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Sent: Friday, April 30, 2010 5:56 PM

To: EBSA, E-ORI - EBSA

Subject: RIN 1210-AB33 Request for Information-Lifetime Income

Office of Regulations and Interpretations Employee Benefits Security
Administration Room N-5655

U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

April 30, 2010

Via email

Attention: Lifetime Income RFI

Re: Request for Information - Lifetime Income (RIN 1210-AB33)

By way of background, employee benefits have been a focus of my professional life for 40 years. This includes 30 years working for two Fortune five companies, the last as Vice President for Corporate Human Resources. A few years ago, I co-founded ELM Income Group, Inc as an online insurance agency specializing in selling only fixed annuities. ELM's mission is to maintain an educational and sales site on fixed annuities that employers can use to overcome the "annuity puzzle"- the failure of the retirees to purchase fixed annuities, despite many economic studies that demonstrate the wisdom of doing so. The ELM Annuity site is also available to the public.

Summary

I applaud the Departments of Labor and Treasury for issuing this RFI. It is an excellent way to start a regulatory process in this area, which is both complex and vitally important. In response, I would urge that the Department of Labor clarify that employers who educate their retirees and near retirees on retirement income planning and the potential usefulness of fixed annuities in that undertaking may do so without incurring any fiduciary liability. I believe that such education- including a marketplace introduction or "referral" -is of primary importance now and will be more effective in solving the "annuity puzzle" than mandatory programs at this time.

The DOL and Treasury should be doing this. Q1

- As indicated in the 2009 GAO study cited in the RFI, fixed annuities can significantly increase the level of sustainable income in retirement for many retirees. The economic studies endorsing this view are so numerous that an August 2007 Wharton School Policy Brief said: "The value of annuities in retirement seems to be a rare area of consensus among economists." A 2007 CFA Institute Publication "Lifetime Financial Advice", authored by Roger Ibbotson, Moshe Milevsky, Peng Chen and Kevin Zhu says "the theoretical arguments in favor of annuitization are so powerful that an entire body of economic literature has emerged under the title of 'annuity puzzle', that seeks

to discover the reasons so few consumers actively and conscientiously embrace these instruments" (p. 72).

- The Federal Government incurs very large tax expenditures for Retirement and Savings Plans that is in turn dwarfed by the Private Sector's expense and cash contributions to fund and maintain these programs. The ultimate justification for this is the importance of financial security in retirement for all the stakeholders, including the labor force. If annuities in retirement offer substantially more sustainable income per available dollar, the financial implications to the Public and Private sector and the retiree populations are enormous.

Q 11- Mandatory annuitization and default annuitization are not advisable at this time, given the current unpopularity of annuity contracts among retirees and the current debate over their proper use.

- Although the economics community recognizes the power of "mortality credits" in annuity contracts to substantially increase sustainable retirement income, there remains much debate about the best time for a retiree to purchase an annuity. For example, the 2007 CFA book cited earlier states that purchasing an annuity purchase "prior to age 60 is too early". It goes on to favor gradual annuitization from age 65 to age 75 (p.71-72).

- Other writers also make the case for a later (not before age 65-70) purchase of annuity contracts. (Moshe A. Milevsky, Virginia R. Young, "The timing of annuitization: Investment dominance and mortality risk"; Insurance: Mathematics and Economics 40 2007, 135-144).

- In short, there is much less support among researchers for an annuity purchase at the time of retirement than there is for the idea that after age 65, a retiree should use some assets to purchase an annuity.

- Defaulting into an annuity option at this point is not likely to generate much more annuity acceptance judging by the DB lump sum experience noted in the 2009 GAO study cited in the RFI.

- The annuity marketplace is rapidly developing. Plan provisions requiring default or mandate in the DC area may have difficulty keeping up with the pace of change. For example, new retail annuity offers in the last three to four years include CPI escalator clauses and enhanced security through the use of an insulated separate account.

Is the absence of annuity purchases really a puzzle? Or is it the lack of participant education and preparation for retirement? Q 17-20

Rubik's cube is a puzzle the world over. However, many countries seem to have solved their annuity puzzle. One of them-Switzerland- has an employer sponsored pension system that offers the choice of either a

lump sum or annuity payout at retirement. According to the 2003 GAO study cited in the RFI, in Switzerland "most people receive their pension benefits as a monthly annuity" (p.38). The Swiss experience, with its high voluntary annuitization, has been the subject of several independent studies that conclude that what I will call "workplace culture" is a large factor in the annuity preference.

Since 1994, the annual EBRI/Greenwald Retirement Confidence Survey has shown that no more than half the workers try to calculate how much money they will need in retirement. In the 2007, 2008 surveys, the only time the question was asked, half of the retirees said they did not consider how long their retirement might last when planning for retirement!

Given this lack of informed preparation for retirement planning, can we honestly say it's a puzzle why retirees are not purchasing annuities in the US? Neither will it be a puzzle in the future if retirees suffer a much lower standard of living due to the continued absence of informed retirement planning.

Q17. Employees and retirees first need information about the prudent rate of inflation-adjusted withdrawal from their retirement assets. Then they need to understand the impact on this level of withdrawal and their residual assets if they include a fixed annuity in their asset mix, with or without a CPI rider. Without this information, in my opinion, they cannot understand the concept of retirement income planning, much less the usefulness of an annuity.

The EBRI/Greenwald Retirement Confidence Surveys indicate that retirees are much more likely to use information provided by or through their employer than information provided in the general marketplace. Thus, if they wish to do so, employers should be able to provide information to retirees on retirement income planning, without fear of fiduciary liability. This information should include the pros and cons of including a fixed annuity in their asset mix-all this in general advisory terms and/or by referral to a third party source.

Q18. There is a need for guidance from the government on the use of plan assets to provide information on the theories of prudent retirement income planning including the use of annuity products in retirement. The absence of any mention of retirement income planning and annuity products in IB 96-1 has created a question, in the minds of some people, about what is permitted.

Q19. In my experience, Company counsel is extremely conservative about approving any Company communication on the use of qualified funds. In the absence of specific mention of lifetime income or annuities in a "safe harbor" or advice from the DOL, most Company counsel I have spoken with will not sanction a communication on these subjects.

Q 20 & Q6 The guidance offering the greatest practical assistance in increasing retirees' understanding of the value of annuities in retirement would sanction the ability of an employer to make a "referral" to one or more annuity providers in the general marketplace, without incurring fiduciary liability. This introduction to the

marketplace would be done for those already retired, who the economists agree are the most likely to benefit from an annuity purchase.

- State insurance law permits a "referral" by a non-licensed person, in this case an employer. (In contrast, an "insurance solicitation" can only be made by a person licensed to solicit). In the case of a fixed annuity product, a referral would include mention of an annuity broker or provider but without any significant discussion of specific annuity provisions and without a recommendation. Employers should be permitted to offer such referrals to one or more fixed annuity providers (brokers or insurers) in the public marketplace of their choosing, without any ERISA liability, even if the funds involved in the purchase would be rollover funds from qualified plans. As a precaution against inappropriate referrals, the Department of Labor may wish to require any such referral to recommend comparison with other offerings in the public marketplace before purchase.

- A referral by a trusted source-in this case the employer- will generate the interest and inquiry from retirees, which is a foundation for any movement toward fixed annuities in retirement.

- I believe making an annuity "referral" to retirees is the easiest action an employer can undertake to help solve the annuity puzzle, provided the Department of Labor agrees that there is no fiduciary liability involved. The "market test" most employers would want to justify a referral would be readily available from the market place.

Thank you very much for the opportunity to comment on this important endeavor. I would be pleased to offer additional comments, if you wish.

Yours truly,

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