ACLI
Financial Security...for Life.

Gary Hughes
Executive Vice President & General Counsel

June 24, 2015

The Honorable Thomas E. Perez
Secretary of Labor
United States Department of Labor
200 Connecticut Ave, NW
Washington, DC 20210

Dear Mr. Secretary:

On behalf of the American Council of Life Insurers and its approximately 300 member companies operating in the United States and abroad, I would like to address concerns you raised about the regulation of variable annuities at the House Health, Education, Labor and Pensions hearing on June 17th.

ACLI advocates in federal, state, and international forums for public policy that supports the life insurance marketplace and the 75 million American families that rely on life insurers' products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance and reinsurance, representing more than 90 percent of industry assets and premiums.

The issuance and sale of variable annuities is regulated more comprehensively than most financial products oriented toward retirement security. This is accomplished through a combination of state and federal laws, rules and regulations. As the Department of Labor continues its consideration of a proposed change to the definition of "fiduciary" under ERISA, we believe an appreciation for this regulatory construct is essential.

State Insurance Regulatory Considerations

The variable annuity product approval and sales process is heavily regulated at the state level. State insurance departments have broad powers to assure proper sales practices and to audit company compliance with applicable rules and regulations through periodic market conduct examinations. Insurance departments also have robust consumer affairs divisions that are responsive to consumer questions and complaints. In addition, insurance agents selling these products must pass rigorous licensing requirements and can lose their licenses for inappropriate sales practices.

Relevant state regulatory provisions include:

- Rules mandating truthful disclosure in advertising, which rules encompass print, audiovisual, and web-based materials used in mass communication media. Among other things, these rules prohibit misrepresentation of policy benefits.

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- Laws and regulations calling for the approval by state insurance officials of every variable annuity contract form before it can be offered and sold.

- Requirements for extensive product disclosures, including a buyer's guide developed by the National Association of Insurance Commissioners (NAIC). The guide contains basic information that consumers should know about variable annuities including how money is invested, applicable fees, how rates are calculated and how often applicable rates can be changed, and available options and restrictions for withdrawing money. A copy of the buyers guide is appended to this letter.

- Laws identifying and prohibiting "unfair trade practices" that govern virtually all aspects of the variable annuity sales process.

- Regular market conduct and financial examinations during which state insurance regulators review company sales and compliance programs.

- Requirements for company and agent licensing specific to variable annuity products.

- Rules establishing standards for determining whether a variable annuity is suitable for a particular client and requiring life insurance companies to oversee the propriety of recommendations made by sales representatives to purchase a variable annuity.

- Required consumer disclosure when a sales representative recommends replacing an annuity with another insurance product.

- Regulations addressing the use of senior-specific certifications and professional designations.

- "Free look" provisions enabling a variable annuity purchaser not satisfied with a purchase decision to return the product for a full or partial refund. Most "free look" periods last 10 days, but rules vary by state. Neither mutual funds nor any other financial product have this feature.

Federal Securities Regulatory Considerations

Because variable annuities are also regulated as securities, the federal securities laws are fully applicable to the issuance and sale of these products. The Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA) set rules governing the sales practices of broker-dealers selling these products.

- Federal securities laws impose broad antifraud prohibitions applicable to the sale of variable annuities and give the SEC significant enforcement authority.

- SEC requires that potential buyers of an individual variable annuity receive a prospectus summarizing the annuity's funding options. The content of variable annuity prospectuses, particularly the disclosure provisions regarding fees and risks, is reviewed by the SEC.

- FINRA issues member conduct rules to govern the activity of variable annuity sales representatives, including standards addressing the suitability of variable annuities for customers as well as advertising and supervision standards.

- Variable annuity advertising must be filed with and reviewed by FINRA.

- Variable annuity contract owners may use the FINRA arbitration process to rectify grievances concerning the sale of the product. Federal securities laws also give the variable annuity purchaser a private right of action against the issuer for material misstatements, material omissions, and fraud.

- We also note the SEC's recently announced Retirement-Targeted Industry Reviews and Examinations initiative designed to ensure that brokers and advisers are offering reasonable investment advice and disclosing conflicts to retirement-age investors.

Beyond these state and federal regulatory provisions, it should be noted that under specific circumstances, such as death or terminal illness, most annuity contracts allow early withdrawals without incurring surrender charges. They may also allow annual withdrawals of a certain amount for any reason without triggering a surrender charge..

In sum, variable annuities are highly regulated products uniquely providing consumers with guaranteed lifetime income. For many, this product constitutes an important component of their retirement portfolio. It is not in consumers' best interests to unreasonably constrain the ability of advisors to provide relevant guidance and education regarding these products as we believe your proposed rule does.

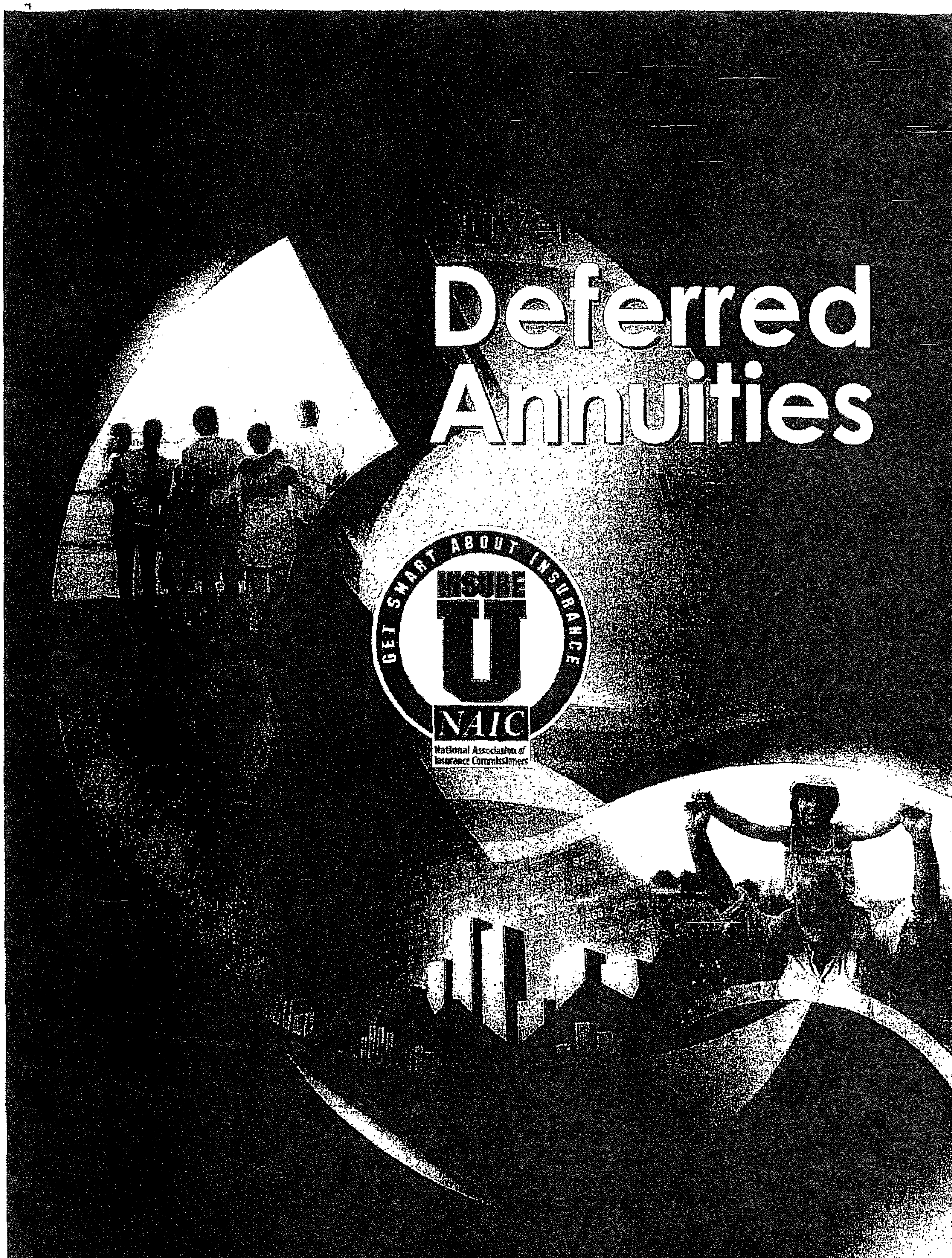
We will continue to work constructively with you and your staff to craft a rule that truly benefits America's workers and retirees and appropriately facilitates their ability to make informed decisions regarding their retirement security.

Thank you for your consideration of our views.

Sincerely,

Gary Hughes

Deferred Annuities



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Prepared by the

NAIC

National Association of Insurance Commissioners

The National Association of Insurance Commissioners is an association of state insurance regulatory officials. This association helps the various insurance departments to coordinate insurance laws for the benefit of all consumers.

This guide does not endorse any company or policy.

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NAIC Buyer's Guide for Deferred Annuities

It's important that you understand how annuities can be different from each other so you can choose the type of annuity that's best for you. The purpose of this Buyer's Guide is to help you do that. This Buyer's Guide isn't meant to offer legal, financial, or tax advice. You may want to consult independent advisors that specialize in these areas.

This Buyer's Guide is about deferred annuities in general and some of their most common features. The annuity you select may have unique features this Guide doesn't describe. It's important for you to carefully read the material you're given or ask your annuity salesperson, especially if you're interested in a particular annuity or specific annuity features.

This Buyer's Guide includes questions you should ask the insurance company or the annuity salesperson (the agent, producer, broker, or advisor). Be sure you're satisfied with the answers before you buy an annuity.

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What Is an Annuity?

An annuity is a contract with an insurance company. All annuities have one feature in common, and it makes annuities different from other financial products. *With an annuity, the insurance company promises to pay you income on a regular basis for a period of time you choose*—including the rest of your life.

When Annuities Start to Make Income Payments

Some annuities begin paying income to you soon after you buy it (an **immediate** annuity). Others begin at some later date you choose (a **deferred** annuity).

How Deferred Annuities Are Alike

There are ways that *most* deferred annuities are alike.

- They have an **accumulation** period and a **payout** period. During the accumulation period, the value of your annuity changes based on the type of annuity. During the payout period, the annuity makes income payments to you.
- They offer a basic death benefit. If you die during the accumulation period, a deferred annuity with a basic death benefit pays some or all of the annuity's value to your survivors (called beneficiaries) either in one payment or multiple payments over time. The amount is usually the greater of the annuity account value or the minimum guaranteed surrender value. If you die after you begin to receive income payments (**annuitize**), your chosen survivors may not receive anything *unless*: 1) your annuity guarantees to pay out at least as much as you paid into the annuity, or 2) you chose a payout option that continues to make payments after your death. For an extra cost, you may be able to choose enhanced death benefits that increase the value of the basic death benefit.
- You usually have to pay a charge (called a **surrender** or **withdrawal charge**) if you take some or all of your money out too early (usually before a set time period ends). Some annuities may not charge if you withdraw small amounts (for example, 10% or less of the account value) each year.
- Any money your annuity earns is **tax deferred.** That means you won't pay income tax on earnings until you take them out of the annuity.
- You can add features (called **riders**) to many annuities, usually at an extra cost.
- An annuity salesperson must be licensed by your state insurance department. A person selling a variable annuity also must be registered with FINRA[1] as a representative of a broker/dealer that's a FINRA member. In some states, the state securities department also must license a person selling a variable annuity.

Sources of Information

Contract: *The legal document between you and the insurance company that binds both of you to the terms of the agreement.*

Disclosure: *A document that describes the key features of your annuity, including what is guaranteed and what isn't, and your annuity's fees and charges. If you buy a variable annuity, you'll receive a prospectus that includes detailed information about investment objectives, risks, charges, and expenses.*

Illustration: *A personalized document that shows how your annuity features might work. Ask what is guaranteed and what isn't and what assumptions were made to create the illustration.*

1. FINRA (Financial Industry Regulatory Authority) regulates the companies and salespeople who sell variable annuities.

- Insurance companies sell annuities. You want to buy from an insurance company that's financially sound. There are various ways you can research an insurance company's financial strength. You can visit the insurance company's website or ask your annuity salesperson for more information. You also can review an insurance company's rating from an independent rating agency. Four main firms currently rate insurance companies. They are A.M. Best Company, Standard and Poor's Corporation, Moody's Investors Service, and Fitch Ratings. Your insurance department may have more information about insurance companies. An easy way to find contact information for your insurance department is to visit *www.naic.org* and click on "**States and Jurisdictions Map.**"

- Insurance companies usually pay the annuity salesperson after the sale, but the payment doesn't reduce the amount you pay into the annuity. You can ask your salesperson how they earn money from the sale.

How Deferred Annuities Are Different

There are differences among deferred annuities. Some of the differences are:

- Whether you pay for the annuity with one or more than one payment (called a **premium**).

- The types and amounts of the **fees**, **charges**, and **adjustments**. While almost all annuities have *some* fees and charges that could reduce your account value, the types and amounts can be different among annuities. ***Read the Fees, Charges, and Adjustments section in this Buyer's Guide for more information.***

- Whether the annuity is a **fixed** annuity or a **variable** annuity. How the value of an annuity changes is different depending on whether the annuity is fixed or variable.

    Fixed annuities guarantee your money will earn at least a minimum interest rate. Fixed annuities may earn interest at a rate higher than the minimum but only the minimum rate is guaranteed. The insurance company sets the rates.

    Fixed indexed annuities are a type of fixed annuity that earns interest based on changes in a market index, which measures how the market or part of the market performs. The interest rate is guaranteed to never be less than zero, even if the market goes down.

    Variable annuities earn investment returns based on the performance of the investment portfolios, known as "subaccounts," where you choose to put your money. The return earned in a variable annuity isn't guaranteed. The value of the subaccounts you choose could go up or down. If they go up, you could make money. But, if the value of these subaccounts goes down, you could lose money. Also, income payments to you could be less than you expected.

- Some annuities offer a **premium bonus**, which usually is a lump sum amount the insurance company adds to your annuity when you buy it or when you add money. It's usually a set percentage of the amount you put into the annuity. Other annuities offer an **interest bonus**, which is an amount the insurance company adds to your annuity when you earn interest. It's usually a set percentage of the interest earned. You may not be able to withdraw some or all of your premium bonus for a set period of time. ***Also, you could lose the bonus if you take some or all of the money out of your annuity within a set period of time.***

How Does the Value of a Deferred Annuity Change?

Variable Annuities

Money in a variable annuity earns a return based on the performance of the investment portfolios, known as "**subaccounts,**" where you choose to put your money. Your investment choices likely will include subaccounts with different types and levels of risk. Your choices will affect the return you earn on your annuity. Subaccounts usually have no guaranteed return, but you may have a choice to put some money in a fixed interest rate account, with a rate that won't change for a set period.

The value of your annuity can change every day as the subaccounts' values change. If the subaccounts' values increase, your annuity earns money. But ***there's no guarantee that the values of the subaccounts will increase. If the subaccounts' values go down, you may end up with less money in your annuity than you paid into it.***

An insurer may offer several versions of a variable deferred annuity product. The different versions usually are identified as **share classes**. The key differences between the versions are the fees you'll pay every year you own the annuity. The rules that apply if you take money out of the annuity also may be different. Read the prospectus carefully. Ask the annuity salesperson to explain the differences among the versions.

What Other Information Should You Consider?

Fees, Charges, and Adjustments

Fees and charges reduce the value of your annuity. They help cover the insurer's costs to sell and manage the annuity and pay benefits. The insurer may subtract these costs directly from your annuity's value. Most annuities have fees and charges but they can be different for different annuities. Read the contract and disclosure or prospectus carefully and ask the annuity salesperson to describe these costs.

A **surrender** or **withdrawal charge** is a charge if you take part or all of the money out of your annuity during a set period of time. The charge is a percentage of the amount you take out of the annuity. The percentage usually goes down each year until the surrender charge period ends. Look at the contract and the disclosure or prospectus for details about the charge. Also look for any waivers for events (such as a death) or the right to take out a small amount (usually up to 10%) each year without paying the charge. If you take all of your money out of an annuity, you've surrendered it and no longer have any right to future income payments.

Annuity Fees and Charges

Contract fee – *A flat dollar amount or percentage charged once or annually.*

Percentage of purchase payment – *A front-end sales load or other charge deducted from each premium paid. The percentage may vary over time.*

Premium tax – *A tax some states charge on annuities. The insurer may subtract the amount of the tax when you pay your premium, when you withdraw your contract value, when you start to receive income payments, or when it pays a death benefit to your beneficiary.*

Transaction fee – *A charge for certain transactions, such as transfers or withdrawals.*

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Mortality and expense (M&E) risk charge – *A fee charged on* ***variable annuities****. It's a percentage of the account value invested in subaccounts.*

Underlying fund charges – *Fees and charges on a* ***variable*** *annuity's subaccounts; may include an investment management fee, distribution and service (12b-1) fees, and other fees.*

Some annuities have a **Market Value Adjustment (MVA).** An MVA could increase or decrease your annuity's account value, cash surrender value, and/or death benefit value if you withdraw money from your account. In general, if interest rates are *lower* when you withdraw money than they were when you bought the annuity, the MVA could *increase* the amount you could take from your annuity. If interest rates are *higher* than when you bought the annuity, the MVA could *reduce* the amount you could take from your annuity. Every MVA calculation is different. Check your contract and disclosure or prospectus for details.

How Annuities Make Payments

Annuitize

At some future time, you can choose to **annuitize** your annuity and start to receive guaranteed fixed income payments for life or a period of time you choose. After payments begin, you can't take any other money out of the annuity. You also usually can't change the amount of your payments. For more information, see "*Payout Options*" in this Buyer's Guide. If you die before the payment period ends, your survivors may not receive any payments, depending on the payout option you choose.

Full Withdrawal

You can withdraw the cash surrender value of the annuity in a lump sum payment and end your annuity. *You'll likely pay a charge to do this if it's during the surrender charge period.* If you withdraw your annuity's cash surrender value, your annuity is cancelled. Once that happens, you can't start or continue to receive regular income payments from the annuity.

Partial Withdrawal

You may be able to withdraw *some* of the money from the annuity's cash surrender value without ending the annuity. Most annuities with surrender charges let you take out a certain amount (usually up to 10%) each year without paying surrender charges on that amount. Check your contract and disclosure or prospectus. Ask your annuity salesperson about other ways you can take money from the annuity without paying charges.

Living Benefits for Variable Annuities

Variable annuities may offer a benefit at an extra cost that guarantees you a minimum account value, a minimum lifetime income, or minimum withdrawal amounts regardless of how your subaccounts perform. See "*Variable Annuity Living Benefit Options*" at right. Check your contract and disclosure or prospectus or ask your annuity salesperson about these options.

Variable Annuity Living Benefit Options

Guaranteed Minimum Accumulation Benefit (GMAB) – *Guarantees your account value will equal some percentage (typically 100%) of premiums less withdrawals, at a set future date (for example, at maturity). If your annuity is worth less than the guaranteed amount at that date, your insurance company will add the difference.*

Guaranteed Minimum Income Benefit (GMIB) – *Guarantees a minimum lifetime income. You usually must choose this benefit when you buy the annuity and must annuitize to use the benefit. There may be a waiting period before you can annuitize using this benefit.*

Guaranteed Lifetime Withdrawal Benefit (GLWB) – *Guarantees you can make withdrawals for the rest of your life, up to a set maximum percentage each year.*

How Annuities Are Taxed

Ask a tax professional about your individual situation. The information below is general and should not be considered tax advice.

Current federal law gives annuities special tax treatment. Income tax on annuities is deferred. That means you aren't taxed on any interest or investment returns while your money is in the annuity. This isn't the same as tax-free. You'll pay ordinary income tax when you take a withdrawal, receive an income stream, or receive each annuity payment. When you die, your survivors will typically owe income taxes on any death benefit they receive from an annuity.

There are other ways to save that offer tax advantages, including Individual Retirement Accounts (IRAs). You can buy an annuity to fund an IRA, ***but you also can fund your IRA other ways and get the same tax advantages.*** When you take a withdrawal or receive payments, you'll pay ordinary income tax on all of the money you receive (not just the interest or the investment return). You also may have to pay a 10% tax penalty if you withdraw money before you're age 59½.

Payout Options

You'll have a choice about how to receive income payments. These choices usually include:

- *For your lifetime*
- *For the longer of your lifetime or your spouse's lifetime*
- *For a set time period*
- *For the longer of your lifetime or a set time period*

Finding an Annuity That's Right for You

An annuity salesperson who suggests an annuity must choose one that they think is right for you, based on information from you. They need complete information about your life and financial situation to make a suitable recommendation. Expect a salesperson to ask about your age; your financial situation (assets, debts, income, tax status, how you plan to pay for the annuity); your tolerance for risk; your financial objectives and experience; your family circumstances; and how you plan to use the annuity. If you aren't comfortable with the annuity, ask your annuity salesperson to explain why they recommended it. Don't buy an annuity you don't understand or that doesn't seem right for you.

Within each annuity, the insurer ***may*** guarantee some values but not others. Some guarantees may be only for a year or less while others could be longer. Ask about risks and decide if you can accept them. For example, it's possible you won't get all of your money back ***or*** the return on your annuity may be lower than you expected. It's also possible you won't be able to withdraw money you need from your annuity without paying fees ***or*** the annuity payments may not be as much as you need to reach your goals. These risks vary with the type of annuity you buy. All product guarantees depend on the insurance company's financial strength and claims-paying ability.

Questions You Should Ask

- Do I understand the risks of an annuity? Am I comfortable with them?
- How will this annuity help me meet my overall financial objectives and time horizon?
- Will I use the annuity for a long-term goal such as retirement? If so, how could I achieve that goal if the income from the annuity isn't as much as I expected it to be?
- What features and benefits in the annuity, other than tax deferral, make it appropriate for me?
- Does my annuity offer a guaranteed minimum interest rate? If so, what is it?
- If the annuity includes riders, do I understand how they work?
- Am I taking full advantage of all of my other tax-deferred opportunities, such as 401(k)s, 403(b)s, and IRAs?
- Do I understand all of the annuity's fees, charges, and adjustments?
- Is there a limit on how much I can take out of my annuity each year without paying a surrender charge? Is there a limit on the ***total*** amount I can withdraw during the surrender charge period?
- Do I intend to keep my money in the annuity long enough to avoid paying any surrender charges?
- Have I consulted a tax advisor and/or considered how buying an annuity will affect my tax liability?
- How do I make sure my chosen survivors (beneficiaries) will receive any payment from my annuity if I die?

If you don't know the answers or have other questions, ask your annuity salesperson for help.

When You Receive Your Annuity Contract

When you receive your annuity contract, carefully review it. Be sure it matches your understanding. Also, read the disclosure or prospectus and other materials from the insurance company. Ask your annuity salesperson to explain anything you don't understand. In many states, a law gives you a set number of days (usually 10 to 30 days) to change your mind about buying an annuity after you receive it. This often is called a **free look** or **right to return** period. Your contract and disclosure or prospectus should prominently state your free look period. If you decide during that time that you don't want the annuity, you can contact the insurance company and return the contract. Depending on the state, you'll either get back all of your money or your current account value.