THE FINANCIAL SERVICES ROUNDTABLE

Impacting Policy. Impacting People.

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May 3, 2010

Secretary Hilda Solis
Office of Regulations and Interpretations, Employee
Benefits Security Administration, Room N-5655
Attn: Lifetime Income RFI
US Department of Labor
200 Constitution Avenue, NW
Washington DC 20210

RE: RFI Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans (RIN 1210-AB33)

Dear Ms Solis:

The Financial Services Roundtable[1] ("Roundtable") submits this letter in response to the Department of Labor's ("DOL") proposed regulation regarding Lifetime Income. The Roundtable shares the Obama Administration's goal of increasing opportunities for Americans to save and plan for their retirement. The recent economic downturn underscores the need for more Americans to plan and save for retirement. It is our belief that the preservation and expansion of the current workplace-based retirement system is the best way to improve Americans' retirement security. Likewise, creating policies that promote and develop workplace-based solutions will enable the financial services industry to better meet the long-term retirement needs of hard working Americans. We appreciate the opportunity to comment on this very important issue. Our reply is outlined below.

<u>Background:</u>

The increased life span of the average American and the growing number of baby boomers nearing retirement age makes prudent retirement planning a critical issue. Millions of Americans do not have a guaranteed monthly retirement income other than Social Security. The decline of defined benefit plans and the increase of defined contribution plans mean fewer and fewer Americans can depend on receiving regular monthly payments during their retirement.[2]

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[1] The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for $74.7 trillion in managed assets, $1.1 trillion in revenue, and 2.3 million jobs.

[2] *See* U.S. Congressional Research Service, *401(k) Plans and Retirement Savings: Issues for Congress* (RL 40707), by Patrick Purcell & John Topoleski, available at http://digitalcommons.ilr.cornell.edu/key_workplace/632/. Accessed April 16, 2010.

Fortunately, Americans have a multitude of options available to help them convert retirement savings into retirement income. We can encourage individuals to pursue these options by increasing the availability and attractiveness of lifetime annuities and similar products. A lifetime annuity can help retirees manage the financial risks of retirement, including investment risk, longevity risk, and unforeseen circumstances. The Roundtable believes that most Americans should approach retirement with a comprehensive strategy that incorporates a number of retirement vehicles, including annuities. The value and longevity that annuities provide are important reasons workers and retirees should consider purchasing an annuity.

Most defined contribution (DC) plans do not offer an annuity option to their plan participants. Relatively few 401(k) plans provide the opportunity for retiring workers to convert all or part of the 401(k) accounts into life annuities.[3] Few plans offer annuities because Americans have historically shunned annuities; fewer than 10% of participants in plans that offer an annuity choose this option. Currently, there are several barriers consumers in a DC plan must clear before they can purchase an annuity apart from their plan. First and foremost is the difficulty of choosing the right annuity. Most people do not have the time or the expertise to discern which annuity fits their needs best, which increases the likelihood the individual will "self annuitize" by making periodic withdrawals from their retirement savings – a decision that carries a number of risks, including reducing savings if retirees are not disciplined in their spending or withdrawals. However, "[w]hen the insurance aspect of annuities are emphasized – in particular, the insurance against outliving one's assets – potential buyers have been found to be more receptive to the idea of buying a life annuity."[4]

Consumer education about retirement savings products can help consumers make sound investment decisions and allow them to maximize their retirement savings. Further gains can be achieved through better use of investment advice, and by promoting policies that provide for more diversified, dynamic asset allocation, more institutional products, and by exploring new and innovative methods to help individuals make better investment decisions.

Incentives to Include Annuity Option in Retirement Plans

The Roundtable respectfully requests that the Department create incentives for employers to include an annuity option within their retirement plans, and consider adding incentives to encourage employees to take advantage of these options. New rules should be developed to provide similar incentives for the employees with retirement savings in nonqualified plans such as individual retirement accounts (IRA) because the need for guaranteed lifetime income is not limited to participants in employer based retirement programs. Importantly, plan participants with annuity investments should be allowed to take their annuity with them as they move from job to job. Annuity portability gives workers the freedom to pursue better job opportunities without worrying about how it will affect their retirement income. We believe this change will make annuities more attractive because plan participants will have peace of mind that their annuity will remain intact if they leave their employer.

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[3] *See* Profit Sharing/401k Council of America, *Annual Survey of Profit Sharing and 401(k) Plans*, available at www.psca.org.

[4] Brown, Jeffrey R., Jeffrey R. Kling, Sendhil Mullainathan, & Marian V. Wrobel, *Why Don't People Insure Late-Life Consumption? A Framing Explanation of the Under-Annuitization Puzzle,* American Economic Review, April 2008, 304–309.

Accordingly, the Roundtable believes allowing qualified, plan distributed annuities to receive rollovers will increase Americans' retirement security and preserves worker mobility. We suggest that if the plan participant elects to transfer the annuity, the participant should have the ability to receive rollover contributions. This would allow the participant to choose one of three options when they leave job: 1) keep the account in a former employer's plan; 2) rollover the account into a new employer's plan; or 3) receive a cash distribution. The Roundtable urges the Department to consider these options and provide additional guidance and clarity on this topic.

Reduce the Taxes Applied to Annuities Upon Distribution

Under current law, taxes on annuity investment earnings are deferred and annuitant earnings are taxed at distribution. The benefit of deferred annuity taxation is that money invested in an annuity can compound tax-free before the tax liability on the funds is fully realized. However, when taxes are realized, the tax on annuity-related income is calculated at then-current income tax rates, which are likely to be significantly higher than the capital gains and dividend tax rates.

While the current annuity tax structure is designed to dissuade plan participants from making premature withdrawals, the possibility of heavy deferred tax penalties has the unintended result of discouraging participants from even considering annuities as a retirement investment vehicle. The Roundtable believes that removing the current tax-penalties entirely would ultimately increase the number of Americans saving for retirement because they would worry less about their funds being trapped in an illiquid investment vehicle. In the alternative, taxing annuities at the same rate or lower than the current capital gains tax rate would also help.

Furthermore, annuity distribution tax rates vary according to the form of payout selected (*e.g.*, lump sum payment, life annuity, etc.). We believe that annuities would be more attractive to retirees if annuity pay-out options were treated with parity and if the overall annuity tax-scheme was simplified. Tax parity and simplification of payout options, together with lowering the annuity tax rate to match the capital gains tax rate, would make annuities more attractive by making them easier to understand. We believe promoting these policies would enable individuals to maintain their retirement asset values and promote better savings behaviors.

Participant Education

The Roundtable wholeheartedly supports financial education, advice, and meaningful disclosures to employees help them gain a better understanding of their retirement options. It is vitally important that every American become financially literate so that they can be financially independent when they retire. Sound investment decisions can maximize an individual's retirement savings.

To ensure that individuals have the tools to make sound retirement planning decisions, plan participants must have a fundamental understanding of prudent financial planning principles, including the importance of planning and saving for retirement. It is critical that employees learn basic financial principals to ensure that they understand the importance of diversifying their retirement portfolio, how interest compounds, the difference between stocks and bonds, and the nature of market risk. Participants must understand the basic tenets of retirement saving before they can meaningfully evaluate the benefits of utilizing annuities as part of their comprehensive retirement strategy.

The DOL can facilitate annuitization and consumer education by providing guidance on the amount of distribution education an employer may provide to plan participants. Plan sponsors must know what actions qualify as the provision of informational and general education materials, and what constitutes investment advice subject to a fiduciary responsibility. Additional guidance will help employers who are contemplating offering participant education and/or investment advice, but may be reluctant to do so for fear of triggering fiduciary liability. Thus, we respectfully request that DOL issue guidance, similar to the advice found in Interpretive Bulletin 96-1 (July 2009), establishing a demarcated line between investment *education* and investment *advice*.[5]

Conclusion

The Roundtable will continue to seek out and support proposals and financial vehicles with the potential to strengthen the retirement security of all Americans. Our nation's diverse workforce and constantly changing socio-economic demographics require a broad portfolio of savings products to help all individuals save for their retirement and more effectively manage their assets in retirement. Greater incentives for employers to provide annuities, lower tax rates on deferred income from annuities, and increased participant education will foster the use of annuities and help meet the retirement needs of the American people.

Thank you again for the opportunity to share our views with you on this subject. If you have any questions, please feel free to contact myself or Brian Tate at (202) 289-4322.

Sincerely,

Richard Whiting
Executive Director and General Counsel

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[5]Interpretive Bulletin 96-1 describes the limited exception to the traditional fiduciary rules found in the Employee Retirement Income Security Act (ERISA) § 404, for a pension plan that permits a participant or beneficiary to exercise control over the assets in his or her individual account.