

# Adopting an In-Plan Annuity Policy

*Sample language for an Investment Policy Statement (IPS) for a plan with an in-plan annuity option*

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*With the growing recognition of the role that defined contributions plans can play in facilitating retirement income, and with recent legal changes to support fiduciaries who offer annuities in plans, more committees are considering providing participants with guaranteed income solutions in the form of “in-plan” annuities. This sample In-Plan Annuity Policy is intended to be used as part of a plan fiduciary’s Investment Policy Statement (IPS). Thus, this sample assumes that the plan’s IPS already defines common terms such as Committee and ERISA.*

### SAMPLE IPS LANGUAGE

**In-plan annuity option.** The Committee may make available under the Plan one or more investments that include the ability of participants to purchase guaranteed retirement income, that is, an annuity or similar product that offers the option to receive payments over the life of the participant and/or the life of a spouse or other beneficiary. This section describes the Committee’s process for selecting and monitoring the in-plan annuity product as well as the insurance company issuing the product.

**Note regarding terminology:** This sample In-Plan Annuity Policy is intended for those defined contribution plans that offer, or would like to offer, what’s typically referred to as an “in-plan annuity” option, which can provide guaranteed lifetime income in various forms, for a participant to invest during both the accumulation and decumulation phases of plan design. Different considerations apply if an annuity is available solely as a distribution option, meaning only when the participant terminates employment.

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### **Considerations for selecting annuity issuers.**

The Committee will engage in an objective, thorough, and analytical search for the purpose of identifying insurers for the in-plan annuity option. The Committee is not restricted to select an in-plan annuity option that is proprietary to the Plan's recordkeeper, but may do so if selected through its objective search.

- **Financial capability requirement.** The Committee will consider the financial capability of each insurer under consideration to satisfy the insurer's obligations under the in-plan annuity option.

- **Required representations from insurer.**

Pursuant to section 404(e) of ERISA, the Committee will meet its responsibility to consider the financial capability of each insurer by requesting a "safe harbor" notice from the insurer that includes all of the representations in **Appendix A**. The Committee will conclusively rely on this certification as long as (a) the Committee is not in possession of other information that would cause the Committee to question the representations received from the insurer and (b) the Committee has not received a notification from the insurer that the insurer can no longer make its representations.

- **Relative financial strength.** The Committee may, but is not required to, consider an insurer's financial strength relative to other insurers under consideration in deciding among insurers, assuming all of whom can make the representations in **Appendix A**.

**Considerations for selecting in-plan annuity options.** With respect to the selection of a particular in-plan annuity option, the Committee will consider the following:

- **Cost.** For each in-plan annuity option under consideration, the Committee will consider the cost (including fees and commissions) of the in-plan annuity option offered by the insurer in relation to the benefits and product features of the contract and administrative services to be

provided under such contract. The Committee is *not* required to select the lowest cost in-plan annuity option. However, the Committee will consider whether the relative cost of each in-plan annuity option under consideration is reasonable for the product features and services being provided.

### **Impact on plan-specific disclosures**

The offering of an in-plan annuity has implications for disclosures. For example:

**Participant disclosure (404a-5).** The annual disclosure to participants describes the plan's investment options will need to describe the annuity options available.

**Service provider disclosure (408b-2).** Insurance brokers and consultants to the plan will need to disclose to the Committee their direct and indirect compensation.

**Schedule A.** The plan's Form 5500 Schedule A must disclose information on insurance products held in the plan, and the insurance company must provide information to complete this Schedule.

- **Contract features and benefits.** In reviewing an in-plan annuity option, the Committee will consider the value of the contract, including features and benefits of the contract and attributes of the insurer in conjunction with the cost of the contract. In addition, the Committee will consider how the characteristics of the in-plan annuity option align with the needs and demographics of plan participants and beneficiaries taking into account, among other things, the nature and duration of any liquidity restrictions, the level of the guarantees of principal and minimum interest rates, any opportunities for the guaranteed minimum interest rates to be supplemented with additional credited amounts, the expected lifetime income to be provided in retirement and

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the potential for annual increases in retirement income. If the in-plan annuity option will be part of a larger investment option, such as a target date fund or other asset allocation investment, the Committee will consider the role the in-plan annuity option will play in that larger investment option.

**Documentation.** The Committee shall document its process for selecting an insurer and an in-plan annuity option, including the considerations taken into account, in accordance with the documentation procedures applied to other key Committee decisions.

**Periodic review.** Once an in-plan annuity option has been selected for inclusion in the Plan, except as otherwise described in this paragraph, the in-plan annuity option shall be evaluated at the same time as other investment menu options made available in the Plan. This review will consider the value of the in-plan annuity option, including the features and benefits of the contract in relation to its cost, to confirm that the in-plan annuity option is still appropriate for the Plan. In addition to its periodic review of all investments in the Plan, the Committee will obtain the representations from the insurer referenced in **Appendix A** on an annual basis. Nothing in the preceding sentence shall be construed to require the Committee to review the appropriateness of a selection after the purchase of a contract for a particular participant or beneficiary.

**Designation as default investment.** The Committee may designate the in-plan annuity option, or a larger investment such as a target

date fund, balanced fund, or managed account, of which the in-plan annuity option is a part, as the investment into which contributions are made the absence of an affirmative election by a participant. The Committee may require that the default investment meet the requirements to be a qualified default investment alternative (QDIA) under Department of Labor (DOL) regulations. Pursuant to DOL guidance, however, the Committee may, consistent with the provisions of ERISA, prudently select an investment with guaranteed lifetime income elements as a default investment under the Plan if it complies with all the requirements of QDIA rules except for reasonable liquidity and transferability conditions.

**Delegation to investment manager.** If the Committee has engaged the services of an investment manager under section 3(38) of ERISA, the Committee may also delegate to the investment manager the discretion and authority to (a) select and monitor in-plan annuity options; (b) receive and review the required disclosure in **Appendix A** from the insurer; and (c) otherwise comply with the requirements of section 404 of ERISA, including the safe harbor in section 404(e). In that case, the Committee shall be responsible for selecting and monitoring the investment manager but shall not be responsible for the acts or omissions of the investment manager in performing its duties with respect to the in-plan annuity option or a larger investment such as a target date fund or other investment, of which the in-plan annuity option is a part.

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### Possible questions to consider

**Note:** This sample IPS language is intended to be flexible in order to account for evaluating a variety of in-plan annuities. Thus, the contract features and benefits that might be relevant will vary from plan to plan. As a starting point, below are a list of questions a fiduciary committee might consider in evaluating an in-plan annuity to be included in the plan:

- Is the in-plan annuity a group or individual annuity? If this is an individual contract, who will be designated as the owner of the contract and what rights will the plan retain over the contract?
- What type of annuity is it? Fixed, variable, indexed, other?
- Is this an immediate annuity (payments begin immediately) or deferred annuity (payments will begin in the future)?
- For fixed return annuities, is there a minimum interest rate and can the annuity provider credit more than the minimum rate?
- What are the options for payment of income? Can a joint annuity be with a non-spouse? Can the participant receive a term certain or installments?
- Does the contract offer guaranteed living withdrawal benefits or guaranteed minimum withdrawal benefits? If so, how do these options work?
- Does the contract impose liquidity restrictions? If so, do these liquidity restrictions result in enhanced returns?
- Does the contract provide for enhanced death benefits?
- What additional riders are available? At what cost?
- What are the fees? Does the contract impose surrender charges and, if so, do these apply to the plan or to the participant? What commissions will be paid in connection with the sale?
- If the Committee decides in the future to discontinue the in-plan annuity as an investment option in the plan, can the contract be converted into a rollover or qualified plan distributed annuity, under the SECURE Act portability option?

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## APPENDIX A

### Required disclosure from insurers

Under the annuity selection “safe harbor” in ERISA section 404(e), added by the SECURE Act, the Committee will require any insurer offering an in-plan annuity option to make all of the following representations:

- The insurer is licensed to offer the in-plan annuity option.
- Both currently and for the immediately preceding 7 plan years, the insurer:
  - operates under a certificate of authority from the insurance commissioner of its domiciliary state which has not been revoked or suspended;
  - has filed audited financial statements in accordance with the laws of its domiciliary state under applicable statutory accounting principles;
  - maintains (and has maintained) reserves which satisfies all the statutory requirements of all states where the insurer does business; and
  - is not operating under an order of supervision, rehabilitation, or liquidation.
- The insurer undergoes, at least every 5 years, a financial examination (within the meaning of the law of its domiciliary state) by the insurance commissioner of the domiciliary state (or representative, designee, or other party approved by such commissioner).
- The insurer will notify the Committee of any change in circumstances which would preclude the insurer from making the above representations.

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