May 3, 2010

Ms. Phyllis C. Borzi
Assistant Secretary, Employee Benefits Security Administration
Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Re: Comment Letter - Request For Information Regarding Lifetime Income Options For Participants and Beneficiaries in Retirement Plans (RIN 1210-AB33)

Dear Ms. Borzi,

This comment letter by the Association for Advanced Life Underwriting (AALU) is in response to your Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans (RFI) issued jointly with the Department of the Treasury (Department of Labor RIN 1210-AB33).

AALU is a national trade association representing over 2,000 advanced life insurance producers. Our members facilitate responsible retirement saving through the use of life insurance products for thousands of Americans. Many AALU members specialize in supplementing a variety of qualified retirement plans, such as defined benefit and defined contribution plans, with life insurance benefits and other lifetime income producing products. AALU feels strongly about the ability of life insurance and annuity products to help provide a stable and sustainable retirement for millions of Americans.

Overview

In the RFI, the Agencies initially explain that they are currently considering the rules under the Employee Retirement Income Security Act of 1974 (ERISA) and the qualification requirements under the Internal Revenue Code of 1986 (Code) to determine whether, and if so, how, the Agencies could or should enhance, by regulation or otherwise, the retirement security of participants in employer-sponsored retirement plans and individual retirement accounts (IRAs) by facilitating access to, and use of, lifetime income or other arrangements designed to provide a lifetime stream of income after retirement.

We understand that the Agencies' concerns are, in large part, due to a shift away from traditional defined benefit pension plans to defined contribution plans, including a transition from traditional defined benefit pension plans and annuities to lump-sum based 401(k) and hybrid plans, such as cash balance or pension equity plans. As a result, an ever increasing number of workers are looking to defined contribution plans for their retirement security and receiving their retirement benefits in lump sum distribution. The Agencies are concerned that these trends could increase the American workers' risk of

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not having adequate income during retirement, including the risk of outliving their retirement benefits.

AALU and our members, as part of the life insurance industry, strongly share the interests of the Agencies in arriving at plausible and sustainable solutions for providing lifetime income after retirement for working Americans. To this end, AALU strongly encourages the Agencies to consider all options for facilitating access to, and use of, arrangements that provide a lifetime stream of income after retirement, including, but not limited to, requiring all tax-favored retirement plans to offer participants the option of receiving their retirement benefits under a lifetime income option and requiring all tax-favored retirement plans to provide education about the advantages of lifetime income options.

Selected Questions

AALU addresses selected questions from the RFI separately below:

Question 2: Question 2 states that the vast majority of individuals who currently have a lifetime income option do not select the option and asks what factors explain the low usage rate. One of the potential factors specifically identified in Question 2 is a desire by retirees for flexibility to respond to unexpected financial needs, suggesting that the election of a lifetime income option may not provide such flexibility. In this regard, please note that many insurance companies and financial institutions are now developing products which provide participants with guaranteed withdrawal rights, within certain limits, as well as lifetime income benefits. These products should provide participants with flexibility and should further encourage participants to consider lifetime income options.

Question 7: Question 7 asks about what product features have a significant impact on the cost of providing lifetime income. One of the most important features to consider when considering lifetime income products is guarantees. AALU understands that the Agencies would prefer a low cost product for providing lifetime income, but low cost products may not always provide the guarantees necessary to maintain lifetime income from retirement savings. Another feature that can have a significant impact on cost is a feature that provides a retiree with guaranteed withdrawal benefits for a certain period followed by lifetime annuity payments. As discussed above, this type of feature provides participants with flexibility and should encourage participants to consider lifetime income options.

Question 13: Question 13 asks whether some form of lifetime income option should be required for defined contribution plans (other than money purchase pension plans). AALU believes that all tax-favored retirement plans should be required to provide some form of lifetime income option. The option should not necessarily have to be provided directly by the plan. Rather, the plan should be able to satisfy this requirement by offering lifetime income options outside of the plan (e.g., annuity contracts acquired outside of the plan at the time of distribution). The new requirement should not specify a specific type of lifetime income option that must be provided. Plan sponsors should

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retain discretion to determine the lifetime income option(s) that would be offered to participants to satisfy this requirement. In addition, the lifetime income option should not be required to be the default distribution option under the plan. Rather, plan sponsors should retain the discretion to determine the default distribution option under the plan. Moreover, the law should be changed to provide that a defined contribution plan is not be subject to the qualified joint and survivor annuity rules (QJSA) solely because it offers a lifetime distribution option.

Question 20: Question 20 asks whether plans should be encouraged or required to provide education about the advantages and disadvantages of lifetime income options. AALU believes that all tax-favored retirement plans should be required to provide such education to further encourage participants to consider lifetime income options. The Agencies should provide a model notice for this purpose that, if used by a plan, would not be considered to be investment advice under ERISA.

Questions 21 - 24: Question 21 asks whether the individual benefit statements provided to participants should present their accrued benefits as both an account balance and a lifetime income stream of payments. AALU believes that, to further educate participants about lifetime income options, the benefit statements provided to participants should include an equivalent lifetime income stream of payments. The amount of the lifetime income stream should be based on uniform assumptions prescribed by the Agencies and should be projected to age 65 to reflect reasonable earnings, but no additional contributions.

Question 25: Question 25 asks whether any changes should be made to the qualification rules to encourage lifetime income options. As discussed above, a defined contribution plan should not be subject to the QJSA rules simply because it offers a lifetime income option. In addition, particularly with respect to some of the new lifetime income products that are being developed, it is not clear how a number of the qualification requirements apply to the products. The Agencies should specifically address how the qualification requirements apply to these products so that plan sponsors would be more willing to include such products in their plans.

For example, in PLR 200951039, the Internal Revenue Service (IRS) addressed a number of the qualification requirements that apply to a relatively new product. The variable annuity contract addressed in the PLR would be owned by the qualified plan and would provide lifetime income streams paid out to participants in two phases. During the initial phase, participants would have flexibility with respect to starting or stopping periodic payments, paying additional premiums to the contract, requesting partial lump sum payments, surrendering the contract, or changing the joint annuitant or the annuity distribution option. During the second phase, periodic payments would reflect net investment returns and the payments could not exhaust the value of the variable annuity contract and would be designed to continue throughout the life of the participant. In the PLR, the IRS addressed a number of qualification requirements (e.g., the required minimum distribution rules (i.e., age 70-1/2 rules)), but did not address other qualification issues (e.g., when the annuity starting date occurs for purposes of the QJSA rules). The Agencies should consider addressing these and any future qualification issues

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that may arise in connection with the development of lifetime income products to encourage their development and consideration by plan sponsors.

Other Comments

AALU, utilizing feedback from AALU members who operate in the qualified retirement plan marketplace, has additional comments regarding the structure and functionality of lifetime income products to be offered under retirement plans.

AALU believes that the products should be allowed to have features that give participants flexibility, while providing incentives for sustainable investment decisions. For example, some form of a guaranteed monthly income benefit should be included as an option for all plan participants. Certain existing products include such an option, which provides a regular monthly income, even after the death of the participant in most cases. An additional feature could include portability. Plan participants should be given the option of transferring the product from the qualified retirement plan if that choice is best for the participant's sustained retirement income. For example, a participant should be permitted to transfer a lifetime income product from a qualified retirement plan to an IRA, without incurring penalties or losing guarantees.

Similarly, most current variable annuity contracts also lose their guarantees if a required minimum distribution (i.e., 70-1/2 distribution rules) is withdrawn from the contract. In addition, if the required minimum distribution amounts increase and cause an excessive withdrawal, the benefits base is detrimentally affected by a proportionate amount, which diminishes the value of the benefit and of the periodic payments under the contract. This should be evaluated by the Agencies to ensure that the benefits base is not being inappropriately reduced.

In the RFI, the Agencies also included several questions about the current standards for selecting an annuity provider for distributions from defined contribution plans (see Questions 30 - 32). The Agencies noted that DOL Regulation section 2550.404a-4 contains a fiduciary safe harbor for the selection of annuity providers for defined contribution plans. The Agencies did not specifically ask about the guidance that has been issued to date by the DOL regarding the selection of annuity providers in connection with defined benefit pension plans.

DOL Interpretive Bulletin 95-1 (29 CFR 2509.95-1), provides, among other items of guidance, that a defined benefit plan fiduciary "…must take steps to obtain the safest annuity available…" This "safest available annuity" standard causes problems for plan fiduciaries because it is not clear how it should be applied in many situations. The interpretive bulletin does provide that a fiduciary may conclude that more than one annuity is the "safest," and that there may be situations where it may be in the best interest of participants and beneficiaries to purchase other than the safest available annuity. However, it is not clear when these "exceptions" apply.

To further encourage plans to offer a variety of lifetime annuity products, including products that are being developed to address participants' desire for more flexible

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features, the Agencies should consider modifying the guidance for defined benefit plans to provide guidance similar to the safe harbor for defined contribution plans, which focuses more on the annuity selection process and less on the "safety" ranking of the annuity ultimately selected. While the "safety" of an annuity should be an important factor considered by a plan fiduciary during the selection process, it should not be the ultimate fiduciary standard for selecting annuities.

In addition, the Agencies should consider modifying the safe harbor for defined contribution plans to revise the requirement that a plan fiduciary appropriately conclude that, "at the time of the 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." Like the "safest available annuity" standard discussed above, it is not clear how this determination is made and focuses on the plan fiduciaries specific assessment and not necessarily on the process or factors to be considered, which should be the focus of a safe harbor.

AALU appreciates the opportunity to provide comments in response to the Agencies' RFI and would welcome opportunities to provide additional comments in the future as the Agencies consider these important issues further and move forward with more specific proposals.

If you have any questions regarding our comments, please contact Anthony Raglani at 202-742-4589

Sincerely,

The Association for Advanced Life Underwriting (AALU)