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Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210
Attn: Lifetime Income

RE; Request for Information Regarding Lifetime Income Options
for Participants and Beneficiaries in Retirement Plans. RFI – RIN 1210-AB33

Ladies and Gentlemen:

Below are my views, suggestions and comments with respect to specific questions included in the above referenced Request for Information. Hopefully, they will prove to be of some assistance to the Agencies in their efforts to assess various means to enhance the retirement security of plan participants

1. From the standpoint of plan participants, what are the advantages and disadvantages for participants receiving some or all of their benefits in the form of lifetime payments?

When discerning the advantages and disadvantages of lifetime income payments within a plan, it's only proper to first identify the manner in which lifetime income could be offered to the participant. If it is simply offered as an option at or near retirement, there would be little or no advantage from the participant's perspective. This is true because by offering an annuity to participants when they are older still leaves them with the burden of assuming the investment risk throughout their working careers up to such point in time when they are offered the opportunity to annuitize. Unfortunately, any point in time can render less than optimal results. Specifically, what would have been the advantage to a participant to have an annuity option available during the fourth quarter of 2008 if 40% of his/her plan account balance were invested in an index fund that tracked the S&P 500 at that time? The answer is no advantage; since the individual would have lost a significant portion of his//her annuity purchasing power during that timeframe. Moreover, as participants approach normal retirement age, the annuity purchase rates are less attractive since the annuities purchased at such time are typically immediate annuities and tend to give less consideration to the time value of money.

Alternatively, if the annuity was positioned as "being offered incrementally during the accumulation phase" there are certain participant advantages.[1] Specifically, it would allow the participant to create a strategy focused toward his or her planned retirement date. In effect, the participant could view the current guaranteed purchase rates at each attained age, make estimates of his/her future salary levels, determine possible contribution rates, approximate allocation amounts, and ultimately derive an annuity amount that could be payable at his/her planned retirement date. The projected annuity amount at the planned retirement date could then serve as an initial baseline for observation, comparison and future adjustment with respect to designing and implementing a retirement income strategy. Here¸ the advantage relates to the fact that once participants become involved in the strategy, they would have transformed their point of reference from that of accumulators/savers where the future is less predictable to that of a consumer orientation; evaluating the cost of a financial product that offers future certainty. In addition, this approach is consistent with the Estimated Benefit Statements provided by the Social Security Administration and would thus allow employees to look at their future retirement needs from a more holistic approach to retirement security. This is not to state that there are not complexities to overcome, but a new approach to retirement education supported by innovations in technology could surmount these obstacles.

2. Currently the vast majority of individuals who have the option of receiving a lump sum distribution or ad hoc periodic payments from their plan or IRA choose to do so and do not select a lifetime income option. What explains the low usage rate of lifetime income arrangements? Is it the result of market failure or other factors (e.g. cost, complexity of products, adverse selection, poor decision making by consumers, desire for flexibility to respond to unexpected financial needs, counterparty risk or seller insolvency, etc.)? Are there steps that the Agencies could

[1] For purposes of these responses, an annuity "being offered incrementally during the accumulation phase" would permit the participant to secure annual lifetime annuity guarantees payable upon the participant's attainment of a certain age as provided for under the terms of the plan. It would be anticipated that the earliest age would be fifty five with a deferral of the annuity commencement date to as late as the participant's required beginning date. Furthermore, the guarantees could be secured by current plan contributions, rollovers, and transfers to the annuity option from other investment options offered by the plan, provided such options permitted transfers. In addition, aggregate gains attributable to the annuity's underlying investment option would be used to secure additional annuity guarantees. Furthermore, the annuity option would also permit the transfer of account balances attributable to the annuity option to other investment options available under the plan with the loss of the guarantee on a proportionate basis. The amount of the annuity secured would be based on the participant's age at the time of the investment into the annuity option. For example, a contribution of $100.00 made into the annuity option at age twenty one may secure an annual lifetime annuity guarantee of $40.00 payable at 65; a contribution of $100.00 when made into the annuity option at age forty may secure an annual lifetime annuity guarantee of $20.00 payable at 65; and a contribution of $100 when the participant was age sixty may secure an annual lifetime annuity payment of $5.00 payable at 65. Finally, the annuity purchase rates could be modified annually but such modification would apply only to future allocations to the annuity option and the provider would be required to provide advance notice to all participants on a basis similar to the provisions under IRC section 411(d).

or should take to overcome at least some of the concerns that keep plan participants from requesting or electing lifetime income?

There are multiple factors that have led to the erosion of the lifetime income approach to retirement planning. However¸ its genesis relates back to the exemption of profit sharing plans, (i.e. defined contribution plans not subject to section 412 of the Internal Revenue Code) from the Qualified Joint and Survivor Annuity requirements specified in section 401(a)(11), coupled with the exponential growth of 401(k) arrangements which qualify for the exemption. Moreover, even though 401(k) plan sponsors could at their option provide that the normal form of benefit would be the qualified joint and survivor annuity, there was little incentive to do so. To a great degree the disincentive can be traced to the fact that a plan that voluntarily subjected itself to the section 401(a)(11) qualified joint and survivor annuity requirements also subjected itself to the preretirement survivor annuity requirements and the complex and the burdensome participant notification requirements as specified in section 417(a)(3)(B).[2] In addition, the requirements were plan qualification requirements that could cause plan disqualification for noncompliance at an historical point that preceded Agency sponsored correction programs. Moreover, if a plan were to be subject to these requirements, the challenge of fulfillment generally rested with the plan's service provider which also had no incentive to include them in their proposals since, if anything, the prospect of administering the notification requirements would tend only to drive up programming costs with no marketing advantage. Accordingly, qualified joint and survivor annuities tended to disappear from the qualified plan landscape. Finally, it should also be noted that the further erosion of the use of annuities stems to some degree from statutory developments which allowed profit sharing plans to eliminate certain forms of benefits previously provided under the plan, provided a single sum payment was available to the participant at the same time the form of distribution was eliminated.[3]

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4. To what extent are the lifetime income options referenced in 3 provided at retirement or other termination of employment as opposed to being offered incrementally during the accumulation phase, as contributions are made? How are such incremental or accumulating annuity arrangements structured?

At this point in time, the vast majority of lifetime options are offered at retirement or termination of employment with very few plans providing lifetime income incrementally during the accumulation phase. It must be noted, however, that the universe of 401(k) profit sharing plans that actually do offer annuities is limited and consequently a vast

[2] Section 417(a)(3)(B)(i) provides in pertinent part that each plan shall provide to each participant, within the applicable period with respect to such participant, a written explanation with respect to the qualified preretirement survivor annuity. Section 417(a)(3)(B)(ii) in turn provides in pertinent part that the "applicable period" with respect to a participant means whichever of the following periods ends last: the period beginning with the first day of the plan year in which the participant obtains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35; a reasonable period after the individual becomes a participant; a reasonable period ending after section 401(a)(11) applies to the participant. It also provides that if a participant separates from service before attaining age 35, the applicable period shall be a reasonable period after separation.

[3] See. IRC Sec. 411(d)(6)(E)

majority of plans that came into being in the past twenty years do not offer annuities as an option. This is the norm even in instances where one or more of the underlying investments of a plan is through a group annuity contract. In these instances, the plan is simply designed to limit payment options to a lump sum or periodic payments to avoid the need for spousal consent with respect to participant terminations, loans, and hardship withdrawals.

5. To what extent are 401(k) and other defined contribution plan sponsors using employer contributions matching contributions to fund lifetime income? To what extent are participants offered a choice regarding such use of employer contributions, including by default or otherwise?

(a) There is little evidence to indicate that defined contribution plan sponsors are using employer contributions and matching contributions to fund lifetime income, particularly when the plan is smaller. This is particularly true if the meaning of funding in this question refers to the plan sponsor's unilateral decision to invest these contribution types into life income options. This is because the overriding objective in the context of individual account plans is to limit the potential liability for fiduciary breaches to the greatest extent possible. Accordingly, most individual account plans are structured to be in compliance with ERISA 404(c) by having the participant exercise control over the assets in his/her account. This in turn relieves the fiduciary from financial liability for any loss which may result from the participant's control over such assets. In effect, this particular fiduciary approach, i.e., to place investment responsibility with the participant, is ingrained in the plan fiduciary game-plan and there seems to be little incentive to change.

This particular way of fiduciary thinking bears witness in the context of automatic enrollment arrangements which were approved some years ago by the Internal Revenue Service in an effort to increase plan participation rates. Specifically, when automatic enrollment arrangements were made available to the plan sponsor community, there was a limited universe of takers. This is because automatic enrollment arrangements generally imposed investment responsibility on the fiduciary. In turn, such responsibility when acted upon exposed the fiduciary to more potential liability. As a consequence, these arrangements did not receive general acceptance until the enactment of the Pension Protection Act which amended ERISA; and provided that the plan fiduciary could continue to avail itself of ERISA 404(c) protection (and insulate its liability exposure) provided the plan invested in a qualified default investment alternative.[4]

With the above noted, one would expect this general trend to continue. Specifically, fiduciaries will not use their investment discretion to fund lifetime income options unless there is a strong incentive to do so, i.e., enhanced fiduciary protections with respect to lifetime income choices, or a governmental mandate, i.e., a requirement to invest a certain percentage of all contributions allocated to a participant's account (other than eligible rollover contributions) into a lifetime income product. In this respect, it may be prudent to reassess the Department of Labor's final regulation that addressed the

[4] See. ERISA section 404(c) and 29 CFR 2550.404c-5.

selection of “annuity providers- safe harbor for individual account plans.” Specifically, it may make sense to reevaluate the procedural elements necessary to fulfill the safe harbor requirement to determine whether they may have had the unintended effect of creating a barrier to the acceptance of annuity options in defined contribution plans.[5] For example, one might ask what would be the likelihood of a plan sponsor that operates a small trucking operation with twenty five employees to do a self evaluation of his/her financial expertise with respect to insurance companies and determine that he/she has the capacity and/or time to: (i) engage in an objective, thorough and analytical search for the purpose of identifying and selecting providers from which to purchase annuities, (ii) appropriately consider information sufficient to assess the ability of the annuity provider to make all future payments under the annuity contract, (iii) appropriately consider the cost, (including fees and commissions) of the annuity contract in relation to the benefits and services to be provided under the contract; and (iv) appropriately conclude that, at the time of selection, the annuity provider is financially able to make all future payments under the annuity contract and the cost of the annuity contract is reasonable in relation to the benefits and services to be provided under the contract? If the response is that the plan sponsor would not deem himself/herself capable of appropriately assessing an array of providers, the next step the plan sponsor might take is to explore the practical options that are available. The first option would be to consult with an appropriate expert or experts for purposes of compliance with (i) through (iv) as described above. However, this option, “the selection of an independent expert(s) for the purposes of the selection of an annuity provider” in and of itself brings with it an additional set of ERISA obligations and considerations. What is an expert? Can one rely on just one expert for a single selection or should a prudent man in like circumstances seek the advice of multiple experts? Can one retain the same expert(s) or must there be a constant selection process? What defines an “appropriate expert”? What would be a reasonable fee in light of the services provided by the appropriate expert(s)?

Alternatively, the plan sponsor might seek a secondary less complicated direction. That would be the option that simply excludes annuities from the plan altogether and thus relieve the fiduciary of the multiple tasks that need to be performed in the selection process. The later method would also circumscribe the plan sponsor’s overall potential liability. Unfortunately, the absence of an annuity option not only deprives participants of the opportunity to annuitize within the plan itself, it also deprives them throughout their working careers of the much needed education with respect to what an annuity is, (i.e., protection against longevity risk) and what purpose it may serve in the context overall retirement planning.

(b) As a general rule, participant choices with respect to the use of employer contributions mirror the same choices that are available for elective deferrals, including ROTH deferrals, and employee after tax contributions. And although the participant might have the option to invest contribution types differently, the overall investment menu from which to choose is the same. For the most part this approach is utilized due to the relative ease of administration, i.e., the avoidance of multiple investment election forms, and also to avoid confusion within the participant community.

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[5] See. 29 CFR 2550.404a-4.

6. What types of lifetime income or other arrangements designed to provide a stream of income after retirement are available to those who have already received distributions from their plans (out-of-plan options), such as IRA products, and how are such arrangements structured (fixed, inflation adjusted, or other variable, immediate or deferred, etc.)? Are there annuity products under which plan accumulations can be rolled over to an individual annuity of the same issuer to retain the annuity purchase rights that were available under the plan?

There is a multiplicity of IRA products designed to capture plan assets particularly in the context of direct rollovers. Moreover, they vary substantially and are designed to address the individual needs of the terminating/retiring participant depending upon the individual's age, net worth, disposable assets, risk tolerance, and whether there is an immediate need for protection against longevity risk. With respect to products under which plan accumulations can be rolled over to an individual annuity of the same issuer to retain the same annuity purchase rights that were available under the plan, the universe is limited. This is true since there are few annuity products in the market, particularly group annuities, that allow the participant to secure annuity rights incrementally under a defined contribution arrangement. That stated, there are IRA annuity products available to participants that retain annuity rights accumulated under such plans. It should be noted, however, that in most instances they are created to support the sale of a particular group annuity product. Moreover, the individual product is generally created simply as a marketing mechanism to ease a plan fiduciary's anxiety as to what would occur to participant guarantees in the event of a plan termination and a subsequent distribution of plan assets. As such, the IRA annuity product is primarily developed as a one event product subject to a contingency that may or may not occur depending upon the portfolio of plans that the insurance provider is funding. Consequently, there is a real possibility of underutilization of these individual rollover products coupled with the real expense of ongoing filings under both state insurance and federal securities laws.

8. What are the advantages and disadvantages for participants of selecting lifetime income payments through a plan (in-plan option) as opposed to outside plan (e.g., after a distribution or rollover)?

When participants have the opportunity to select lifetime income payments through a plan option there can be several advantages. To begin, the annuity provider, the underlying investment vehicles and the contract terms that support the option are selected by plan fiduciaries who are obligated under ERISA section 404(a)(1)(B). Under this section, fiduciaries are required to discharge their duties with respect to the plan solely in the interests of participants with the care, skill, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of a like character and with like aims. In other words, the individuals selecting the arrangement must do so judiciously and with the overall intent of protecting the participant population. Moreover, when a fiduciary selects certain lifetime income options, the selection process is typically performed void of any conflict of interest. Consequently, the participant has a key advantage.

Specifically, he or she has an annuity choice within the plan that was first evaluated and then chosen by someone obligated to act on his or her behalf while subject to an extremely high ethical standard. That situation, however, would not be the case should a lifetime income option be chosen outside of the plan. In the outside plan situation, the terminated participant would generally be dealing with sales representatives that have a vested interest in selling the lifetime income product which is commission oriented. Moreover, commission rates payable to sales representatives may vary by product type issued by a specific annuity provider; or may vary by annuity provider. In effect, there is the enticement to promote the product that provides the most attractive commission structure. This approach is intrinsically contrary to fiduciary standards. So in effect, the terminated participant is left to a great extent to his or her own financial savvy. That said, this does not mean there are no consumer protections in place. However, the consumer protection standards do not require an individual to specifically act in the best interest of the consumer in terms of the promotion and sale of annuities. Instead, the sale of individual annuities are subject to a general suitability obligation. In broad terms, when one recommends the purchase of an annuity, the individual or firm must have a reasonable basis to believe that the transaction is suitable and have a reasonable basis to believe that: (i) the customer has been informed in general terms of the various features of the annuity; (ii) the customer would benefit from certain features of the annuity; and (iii) the annuity as a whole, including contract riders and product enhancements, and the underlying subaccounts to which premium payments are allocated, are suitable for the particular customer.[6] It is well appreciated that these regulations will serve to protect prospective annuity purchasers from abusive sales practices. However, one might still ask whether these consumers will be consistently directed to an annuity that would truly fit their needs in light of recent abuses in the sale of such products. In this regard, it is instructive to note that the NAIC Suitability In Annuity Transactions Model Regulation (2009) provides in pertinent part that any insurance producer who engages in the sale of annuity products shall complete a one-time (4) credit training course, (i.e., 4 hours) approved by the department of insurance-approved education provider. Although one might argue that 4 hours is only the minimum and that the financial service industries will provide more in depth training, the 4 hour regulatory minimum suggested by the NAIC calls into question the level of expertise and support that will be afforded the public at large.[7]

9. **What are the advantages and disadvantages from the standpoint of the plan sponsor of providing an in-plan option for lifetime income as opposed leaving to participants the task of securing a lifetime income vehicle after receiving a plan distribution?**

If framed in terms of fiduciary liability, there is no advantage in providing an in-plan option as opposed to leaving to participants the task of securing a lifetime income vehicle after receiving a plan distribution. Specifically, there is no possible liability for any

[6] <u>See.</u> National Association of Insurance Commissioners Suitability In Annuity Transactions Model Regulation (2009) and FINRA Rules 2310 and 2821.
[7] The NAIC acts as a forum for the creation of model laws and regulations. Each state decides whether to pass each NAIC model law or regulation, and each state may make changes in the enactment process

subsequent election made by the participant once he or she receives a plan distribution. This is because these amounts are no longer plan assets. There is, however, a fiduciary encumbrance placed on the plan fiduciary if it elects an in plan option. This occurs either (i) at the time the fiduciary selects the annuity provider and the provider's contract to commence the distribution of benefits to a specific participant or beneficiary or (ii) at the time the plan fiduciary selects an annuity provider and the provider's annuity contract to accrue benefits for participants payable at future dates. Moreover, with respect to (ii), the plan fiduciary is required to review the continuing appropriateness of its prior conclusion that the annuity provider is financially able to make all future payments under the annuity contract and reevaluate whether the cost of the annuity contract remains reasonable in relation to the benefits and services to be provided.[8] Although the continuing review criteria described in (ii) surely represents sound fiduciary policy, in practicality it could present complications. For example, consider the plan sponsor that after appropriate analysis selects a group variable annuity with Provider A that allows participants to secure guaranteed benefits incrementally with current plan deferrals and employer matching contributions each year using age based factors. Participant X joins the plan at age 21 and makes allocations to the group variable annuity contract consistently each year for 15 years. In year 16, the plan fiduciary determines that the annuity provider's claims paying ability has suffered and decides that it is its fiduciary obligation to change to annuity Provider B for this reason. However with respect to Participant X, if assets previously allocated to the contract were to be withdrawn, he or she would forfeit the incremental guarantees accrued over the past 15 years. Furthermore, it is almost a certainty that if Participant X's accumulated plan assets were transferred to Provider B's contract Participant X would receive a decreased guaranteed amount at age 36; taking into consideration the time value of money. Such a circumstance raises several questions that would need to be resolved from a fiduciary perspective. Would the transition to Provider B with the loss of Participant's X secured guarantee under the group variable contract be deemed a breach of the fiduciary's obligation under section 404(a)(1)(A)? [9] Alternatively, would there be a fiduciary breach if the plan sponsor were to leave Participant X's assets with Provider A in an attempt to save the guarantees? In either situation, would Participant X have a plausible argument under which equitable relief might be granted if he/she were to receive something less than the accrued guarantee? In this regard, it is worthwhile noting that where incremental benefits are secured during the accumulation phase, a "benefit expectation" has been created similar to a career average defined benefit plan. Furthermore, this "benefit expectation" does not seem to be addressed directly under current regulation where investment options in general are not protected optional forms of benefit.[10]

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[8] Although pursuant to 29 CFR 2550.404a-4 (c)(2), the requirement to review the continuing appropriateness of the annuity provider and the annuity contract is included in the safe harbor for the selection of an annuity provider, it would seem to follow that the ongoing analysis would apply with respect to any alternative procedure that might be selected to satisfy one's fiduciary responsibilities inherent in the selection of an annuity provider.

[9] Section 404(a)(1)(A) of ERISA calls upon the plan fiduciary to discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries.

[10] See. 26 CFR 1.411(d).4 Q&A-1(d)(7).

10. How commonly do plan sponsors offer participants the explicit choice of using a portion of their account balances to purchase a lifetime annuity, while leaving the rest in the plan or taking it as a lump sum distribution or a series of ad hoc distributions? Why do some plan sponsors make the partial annuity available while others do not? Would expanded offering of such partial annuity options – or particular ways of presenting or framing such choices to participants – be desirable and would this likely make a difference in whether participants select a lifetime annuity?

(a) Providing the participant the explicit choice of using a portion of their account balances to purchase a lifetime annuity would be the exception in current plan design. As noted in responses 2, 5 and 9, the inclusion of an annuity option within a participant directed plan generates enhanced fiduciary and additional record keeping responsibilities. Also as noted in response 9, the potential for some difficult choices could occur years after an annuity provider is initially selected should an insurer's claims paying ability be called into questioned.

(b) With specific reference to plan design, a partial annuity option would be viewed by the participant population as more palatable than a full annuitization only option. Assuming participants would opt to retire at age 65 with a life expectancy in excess of 20 years, such individuals would by and large prefer some degree of flexibility to meet both anticipated and unanticipated costs. That stated, it could make a difference in whether participants would select an annuity. Again, however, participants would need to be educated about how annuities could be part of a successful retirement planning strategy with the most important emphasis relating to a "successful outcome" as opposed to simple contributing and investing programs.

12. How should participants determine what portion (if any) of their account balance to annuitize? Should that portion be based on basic or necessary expenses in retirement?

There is no particular formula that would adequately describe what portion of a participant's account balance should be annuitized if a lifetime income option were available. Therefore, it is only appropriate to have participants make these choices based on their own particular circumstances. However, individual choice should not preclude the use of participant education. In this regard, illustrations based on real-life situations and realistic examples of anticipated financial obligations, i.e., potential medical and long term care costs, might prove fruitful.

13. Should some form of lifetime income distribution option be required for defined contribution plans (in addition to money purchase pension plans)? If so, should that option be the default distribution option, and should it apply to the entire account balance? To what extent would such a requirement encourage or discourage plan sponsorship?

(a) When the Joint and Survivor provisions were included in the Retirement Equity Act, it made it mandatory for participants with spouses to be in receipt of retirement income from a retirement plan in the form of a joint and survivor annuity unless the participant's spouse waived that right in writing. This was intended to prevent the participant from writing the spouse out of the plan's benefit income stream. It is unfortunate, but understandable, that within the context of defined contribution plans at such time, Congress decided to exclude from the joint and survivor annuity requirements plans that were not subject to the minimum funding standards as contained in section 412 of the Internal Revenue Code. The rationale for such exclusion was that profit sharing plans, i.e., plans not subject to the minimum funding standards, were deemed ancillary plans. Moreover, such plans typically were designed to be more liberal with respect to points in time when participants could have access to plan assets. In effect, they were not classified as retirement plans although they were subject to section 401(a) of the Internal Revenue Code and entitled to certain tax deferral advantages. Included in the class of plans not subject to the joint and survivor annuity requirements were 401(k) arrangements since they also were not subject to the minimum funding standards. However, their ultimate design as a result of certain laws and regulations have made their features more similar to defined contribution money purchase plans (designed specifically as retirement vehicles) than profit sharing plans. Specifically, the majority of contribution types that are found in 401(k) arrangements are severely restricted as to when and under what circumstance a non-terminated participant may have access to plan assets in the form of a distribution. On the other hand, a typical profit sharing plan may provide access to plan assets in a very short timeframe after contributions are initially made. Furthermore, 401(k) programs have become the predominant retirement vehicle in the private sector. Accordingly, it may be an appropriate time to abandon the distinction between profit sharing plans and retirement plans based upon whether the plan is subject to the minimum funding standards, and look to the type of benefit the plan is designed to provide. Such an approach would likely make 401(k) arrangements subject to the joint and survivor annuity requirements. Furthermore, this would be more in line with the original intent of the Retirement Equity Act. That stated, it might be up to the Congress and not the Agencies to determine whether a lifetime distribution option can be made the default option under 401(k) arrangements, while maintaining the exclusion for traditional profit sharing plans.

(b) Should a lifetime distribution option become the default option, some resistance from the plan sponsor community should be anticipated. Although, it might be sound public policy to bring lifetime distribution options into the public discourse, they will necessitate greater fiduciary responsibilities in terms of the selection of annuity providers. It would also increase the costs associated with plan administration. In that regard, it might be appropriate to evaluate whether it makes sense to continue certain provisions in the qualified pre-retirement joint and survivor requirements (QPSA) with respect to defined contribution plans in the event lifetime distribution options become the default option. Of note in this area, are the requirements that the participant receive an explanation of the QPSA as well as the opportunity to waive the benefit in favor of another beneficiary. More importantly, the timing requirements with respect to the explanation do not appear to have any practical effect in the context of a defined contribution plan. On the other hand, these requirements would both drive up administrative costs and increase the opportunity for a plan operational failure.[11] Moreover, the formalities attached to the waiver requirements at such an early stage in a worker's career appear to make little sense; particularly when the account balances might be negligible but not eligible for the automatic rollover provision.[12]

19. What specific legal concerns do plan sponsors have about educating participants as to the advantages and disadvantages of lifetime income or other arrangements designed to provide a stream of income after retirement? What actions, regulatory or otherwise, could the agencies take to address such concerns?

Plan sponsor concern with respect to educating participants should be viewed in terms of the proposed regulation for fiduciary requirements for disclosure in participant individual account plans.[13] The proposed regulation is intended provide participants with pertinent information with respect to plan investments in terms of rates of return and operating expenses. As described in the proposed regulation, annuity options and lifetime income options would certainly satisfy the definition of a "designated investment alternative." By definition, a designated investment alternative is any investment alternative designated by the plan into which participants may direct the investment of plan assets held in, or contributed to, their individual accounts. That stated, the proposed regulation is silent with respect to annuity and lifetime income options. To be more specific, the proposed regulation appears to be constructed under the premise that the only "designated investments alternatives" appear to be registered mutual funds and/or fixed income investments. This is illustrated through its emphasis on performance data, fees and expenses, and the requirement that this information be provided through either a comparative chart or similar format designed to facilitate a comparison of such information for each designated investment available under the plan.

Annuities and lifetime income options do not fit comfortably within this configuration. Although they may have an investment component through the use of equity based separate accounts, they are quite different investment vehicles, particularly if the annuity is designed to secure incremental lifetime guarantees throughout the participants working lifetime. In effect, such investment types provide protections against longevity risk through lifetime guarantees. These products may also contain certain death benefits.

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[11] The QPSA explanation must be provided during the period that begins with the plan year in which the participant attains age 32 and ends with the plan year in which the participant attains age 35. See. IRC §417(a)(3)(B)(ii). If an employee becomes a participant after the age 32 to age 35 period, the explanation must be given than one year following the employee's initial participation date. See. 26 CFR 401(a)-20, Q&A-35(a).

[12] A waiver of the QPSA may be made at any time after the first day of the plan year in which the participant attains age 35. See. §417(a)(6)(B). However, the plan may permit the participant to waive the QPSA prior to age 35, but the QPSA becomes invalid at age 35, and a new notice must be provided. See. 26 CFR 1.401(a)-20, A-33(b). If the participant separates from service before age 35¸ he must have an opportunity to waive the QPSA benefit at that time. And if the participant has not received the explanation at the time of his/her separation, the notice must be given no later than one year after his separation, unless a full distribution of the benefit is made before such time.

[13] See. Proposed Regulation 29 CFR 2550.404-5.

Moreover, they tend to involve additional administrative activities than those associated with traditional mutual fund investments. These would involve the cost of tracking guarantees and making ongoing distribution payments. Consequently, these products may tend to reflect a lower average rate of return and/or higher operating expenses than a plan's more conventional investment options. The proposed regulation, however, does not take these distinctions into consideration; nor does it recognize the differences between an investment option and an insurance product that technically fits within the proposed definition of designated investment alternative within a plan. This circumstance is further compounded with the introduction of the proposed Appendix to §2550.404a-5 – Model Comparative Chart coupled with the proposed regulation's endorsement of the Appendix. In general, the endorsement provides in pertinent part that a fiduciary that uses and accurately completes the model format set forth in the Appendix will be deemed to have satisfied the requirements of the regulation.[14] Regrettably, if this recommendation is strictly followed by the plan sponsor, the Appendix and the information contained therein would place annuities and lifetime income products in a poor light if interpreted purely from the performance and expense perspective. This is true because the Appendix is not designed to segregate the salient points of lifetime guaranteed products. Nor does it explicate the advantages lifetime income might have to the participant. Accordingly, it is recommended that the Agencies reevaluate all investment types for appropriate consideration of a larger universe of investment products prior to finalizing this regulation. As noted in the background information to the proposed regulation, there was concern that "participants may not have access to, or if accessible, may not be considering information critical to making informed decisions about the management of their accounts, particularly information on investment choices, including attendant fees and expenses." Hence, if comparisons are not truly meaningful, i.e., no attention to specific product features such as lifetime income benefits, there really is no true basis for comparison, and participants would necessarily be missing critical information to making informed decisions.

21. Should an individual benefit statement present to the participant's accrued benefits as a lifetime income stream of payments in addition to presenting the benefits as an account balance?

Yes. However, the presentation would need to take into account two distinct situations. The first situation would occur when the plan has already engaged the services of an annuity provider. In such a circumstance, the benefit should reflect the actual guaranteed purchase rates currently being offered with notices, if appropriate, that that such rates would be subject to change for future investments. In situations where the plan has not engaged the services of an annuity provider, the presentation would need to be based on some recognized national standard validated by an Agency each calendar quarter.

[14] Although there was no reference to a safe harbor contained within the proposed amendment, its language strongly suggests that the regulation would be satisfied if the Appendix. Consequently, it more likely than not that plan sponsors will strictly adhere to the Appendix's structure and avoid any variation to the format.

22. If the answer to question 21 is yes, how should a lifetime stream of income payments be expressed on the benefit statement? For example, should payments be expressed as if they are to begin immediately? Should benefit amounts be projected to a future retirement age based on the assumption of future contributions? Should lifetime income payments be expressed in the form of monthly or annual payments? Should lifetime income payments of a married participant be expressed as a single-life annuity payable to the participant or a joint and survivor type annuity, or both.

(a) It would be preferable to display lifetime income payments on the benefit statement as a payment amount commencing at the plan's normal retirement age. Moreover, it would seem to be more advantageous to have the statement display both what would be payable at normal retirement age using account balances accrued to date and to project a future annuity benefit at retirement assuming future contributions as well.[15] The reason for this preference is to make retirement planning a comprehensive endeavor in which the participant has every opportunity throughout his/her working career to make an educated choice. That stated, there is an important difference in annuity contracts that must be considered. If the plan's underlying contract is a deferred annuity contract with the opportunity to secure retirement guarantees incrementally throughout employment, the presentation would tend to have more impact. This is because the participant would have the opportunity to see what has actually been accrued to date and look forward to what he/she might expect in the future. On the other hand, if the annuity available simply reflects a purchase rate at normal retirement which might be thirty years in offing, its impact would be lessened.

(b) To avoid any opportunity for confusion within the participant population, the lifetime income amount should be expressed as both monthly and annual amounts.

(c) Assuming that the election of an annuity at retirement would be subject to the joint and survivor rules, the income payments of a married participant should be expressed in the form of a joint and survivor annuity.

23. If the answer to question 21 is yes, what actuarial or other assumptions (e.g., mortality, interest, etc.) would be needed in order to state accrued benefits as a lifetime stream of payments? If benefit payments are to commence at some date in the future, what interest rates (e.g., deferred insurance rates) and other assumptions should be applied? Should an expense load be reflected? Are there any authoritative tools or sources (online or otherwise) that plans should or could use for conversion purposes, or would the plan need to hire an actuary? Should caveats be required so that participants understand that lifetime income payments are merely estimates for illustrative purposes? Should the assumptions underlying the presentation of accrued benefits as a lifetime stream of payments be disclosed to participants? Should the assumptions used to convert accounts into a lifetime

[15] In assuming future contribution rates, the use of compensation increases might be taken into consideration. However, such an assumption might tend to inflate the projected annuity amount and create a false sense of retirement security within the participant population

stream of income payments be dictated by regulation, or should the Department issue assumptions that plan sponsors could rely upon as safe harbors?

There are no authoritative tools or sources that plans can currently use for conversion purposes. That stated, common sense would dictate that if the plan were obligated to secure the services of an actuary to develop either ongoing purchase or conversion rates, the plan's underlying cost would increase. Furthermore, the cost for this professional service would be the same for each plan without regard to plan size. In effect, if the cost for a large plan were $xxx.xx, the cost to the small plan sponsor would be the same $xxx.xx. Accordingly, the per participant cost would be higher for the smaller plan. Moreover, it would seem that the cost for this actuarially service would be ongoing to reflect changes in mortality and interest rate assumptions. Consequently, to promote economic efficiency, the source of the assumptions used to convert accounts into a lifetime income stream should be from the Agencies. Preferably, the assumptions should be dictated by regulation to ensure consistency. However, provisions in the regulation should stipulate that the assumptions would not be applicable to plans that have selected and have entered into a contract with a state regulated annuity provider that is currently obligated go provide annuity purchase guarantees to participants. In such an instance, the plan would be obligated to use the purchase rates provided by the annuity provider. Finally, if all or a portion of the lifetime income stream is based on an estimated conversion rate, the applicable portion should be noted with cautionary language.

24. Should an individual benefit statement include an income replacement ratio (e.g., the percentage of working income an individual would need to maintain his or her pre-retirement standard of living)? If so, what methodology should be used to establish such ratio, such as pre-retirement and post retirement inflation assumptions, and what are the impediments for plans to present the ratio in a meaningful way to participants on an individualized basis.

No. Income replacement ratios are very rough estimates at best. Specifically, they do not address an individual's particular set of circumstances. Moreover, if the replacement ratio is viewed by the participant to be unrealistic or out of his or her reach, it could serve as a disincentive to retirement planning. Consequently, it would be preferable to let the participant determine what his or her future income needs are independently. That stated, if it is determined that an income ratio is warranted, the participant should be provided with additional information, particularly with respect to his or her projected Social Security benefits. In this regard, it might be advantageous to coordinate the annual benefit statement (displaying lifetime income payments) with the Social Security Administration providing the participant the opportunity to access the projected Social Security amount electronically.

25. How do the 401(k) or other plan qualification rules affect defined contribution plan sponsors' and participants' interest in the offering and use of lifetime income? Are there changes to those rules that could or should be made to encourage lifetime income without prejudice to other important policy objectives?

If regulatory policy is intended to offer participants the "explicit choice of using a portion of their account balances" to purchase a lifetime annuity, while leaving the remaining balance in the plan or taking a lump sum distribution or a series of ad hoc distributions, treasury regulations may need to be clarified; particularly if the plan desires to maintain the profit sharing exemption with respect to other distribution options as described above. Specifically, there seems to be an undeveloped area in terms of the qualified joint and survivor annuity as it pertains to determining which portion of the participant's vested account balance in a defined contribution plan must be taken into consideration in calculating the 50% to 100% survivor percentage.

26 CFR 1.401(a)-20, A-11 provides in pertinent part that "all benefits provided under a plan, including rollover contributions are subject to the survivor annuity requirements." This wording alone might educe the conclusion that all of the participant's accrued vested account balance would be subject to the qualified joint and survivor annuity regulations should a participant elect an annuity form of payment in a plan that would otherwise qualify for the profit sharing exception with respect to other forms of payment. However, 26 CFR 1.401(a)-20, A-4 appears to carve out an exception. It states: "If a participant elects at any time …… a life annuity under a defined contribution plan not subject to section 412, the survivor annuity requirements of sections 401(a)11 and 417 will always thereafter apply to all of the participant's benefits *unless there is a separate accounting of the account balance subject to the election*." (Italics added) In effect, the regulation implies that a plan may be designed to segregate those vested accrued assets subject to the qualified joint and survivor annuity requirements from those that would remain exempt from such requirements. However, the regulations do not detail the meaning of a separate accounting.

Nevertheless, there is some indirect guidance on the subject. In 26 CFR 1.401(a)-20, A-5, the Treasury dealt with the results that would occur if a participant's assets in a plan already subject to the joint and survivor rules were transferred to a plan that was otherwise exempt from such requirements. It provided that "[T]he survivor annuity requirements apply to all accrued benefits held for a participant with respect to whom the plan is a transferee plan unless there is an *acceptable separate accounting between the transferred benefits and all other benefits under the plan*." It then went on to state: "A separate accounting is not acceptable unless gains, losses, withdrawals, contributions, forfeitures, and other credits or charges are allocated on a reasonable and consistent basis between the accrued benefits subject to the survivor annuity requirements and other benefits." And finally, in 26 CFR 1.401(a)-11(a)(3), Example 1, the Treasury indicated that when a participant elects a life annuity option the life annuity benefit will be paid in a form having the effect of a qualified joint and survivor annuity, *except to the extent that the participant elects another form of benefit payment*. (Italics added)

The above regulations render support to the position that when a participant chooses some form of annuity option, there is no requirement that his/her total vested account balance be taken into account in determining whether the Qualified Joint and Survivor Annuity requirements are met. Furthermore, they intimate that at the time of annuitization, the involved participant can maintain control as to what assets will or won't be converted to an annuity; provided of course, that the plan provisions permit such participant flexibility. Moreover, they suggest that to maintain the participant's freedom of choice, the plan's underlying recordkeeping system must be sufficiently structured to furnish a "separate accounting" to support the options that may be available to the participant at annuitization. What is not altogether clear are the limits, if any, that a plan must adhere to in devising the critical elements that may be eligible for "separate accounting" treatment. Could the distinctive elements eligible for "separate accounting" include contribution types; different investment types such as mutual funds, employee stock and/or self directed brokerage accounts; or investment products with unique incremental/ guarantees that might be offered by the financial services industry? Current guidance isn't sufficiently clear and may need some modification by the appropriate regulatory authority.

26. Could or should any changes be made to the rules relating to qualified joint and survivor annuities and spousal consents to encourage the use of lifetime income without compromising spousal protections?

It can be argued that when defined contribution plans not subject to section 412 of the Internal Revenue, including 401(k) arrangements, were exempted from the Qualified Joint and Survivor Annuity requirements specified in section 401(a)(11), spousal protections were effectively compromised. In effect, a participant is permitted to take distributions from such plans in any amount without the approval of a spouse, provided the spouse is the plan beneficiary. Accordingly, spousal protections can only be secured through congressional initiative. That stated, it would appear that in circumstances under which the joint and survivor rules apply, the rules are currently adequate to protect spousal interests.

28. How do the required minimum distribution rules affect defined contribution plan sponsors' and participants' interest in the offering and use of lifetime income? Are there changes to those rules that could or should be made to encourage lifetime income without prejudice to other important policy objectives? In particular, how are deferred annuities that begin at an advanced (sometimes referred to longevity insurance) affected by those rules? Are there changes to the rules that could or should be considered to encourage such arrangements?

The required minimum distribution rules as currently applied to defined contribution plans have not been shown to be a disincentive to participants' interest in lifetime income. In addition, these rules have had no significant negative impact with respect to the development of lifetime income products, including deferred annuities that begin at an advanced age.

30. **To what extent do fiduciaries currently use the safe harbor under CFR 2550.404a-4 when selecting annuity providers for the purpose of making benefit distributions?**

Since the safe harbor under 29 CFR 2550.404a-4 was not effective until December 8, 2008, there is not sufficient data to document the extent to which fiduciaries use the safe harbor. Moreover, documentation might be difficult to ascertain since availing oneself to the safe harbor does not require any modification to the plan. Then again, the operative question might be whether the safe harbor has incented plan sponsors to make an annuity available under their plans? If the response is no, it may be prudent to reassess the true impact that the safe harbor has had with respect to the acceptance of annuities as viable options within defined contribution plans, and then determine if its continuance is consistent with public policy objectives. By restating the response to question 5, one might ask what would be the likelihood of a plan sponsor that operates a small trucking operation with twenty five employees to do a self evaluation of his/her financial expertise with respect to insurance companies and determine that he/she has the capacity and/or time to: (i) engage in an objective, thorough and analytical search for the purpose of identifying and selecting providers from which to purchase annuities, (ii) appropriately consider information sufficient to assess the ability of the annuity provider to make all future payments under the annuity contract, (iii) appropriately consider the cost, (including fees and commissions) of the annuity contract in relation to the benefits and services to be provided under the contract; and (iv) appropriately conclude that, at the time of selection, the annuity provider is financially able to make all future payments under the annuity contract and the cost of the annuity contract is reasonable in relation to the benefits and services to be provided under the contract? If the response is that the plan sponsor would not deem himself/herself capable of appropriately assessing the provider, the next step the plan sponsor might take is to explore the practical options that are available. The first option would be to consult with an appropriate expert or experts for purposes of compliance with (i) through (iv) as described above. However, this option, "the selection of an independent expert(s) for the purposes of the selection of an annuity provider" in and of itself brings with it an additional set of ERISA obligations and considerations. What is an expert? Can one rely on just one expert for a single selection or should a prudent man in like circumstances seek the advice of multiple experts? Can one retain the same expert(s) or must there be a constant selection process? What defines an "appropriate expert"? What would be a reasonable fee in light of the services provided by the appropriate expert(s)?

Alternatively, the plan sponsor might seek a secondary less complicated direction. That would be the option that simply excludes annuities from the plan altogether and thus relieve the fiduciary of the multiple tasks that need to be performed in the selection process. The later method would also circumscribe the plan sponsor's overall potential liability. Unfortunately, the absence of an annuity option not only deprives participants of the opportunity to annuitize within the plan itself, it also deprives them throughout their working careers of the much needed education with respect to what an annuity is, (i.e., protection against longevity risk) and what purpose it may serve in the context overall retirement planning.

34. To what extent do ERISA 404(c) plans currently provide lifetime income through variable annuity contracts or similar lifetime income products? What are the advantages and disadvantages and disadvantages of such products to participants? What information about the annuity feature typically is disclosed to the participant, in what form, and when? To what extent could or should ERISA 404(c) regulation be amended to encourage use of these products?

Generally, plans that attempt to comply with ERISA 404(c) do so because the responsible plan fiduciaries seek to curb their potential liability. The inclusion of annuity options only increases their fiduciary exposure. Accordingly, there is no practical inducement to have lifetime options included in such plans. Consequently, their presence in ERISA 404(c) arrangements is limited.

35. To what extent are plans using default investment alternatives that include guarantees or similar lifetime income features ancillary to the investment, product or model portfolio, such as a target date maturity fund product that contains a guarantee of minimum lifetime income? What are the most common features currently in use? Are there actions, regulatory or otherwise, the Agencies could or should take to encourage use of these lifetime features in connection with qualified default investment alternatives.

Because the final regulations addressing qualified default investment alternatives were not published until late 2007 and since the "in-plan" guaranteed minimum lifetime income product is a relatively recent phenomena, the use of these two features in combination is minimal at this point in time. However, there is a certain community that strongly believes that using qualified default investment alternatives to fund guaranteed lifetime income products would go a long way in establishing successful retirement outcomes. In fact, there are certain studies that provide support for this position. It should be understood, however, that the uses of the qualified default investment may vary based on product design. In this regard, there are two basic product types. One type is an annuity product that lets the participant secure incremental annuity rights during all years of employment with full benefits payable at a certain age, generally age sixty five, in the form of a lifetime annuity. With this type of product, the amount secured by the participant is contingent upon his or her age at the time plan assets are allocated to the contract. Hence, the same amount allocated to the product at age 21 would secure a larger lifetime annuity payment than it would if it were allocated at age 45.[16] The other type of product is generally identified as a guaranteed minimum withdrawal benefit. Under a guaranteed minimum withdrawal benefit, a participant's *age is not determinative of what the lifetime income amount would be payable at a certain age*. For illustrative purposes, a guaranteed minimum withdrawal benefit arrangement might provide that for a given year, any contribution made to the investment option by the participant would secure a guaranteed minimum withdrawal benefit payable at 65 equal to 4% of the contribution amount. For example, in year 1 if a participant at age 25 contributed $2,000, that amount would secure a guaranteed minimum withdrawal amount of $80.00

[16] <u>See.</u> Fn. 1.

per year beginning a age 65. Likewise, if a participant at age 50 applied $2,000 to the guaranteed minimum withdrawal option, it would secure a guaranteed minimum withdrawal amount of $80.00 as well. Thereafter, the guaranteed minimum withdrawal amount associated with those allocations might increase based on the investment performance of the underlying fund. Therefore if the $2,000 contribution amount made in year 1 increased to $2,500 due to investment performance in year 2, and the 4% rate still applied, the guaranteed minimum withdrawal amount payable at age 65 would be increased to $100.00 per year. The $2,500 may be referred to as the high water mark which means that the $100 guaranteed withdrawal amount can never go down should the value of the account go below $2,500 due to investment performance. Obviously, participant withdrawals would lower the guarantee.

Some investment advisers have questioned the wisdom of using the guaranteed minimum withdrawal benefit product as described above for younger participants since these products have inherent costs and fees associated with them, without providing any financial advantage to securing a guarantee at an earlier age. Accordingly, they may recommend that the plan provide that this particular option be offered to participants that attain a certain age, i.e. age 50. In such a circumstance, however, the plan would need to be tested for discrimination purposes under the section 401(a)(4) current availability test. This is because the plan would be offering a benefit, right or feature to a limited segment of the participant population. Whether this plan qualification requirement is consistent with ERISA policy objectives is another matter. Hence the Agencies may wish to contemplate an exception to the general availability test if the primary reason to include the particular investment option is to provide lifetime income older participants. In essence, it should be questioned whether it would make sense to deny older highly compensated participants the “opportunity” to use their qualified plan contributions to purchase lifetime income guarantees under circumstances in which the plan fiduciary has determined that such an “opportunity” would be inappropriate for all younger participants regardless of their compensation?

It should also be noted that there appears to be some ambiguity as to whether guaranteed minimum withdrawal benefit products fall squarely within the definition of an annuity.[17] Consequently, the Agencies may need to resolve this issue. If guaranteed minimum withdrawal benefits are found not to be annuities, then plans could adopt these products without the need to include the qualified joint and survivor annuity provisions. Whether this circumstance is sound public policy is another matter. Furthermore, if these products are found not to be annuities, it would stand to reason that 29 CFR 2550.404a-4 would not apply since the financial provider would not fall within the definition of an annuity provider. Accordingly, further analysis might be warranted with respect to the classification of guaranteed minimum withdrawal benefit products. This is true since the

[17] Guaranteed Minimum Withdrawal Benefits are generally designed to provide the retiring participant with the flexibility to discontinue the receipt of his/her guaranteed withdrawal amount and receive the balance of the plan account in a lump sum. In this regard, it should also be noted that guaranteed minimum withdrawal distributions are classified as distributions eligible to be rolled over. Accordingly, they would be subject to the 20% automatic withholding requirements. Such a high withholding rate might prove to be a hardship to retirees with relatively low incomes.

security attached to these anticipated benefits are intrinsically a function of the claims paying ability and creditworthiness of the financial institution providing the withdrawal guarantee.

36. **What are the costs and benefits to a plan sponsor of offering lifetime annuities or similar lifetime income products as an in-plan option? Please quantify if possible.**

In most circumstances there would be little cost to the plan sponsor other than those possibly associated with the human resources function and plan consulting fees. However, it should be noted that the cost could rise, depending on whether there are ongoing costs that may be incurred with respect to the selection of an annuity provider under the safe harbor standards. Otherwise, the intrinsic costs associated with lifetime annuities or lifetime income products are generally borne by the participant. These costs include investment management fees, the actuarial cost of providing the income guarantees, and the cost of administration by the product provider, i.e., calculating guarantees, making income payments, and interfacing with third party administrators.

However, the inclusion of lifetime income options on defined contribution recordkeeping platforms could drive up both programming costs and transactional costs in terms of third party administration. For example, there might be programming costs if the benefit statement is to include the guaranteed amount at the beginning of the period, the amount of any additional guarantees purchased during the period, and the account balance and the guaranteed benefit amount at the end of such period.

In addition, there might be some recordkeeping and investment features that would need to be modified. For example, if participants could select an automatic rebalancing feature, a special accommodation might need to be added to protect any guarantees previously secured with prior contributions from being lost.[18] Likewise, if participants were permitted to make hardship withdrawals or take loans from the plan, a withdrawal hierarchy may need to be put in place.[19] These modifications would probably have costs attached to them. It should also be noted that lifetime income annuities and lifetime income products that provide for the accumulation of guarantees with each participant

[18] Under an automatic rebalancing program, account balances are readjusted periodically to conform to the investment allocation mix selected by the participant or the investment advisor. If the underlying investment of the lifetime income guarantee, i.e., a balanced fund, were to outperform the other investment options included in the allocation mix, the rebalancing process would demand that assets in the balanced fund be transferred/reallocated to the other investment options. Accordingly, assets in the balanced fund that were otherwise used to secure the guarantee would be reduced. In turn, a portion of the incremental guaranteed amount previously secured would be forfeited. Consequently, a procedure would need to be imbedded in the recordkeeping system to exclude those assets in the fund supporting the guarantee from being transferred whenever the rebalancing program is run. Likewise, it would be appropriate to prevent those other assets from being reallocated to a fund that supports the income guarantee.

[19] A withdrawal hierarchy with respect to in-service transactions such as hardship withdrawals and participant loans would provide that available amounts that are allocated to other investment options under the plan would be exhausted before any amounts were withdrawn from the fund that supported the lifetime income guarantee. This would preclude the fund supporting the underlying fund from being withdrawn and therefore prevent the in-plan guaranteed amount from being reduced.

elective deferral are in the developmental stage.. As such, it should be anticipated that these features will be met with initial resistance within the third party recordkeeping community. As such, they will be accommodated only if there is sufficient demand and/or pressure from the plan sponsor community. The issue with respect to such accommodations focuses on who will ultimately pay these add-on costs? Although there are various candidates which include either the product provider, the third party recordkeeper or the plan sponsor, the growing trend with respect to participant directed plans is to push the cost down to the participant level, particularly in smaller plans. Consequently, it would seem that the participant population would underwrite a large majority of the cost. That stated, it would be the responsibility of the plan's fiduciary to determine if the cost for these added features are reasonable with respect to the service actually being offered.

38. **Would making a lifetime annuity or other lifetime income product the default form of benefit payment have any impact on employee contribution rates? If so, in which direction and why?**

Unless participants have the opportunity to see the value of lifetime annuity or lifetime income products during the earlier stages of their careers, their inclusion as the default form of benefit would probably have no impact on employee contribution rates. In effect, there would need to be a focused effort to change participant behavior to that of a long term consumer as opposed to asset accumulator. Moreover, in many respects the prognosis of forfeiting liquidity for the sake of income security is both serious and intimidating and without the opportunity of forethought, participants would reject the default scenario if purely triggered at retirement. Alternatively, if lifetime annuity and lifetime income options were used by plan sponsors as the plan's "qualified default investment alternative" and coupled with some practical illustrations as to their value, participant behavior might change and lead to an increase in employee contribution rates. In addition, if participants were to accrue incremental lifetime benefits at earlier ages, there might be less of an inclination to opt for a cash distribution upon termination either due to a forced layoff or job change. In effect, the decision process would now focus on the differences between one's immediate need and future income security as opposed to a "spend" or "not to spend" scenario.

Sincerely,

Michael D. Beldy