May 3, 2010

FILED ELECTRONICALLY

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210
Attn.: Lifetime Income RFI
RIN 1210-AB33

CC:PA:LPD:PR (REG-148681-09)
Room 5205
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

The undersigned are nonprofit, nonpartisan public policy organizations committed to promoting women's retirement security. As will be discussed in our comments, ensuring a stream of lifetime income is particularly important to women's retirement security. The undersigned commend the Departments of Labor and Treasury for making expanded access to lifetime income payments a regulatory priority, and appreciate the opportunity to comment and respond to the Departments' Request for Information.

Introduction

Recent losses in the stock market and poor economic conditions underscore that many U.S. workers are at risk of not having an adequate income in retirement. Even before the current economic recession, research indicated that retirement savings are likely to be inadequate for many Americans, particularly women. While there is a substantial gender gap in all sources of retirement income, the disparity between women's and men's pension income is especially pronounced and exists in levels of retirement plan participation, pension benefits, and defined contribution account accumulations. This gender gap in retirement income is largely attributable to women's experience in the labor force: women spend fewer years in the workforce, are more likely to work in part-time employment, and historically earn less than their male counterparts. Unfortunately, women need more, not fewer, retirement savings than men, because they are likely to live longer than men and spend more years living alone. In 2008, almost 12 percent of women 65 and older lived in poverty (compared to 6.7 percent of men 65 and older).

The continuing shift from defined benefit to defined contribution plans has exacerbated the challenges women face in securing adequate retirement income. Over the last two decades, much of the risk and burden of financing retirement has shifted from employers to employees as coverage has moved away from traditional defined benefit (DB) plans, in which workers typically accrue monthly benefits based on years of service and earnings, in favor of defined contribution (DC) plans, in which participants accumulate balances in self-directed individual accounts, such as 401(k)s. Across the board, DC plan balances are typically inadequate for a secure retirement, and this is especially pronounced for women. A 2008 study found that the median female worker near retirement with a DC plan or IRA held $34,000 in her retirement accounts while her male counterpart held $70,000.

Moreover, the very structure of these plans, in which workers bear responsibility for the investment decisions, poses risks for all workers. In DC plans, workers are responsible for allocating their funds among a range of options and individually bear the investment risks. If investments do not perform as well as expected, workers will have less money in their DC plans to provide income in retirement.

In addition, the fact that most workers, including women, do not spend their careers in a single job has additional negative implications for women. When a worker leaves a job, he or she can leave any retirement savings accrued in an employer's DC plan with the employer, as long as the account balance is above a certain minimum level. However, workers leaving jobs often take distributions from their DC plans – either withdrawing the savings (often subject to a tax penalty if they have not reached retirement age) or rolling the savings over into another tax-qualified retirement savings vehicle (such as another employer-sponsored DC plan or an individual retirement account). Women, however, are less likely than men to roll over a "lump-sum" payment when leaving a job.[1] Twenty-seven percent of men compared with 23 percent of women re-invested their lump sum in one of these other savings vehicles. This reduces women's already lower retirement savings.

Likewise, because DC plans like 401(k)s typically pay out in lump sums as opposed to annuities, workers bear the risk of managing their account balances so they can provide additional support over their lifetimes and, for many, the lifetime of a surviving spouse. This "longevity risk"—in which a retiree may live longer than expected and thus exhaust his or her retirement savings—is especially manifest for women. Because women on average live longer than men, their 401(k) balances must be able to produce an income stream over a longer stretch of time. A woman whose 401(k) plan does not offer an annuity option but who wishes to ensure lifetime income currently can use her 401(k) balance to purchase an annuity from a private insurance company. Small annuities purchased on the open market, however, are generally burdened by high fees and low effective rates of return, which can reduce their attractiveness notwithstanding the value of a lifetime stream of income. Women, in addition, generally face the disadvantage of having to purchase annuity products from insurance companies

[1] Moreover, women also lag behind men in re-investing the funds in other savings vehicles such as savings accounts, stocks, bonds, or the purchase of a home.

that are priced using gender-distinct mortality tables (in contrast, defined benefit and money purchase plan annuities are calculated without regard to gender, as required by Title VII of the Civil Rights Act of 1964). This can amount to an appreciable decrease in retirement income.

Finally, we note that marital status matters for women's retirement security. Because women have fewer retirement savings of their own, women are more likely than men to rely on their spouses' pension income. As a result, widows and divorced women, as well as never-married women, are especially vulnerable in retirement—in 2008, 15 percent of elderly widows, nearly 20 percent of divorced elderly women, and 18 percent of never-married elderly women lived in poverty.[2]

Comments

As set forth above, women, on average, live longer and have fewer retirement savings than men. As a result, women are particularly at risk of exhausting their retirement savings if those savings are not distributed in the form of lifetime income. Although Social Security benefits, which are lifelong and inflation-adjusted, offer an important foundation for retirement security, they were not designed to be the sole source of income in retirement. Thus, women would generally benefit by receiving distributions from their retirement savings accounts as lifetime income payments, whether in the context of the employer-based retirement system or in savings accounts such as individual retirement accounts (IRAs), to supplement Social Security and bring them closer to a secure retirement.

<u>Employer-based retirement savings accounts</u>

Most Americans who save for retirement do so through the employer-based retirement system. Yet, participation in the employer-based retirement savings system is far from universal. Not all workers have access to retirement savings plans through their employers.[3] And only 40 percent of women who are eligible to participate in an employer's retirement savings plan actually participate.[4]

As mentioned above, defined benefit pension plans, which pay benefits in the form of a life annuity (or, for married participants whose spouses did not waive this option, joint-and-survivor annuities), predominated in the employer-based retirement

---

[2] NWLC calculations based on U.S. Census Bureau, Current Population Survey, Annual Social and Economic Supplement (2009) (using CPS Table Creator, *available at* http://www.census.gov/hhes/www/cpstc/cps_table_creator.html).

[3] In 2008, 50.6% of all workers worked for an employer that sponsored a retirement plan, and 40.4% of those workers participated in a retirement plan. Craig Copeland, Employee Benefit Research Inst., Issue Brief No. 336, Employment-Based Retirement Plan Participation: Geographic Differences and Trends, 2008, at 8 fig.1 (2009), *available at* http://www.ebri.org/pdf/briefspdf/EBRI_IB_11-2009_No336_Ret-Part.pdf.

[4] In 2008, 40.2% of all female workers participated in an employer-sponsored retirement plan. For full-time, full year wage and salary workers aged 21 to 6), less than two-thirds of female workers are covered (56.2%). Copeland, *supra* note 3, at 9 fig.2.

system for many years. Increasingly, however, employers offer defined contribution plans such as 401(k)s or 403(b)s. Few 401(k) plans offer options for participants to receive some or all distributions in the form of lifetime income payments,[5] and most participants in 403(b) plans elect to receive lump-sum payments.

Require Lifetime Income Option

Increasing the availability of lifetime income options from employer-sponsored DC plans would benefit women. (Question 1) There are distinct advantages to lifetime income payment options offered through employer-sponsored plans, as compared to annuities purchased from a private insurance company (the lifetime income option available to IRA owners or participants in 401(k)s that do not offer annuity options). (Question 8) First, as mentioned above, women generally face higher prices than men when purchasing annuities outside an employer-sponsored plan, on the open market.[6] But federal law prohibits employers from requiring women to pay more than men for annuities offered through employer-based retirement savings plans.[7] In addition, employer-based retirement savings plans may be able to negotiate lower fees overall, premised on a group rate—which is particularly important for workers with lower account balances (who are disproportionately women). Further, it is to be hoped that as increasing numbers of participants in employer-sponsored plans select annuities, costs (and risk) could be spread out and the price of annuities would drop further.[8] Thus, we would strongly recommend that 401(k) and other employer-based DC plans be required to offer a lifetime income option. (Question 13) Gender-neutral pricing should be mandated, as under current law. (Question 16)

---

[5] In 2008, only 14% of surveyed employers that offered a 401(k) plan offered an annuity option to participants. Hewitt Assocs., Research Highlights: Trends and Experience in 401(k) Plans 7 (2009), *available at* http://www.retirementmadesimpler.org/Library/Hewitt_Research_Trends_in_401k_Highlights.pdf.

[6] For example, one online annuity quote generator estimates that a 64-year old female in the District of Columbia purchasing an annuity with $50,000 would receive a monthly payment of $304, whereas a 64-year old male in the District of Columbia purchasing an annuity with the same amount would receive a monthly payment of $324. ImmediateAnnuities.com, Instant Annuity Calculator, www.immediateannuities.com (search run by NWLC Apr. 28, 2010). For low- or moderate-income retirees, an extra $250 per year could be significant.

[7] Equal Employment Opportunity Comm'n, Compliance Manual, Chapter 3: Employee Benefits, Title VII/EPA Issues, II(A) (2000) ("Although women as a class generally live longer than men, Title VII requires that each woman -- and each man -- be treated as an individual. As a result, employers may not use sex-based actuarial tables -- which rely on generalizations about women's and men's life expectancies -- to calculate . . . the amounts that it will charge its male and female employees for those benefits.") (citing *Arizona Governing Committee v. Norris*, 463 U.S. 1073 (1983); *Los Angeles Dep't of Water and Power v. Manhart*, 435 U.S. 702 (1978)), *available at* http://archive.eeoc.gov/policy/docs/benefits.html.

[8] Notwithstanding, the undersigned submit that low- and moderate-income workers as well as small employers would benefit from the creation of low-cost, reliable, inflation-adjusted alternative annuity products. These alternatives could include low-cost annuities with limited options, administered through a government clearinghouse (such as the PBGC or an entity based in the federal Thrift Savings Board), or retirement savings bonds (R-bonds), backed by Treasury securities and payable only at retirement, which would be received as lifetime income (or at least would offer an option to receive it as lifetime income). We encourage the Secretaries to consider exploring and supporting the creation of these, and other, annuity products that would provide alternatives to the annuity products currently on the market.

We recognize that account balances below a certain amount present administrative burdens and are unlikely to result in meaningful lifetime income payments. Yet in our experience, even relatively small amounts of dependable lifetime income can be significant for low- and moderate-income workers. In addition, DB plans and the federal Thrift Savings Plan contemplate very small monthly payments—DB plans must annuitize benefits with a present value in excess of $5,000,[9] and the Federal Thrift Savings Plan must do so for account balances above $3,500.[10] We therefore encourage the Departments of Labor and Treasury to conduct a joint study to determine an appropriate minimum account balance for purchase of an annuity with the needs and likely account balances of low- and moderate-income workers in mind. A participant should thus be given the option of receiving his or her account balance (or portion of the account balance) amount as an annuity, so long as the amount to be annuitized at least equals some minimum threshold. (Question 13)

Default Form of Benefit

Question 13 of the Request for Information asks whether lifetime income options should be made the default form of benefit. Such an approach could turn inertia into a potential advantage, and might increase the number of individuals receiving lifetime income payments from DC plans in the same way that "automatic enrollment" has increased the number of participants in 401(k) plans. However, while the promise of default lifetime income is significant, it is possible that some individuals would respond negatively to having some or all of their savings converted into a lifetime income option by default.

To address this possibility, we would recommend that, first, before the Secretaries consider mandating that lifetime income payments become the default form of benefit, plans first be required to offer lifetime income as an *optional* form of benefit for a specified period of time. As participants become more familiar with lifetime income options, and become accustomed to DC plans offering lifetime income options, they may eventually respond less negatively to being defaulted into a lifetime income option. Pilot projects with intensive education efforts also may prove effective.[11] In addition, a default lifetime income option that offered a "trial" period[12] would permit participants who, for whatever reason, did not realize that some or all of their savings would be converted into lifetime income to opt out of that default. (Question 11)

Spousal Protections

---

[9] 26 U.S.C. § 411(a)(11).
[10] 5 U.S.C. § 8435(g).
[11] Providing participants with benefit statements that estimate the annuity that could be purchased with the existing account balance, as proposed by the Lifetime Income Disclosure Act, S. 2832, 111th Cong. (2009), currently before the Senate, could also help condition the workforce to think of their retirement savings in terms of lifetime income. (Question 17)
[12] *See, e.g.,* William G. Gale et al., The Retirement Security Project, Increasing Annuitization in 401(k) Plans with Automatic Trial Income 12 (2008), *available at* http://www.brookings.edu/~/media/Files/rc/papers/2008/06_annuities_gale/06_annuities_gale.pdf.

In addition, lifetime income options offered through employer-based retirement plans would benefit women because they trigger important spousal protections. (Question 8)

Women have fewer retirement assets than men, and more women rely on their spouses' pensions than men.[13] And among widowed persons, 21 percent of widows compared to just 5 percent of widowers receive pension benefits based on the pension of a deceased spouse.[14] Spousal protections in retirement savings are therefore extremely important for women. The Retirement Equity Act of 1984 (REA)[15] made a lifetime annuity with a survivor annuity for a spouse the default form of benefit from DB pension plans for married workers.[16] Following the enactment of the REA, the number of married men who provided a survivor annuity for their spouses increased 15 percent, ensuring a more secure retirement for many more widows.[17]

However, DB plans have been increasingly supplanted by retirement savings plans such as 401(k)s. In general, participants in DC plans take distributions of their benefits in the form of a lump sum at retirement, or roll their account balances over into another tax-qualified retirement savings plan when they change jobs prior to retiring. But no spousal protections are available to the spouses of married participants who do so, meaning that the participant can make the decision to take a lump-sum or rollover distribution without any input from the spouse.[18] In contrast, if a 401(k) or similar DC plan offers annuities and a married participant selects an annuity, spousal protections equivalent to those in DB plans apply: the participant must choose a lifetime annuity with a survivor annuity of at least 50 percent for a spouse, unless the spouse waives the survivor benefit. [19] Thus, when DC plans offer annuity options, important spousal protections are triggered.

Because of the importance of robust spousal protections for lifetime payments from retirement savings, the Secretaries should ensure that lifetime income options offered by DC plans fall under the statutory definition of annuity.[20] Second, the spousal protections that apply to annuities offered by DC plans under current law should be maintained. (Question 26) There should be no difference between spousal protections for lifetime income received from DC plans and that received from DB plans. This is

---

[13] According to NWLC calculations based on the 1998 Health and Retirement Study, 87% of married women as opposed to 31% of married men relied on their partner's pension income.
[14] Pension & Welfare Benefits Admin., U.S. Dep't of Labor, Retirement Benefits of American Workers: New Findings from the September 1994 Current Population Survey tbl.D11 (1995), *available at* http://www.dol.gov/ebsa/programs/opr/redbook/d_11.htm.
[15] Retirement Equity Act of 1984, Pub. L. No. 98–397, 98 Stat. 1426.
[16] Pub. L. No. 98–397, § 103 (codified at 29 U.S.C. § 1055(a)–(b)).
[17] U.S. Gen. Accounting Office, GAO/HRD-92-49, Pensions Plans: Survivor Benefit Coverage for Wives Increased After 1984 Pension Law 7 (1992) (examining data from 1984-1989), *available at* http://archive.gao.gov/t2pbat6/146159.pdf.
[18] Generally, a participant in a 401(k) plan cannot designate a beneficiary (in case the participant dies while participating in the plan) other than his or her spouse without that spouse's consent. 26 U.S.C. § 417(a)(2).
[19] *See* 26 U.S.C. § 401(a)(11); Internal Revenue Service Publication 6391, Explanation No. 3, Joint and Survivor Determination of Qualification 3 (2009), *available at* http://www.irs.gov/pub/irs-pdf/p6391.pdf.
[20] The undersigned believe that this can be accomplished by regulation.

particularly important because spousal protections have already been weakened by permitting spousal consent to be transmitted through electronic technologies.[21] Third, in the event that lifetime income options are made the default form of benefit, it should be clarified that a participant must obtain spousal consent not only to take a single life annuity, but also a lump sum or other form of benefit, as under the federal Thrift Savings Plan.[22]

Rollovers from Other Qualified Plans

Low- and moderate-income individuals face significant barriers to saving through an employer-sponsored DC plan. Although participants can contribute up to $16,500 per year under current law, few workers, especially low- and moderate-income workers, do so.[23] Among women making a contribution to a 401(k)-type plan in 2005, only 6 percent made the maximum contribution; indeed, the average contribution in 2005 was roughly $3,500.[24] Moreover, because the median job tenure for women is less than five years,[25] there is a risk that the retirement savings that a female worker accumulates with one particular employer may be small.

Since the average worker has multiple jobs during his or her career,[26] he or she is likely to have accumulated retirement savings with a number of employers. Under current law, workers with retirement savings in an employer-based plan can either keep the account balance in the employer's plan (if they have more than a minimum amount of savings), or roll the account balance into another tax-qualified retirement savings account—such as another defined contribution or defined benefit plan, if it accepts rollover contributions, or, more likely, an IRA.[27] Thus, as a worker nears retirement, he

[21] Commentators, including some of the undersigned, submitted that the use of electronic media to waive a survivor annuity presents issues of authentication and conflict-of-interest between spouses. *See* Use of Electronic Media for Providing Employee Benefit Notices and Making Employee Benefit Elections and Consents, 71 Fed. Reg. 61,877, 61,882–83 (Oct. 20, 2006) *available at* http://edocket.access.gpo.gov/2006/pdf/E6-17528.pdf; 26 C.F.R. § 1.401(a)–21(d)(6) (2009), *available at* http://edocket.access.gpo.gov/cfr_2009/aprqtr/pdf/26cfr1.401(a)-21.pdf.

[22] 5 U.S.C. § 8435(a)(1). Again, the undersigned believe that this could be accomplished by regulation and that legislation would not be necessary.

[23] In 2005, , only 1.3% of workers with a family income between $20,000 and $29,999 and making a contribution to a 401(k) type plan made the maximum contribution while 14.6% of those with incomes of $75,000 did so. Craig Copeland, *Ownership of Individual Retirement Accounts (IRAs) and 401(k)-Type Plans*, EBRI Notes (Employee Benefit Research Inst., Washington, D.C.), May 2008, at 2 fig.3, *available at* http://www.ebri.org/pdf/EBRI_Notes_05-2008.pdf. In 2010, individuals 50 and over can contribute a maximum of $22,000 a year.

[24] Copeland, *supra* note 23, at 2 fig.3.

[25] In 2008, the median tenure for all wage and salary workers age 25 or older was 5.1 years. The median tenure for male wage and salary workers was 5.2 years and for women 4.9 years. Craig Copeland, *Employee Tenure, 2008*, EBRI Notes (Employee Benefit Research Inst., Washington, D.C.), Jan. 2010, at 2, *available at* http://www.ebri.org/pdf/notespdf/EBRI_Notes_Jan-10.Tenure.pdf.

[26] The average person born in the later years of the baby boom (individuals born from 1957 to 1964) held 10.8 jobs from age 18 to age 42. Press Release, Bureau of Labor Statistics, Number of Jobs Held, Labor Market Activity, and Earnings Growth Among the Youngest Baby Boomers: Results from a Longitudinal Survey (June 27, 2008), *available at* http://www.bls.gov/news.release/pdf/nlsoy.pdf.

[27] 26 U.S.C. § 408(d)(3)(A). Workers can also withdraw some or all of the account balance, subject to a tax penalty if they are not yet of retirement age. 26 U.S.C. § 72(t)(1).

or she may have retirement savings in one or more employer-based retirement savings accounts, and/or in one or more IRAs.

Many women have saved enough throughout their careers to provide for a modest, but not insignificant, supplement to Social Security. The median 401(k) and/or IRA account balance for women near retirement age in 2004 was $34,000.[28] One annuity calculator estimated that a 64-year-old female in the District of Columbia who purchased a fixed immediate single-life annuity with $34,000 from an insurance company could expect monthly annuity payments of $207.[29] Joint-and-survivor annuities purchased by this hypothetical woman, if she were married to a 64-year-old male, would result in monthly payments of $182.[30] Although it would be difficult to live off these monthly payments alone, they would provide an important boost to Social Security payments, which average about $1,000 per month.[31] Even such a modest annuity could allow many low- and moderate-income participants to feel more secure in their retirement.

Unfortunately, unless an individual could aggregate his or her accumulated retirement savings in the 401(k) account that offered a lifetime income payout, he or she would be unable to maximize his or her lifetime income payments. Under current law, a DC plan may, but is not required to, accept rollovers from other qualified retirement accounts.[32] We therefore recommend that the Secretaries of Labor and Treasury consider requiring plan administrators to accept such rollovers, to give low- and moderate-income workers an opportunity to receive larger lifetime income payments.[33] In particular, the Secretaries should conduct a joint study to determine whether requiring employer-sponsored DC plans to accept rollovers would benefit participants seeking to receive their distributions in the form of lifetime income, with a particular focus on low- and

[28] Leslie E. Papke, Lina Walker, & Michael Dworsky, The Retirement Security Project, Retirement Security for Women: Progress to Date and Policies for Tomorrow 4 tbl.1 (2008), *available at* http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Retirement_security/RSP-PB_Women_FINAL_4.2.2008.pdf. The average account balance for women aged 55-64 was $91,700. *Id.* In 2004, the median account balance in current or former DC plans, including rolled-over retirement funds, was $50,000 for workers aged 55 to 64, and $60,600 for those aged 60 to 64. U.S. Gen. Accounting Office, GAO-08-8, Private Pensions: Low Defined Contribution Plan Savings May Pose Challenges to Retirement Security, Especially for Many Low-Income Workers 15–16 (2007), *available at* www.gao.gov/new.items/d088.pdf. The average account balance for workers aged 60 to 64 was $135,300. *Id.* at 15 fig.3.

[29] ImmediateAnnuities.com, Instant Annuity Calculator, http://www.immediateannuities.com (search run by NWLC Apr. 28, 2010).

[30] ImmediateAnnuities.com, Instant Annuity Calculator, http://www.immediateannuities.com (search run by NWLC Apr. 28, 2010). Note that the joint-and-survivor annuity described on ImmediateAnnuities.com offers a 100% benefit to the survivor, meaning that the same monthly payment received by the couple during their joint lives would be received by the surviving spouse. Joint-and-survivor annuities offered in defined benefit plans offer survivor annuities of not less than 50% of the benefit received by the couple during their joint lives. 26 U.S.C. § 417(b)(1). This would result in a higher monthly payment during the couple's joint lives, but a lower payment for the surviving spouse.

[31] The average monthly Social Security retired worker benefit for women in March 2010 was $970. *See* Soc. Sec. Admin., Beneficiary Data, Benefits Awarded by Type of Beneficiary, http://www.ssa.gov/OACT/ProgData/awards.html (search run by NWLC Apr. 28, 2010).

[32] 26 U.S.C. § 401(a)(31)(E); 26 C.F.R. § 1.401(a)(31)-1, Q&A 13 (2009).

[33] We believe that this could be accomplished through regulation, but may be easier if effectuated through legislative changes.

moderate-income participants; whether this requirement would significantly increase administrative burdens on retirement plans; and whether particular incentives would be effective in encouraging employers to offer lifetime income options.

Conclusion of Recommendations (401(k) and other defined contribution plans)

In sum, the undersigned recommend that (1) employer-sponsored defined contribution plans be required to offer lifetime income options to participants; (2) lifetime income options should not, however, be made a default form of benefits, at least not until participants have had some experience with defined contribution plans offering lifetime income options and unless structures are put in place that recognize and account for the significance of irrevocably converting a participant's accumulated savings, by default, into lifetime income; (3) the spousal protections that currently attach when participants in defined contribution plans select life annuities should apply without alteration; (4) the Secretaries consider requiring plan administrators to accept rollovers from qualified retirement savings accounts.

IRAs

A significant amount of retirement assets are deposited in IRAs as rollovers from 401(k) or other DC accounts when individuals leave a job before retiring.[34] Individuals may have more assets with which to purchase lifetime income payments in an IRA than in their current 401(k) or other DC plan.

But even if women have enough assets in an IRA to purchase an annuity that would meaningfully boost their retirement security, they face disadvantages when seeking to do so on the open market. (Question 8) As discussed above, annuity products are expensive, although they provide an important guarantee of lifetime income in return. Also, as discussed above, insurance companies generally charge similarly situated women more than men for an annuity. In addition, many annuities offer the option to provide death benefits to a beneficiary or for the annuitant to opt out of the annuity at a certain point, which increases costs and further reduces retirement income. Moreover, many products on the market are called annuities, but are actually investment vehicles rather than sources of secure lifetime retirement income. Further, individuals who purchase annuities on the open market face the risk of the insurance company offering the annuity going out of business or filing for bankruptcy, and thus becoming unable to fulfill its obligation, in full or in part, to provide the annuitant with lifetime income.[35] Commentators and policymakers have raised other reasons for which many individuals, including women, may be unwilling to purchase annuities on the private market, in

[34] In 2008, $3.61 trillion dollars in retirement assets were held in private-sector IRAs, mostly as a result of rollovers from 401(k)s or other defined contribution accounts. Craig Copeland, Employee Benefit Research Inst., EBRI Issue Brief No. 333, Individual Retirement Account Plans: An Analysis of the 2007 Survey of Consumer Finances, with Market Adjustments to June 2009, at 4 fig.1, 24 fig.12b (2009), *available at* http://www.ebri.org/pdf/briefspdf/EBRI_IB_8-2009_No333_SCF.pdf.

[35] State insolvency guaranty funds provide some relief from that risk, up to certain levels of liability. *See* AnnuityAdvantage.com, State Guarantee Funds, http://www.annuityadvantage.com/stateguarantee.htm (last visited Apr. 28, 2010).

addition to price.[36] Some of these reasons may be particularly significant for lower- and moderate-income workers.

For all of these reasons, we recommend that before encouraging IRA account holders to purchase lifetime income options, the Secretaries consider a number of policy changes with regard to annuity products offered by insurance companies. These could take the form of recommendations to state insurance industry regulators, or changes in federal law to ensure that protections are available to individuals purchasing annuities in every state. These could include prohibiting discriminatory pricing and creating standard, low-cost alternatives (whether offered under the auspices of a government clearinghouse, retirement savings bonds, or other low-fee, reliable lifetime income options) to the annuity products currently available to individuals on the market. Without affordable, reliable annuity products, encouraging individuals, especially low- and moderate-income individuals, to purchase lifetime income products could have little practical positive impact. Other changes to the laws governing IRAs, including adding spousal protections to rollover accounts, should be considered. Given the amount of rollover assets in IRAs, failing to address the barriers to obtaining lifetime income from IRAs in the private insurance market, under the current legal framework, would create a significant policy gap.

Conclusion

The undersigned organizations thank the Secretaries for making expanded access to lifetime income a policy priority, and appreciate the opportunity to comment. As the foregoing comments demonstrate, the ability to convert retirement savings into lifetime income is extremely important for women. In order to increase access to lifetime income options, especially for women, the undersigned recommend that the Secretaries (1) require employer-sponsored defined contribution plans to offer lifetime income options; (2) maintain the spousal protections that currently attach when married participants in defined contribution plans select life annuities; (3) consider requiring plan administrators to accept rollovers from qualified retirement savings accounts; and (4) consider recommending significant policy changes related to the sale of annuity products by insurance companies.

If you have any questions pertaining to these comments, please contact Amy Matsui, Senior Counsel, at the National Women's Law Center at (202) 588-7615 or amatsui@nwlc.org.

Sincerely,

American Association of University Women (AAUW)
American Federation of State, County and Municipal Employees
National Consumers League
National Organization for Women (NOW)

---

[36] *See generally, e.g.*, Jeffrey R. Brown, Univ. of Ill. and Nat'l Bureau of Econ. Research, Financial Education and Annuities (2008), *available at* http://www.oecd.org/dataoecd/38/0/44509379.pdf.

National Women’s Law Center
Older Women and Economic Security (OWES) Task Force of the National Council of Women’s Organizations
OWL - The Voice of Midlife and Older Women
Pension Rights Center