



June 1, 2026

Employee Benefits Security Administration
Office of Regulations and Interpretations
Department of Labor
Attn: RIN 1210-AC38
Room N-5655, U.S.
200 Constitution Ave. NW
Washington, D.C. 20210

Re: Request for Comments on Proposed Rule

To Whom It May Concern:

On behalf of the Retirement Policy and Design Evaluation Committee and the Defined Contribution Subcommittee (Committees) of the American Academy of Actuaries,¹ we appreciate the opportunity to share our perspectives on EBSA's recent proposed rule, [Fiduciary Duties in Selecting Designated Investment Alternatives](#). We've focused our comments in two key areas:

- 1) "Longevity risk-sharing pools," as listed in E.O. 14330 (Section 3(vi)) and addressed in the proposed rule in Section 11 of the introductory Supplemental Information and Section (m)(3) of the proposed rule.
- 2) Evaluating fees and value of insured products as discussed in the example of paragraph (h)(3) of the proposed rule.

Longevity Risk-Sharing Pools

Section 11 of the proposed rule's Introductory Supplemental Information notes that "a longevity risk-sharing pool might be implemented or offered in a participant-directed individual account plan through a designated investment alternative." Additional clarification of how EBSA would define a longevity risk-sharing pool is necessary, as the current draft does not clearly explain what is meant or provide examples of how to apply the evaluation criteria described in the proposed rule.

The Committees would recommend that EBSA consider including language to help clarify what is meant. Longevity risk-sharing pools, by construction, can ensure that benefits last for an individual's lifetime or for the joint lives of a couple. However, in contrast to many insured products that are backed by reserves, these risk-sharing pools provide no guarantee of investment returns or

¹ The American Academy of Actuaries is a 20,000-member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 60 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

the amount of income received. Instead, longevity risk-sharing pools offer participants the opportunity to potentially receive² higher total benefits when compared to insured products and might be a reasonable item to include on a menu of investment options, as suggested in [E.O. 14330](#).

Like any other designated investment alternative (DIA), longevity risk-sharing pools experience investment gains and losses. Longevity risk-sharing pools have additional properties to consider when determining whether to include them in a plan's investment menu. For example:

- Unlike with more conventional DIAs, the primary purpose is not capital accumulation but facilitating lifetime decumulation or retirement spend-down.
- Liquidity consists solely of a payment stream that is effectively purchased from the pool, the pattern of which cannot be modified once it commences.
- Besides investments, there is an additional source of returns, often called “mortality credits”, “longevity credits”, “mortality dividends,” or something similar. The source of these returns is money remaining in the pool once the purchased benefits have been fully paid, typically at the death of a plan participant or their spouse.

Recommendation: Include a definition of “longevity risk-sharing pool”

The final rule should include a definition of longevity risk-sharing pools, with the additional possibility of a fuller description of them in the introduction, such as:

- At the time payments from a longevity risk-sharing pool are committed to under an optional payment pattern offered by the pool, the election becomes irrevocable, and at least a portion of the committed funds becomes subject to forfeiture. After committing to the payment pattern, the participant may no longer withdraw funds. Instead, the participant will be paid only in accordance with the selected payment option. If participant elections were not irrevocable, selection against the pool to the detriment of other pool participants would be possible. For example, a participant withdrawing her entire interest after experiencing health setbacks would make it impossible for the pool to fulfill its purpose.
- Optional payment patterns may include: monthly payments for a participant's life or for the joint life of a participant and spouse; annual payments; or, one or more lump sums payable to survivors at an advanced age or a series of ages. A “return of principal” feature may be added.³
- Payments from such pools are structured to be actuarially fair, meaning that at the time a participant's payments from the pool commence, the actuarial present value of those payments, determined using a reasonable return assumption for the underlying investments and a reasonable mortality table that satisfies current law, is equal to the

² There is no need to set aside assets to hold as a reserve against possible adverse experience, and no insurance company shareholders seeking profits from higher returns than those guaranteed by the insurance.

³ In the event of an early death, the lesser of (a) the total pool premium minus total benefit payments and (b) the value of the account benefit at death is paid to a designated beneficiary or the participant's estate.

amount of funds that are invested to generate the income selected.

- For participants and/or spouses who survive over an accounting period, there is a “survivorship return” (often called “mortality credits,” “longevity credits,” or “mortality dividends”) representing a reasonable allocation of freed-up account balances from those who died during the period and whose participant ownership stakes in the pool were therefore forfeited. This is in addition to returns or losses from underlying investments.
- Benefits from the pool are recalculated at the beginning of each accounting period under the payment option chosen. This process results in the sum of the ownership interests always equaling the actuarial present value of the fund’s expected payments. This, in turn, equals the total value of the fund’s investments.

Recommendation: Include detailed examples of longevity risk-sharing pools and additional guidance on the application of the six enumerated factors

The proposed rule lists six factors that a sponsor must make determinations on when selecting a designated investment alternative for the plan investment menu. Detailed examples of longevity risk-sharing pools are notably absent. We address each factor below.

1. Performance—proposed example

An employer wishes to provide opportunities for participants to generate lifetime income. The employer considers available options and decides to offer two alternative longevity risk-sharing pools:

- a. A “variable benefit” option with underlying investments in a diversified investment portfolio that roughly aligns with allocations in the plan’s target date funds during retirement.
- b. A “stable benefit” option with underlying investments in very low-default-risk fixed income securities designed to result in little variation in lifetime income.⁴

At retirement, each participant can select to invest in either, neither, or a combination of the two to design a pattern of lifetime income commensurate with the individual’s desire to balance income stability and possible income growth in exchange for accepting some investment risk.

The sponsor analyzes the diversified portfolio underlying the first pool with assistance from an ERISA 3(21) fiduciary and the low-risk portfolio underlying the stable-income pool with the assistance of a 3(38) fiduciary with experience in hedging the interest rate risk of qualified traditional defined benefit plans. The sponsor consults with a qualified actuary for help assessing the actuarial fairness of the pools.

⁴ In this context, “stable” does not mean fixed. The benefit is still subject to change, but the investments are structured to keep changes that result from changing market conditions within a reasonable narrow range.

Analysis: The sponsor knowingly accepts two different risk/return investment profiles consistent with participants' likely varying needs and preferences for retirement income that lasts for life.

Conclusion: The sponsor has acted appropriately. The risk/return profiles of the two longevity risk-sharing pools address possible participant income needs and preferences over the course of their respective lifetimes.

2. Fees

The example in section (h)(3), involving the appropriateness of fees in exchange for lifetime income, would similarly apply to the provision of lifetime income in a longevity risk-sharing pool. A similar example with longevity risk-sharing pools might be helpful, comparing an annuity contract with guaranteed payment amounts against a similar longevity risk-sharing pool with lower fees and higher, but non-guaranteed, income amounts.⁵ The employer may decide to offer both, as alternatives.

3. Liquidity

Participant investments in longevity risk-sharing pools are irrevocable, with participants buying a conditional income stream that they commit to for life. Judging the liquidity adequacy of the underlying assets would presumably involve comparing the cash available from the investment portfolio against the projected participant benefit stream.

4. Valuation

There are no asset valuation issues specific to longevity risk-sharing pools that differentiate these pools from conventional designated investment alternatives.

5. Performance Benchmark

A longevity risk-sharing pool may be designed and operated to provide relatively stable income by investing in low-default fixed-income assets, the cashflows or duration of which closely matches the corresponding pattern of the benefit promises. This is analogous to hedging a traditional defined benefit pension plan. In that case, "performance" would relate to avoiding large and unanticipated adjustments to the benefits, *in either direction*. Various benchmarks could be constructed consistent with that objective.

The principle expressed in paragraph (k) should apply: "when considering a new or innovative product design, a fiduciary should seek to identify the best possible comparators to it while also scrutinizing the potential value proposition presented by the new or innovative design." The comparator in this case is not a benchmark target the investment provider is attempting to exceed, as in a traditional investment benchmark, but something to hew to as closely as possible.

⁵ We note that many cost elements of annuities are typically not explicit but baked into the income amounts and guarantees. As with other complex investments, expert advice may be needed for a proper assessment.

6. Complexity

Because of longevity credits and life contingencies, irrevocability, and periodic benefit adjustments, longevity risk-sharing pools are inherently more complex than traditional investments designed for capital accumulation.

Paragraph (l) notes a possible need for fiduciaries to seek “assistance from a qualified investment advice fiduciary, investment manager, or other individual.” One type of “other individual” may be a qualified actuary who can assist in evaluating the actuarial fairness of the process for converting account balances to income streams and allocating longevity credits.

While longevity risk-sharing pools involve an added level of complexity versus traditional capital accumulation investments, the same complexities exist for any lifetime income investment strategy, including insured annuity products. Longevity risk-sharing pools, in fact, are generally more transparent with respect to actuarial operations, fees, and performance, than insured products.

Two additional factors for fiduciaries to consider that EBSA might want to include in the final rule are:

1. Actuarial Fairness

This would apply to longevity risk-sharing pools and possibly certain insured annuities.

Conceptually, “actuarial fairness” means that, for each participant entering the pool, the actuarial present value of expected future payments is equal to the participant’s contribution to the pool. This would be determined based on reasonable actuarial assumptions for investment return and mortality, after accounting for fees and expenses related to pool operations, which are properly addressed in those respective sections of the proposed regulation.

Another area where the concept of actuarial fairness applies is the allocation of forfeitures by deceased participants to remaining participants in the form of “longevity credits.”

2. Transparency

One of the main challenges of including the items listed in E.O. 14330 as designated investment alternatives, including insured lifetime income investment strategies, is that often only limited information is available. It may be preferred to require the fiduciary to make an explicit determination that the available information is sufficient to assess appropriateness.

Evaluating fees and value of insured products

Paragraph (h)(3), evaluating fees and value of insured products, in the proposed rule provides a helpful example evaluating the fees and value provided by an insured lifetime income benefit. When considering the costs and value of insured lifetime income benefit options, there are three additional considerations we would highlight:

Consideration 1: Metrics to Analyze Value

The example references break-even analysis and comparison to the annuity market when analyzing the value provided by the lifetime income benefit option. There are many additional metrics that a fiduciary might consider. Further discussion of these metrics can be found in the 2023 Primer on Retirement Income Strategy Design and Evaluation from the Society of Actuaries' Research Institute.⁶

Consideration 2: Implicit Costs and Spread-Based Designs

Many insured lifetime income benefit options are funded through implicit costs, rather than explicit fees. For example, in deferred fixed annuities, the insurer may credit interest at a rate that is less than what it is earning on the assets it purchased. This spread may be used to help cover expenses of the product, in addition to the cost of any insurance guarantees.

A lifetime income benefit may have a low explicit fee, but a high implicit cost. Because the level of the implicit costs is not typically disclosed, we believe it would be helpful to fiduciaries if EBSA provided an example that addressed implicit costs, showing how one might evaluate these costs through analysis of performance and benchmarking.

Consideration 3: Ability to Change Costs and Benefits

When considering the value provided, it is important for the fiduciary to understand the extent to which costs and benefits are guaranteed versus how they may change in the future, as well as understand how such changes are governed.

Thank you for the opportunity to share our perspectives and recommendations on this proposed rule. The Committees would welcome the opportunity to discuss these comments with EBSA and answer any questions you may have. Please feel free to contact Janae Nelson, Policy Project Manager, Retirement (nelson@actuary.org).

Sincerely,

Lee Gold, MAAA, ASA, EA, FCA
Chairperson, Retirement Policy and Design Evaluation Committee

Spencer Look, MAAA, FSA
Chairperson, Defined Contribution Subcommittee

⁶ [Primer on Retirement Income Strategy Design and Evaluation](#); Society of Actuaries.