
From: Paula Calimafde [mailto:calimafd@paleyrothman.com]
Sent: Tuesday, March 23, 2010 12:00 AM
To: EBSA, E-ORI - EBSA
Subject: RIN 1210-AB33 - Trasury and DOL request for info re fixed annuities in retirement plans

This is in response to your request for information and comment in Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans Annuities for retirement plan retirees at Federal Register p. 5253 et seq., Vol. 75, No. 21, Tuesday, February 2, 2010 and found on the internet at <http://edocket.access.gpo.gov/2010/pdf/2010-2028.pdf> .

The Small Business Council of America (SBCA) is a national, nonpartisan, nonprofit organization that represents the interests of privately-held and family-owned businesses on federal tax, health care and employee benefit matters. The SBCA, through its members, represents well over 20,000 enterprises in retail, manufacturing and service industries. Because the SBCA represents what is sometimes referred to as "larger" small businesses which are, as a general rule, fairly stable and successful, the vast majority of our members sponsor qualified retirement plans. The SBCA has many of the country's leading small business tax, healthcare and employee benefit advisors included on its Board and Advisory Boards, including investment and insurance experts.

Annuitization of Retirement Plan Payouts. You requested comments on annuitization of retirement plan payouts. Annuitization has always been available for any type of plan. Thus, it is not a new concept. In the "larger" small business segment, many of these companies in the past sponsored both a money-purchase pension plan and a profit sharing or 401(k) plan. The normal form of payout in a money purchase pension plan is a joint and survivor annuity. When the law was changed to allow larger deduction limits for profit sharing plans, almost all of these companies merged the money purchase pension plan into the profit sharing or 401(k) plan. The vast majority of these plans continued to keep a joint and survivor annuity as the required form of payout unless the participant elected another form and the spouse consented to such an election in writing. However, in about 99.99% of payouts, participants do not select annuities (with spousal consent). Why is that? We believe the primary reason is that participants want their family to receive any remaining retirement plan benefits in the event of premature death, rather than the insurance company. By taking a lump sum and rolling it over or directly transferring the payout into an IRA, any remaining benefits will be left to the family. It is critical that participants be allowed to keep the lump sum to IRA option open - otherwise it is likely that interest in retirement plans will chill considerably in the small business market. Also the economics of annuitization need to improve (i.e., interest rates increase), in order for participants to select an annuity. An annuity in the current environment

could prove to be the worst option in addressing the inflation risk mentioned by the GAO in its 2009 report. The SBCA suggests that rather than focus on immediate annuities at retirement, what should be pursued is the "super deferred" annuities; ones that are purchased at age 65, but do not start paying until age 80 or 85. The relative cost is more reasonable and it provides protection for outliving one's money without tying up substantial assets today at low interest rates. These can be especially beneficial for a surviving spouse.

It is important to recognize the burden imposed on small business plans when adding new requirements. Each time a new requirement is added, plan amendments are required and changes to the summary plan description (or an SMM) are required. The small business private retirement system is reeling from the onslaught of interim amendments.

Employer nonelective or matching contributions. Most of our members sponsor profit sharing or 401(k) plans. A few have both defined benefit and defined contribution plans. A small number have only defined benefit plans. Those sponsors with a defined contribution plan, which is most of them, all make either matching or employer nonelective contributions or both. The only exception would be companies facing financial hardship, where they temporarily decide to discontinue contributions. This has happened in greater numbers than in the past due to the economy, but fortunately it is still a relatively small number of the plans.

404(c) Plans & Annuities. Your questions 33 and 34 ask several questions. We have heard from our members and particularly from attorneys and plan administrators who have experience with many small business plans, is as follows: To what extent are fixed deferred lifetime annuities (i.e., incremental or accumulating annuity arrangements) or similar lifetime income products currently used as investment alternatives under ERISA 404(c) plans? Almost never. Most 404(c) plans use core funds or sometimes core funds plus the right to invest in any publicly traded investment ("brokerage window" or open option plans).

Are they typically used as core investment alternatives (alternatives intended to satisfy the broad range of investments requirement in 29 CFR 2550.404c-1) or non-core investment alternatives? Neither. Given current interest rates, fixed annuities could be deemed to be an imprudent investment choice. The annuities that are used are those which are wrappers for various mutual funds, not fixed annuities.

What are the advantages and disadvantages of such products to participants? Protection against loss (assuming there are no fees for surrender, which is rare) versus low yield. What information typically is disclosed to the participant, in what form, and when? Typically none as they are not offered as an investment. To what extent could or should the ERISA 404(c) regulation be amended to encourage use of these products? It shouldn't due to their inherent flaws. This is why money market funds, GICs, and other stable value funds are not an option for QDIAs.

34. To what extent do ERISA 404(c) plans currently provide lifetime income through variable annuity contracts or similar lifetime income products? As mentioned above, many of our member plans offer the annuity option as a payout option. Also, as mentioned above, the annuity option is almost never selected by participants.

What information about the annuity feature typically is disclosed to the participant, in what form, and when? What is required by regulation when this option is offered as a payout choice.

To what extent could or should the ERISA 404(c) regulation be amended to encourage use of these products? We do not think fixed annuities should be encouraged other than DOL providing guidance that these products are deemed to be a prudent investment choice under 404(c), assuming DOL believes this to be the case. They are already a payout option..

Please feel free to contact us if you have any questions or comments.

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