provide for separate accounting to be maintained for the interests of each participating plan.

The CIT trustee is responsible for ensuring that these requirements are satisfied at all times. It does this through the terms of the declaration of trust, as well as through the terms of and representations made by investing plans under a participation agreement for the CIT. The consequences for a violation

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are severe—investing plans would have a qualification defect and the CIT would become a taxable trust. Accordingly, CIT trustees take Rev. Rul. 81-100 compliance very seriously.

The Securities Regulatory Framework

The registration and antifraud provisions of the Securities Act of 1933 (1933 Act) are applicable to the offer and sale of securities.[58] There are two types of securities that may be issued in connection with employee benefit plans (including those that offer guaranteed lifetime income products): (1) participation interests of employees in their respective plans; and (2) participation interests of plans in collective investment vehicles in which such plans invest.

At the plan level, participant interests in employee benefit plans generally are exempt from the registration and most other provisions of the 1933 Act by Section 3(a)(2) of the 1933 Act.[59] The plans themselves are excluded from regulation under Section 3(c)(11) of the 1940 Act.[60]

At the plan *investment* level to date, plans incorporating guaranteed lifetime income products have done so through managed accounts and/or CITs. Under a managed account approach, the plan's assets are managed within the plan by an investment adviser, and the *plan itself* owns the annuity contracts providing the lifetime income guarantees. A drawback of the managed account approach is that a plan's assets generally may not be commingled with the assets of other plans.

Another more versatile option is to offer guaranteed lifetime income by investing some or all of the plan's assets in an underlying CIT, where the assets of the plan can be commingled with the assets of other plans. In this case the *CIT* can own the annuity contract supporting the lifetime income guarantees.

If a plan invests in a CIT, the banking law regime discussed above applicable to CITs is compounded by federal securities regulatory considerations. Chief among these considerations is ensuring that the CIT, in order to avoid significant additional compliance costs, is not required to register its interests under the 1933 Act or itself as an investment company under the 1940 Act. Interests in CITs offered to employee benefit plans typically qualify as "exempt securities" under Section 3(a)(2) of the 1933 Act and are therefore exempt from registration under the 1933 Act, *so long as* the CIT is "maintained by a bank" and participation in the CIT is limited to certain investors specified in Section 3(a)(2). Importantly, however, shares of CITs sold to 403(b) plans are not currently eligible for this exemption. Moreover, while most CITs avoid registration as investment companies under the 1940 Act by relying on an exclusion from the definition of an investment company found in Section 3(c)(11) of the 1940 Act, which is substantially similar to the 1933 Act exemption, CITs sold to 403(b) plans are not currently eligible for the Section 3(c)(11) exclusion.[61] The 403(b) exception not only limits the type of employee benefit plans that may incorporate CIT-based guaranteed lifetime income products but also may limit available portability options.

Finally, at the annuity contract level, guaranteed lifetime income products often incorporate fixed indexed annuity contracts (FIAs) with guaranteed lifetime income benefit (GLWB) features. Fixed income annuity contracts generally are not "securities" because they guarantee principal and some level of stated return. However, practitioners should carefully analyze the use of fixed annuity contracts to ensure that they are not considered securities in accordance with Section 3(a)(8) of the 1933 Act and Rule 151 thereunder.[62]

If the imbedded annuity contract is a variable annuity contract or other type of annuity contract such as registered index-linked annuity contracts (referred to generally as RILAs), the contract, absent an applicable exemption, would be subject to the registration and other provisions of the 1933 Act.[63] To the extent there is interest in using such annuity contracts in guaranteed lifetime income products without such registration and regulation practitioners would want to examine the availability of exemptions under Section 3(a)(2) of the 1933 Act

and exclusions under Section 3(c)(11) of the 1940 Act that generally apply to variable annuity and other SEC-registered contracts, as well as the separate accounts through which they are issued (if any), that fund employee benefit plans. As is the case with CITs, however, these exemptions and exclusions are not available to annuity contracts and their separate accounts that fund 403(b) plans.

A full discussion of the applicable exemptions and exclusions referenced above is beyond the scope of this article. However, because the application of the federal securities law exemptions discussed above has evolved over many decades and is subject to a range of SEC Staff interpretations, practitioners should carefully analyze the various elements of a guaranteed lifetime income product to assess the applicability of such exemptions and exclusions.

The ERISA Regulatory Framework

ERISA is a federal law that governs the administration of employee benefit plans established and maintained by an employer or employee organization, other than governmental plans and certain other plans qualifying for an exception.[64] ERISA imposes duties and obligations on persons who are plan fiduciaries, as that term is defined in ERISA. An important part of structuring a guaranteed lifetime income product is therefore determining which entities are fiduciaries and the extent to which compliance with specific ERISA requirements affect the operation of the product.

ERISA sets forth a functional test under which a person is a fiduciary *to the extent that* the person: (1) exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets; (2) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so; or (3) has any discretionary authority or discretionary responsibility in the administration of such plan.[65]

ERISA permits a plan fiduciary to appoint a special kind of fiduciary, colloquially known as a "3(38) fiduciary." A 3(38) fiduciary is one who meets the ERISA definition of "investment manager" and acknowledges that in writing.[66] If an investment manager is properly appointed, the appointing fiduciary is relieved of responsibility for the performance of investments managed by the Section 3(38) fiduciary, although it does retain fiduciary duties for monitoring the investment manager as it would for any delegation of obligations to third parties.[67]

With respect to a guaranteed lifetime income product, some fiduciaries will be easy to identify. An investment manager of a separately managed account is a fiduciary by way of directly managing a pool of a plan's assets, and if a 3(38) fiduciary, acknowledging such status in writing. A CIT trustee is virtually always an ERISA fiduciary if any ERISA plan participates in the CIT. When a plan invests in a CIT, under ERISA's plan asset regulations, the plan's assets are deemed to include not only the interest in the CIT but also an undivided interest in each of the underlying assets of the CIT.[68] Because a CIT trustee is responsible for the overall management of the CIT, it becomes a fiduciary with respect to those activities. CIT trustees also customarily take on 3(38) fiduciary status. It follows that CIT subadvisors may become fiduciaries by managing the underlying plan assets held in the CIT. It is not uncommon for a CIT trustee to hire a subadvisor as a 3(38) fiduciary. It is also possible for other entities, such as insurance companies or recordkeepers to take on fiduciary status, although these entities generally try to avoid that status. Finally, there is the tricky problem of the inadvertent fiduciary. Because fiduciary status is a functional test, it is possible for an entity in the structure to become a fiduciary without even knowing it. This can happen via the terms of an agreement or through actions taken in operating the product.

Under ERISA, fiduciaries of ERISA plans are bound by specific standards of behavior in the discharge of their responsibilities.[69] These duties have

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been famously described as "the highest known to law."[70] An ERISA fiduciary must act for the exclusive benefit of participants and beneficiaries (the duty of loyalty), with the care, skill, and ability of a prudent expert familiar with the matter (the duty of prudence).[71]

In addition to the general fiduciary duties imposed by ERISA, ERISA fiduciaries must not allow certain direct or indirect transactions with "parties in interest" to the plan. The term party in interest is defined broadly to include not only fiduciaries but service providers, employers, employee organizations (that is, labor unions), employees, officers and directors of an employer, relatives of specific parties in interest, and certain affiliates or owners of specific parties in interest.[72] The list of prohibited transactions includes: (1) the sale or exchange or leasing of property between the plan and a party in interest; (2) the lending of money or other extension of credit between a plan and a party in interest; (3) the furnishing of goods, services, or facilities between the plan and a party in interest; (4) the transfer to or use of plan assets by or for the benefit of a party in interest; or (5) acquisition of employer securities or real property in violation of specific ERISA provisions.[73] Plan fiduciaries are subject to an additional set of prohibited transactions if there is a conflict of interest for the fiduciary. A fiduciary is prohibited from (1) dealing with plan assets in its own interest; (2) representing or acting in any capacity for an adverse party in a transaction involving the plan; or (3) receiving consideration for its own account from a third party in connection with a transaction involving plan assets.[74]

Because the prohibited transaction rules standing alone would prevent nearly all business transactions with a plan regardless of the reasonableness or fairness of such transactions, ERISA provides for prohibited transaction exemptions. If the conditions of a prohibited transaction are met, there is no ERISA prohibited transaction violation. Some prohibited transaction exemptions are statutory exemptions listed in ERISA, for example, the Section 408(b)(2) service provider exemption. ERISA also instructs the DOL to issue administrative class exemptions, such as class prohibited transaction exemption 84-24, which permits the payment of commissions on insurance products if certain conditions are met.[75] If there is not a statutory or administrative exemption available, a party can apply to the DOL for an individual prohibited transaction exemption.[76]

Fiduciary breaches can expose a party to personal liability, penalties, disgorgement, and equitable relief, and the DOL can enjoin a person from serving as a fiduciary.[77] There also is the potential for co-fiduciary liability for another fiduciary's breach if the co-fiduciary is aware or should have been aware of a breach and does not take steps to remedy.[78] The DOL can impose, on any party participating in a prohibited transaction, a 5 percent civil penalty on the total dollar amount involved in the prohibited transaction.[79] If the prohibited transaction is not corrected during the correction period, the civil penalty jumps to 100 percent of the amount involved.[80] The IRS also imposes excise taxes on a disqualified person (the IRC term for a party in interest) at a 15 percent rate of the amount involved, which is increased to 100 percent if not timely corrected.[81] Depending on the particular transaction, correction may require restoring losses to the plan (for example, lost earnings), refunding improper payments, or relinquishing profits from the transaction.

The identification of ERISA issues is a necessary (if somewhat challenging) process in guaranteed lifetime income product development. It is better to address these issues early, so that potential problems can be identified and resolved through documentation and product design.

Conclusion

While DC plans are preferred by many employers over DB plans for a variety of reasons, they do not provide guaranteed lifetime income. This significant

gap has led over the past decade and a half to the development of innovative guaranteed lifetime income products that can be offered with DC plans.

While these modern guaranteed income products were initially viewed by plan participants, sponsors, and recordkeepers as too complex, annuity legislation passed by Congress and a growing acceptance and understanding of the products has led to recent increased product development.

This growing acceptance may continue to spur growth in these products. Developing a guaranteed lifetime income product is not for the faint of heart, and requires careful consideration of the interplay between banking, tax, securities, and ERISA law underneath a broad federal regulatory umbrella. This article was designed to provide a roadmap for such a journey.

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NOTES

1 Elizabeth A. Myers & John J. Topoleski, "A Visual Depiction of the Shift from Defined Benefit (DB) to Defined Contribution (DC) Pension Plans in the Private Sector," Library of Congress (Dec. 2021), *https://www.congress.gov/crs-product/IF12007#:~:text=One%20of%20the%20notable%20trends,do%20not%20provide%20guaranteed%20income*.

2 *Id.*

3 *Id.*

4 *Id.*

5 "In-Plan Annuities Are Gaining Momentum in the Workplace, Are They Poised to Be the Next Big Thing? Maybe," *LIMRA* (May 30, 2024), *https://www.limra.com/en/newsroom/industry-trends/2024/in-plan-annuities-are-gaining-momentum-in-the-workplace-are-they-poised-to-be-the-next-big-thing-maybe/*.

6 "What Plan Sponsors Need to Know About Lifetime Income," Nuveen (Sept. 2023), *https://www.nuveen.com/en-us/insights/retirement/dcio-next-issue-11/what-plan-sponsors-need-to-know-about-lifetime-income* (discussing how 49 percent of Americans say running out of money is their biggest retirement concern).

7 *See, e.g.*, Sabrina Kharrazi, "$4.5T Boom Coming for Annuity-Linked Target-Dates: Nuveen," *IGNITES* (Oct., 9, 2025), *https://www.ignites.com/c/4997114/690654?referrer_module=searchSubFromIG&highlight=$4.5T%20Boom%20Coming%20for%20Annuity-Linked%20Target-Dates* (discussing how the target-date market is expected to double in the next decade from products with annuity components and based on this expectation, the market is seeing multiple target-date fund companies launch guaranteed lifetime income products).

8 Nuveen, *supra* n.6.

9 LIMRA, *supra* n.5.

10 "The Investopedia Team, Defined-Benefit vs. Defined-Contribution Plans: What's the Difference?," *INVESTOPEDIA (June 2025), https://www.investopedia.com/ask/answers/032415/how-does-defined-benefit-pension-plan-differ-defined-contribution-plan.asp.*

11 *Id.*

12 Myers, *supra* n.1.

13 Elizabeth A. Myers & John J. Topoleski, "An Overview of the Pension Benefit Guaranty Corporation (PBGC)," Library of Congress (Feb. 07, 2023), *https://www.congress.gov/crs-product/IF10492#:~:text=The%20sponsors%20of%20single%2Demployer,in%20the%20national%20wage%20index.&text=Single%2Demployer%20flat%2Drate%20premium,each%20participant%20in%20the%20plan* (discussing expenses under PBGC).

14 *ASC715: Compensation–Retirement Benefits,* Financial Accounting Standards Board (March 2017), *https://fasb.org/page/ShowPdf?path=ASU%202017-07.pdf&title=ACCOUNTING%20STANDARDS%20UPDATE%202017-07%E2%80%94COMPENSATION%E2%80%94RETIREMENT%20BENEFITS%20(TOPIC%20715):%20IMPROVING%20THE%20PRES.*

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15 Myers, *supra* n.13.

16 Beaga Wilcox Volz, "Target Dates with Annuities Climb to $100B," *IGNITES* (Sept. 3, 2025), *https://www.ignites.com/c/4965154/686524?referrer_module=searchSubFromIG&highlight=Target%20Dates%20with%20Annuities%20Climb%20to%20$100B.*

17 "CITs vs. Mutual Funds: Key Differences Explained," Great Gray Funds LLC (Sept. 13, 2024), *https://greatgray.com/cits-vs-mutual-funds-key-differences-explained/.*

18 *See id.*

19 *Id.*

20 *See id.*

21 OCC, Collective Investment Trust, Comptrollers Manual; *see also* INVEST Act of 2025 (H.R. 3383) (discussing how the Act intends to modernize 403(b) retirement plans by allowing them to invest in CITs).

22 *Id.*

23 ERISA § 3(21)(B); 29 CFR 2510.3-101(a)(2).

24 *See* LIMRA, *supra* n.5.

25 Kerry Pechter, "An In-Plan annuity with Three Life Insurers," *RetirementIncomeJournal* (Jun.4,2024), *https://retirementincomejournal.com/article/an-in-plan-annuity-with-three-life-insurers/#:~:text=The%20new%20%E2%80%9Cin%2Dplan%E2%80%9D,into%20401(k)%20plans.*

26 Advisory Opinion 2025-04A | U.S. Department of Labor. A Qualified Default Investment Alternative (QDIA) is a plan's investment option under which participant contributions are allocated in the event that the participant does not provide investment instructions for their account. A QDIA must meet the requirement in DOL regulation § 2550.404c-5.

27 Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019, Pub. L. 116–94.

28 For example, IRC § 401(k)(2) provides that employee's elective deferrals may not be distributed earlier than age 59 ½, death, disability, or separation from service, with a limited exception for certain hardship distributions.

29 IRC § 401(a)(38)(B).

30 *Id.*

31 Under a GLWB or similar type product, an individual is guaranteed to be able to take a specified amount of withdrawals each year for life, provided that certain conditions are met, including restrictions on taking excess withdrawals.

32 An FIA is a type of fixed annuity with returns linked to a market index, such as the S&P 500. If the index rises, the earnings are paid subject to a limit in the form of a cap, spread, or participation rate. If the index falls, the losses are similarly limited.

33 "A 'Nesting Doll' of an In-Plan Annuity," *Retirement Income Journal*.

34 *See* LIMRA, *supra* n.5; *see also* "What Plan Sponsors Need to Know About Lifetime Income," Nuveen (Sept. 2023), *https://www.nuveen.com/en-us/insights/retirement/dcio-next-issue-11/what-plan-sponsors-need-to-know-about-lifetime-income* (discussing that "[p]articipants have long wanted lifetime income built within their retirement plans, to mirror the benefits of now essentially extinct defined benefit plans").

35 Beaga Wilcox Volz, *supra* n.16.

36 *Id.*

37 Kharrazi, *supra* n.7.

38 *See* LIMRA, *supra* n.5.

39 *Id.*

40 Fiduciary Duties in Selecting Designated Investment Alternatives, 91 Fed. Reg. 16088 (March 31, 2026).

41 Nicole Ridgway, "6 Reasons Savers Are Skittish About Annuities," *AARP* (July 31, 2024), *https://www.aarp.org/money/retirement/annuity-concerns-problems/#:~:text=Annuities%20can%20be%20expensive.,heir%20will%20also%20cost%20extra.*

42 *Id.*

43 *See* Lena M. Borrelli, "Annuity Regulations," *Annuity.org* (Dec. 2025), *https://www.annuity.org/annuities/regulations/.*

44 *See id.*

45 *See id.*

46 Beaga Wilcox Volz, *supra* n.16.

47 12 CFR § 9.18(a)(2).

48 12 CFR § 9.18(b)(1).

49 OCC, Collective Investment Funds, Comptroller's Handbook, *https://www.occ.treas.gov/publications-*

and-resources/publications/comptrollers-handbook/files/collective-investment-funds/index-collective-investment-funds.html.

50 12 CFR § 9.18(a)(2). In addition, there are "A1" funds that are authorized "exclusively for the collective investment and reinvestment of money contributed to the fund by the bank, or by one or more affiliated banks" but those are not the same as the CITs as described in this article.

51 12 CFR § 9.18(b)(1).

52 *See e.g.*, 12 CFR § 9.18(b)(2).

53 *Id.*

54 12 CFR § 9.18(b)(9) & (b)(10).

55 *See* IRC § 401(a)(2).

56 Rev. Rul. 81-100; *see also* Rev. Rul. 2014-24, 2011-1, and 2004-67.

57 26 U.S.C.A. § 401(a).

58 15 U.S. Code § 77a, Section 5.

59 15 U.S. Code § 77a, Section 3(a)(2), as interpreted by the SEC Staff in *Employee Benefit Plans; Interpretations of Statute,* Securities Act Release No. 6188 (February 1, 1980), *https://www.sec.gov/files/rules/interp/33-6188.pdf* (stating that the SEC Staff views the exemption provided by Section 3(a)(2) of the 1933 Act as being applicable to both interests in underlying plan funding vehicles and interests in plans).

60 15 U.S. Code § 80a-8, Section 3(c)(11).

61 The Incentivizing New Ventures and Economic Strength Through Capital Formation (INVEST) Act (H.R. 3383), passed by the U.S. House of Representatives on December 11, 2025, and introduced in the Senate would extend these exemptions and exclusions to CITs in which 403(b) plans invest.

62 *See, e.g.,* 15 U.S. Code § 77a, Section 3(a)(8) and Rule 151 thereunder.

63 15 U.S. Code § 77a, Section 5.

64 ERISA §§ 3(a) and (b).

65 ERISA § 3(21)(A).

66 ERISA § 3(38) defines an investment manager generally as any fiduciary who (A) has the power to manage, acquire, or dispose of any asset of a plan; (B) who is (i) is registered as an investment adviser under the 40 Act or under the state in which it maintains its principal office and place of business, (ii) a bank, or (iii) an insurance company qualified to perform services described in subparagraph (A); and (C) has acknowledged in writing that it is a fiduciary.

67 ERISA § 405(d).

68 29 CFR § 2510.3-101(h)(1).

69 ERISA § 404(a). Additional fiduciary duties include diversifying plan investments and following the terms of plan documents.

70 *See, e.g.,* Donovan v. Bierwirth, 680 F.2d 263, 272 (2d Cir. 1982).

71 ERISA § 404(a).

72 ERISA § 3(14).

73 ERISA § 406(a).

74 ERISA § 406(b).

75 ERISA § 408(a).

76 *Id.*

77 ERISA §§ 409, 411, and 503(a).

78 ERISA § 405.

79 ERISA § 503(i).

80 *Id.*

81 IRC §§ 4975(a) and (b).

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