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Via Email: e-ORI@dol.gov

Office of Regulations and Interpretations,
Employee Benefits Security Administration,
Room N-5655,
U.S. Department of Labor,
200 Constitution Avenue, NW,
Washington, DC 20210

Re: RIN 1210-AB33
Attention: Lifetime Income RFI.

Ladies and Gentlemen:

Wells Fargo ("WF") appreciates this opportunity to comment briefly on the request for information from the Department of Labor and the Department of Treasury ("DOL" and "Treasury," respectively, or collectively, "the Agencies") concerning lifetime income options for participants and beneficiaries in retirement plans. WF includes Wells Fargo Retirement, a division of Wells Fargo Bank, N.A., and Wells Fargo Advisors, both leading providers of retirement solutions to businesses, institutions and individuals throughout the United States. In combination, WF ranks first in annuity distribution, fourth in IRA assets and seventh in retirement plan recordkeeping.¹

Wells Fargo Retirement ("WFR") is a national leader in providing total retirement management, investments and trust and custody solutions tailored to meet the needs of institutional clients. Since 1952, WFR has serviced the entire scope of institutional retirement clients; from single-participant 401(k) plans to complex billion-dollar defined contribution plans for America's Fortune 500 companies. WFR is recognized as an industry thought leader and innovator in participant level education and communication.² In addition, WFR has been on the forefront of offering lifetime income solutions to plan sponsors and participants.³

Wells Fargo Advisors ("WFA"), the third largest provider of retail brokerage services, administers more than \$1 trillion in client assets. It accomplishes this task through 15,600 full-service financial advisors in 1,100 branch offices in all 50 states and 5,900 licensed financial specialists in 6,610 retail bank branches in 39 states.⁴ Affiliates of Wells Fargo Advisors assist employers in sponsoring retirement plans, and our financial advisors work with countless investors as they move from active work life into retirement.

¹ As of December 31, 2009.

² Wells Fargo was the top winner at the 2009 Profit Sharing/401(k) Council of America (PSCA) annual awards ceremony, winning seven signature awards and two honorable mentions for its retirement plan communication and education.

³ Working with third party vendors, WFR was one of the first recordkeepers to offer a competitive bid annuity rollover option, and an in-plan lifetime income option to plan sponsors on our recordkeeping platforms.

⁴ WFA includes a number of brokerage operations that have combined as the result of the 2008 purchase of Wachovia Corporation by Wells Fargo & Company. For the ease of discussion, this letter will use WFA to refer to all of those brokerage operations.



WF commends the Agencies for opening these discussions and allowing stakeholders an opportunity to share their industry knowledge. WF is dedicated to helping individuals plan for a secure retirement in an age of increasing life spans and individual responsibility. As a leading record keeping provider, WFR serves a critical function in educating plan sponsors and employees about the lifetime income alternatives that are available to them. As a leading advisory firm, WFA serves a vital role in guiding individuals through the process of converting retirement savings into retirement income.

As such, WF has joined in the detailed responses submitted separately by The SPARK Institute, Inc., and the Insured Retirement Institute. Through our individual response, WF wishes to emphasize specific legislative and regulatory action that based on our experiences, we believe will have the most meaningful and long-term impact on the retirement security of Americans. In particular, our individual response addresses topics raised by the Agencies in RFI questions 1, 8, 9, 11, 13, 14, 17, 20, 30 through 33, and 35.

WFR'S OUTLOOK ON THE UNITED STATES RETIREMENT SYSTEM

Historically, the primary source of retirement income for most Americans was a traditional pension plan that paid a guaranteed annual benefit for life. These plans were developed when the average life span after retirement at age 65 was in the single to low double digits – not decades. Retirement systems that were designed to fund average retirements of 10 years are now trying to fund 20, 30 or 40 years. This phenomenon, as well as shifts in corporate philosophy, caused companies to transfer the burden and risk almost exclusively to the individual retiree.

WF believes that:

- (i) individuals are not saving enough;
- (ii) individuals lack knowledge and, in many cases, the skills to assess and manage the numerous risks involved (e.g., savings rates, longevity assumptions, cash flow planning); and
- (iii) inertia drives a lack of employee action.

Therefore, safe harbors and/or incentives to encourage employers to safeguard against some of these risks should be strengthened.

WF advocates continued actions, product designs, and legislation that proactively put Americans into plans, automatically increase savings rates and default them to investment solutions with the highest likelihood of achieving pay replacement targets. We believe this can be achieved through existing defined benefit (“DB”), defined contribution (“DC”) and hybrid plan design models that leverage the best concepts of risk sharing, asset/liability modeling, and funding concepts to meet future employee retirement income needs. We also believe that continued simplification of plan compliance rules and additional safe harbors that allow companies and other stakeholders to improve an individual’s retirement security are required.

Future modifications need to start with the realization that DC plans and IRAs have emerged as the primary retirement plans for most Americans. Americans are “on-their-own” and improvements should be made to these systems to help Americans. We believe the Administration’s recent proposals, including the creation of an auto-IRA and increased 401(k) access for employees of small companies, are positive steps. Given that small business employ 50 percent of the private sector, we encourage a public/private partnership to create administratively simple, automatic solutions for employees to positively change their retirement savings behavior. At the heart of the matter is the need for every

American to grasp their direct role in saving enough money and managing that money for and *through* retirement.

RECENT SUCCESS OF BEHAVIORAL STRATEGIES IN THE ACCUMULATION PHASE

During the last decade, the Agencies, often following Congressional action, have developed a number of key regulatory regimes to address American's troubling defined contribution participation rates, deferral rates, and diversification of accounts. These designs are all based on a behavioral paradigm that use individuals' inertia to their own long-term benefit without resorting to intrusive and unpopular mandates. The Pension Protection Act of 2006 ("PPA") created strong public policy in favor of such arrangements and WF supports this policy.

These designs share four common features:

- (i) a default action that places the individual in a position more likely to result in a successful retirement outcome than a "no-action" default;
- (ii) an opt out at the initial decision point for individuals who actively choose an alternative course of action;
- (iii) an ability to opt out at later times so that individuals are not irrevocably committed to the default action if their circumstances change; and
- (iv) clear guidelines that provide plan sponsors with fiduciary protection for placing individuals into these "active" defaults.

PPA's codification of automatic enrollment arrangements has encouraged plan sponsors to adopt these plan designs and has led to significant increases in plan participation. The creation of Qualified Default Investment Alternatives ("QDIA") and the fiduciary protection afforded plan sponsors through QDIAs, has dramatically improved the asset allocation of participants' retirement accounts and led to the explosive growth in target date funds.

Studies show that plan sponsors who adopt automatic-enrollment designs experience participation rates for new hires that increase from 78% to 90%. In addition, 67% of these automatically enrolled new hires invest their entire account balance in the plan's default fund versus 21% of new hires who affirmatively enrolled in the plan.⁵ The successful spread of these behavioral paradigms in the accumulation phase will have beneficial long-term impact on employees' retirement account balances. Due to earlier participation in employer-sponsored plans, higher contribution rates, and more appropriate asset diversification across an employee's career, employees can look forward to significantly larger retirement account balances at the end of their working years.

WF encourages the Agencies' current interest in carrying the same principles that have been successful in the accumulation phase of retirement planning into the public policy and regulatory framework of the decumulation phase of retirement planning.

⁵ Hewitt Associates, "Trends & Experiences in 401(k) plans," 2007, and "Automatic Enrollment Boosts Participation and Retirement Savings," 2007.

CURRENT STATUS OF THE DECUMULATION PHASE OF RETIREMENT PLANNING

Default options in the decumulation phase of retirement planning would be more complex, as each individual's circumstances, retirement assets, health and lifestyle are unique. However, the rapid decline of defined benefit plans and their normal retirement benefit of a lifetime annuity require that government and plan sponsors support public policy and regulatory solutions that can provide individuals with the possibility of lifetime income.⁶ WF believes employees with defined contribution accounts face four significant risks when they reach retirement age and the distribution decision: longevity risk, investment risk, inflation risk and withdrawal risk.⁷

Longevity Risk

Advances in modern science and medicine have brought meaningful increases in American longevity over the last 100 and even, 50 years. An American man born in 1900 could expect to live to 46 years of age and likely never experience "retirement"; while an American man born 50 years later expected to live an additional 29 years and experienced "retirement". In the last 50 years, the life expectancy of an American man reaching age 65 has increased from 13 years to 17 years, requiring funding for an additional 4 years of retirement. Similarly, an American woman reaching 65 years of age increased from 15 to 20 years, requiring funding for an additional 5 years of retirement.⁸ For Americans who enter retirement with inadequate assets or overly aggressive decumulation plans, these lengthened retirement periods increase the potential for painfully decreased standards of living in retirement.

Traditionally, longevity risk was mitigated by Social Security and defined benefits plans. However, with the precipitous decline in defined benefit plans noted above, the projected strains on the Social Security system, and the heightened nature of longevity risk it has become increasingly clear that Americans will need to address at least some of their longevity risk on their own.

Investment, Inflation and Withdrawal Rate Risk

Participants face investment risk throughout the accumulation phase of retirement planning, but this risk becomes particularly acute as they approach retirement and during the decumulation phase when they may not be able to recover from poor investment returns. Recent market fluctuations have demonstrated how unfortunate retirement timing can rapidly erode a lifetime of retirement savings, particularly when withdrawals are made during a downward market removing the possibility of participating in the market recovery.

Even in favorable market conditions, inappropriate withdrawal rates instituted by unsophisticated or overly optimistic retirees can also quickly erode retirement savings in the early years of retirement. Finally, a lack of understanding regarding the power of inflation can cause retirees to overvalue their savings at the beginning of retirement, leading to a lack of planning and steady erosion of the retiree's standard of living.

⁶ As noted by the Agencies, the trend away from defined benefit plans finds a United States today where only 20 million workers have a defined benefit plan furnished by their employer. Many of these defined benefit plans have been frozen to new participants and future accruals and a number of plan sponsors are discussing further plan freezes. This contrasts to the rapid growth of defined contribution plans, where almost 66 million workers are plan participants with growing account balances, an almost six-fold increase from 1975 to 2006.

⁷ We direct the Agencies to the SPARK Institute, Inc. and the Insured Retirement Institute response to RFI questions 1 and 2 for a more robust discussion of some of the risks faced by individual employees in the decumulation phase of retirement planning.

⁸ "Health, United States 2009, with Special Feature on Medical Terminology", U.S. Department of Health & Human Services, January 2010 DHHS Publications No. 2010-1232

In-Plan Annuity as Response

The annuity proposal will clearly begin to address these longevity, investment, inflation, and withdrawal concerns and aligns with WF's concerns for participants' ability to manage their retirement savings *through* retirement. By converting some of a participant's retirement savings to an inflation adjusted annuity with a fixed or minimum rate of return, lifetime income products can provide a floor of financial security throughout the length of retirement.

In addition to the vast array of IRA rollover income products and services, in-plan lifetime income products can provide an additional option that is convenient, accessible and cost-effective for participants. In-plan options provide convenience to participants as the annuity design and provider has already been selected by the plan sponsor. In-plan options also allow for dollar-cost averaging over the course of a participant's working years and institutional pricing that may not be available to individuals in the IRA market.

However, in-plan options limit flexibility and customization for individuals compared to the established solutions that exist in the broader IRA market. Due to these inherent trade-offs, WF supports both in-plan options, including in-plan defaults with opt-outs, while also continuing to support IRA rollover options as a valuable alternative for individuals who want more customized solutions to meet their personal retirement needs. We also believe that in-plan options should retain participant portability through IRA rollover features to account for changing retiree or employer circumstances over the length of retirement.

While WF believes strongly in the power of participant education to impact individuals, we also recognize the limitations of programs that depend upon individuals understanding complex financial products and taking affirmative steps to engage with such products. For this reason, we support the Agencies interest in addressing the risks of the decumulation phase with the same default behavioral strategies used successfully in recent years.

WELLS FARGO'S RECOMMENDATION

Extending the Success of Behavioral Strategies in the Accumulation Phase to the Decumulation Phase with Public Policy and Regulatory Support for both Employers and Employees

WF believes the same behavioral strategies that have succeeded in the accumulation phase should be extended to the decumulation phase. Due to the complexity of decumulation decisions and lifetime income products, this extension will necessitate greater flexibility than prior strategies, extensive regulatory guidance and safe harbor protections. In particular, WF specifically supports:

- Expanding regulatory safe harbors for plan sponsors who choose to offer lifetime income products within their retirement plans to limit fiduciary exposure.
- Allowing for, and promoting, plan designs that default a portion of a participant's retirement account into lifetime income products during the accumulation phase while retaining a participant's choice to opt-out of the default.
- Creating industry guidelines and/or regulatory safe harbors regarding fee transparency, income framing, and employee education to encourage useful and uniform education of the American public regarding lifetime income products.

Expanding Regulatory Safe Harbors for Plan Sponsors

One key barrier to the adoption of lifetime income products within qualified retirement plans is the employer's potential liability under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). ERISA §404 imposes a fiduciary duty on Plan Administrators (almost uniformly, the employer or a committee of the employer's employees) with respect to the operation of the plan, including the selection of investment alternatives. We have joined and support the detailed discussion of the potential fiduciary liability associated with the selection of lifetime income products in qualified plans provided by the Insured Retirement Institute in response to the RFI's question 14 and 31.

WF would like to emphasize that based on our experience with automatic enrollment and target date funds, employers are extremely reluctant to expose themselves to potential fiduciary liability without the creation of fiduciary protection for the election of these beneficial features. This barrier discourages employers from adopting such features, even when they believe that particular products and active defaults could be beneficial for the majority of their employees. In particular, small businesses that employ 50 percent of Americans, do not have the resources to research, analyze, and design plan features and complex investments without the guidance and fiduciary protection provided by well-designed safe harbors.

WF recommends an expansion of the fiduciary safe harbor provided under 29 CFR 2550.404a-4 to address the adoption of lifetime income products in addition to distribution annuities. Lifetime income products, including those that allow for gradual investment over long time horizons, provide similar benefits to employees and carry similar risks as distribution annuities. A simplification of the safe harbor with potential additional guidance regarding the unique long-term credit concerns raised by lifetime income products, could significantly encourage the adoption of these products by plan sponsors.

Default Annuity Designs for Participants

Participants often decline utilization of lifetime income products for a number of reasons, many of them tied to a lack of financial education and readily available information. Many participants do not understand the varied income products that are available to them and do not have ready access to a financial advisor regarding these products. While many participants have become educated about how to save for retirement, they are generally less knowledgeable about how much income they will need to generate from their savings and how to do so.

A wide variety of current retail retirement income product offerings, coupled with differing naming conventions, features, and fees, make it difficult for individuals to understand their retirement income options. Compounding this knowledge gap, a general negative public perception of insurance annuities and a desire to maintain flexibility over at least a portion of participants' retirement savings are significant obstacles to adoption. Such overwhelming barriers lead participants to opt for the simple lump-sum distributions as their default, regardless of their long term prospects with such an option.

WF supports an expansion of the definition of QDIA to include lifetime income products that meet certain criteria. Such a default investment design should be based on the same principles that have been successful in the other default designs discussed above.

We believe this expansion will provide the fiduciary protection necessary for plan sponsor adoption as a default investment and focus the marketplace on standardization of certain features that would improve administration and portability. An expanded QDIA definition as opposed to mandated distribution features will allow for market and plan sponsor innovation as lifetime income products continue to

evolve. In-plan innovation will likely have a spillover impact on new products and services in the IRA marketplace. Additionally, the avoidance of mandated adoption and utilization will retain the availability of customized rollover and IRA options for engaged and sophisticated participants.

The DOL should establish criteria that address the following in regards to a lifetime income QDIA:

- (i) the appropriate manner to allocate participants' retirement contributions to a lifetime income QDIA (e.g., appropriate age, appropriate portion of participants' accounts);
- (ii) the acceptable composition of the underlying investments in the lifetime income QDIA, including the appropriateness of fixed annuities in general and for certain stages of a participant's life;
- (iii) acceptable levels of flexibility regarding the annuitization decision, including either a "cash-out" feature or a trial design in which participants have a window in which to reverse the annuitization decision; and
- (iv) the age and/or employment event(s) that will trigger the annuitization default.

Participant Education, Income Framing, and Fee Transparency

The critical function of defined contribution plans and IRA's, either on their own or in conjunction with other programs, is to provide sufficient income in retirement for individuals to maintain a reasonable standard of living. However, research demonstrates that very few individuals have the financial literacy to determine what savings amount is sufficient to produce the income stream needed in retirement, to evaluate whether their own savings will meet that need, and to put in place a decumulation plan that is feasible.

As noted above, WF supports efforts to reframe retirement savings balances as sources of personal income streams to provide meaningful measures and benchmarks for participants. In conjunction with the proposals above, WF supports participant education that informs participants of their lifetime income projection, provides an array of product options, either in-plan or through an IRA, and the impact these products can have on funding retirement. Specifically within employer sponsored retirement plans, education materials should clearly, and whenever possible, personally demonstrate to participants the impact of lifetime income products as opposed to other plan options (i.e., non-guaranteed funds and distribution options).

In order to encourage service providers, lifetime income providers, and plan sponsors to provide meaningful and consistent information, industry standards should be established regarding the calculation of future income streams and the delivery format of such information. Options for the establishment of industry standards include reputable objective experts, such as the Society of Actuaries or the National Association of Insurance Commissioners. These standards would allow comparisons between lifetime income products and across industry service providers. The use of industry best practice standards for income projections would be encouraged by establishing a public seal of approval and limited liability for those using these standards.

The DOL should also consider issuing a model disclosure based on the standards above that can be provided to employees without creating liability for plan sponsors. However, there should remain the option for non-standard education materials based on the dynamic nature of the retirement industry and technological developments, such as interactive on-line projections and streaming media.

As part of the development of a model disclosure, WF recommends the DOL work with lifetime income product providers to create a fee disclosure paradigm that would provide expense transparency and

allow for meaningful comparison between products. Fixed annuities in particular do not easily lend themselves to transparency and comparison. WF strongly believes that personalized, understandable, and transparent employee education regarding lifetime income products can have a significant impact on employee acceptance and utilization of these products both inside and outside of the plan.

ALTERNATIVE APPROACHES AND CONCLUSIONS

Experience demonstrates that if plan sponsors have little guidance and fiduciary protection, they are unlikely to adopt plan designs with “active” defaults or complex investment alternatives. Likewise, employees unfamiliar with retirement income products are unlikely to make affirmative elections into financial arrangements with perceived near-term costs and undervalued long-term benefits. This holds true even when relatively straightforward and attractive alternatives are offered to plan sponsors and available for participant election.

Lifetime income products, with their complex design and negative connotations, will likely experience very low utilization rates if they receive no fiduciary protection for plan sponsor adoption and require affirmative employee election.

While well-designed employee education programs can impact the informed and engaged portion of the employee population, education alone cannot overcome the hurdles discussed above for the majority of the employee population. Likewise, without the protections and guidance of safe harbor designs, plan sponsors will remain wary of making such a long-term fiduciary decision with significantly increased liability exposure.

One viable alternative approach is to expand the criteria under which plan participants could receive in-plan financial advice. Participants who receive high quality investment advice within the plan may have less of a need for active defaults because they are more likely to make informed and engaged decisions on their own. Plan sponsors may be more willing to adopt lifetime income products in their retirement plans if they know participants can easily access financial advice regarding these products through in-plan advice. Additionally, properly advised plan participants are likely to be better educated consumers regarding their distribution and IRA options. WF is strongly supportive of such measures and is separately commenting on the DOL’s proposed investment advice regulations.

If lifetime income products are to have a meaningful impact on the retirement outcomes of the 66 million Americans invested in defined contribution retirement plans, then regulatory design and guidelines must support plan sponsors and participants in their adoption and utilization decisions. We welcome the opportunity to participate in upcoming industry and Agency discussions regarding lifetime income products and the retirement security of all Americans.

Sincerely,



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