May 3, 2010

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5665
U.S. Department of Labor
200 Constitution Avenue, NW.
Washington, DC 20210

Attention: **Lifetime Income RFI**

RE: **Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans**

The Defined Contribution Institutional Investment Association (DCIIA) appreciates the opportunity to respond to the Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans (the "Lifetime Income RFI") of the Employee Benefits Security Administration's ("EBSA"), Department of Labor, and the Internal Revenue Service, Department of Treasury, published on February 2, 2010.

Who We Are: The Defined Contribution Institutional Investment Association (DCIIA) is a recently formed non-profit trade association dedicated to enhancing the retirement security of American workers. DCIIA members include investment managers, consultants, record keepers, insurance companies, plan sponsors and others committed to improving retirement outcomes for American workers by advocating for better defined contribution plan design and institutional investment management approaches.

DCIIA's Retirement Income Committee: This response to the Lifetime Income RFI has been prepared by DCIIA's Retirement Income Committee, which was formed to foster and promote research, education, and best practices related to institutional retirement income issues and improving outcomes for plan participants through the application of sound retirement income policies and solutions. The Committee was established in accordance with DCIIA's founding charter and core beliefs. A copy of the Retirement Income Committee's Charter is included with this submission.

DCIIA Supports a Full Lifetime Approach to Retirement Income Adequacy: DCIIA commends the Department of Labor and the Department of Treasury for reviewing the rules under the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and the Internal Revenue Code of 1986, as amended (the "Code") to determine whether, and, if so, how both agencies could or should enhance, including by regulations or otherwise, the retirement security of participants by facilitating access to, and use of, lifetime income or other arrangements designed to provide a lifetime stream of income after retirement. DCIIA urges both agencies to take prompt action to enhance and support the ability of retirement plans and their plan sponsors to offer lifetime income solutions to working Americans.

DCIIA strongly believes that the likelihood of a successful retirement income outcome is improved by careful attention to both the working (accumulation) and retirement (distribution) phases, and, importantly, by enabling a combination of employer-sponsored and individual retirement account solutions to initially grow and ultimately preserve retirement savings to meet spending needs over an individual's total life expectancy.

An important first step is for the entire retirement industry to begin to communicate accumulated retirement values in retirement income terms, e.g., how much lifetime income will a given level of savings produce?. The agencies, along with the whole retirement industry – providers and plan sponsors alike -- must work together to support efforts to create retirement income solutions which are professionally overseen, simply-designed and well-communicated and which facilitate plan sponsors taking the next steps to adopt retirement income solutions to promote a successful retirement outcome for all participants.

DCIIA respectfully requests that the agencies seek to promote acceptance of retirement income strategies, including by adopting fiduciary safe harbors for retirement income solutions, such as by clarifying how retirement income products can serve as a QDIA (qualified default investment alternative) and encouraging adoption of auto-enrollment into retirement income strategies. The agencies should also promote portability of retirement income products and support both guaranteed and non-guaranteed income solutions. Plan sponsors should also be provided support, through regulations, model communications or otherwise, to create participant communications reflecting a lifetime income stream, in addition to account balances.

In addition to our enclosed response, we are also enclosing the core beliefs of our association (see below) and the Charter of our Retirement Income Committee. Both of these helped guide our responses to specific question in the RFI. As an Association representing a wide array of investment managers, recordkeepers, investment consultants and other vendors to the defined contribution industry, we are not advocationg for any particular product design – we believe that the marketplace and plan sponsors will provide innovation and solutions which are relevant and applicable to a particular plan's demographics, needs and other related benefit offerings. We are united, however, in our view that improving the retirement security of retirement plan participants is a critically important goal, and that the agencies can help to promote this goal by making it simpler and more straightforward for plan sponsors to incorporate lifetime income solutions in their plans.

DCIIA's Core Beliefs: DCIIA members believe the current defined contribution retirement system, with the adoption of institutional design approaches available today, can and will provide for the retirement security of working Americans. The important advances contained in the Pension Protection Act, particularly the safe harbor protections for plan automation features and appropriate default investment selection, provide plans with important guidance and fiduciary safe guards which can result in higher participation and savings rates, more appropriate investment allocations and improved long-term investment performance.

By incorporating techniques of professional pension management found in traditional defined benefit pension plans, defined contribution sponsors can improve retirement savings outcomes, affording their employees a better quality of life in retirement while managing their own fiduciary liabilities in plan governance. Some of the most prominent best practices include:

1. Open Architecture in Assembling Best-in-Class Plan Design

Open architecture provides plan sponsors and their consultants with the ability to select the best combination of partners to meet plan needs, including investment manager, record keeper, custodian, managed account, advice and other service providers.

2. Full Support for All Investment Vehicles and Product Solution Formats

The continued development of standard industry trading systems and information sharing protocols provides plan sponsors with a very wide range of DC-appropriate investment and pricing options which, depending on plan preferences, may be best delivered through mutual fund, insurance contract, collective trust or individual and institutional separate account formats.

3. Improved Default Programs as Most Effective Path to Realizing Successful Outcomes

Auto-enrollment and sufficient auto-escalation of contribution rates – coupled with a well-constructed qualified default investment and an effective employee communications and education program – can generate sufficient balances for workers to fund an adequate income replacement rate at retirement. Spending needs and longevity risk can be addressed by existing as well as new post-retirement investment and income management solutions being introduced to the market.

4. Full Lifetime Approach to Providing Retirement Income Adequacy

The likelihood of a successful retirement income outcome may be improved by careful attention during both the working (accumulation) and retirement (distribution) phases, and by including a combination of employer-sponsored and individual retirement accounts, to initially grow and ultimately preserve savings necessary to meet spending needs over an individual's total life expectancy.

5. Full Expense Transparency from All Service Providers

Plan participants benefit from plan sponsors providing fiduciary oversight of plan economics, and being knowledgeable about the breakdown of all plan costs and sources of revenue, including but not limited to investment management, record keeping and other administrative expenses.

Thank you again for the opportunity to provide our views on lifetime income solutions and to respond to the questions you have posed. We look forward to continuing to work with you to better the retirement security of American workers.

Sincerely,

Lew Minsky
Executive Director
Defined Contribution Institutional Investment Association

Enclosures: DCIIA Retirement Income Committee Charter
DCIIA Response to DoL RFI
cc: DCIIA Retirement Income Committee.

DCIIA Retirement Income Committee

The DCIIA Retirement Income Committee provides a forum to foster and promote research, education, and the promulgation of sound fiduciary practices related to institutional retirement income issues. The Committee was established in accordance with DCIIA's founding charter and core beliefs. It brings together investment managers, insurance companies, consultants, record keeping and trust companies, plan sponsors, law firms, academia and others focused on improving outcomes for institutional plan participants through the application of sound retirement income policies and solutions.

Mission

The DCIIA Retirement Income Committee's mission is to promote the delivery of lifetime income solutions to a broad segment of US workers via the following initiatives:

- Frame the industry and public retirement dialogue in outcome-based terms.
- Support efforts advocating that 401(k) statements reflect a lifetime income stream, in addition to account balance.
- Become a clearinghouse for education/communication on the full range of retirement income solutions, tailored to the needs of multiple audiences: plan sponsor, participant, consultant, and regulator.
- Encourage industry standardization and operational protocols for supporting institutional retirement and lifetime income solutions.
- Promote portability/transferability of income between record keeping platforms.
- Promote acceptance of retirement income strategies as a QDIA; encourage consideration of auto-enrollment into retirement income strategies.
- Support both guaranteed and non-guaranteed institutional lifetime income solutions.
- Clarify impact of required minimum distributions (RMD's) on ability to offer different types of income solutions, and promote equal and relevant treatment of various income solutions under the RMD rules.
- Encourage regulatory principles for retirement income options that are equivalent to other 401(k) options.
- Assist plan sponsors who choose to offer an institutional retirement income solution, either in their plan or outside of the plan, in discharging their fiduciary responsibility to periodically review their offering to ensure that it is appropriate for participants and meets the then current investment and fiduciary standards for performance and risk.
- Assist plan sponsors and their advisors in developing and agreeing to broad standards for comparing various income-related solutions.
- Foster partnerships and/or alliances with organizations and individuals who share our goals in order to leverage knowledge/resources.
- Engage in primary and secondary research activities that will broaden awareness and understanding of institutional lifetime and retirement income.

Structure

The DCIIA Board of Directors establishes all Committees. The Retirement Income Committee is comprised of DCIIA Directors or representatives of DCIIA Members, or both. The Board of Directors appoints the Chair and Vice Chair of the Retirement Income Committee, and establishes procedures to govern Committee activities. Participation in the Retirement Income Committee is voluntary and open to representatives of all DCIIA member firms. The DCIIA Retirement Income Committee shall coordinate efforts with other DCIIA Committees on relevant initiatives. The Retirement Income Committee has a Chair and a Vice-Chair, who shall come from different membership categories (or constituencies within membership categories) whenever possible. The Chair and Vice-Chair of the Retirement Income Committee are subject to ratification by a majority of Committee members, and shall serve two year terms. The Chair of the Retirement Income Committee concurrently serves a two year term on the Executive Committee of the DCIIA Board of Directors.

General

1. *From the standpoint of plan participants, what are the advantages and disadvantages for participants of receiving some or all of their benefits in the form of lifetime payments?*

   The primary advantage to receiving some or all benefits in the form of lifetime payments is to create a floor amount of income for life. Social security and pension income (if applicable) may not be sufficient to cover the basic income needs of many retirees. Annuitizing accumulated retirement balances can also mitigate many retirement risks and protect the participant from the consequences of poor financial judgment. Additional advantages include:

   A. Reduce exposure to outliving one's income: Many retirees rely on Social Security and pensions to cover basic living expenses. However, these income sources may be less reliable, or less prevalent, in the case of defined benefit pensions, for future retirees who will increasingly need to rely on personal savings to fund retirement spending.

      Another complexity is that Americans are living longer. As a result, many financial professionals suggest that pre-retirees and new retirees consider a retirement planning horizon of 20 to 30 years.

      The end result is that many workers risk outliving their income.

   B. Reduce market risk: Severe capital market fluctuations, like those experienced in 2008 and 2009, can quickly erode individual's retirement savings. This, in turn, significantly decreases the amount of retirement income participants are able to generate, especially if withdrawals are made during market downturns.

      Products that offer lifetime payment options often mitigate this risk by offering a fixed rate of return (fixed annuities) or by "locking in" investment gains. The addition of lifetime payout options, regardless of the specific form of the product, reduces market exposure and helps insulate the income of participants from market volatility.

   C. Reduce the risk of ineffective financial management: Not all plan participants have the ability or discipline to effectively manage a retirement income distribution strategy. Research shows that most pre-retirees over estimate the amount they can draw down from their retirement savings and under estimate the length of their planning horizon. Further, many participants, especially less affluent participants, do not have access to competent financial advice to help them with this process.

      In addition to suggesting annuitization of benefits via immediate income annuities, different financial product alternatives should be considered. For example, some investment firms have introduced income replacement funds and managed payout funds that generate regular, but non-guaranteed cash flow for the participant. Further, systematic withdrawal programs can also be established to generate non-guaranteed retirement income. These products may become popular because they offer the participant flexibility and control.

   Disadvantages of participants receiving some or all of their benefits in the form of lifetime payments include:

   A. Reduced flexibility and control of assets: Income annuities that offer guarantees are often irrevocable and the participant may not be able to withdraw assets above their scheduled payments without significant penalties. If the annuity is irrevocable, the participant's estate could be reduced if the participant dies prematurely.

   B. If the timing of the annuity election is not flexible, the participant may find that the annuity is not appropriate from tax and planning perspectives. For example, if a participant plans to work in retirement the annuity may prove to generate additional and unwanted taxable income. Further, the participant may want to defer annuitization to increase his/her payout (much like deferring receipt of social security benefits).

C. Reduced opportunity for capital appreciation in a rising market: Because fixed annuities transfer asset risk to the annuity provider, in a market environment where asset prices are generally rising, the participant would give up potential for increased asset prices and income.

D. In the event of impaired health status later in life, participant may be unable to access assets needed to address healthcare costs. Also, for individuals with impaired mortality, an annuity with a payment stream not tailored to the participant's health status may result in reduced distributions than would otherwise be the case.

E. Behavioral challenge of helping participants understand the trade-off between a sizeable accumulated balance and what appear to be relatively modest lifetime monthly payments.

2. *Currently the vast majority of individuals who have the option of receiving a lump sum distribution or ad-hoc periodic payments from their retirement plan or IRA choose to do so and do not select a lifetime income option. What explains the low usage rate of lifetime income arrangements? Is it the result of a market failure or other factors (e.g., cost, complexity of products, adverse selection, poor decision-making by consumers, desire for flexibility to respond to unexpected financial needs, counterparty risk of seller insolvency, etc.)? Are there steps that the Agencies could or should take to overcome at least some of the concerns that keep plan participants from requesting or electing lifetime income?*

DC plan participants often decline to utilize lifetime income arrangements for a combination of the reasons mentioned in this question. However, it should be noted that many participants will roll balances out of the plan and into an IRA and seek to generate retirement income outside of the plan structure.

With respect to DC plan participants foregoing lifetime income options, reasons include:

A. Retain flexibility and control. Participants may be unwilling to make an irrevocable decision with their retirement savings, even if it offers the best expected return.

B. Product complexity. Many participants likely do not appreciate the complexity and risks associated with generating retirement income from their savings. A wide variety of retirement income product features, coupled with inconsistent naming conventions and descriptions of these features deter participants from understanding retirement income options. The lack of cost transparency further adds to the confusion.

C. Costs. The costs of lifetime income distribution options are often significantly higher or perceived to be higher than non-guaranteed options.

D. Lack of confidence in the solvency of the lifetime income provider (most typically an insurer). Participants are uncertain about trusting a single financial institution to guarantee their income, and are generally unaware of what would happen to their assets and guarantees if the guarantee provider were to become insolvent.

3. *What types of lifetime income are currently available to participants directly from plans (in-plan options), such as payments from trust assets held under a defined benefit plan and annuity payments from insurance contracts held under a defined contribution or defined benefit plan?*

Those individuals fortunate enough to participate in defined benefit plans can expect to receive lifetime income from the plan in retirement (assuming they elect to receive their benefit in annuity form). The form and consistency of payout resembles that of Social Security payments. Defined benefit plans also offer different annuity payment options to the participant. Specifically, single and joint life annuities are offered. Joint life annuities may come with different levels of survivorship benefits for a surviving spouse (e.g., 50%, 75% or 100%).

Most defined contribution plans do not offer lifetime income annuities, although participants taking Required Minimum distributions or systematic withdrawals may view that as a repetitive income source. Defined contribution plans also offer lump sum distribution options which are frequently rolled into IRAs.)

4. *To what extent are the lifetime income options referenced in question 3 provided at retirement or other termination of employment as opposed to being offered incrementally during the accumulation phase, as contributions are made? How are such incremental or accumulating annuity arrangements structured?*

Providing future guaranteed income through an in-plan investment option is a good alternative to annuitization at the retirement date, assuming that the disadvantages noted above can be addressed. There are several in-plan product designs which are currently available to plan sponsors .These include guaranteed Living Benefit (GLB) riders attached to group variable annuities and fixed Deferred Income Annuities (DIA), which can be immediate annuities that begin payouts at retirement, or “longevity annuities” which delay payments until later in life (to protect narrowly against the “tail risk” of outliving one’s assets)..

Deferred Income Annuities allow a participant to purchase a future income guarantee while saving in the DC plan. Each contribution purchases a future income guarantee payable at retirement or at a specific age. Essentially, the future income guarantee purchased is based on the age at contribution and projected retirement age or advanced age (in the case of longevity annuities), which determines the deferral period, annuity pricing considerations (e.g., interest rates at the time of contribution, mortality and expenses), and the anticipated annuity option at retirement or later.

Guaranteed Living Benefit riders offer an income guarantee via either a Guaranteed Minimum Income Benefit (GMIB) or Guaranteed Lifetime Withdrawal Benefit (GLWB) rider. With GMIBs, participants are able to invest in approved subaccounts and guarantee a future income benefit based on a separate “stepped up” value. Participants can access the stepped up value only by initiating the withdrawal or income benefit. It cannot be accessed for the single sum cash value. With GLWBs, participants’ assets that are invested in a fund move into the guaranteed fund component at a specified age (e.g., age 50). The market value of the account balance is used to establish the benefit base, which is then “wrapped” with a guaranteed percentage withdrawal amount, for example 4% or 5%, which is then the amount that is paid out annually. The participant retains total control over the assets and may choose to liquidate at any point in time as long as there is a market value. If the assets fall to zero, the insurance company steps in and continues to pay the guaranteed withdrawal amount; this payment comes from the insurance company’s General Account

We believe that a wide variety of options may be viable for most participants for the following reasons:

- Investing in guaranteed income incrementally while saving for retirement can create a dollar-cost-averaging benefit that cannot be achieved via a single point in time purchase. This is especially valid when utilizing DIA products.
- In-plan investments in guarantees, if provided as a QDIA, will create an income floor for participants that can replicate the benefit of a traditional defined benefit plan.
- In-plan investing will reduce the “sticker shock” that many retirees sense when comparing the monthly income benefit provided by a SPIA (single premium immediate annuity) to the cash outlay.
- GLB riders provide a form of portfolio insurance that reduces the impact of large investment losses immediately prior to retirement.
- Finally, investing in income guarantees over time will remind participants that their DC asset accumulations need to be used efficiently to generate income for a long time horizon. Anecdotally, there are many stories of

participants electing a lump sum distribution from their DC plan and splurging on a purchase (industry convention holds that this purchase is often a boat), without a full appreciation for the length of the horizon that the assets need to last.

5. *To what extent are 401(k) and other defined contribution plan sponsors using employer matching contributions or employer non-elective contributions to fund lifetime income? To what extent are participants offered a choice regarding such use of employer contributions, including by default or otherwise?*

   There are products in the marketplace which propose such a design, but it is not clear that sponsors have utilized them to date (survey data indicates that substantially less than 10% of plans utilize any type of in-plan annuity today). The designs appear to allow participants full discretionary control over these assets, as with any default structure.

6. *What types of lifetime income or other arrangements designed to provide a stream of income after retirement are available to individuals who have already received distributions from their plans (out-of-plan options), such as IRA products, and how are such arrangements being structured (fixed, inflation adjusted, or other variable, immediate or deferred, etc.)? Are there annuity products under which plan accumulations can be rolled over to an individual retirement annuity of the same issuer to retain the annuity purchase rights that were available under the plan?*

   In reviewing the question, DCIIA respectfully declines to comment on those arrangements that are designed for retail delivery to individuals who no longer have any affiliation with their employer sponsored retirement plan.

   Our Association is focused on lifetime income programs that are provided to plan participants still affiliated with their employer sponsored retirement plan. We believe that both in-plan and voluntary distribution arrangements facilitated through IRA rollovers should be designed as qualified institutional offerings. These arrangements should be structured to take advantage of the institutional framework of professional oversight, scale pricing, transparency, and unbiased participant education. Institutional arrangements provided to plan participants both during the accumulation and distribution phases will produce far better outcomes than what is available to participants on a retail basis. Today there are examples of lifetime income arrangements available to plan sponsors on both an in-plan and IRA rollover basis. There has been significant product development to date and the DCIIA supports continued broad based product development within the institutional framework for both in-plan and qualified IRA rollover distributions.

7. *What product features have a significant impact on the cost of providing lifetime income or other arrangements designed to provide a stream of income after retirement, such as features that provide participants with the option of lifetime payments, while retaining the flexibility to accelerate distributions if needed?*

   Fundamentally, lifetime income options, particularly in the guaranteed space, provide a combination of features – investment components that allow participants some sort of market exposure (to varying degrees, including no market exposure, in the case of an immediate annuity), and insurance, specifically, insurance against outliving one's assets. Products that carry a promise to make payments to a participant for their entire life, regardless of market performance, interest rate changes or the life span of that individual mean that the provider of that guarantee is bearing additional risks, and there are costs associated with that guarantee. In some cases, these costs are explicit, and various regulators may require them to be disclosed, and hedged. In other cases, the costs are there, but are carried as long term guarantees, and do not have to be explicitly accounted for or hedged. In either case, the guarantor (an insurance company), is bearing a complex set of risks associated with that promise to pay. If, for example, regulatory or capital constraints require that certain market risks be hedged, then short-term changes in market volatility can increase the cost of offering a specific guarantee. The insurance company may elect to bear those increased costs or pass them along to current or future participants.

Critically, these costs differ fundamentally from the costs associated with providing an investment product appropriate for the accumulation phase of a participant's savings horizon. The provision of a guarantee, where certain risks are transferred from the individual to an insurance company, naturally incur costs over and above those created by providing participants with market exposure.

8. *What are the advantages and disadvantages for participants of selecting lifetime income payments through a plan (in-plan option) as opposed to outside a plan (e.g., after a distribution or rollover)?*

Pros of In-Plan

- Track Retirement Income – An in-plan option allows the participation to track the amount of accumulated income leading up to the retirement.
- Dollar Cost Averaging – An in-plan option may allow for dollar cost averaging by purchasing lifetime income payments across an extended period leading up to retirement, reducing vulnerability to the interest rate environment at the time of retirement.
- Institutional Pricing – Participants may gain access to significantly lower fees than the retail market by being lumped into a large asset base (i.e. plan level assets).
- Increased Fee Transparency – Fee disclosure requirements may lead to clearer, more transparent disclosure for in-plan participants. Plan sponsors (and their advisors) can individually and collectively improve the transparency and comparability of a wide array of lifetime income product solutions.
- Spur Participation – A participant will be more likely to take action within a plan's parameters versus soliciting annuity options on his/her own behalf.
- Endorsement – Participants may take comfort in knowing that the in-plan option was pre-screened by the plan sponsor acting as fiduciary, which will also continue to monitor the in-plan option.
- Unbiased Decision Support – Plan sponsors have no financial incentive to drive participant behavior into specific options, and thus would typically offer decision support and guidance that has no inherent bias. In the individual retail market, commissions and other revenue incentives can create biased guidance and aggressive marketing tactics.

Cons of In-Plan

- Flexibility – A participant may seek a variety of annuity providers or features in the retail market, but most likely only a single in-plan option would be offered to participants.
- Portability – The issue of a participant being able to take lifetime income payments from one employer to another becomes relevant when offered as an in-plan option.

9. *What are the advantages and disadvantages from the standpoint of the plan sponsor of providing an in-plan option for lifetime income as opposed to leaving to participants the task of securing a lifetime income vehicle after receiving a plan distribution?*

Pros of In-Plan

- Beneficial for Participants – The addition of an in-plan option exhibits a conscious decision by the plan sponsor to help its participants prepare for retirement, promoting employee engagement and productivity. Providing an option that aids in the awareness of accumulated retirement income, protects against the early depletion of assets, and access to institutional fees is a benefit to participants and should thus also benefit the plan sponsor through employee appreciation.

- "DB-Like" Structure – An in-plan option allows a participant to transform defined contribution assets into a guaranteed income stream similar to once prevalent defined benefit plans. Plan sponsors who have moved away from a DB structure may appreciate the security offered to employees through an in-plan option.
- No Added Costs – The addition of an in-plan option should not result in additional fees for the plan sponsor.
- Asset Retention – In-plan options often preserve assets within the plan after retirement, maintaining asset levels over time and retaining the institutional purchasing power within the plan.
- Employee retention. Like defined benefit plans, carefully designed DC plans that have a guaranty income option may help in the retention of skilled employees

Cons of In-Plan

- Limited Number of Options – At this time, there is a limited number of in-plan options available to plan sponsors to choose from.
- Fiduciary Responsibility – Plan sponsor protection in offering an in-plan option is undefined currently.
- Ongoing Monitoring – The evaluation of the universe of annuity/guaranteed income options is unprecedented in a defined contribution setting, creating concerns in ability to effectively monitor or replace an option if necessary. Options offered outside the plan generate significantly less work and risk for the plan sponsor.
- Employer/Plan-level Portability – If a plan sponsor wishes to switch providers, either the plan recordkeeper or the lifetime income provider, there are currently no standards for transferring accumulated income balances, and not all recordkeepers will support all products or solutions. This can leave plan sponsors with a difficult choice regarding solutions which are no longer appropriate for the sponsor or their participants.

10. *How commonly do plan sponsors offer participants the explicit choice of using a portion of their account balances to purchase a lifetime annuity, while leaving the rest in the plan or taking it as a lump sum distribution or a series of ad hoc distributions? Why do some plan sponsors make this partial annuity option available while others do not? Would expanded offering of such partial annuity options—or particular ways of presenting or framing such choices to participants—be desirable and would this likely make a difference in whether participants select a lifetime annuity option?*

    Without commenting on the current state of the market with respect to sponsors offering partial annuitization options, there can be little doubt that the literature regarding choice architecture is compelling on this point. Simple "framing" choices with respect to how lifetime/retirement income choices are presented to participants can make enormous differences in the take-up rates of such products. More research is called for on this topic, but initial work done by academics such as Jeffrey Brown, Moshe Milevsky, David Laibson, Brigitte Madrian, not to mention the seminal work done by Cass Sunstein and Richard Thaler in this field suggests that simple changes in how lifetime income options are presented (or delivered, in the case of a default approach) can lead to much-improved metrics with respect to retirement security.

11. *Various "behavioral" strategies for encouraging greater use of lifetime income have been implemented or suggested based on evidence or assumptions concerning common participant behavior patterns and motivations. These strategies have included the use of default or automatic arrangements (similar to automatic enrollment in 401(k) plans) and a focus on other ways in which choices are structured or presented to participants, including efforts to mitigate "all or nothing" choices by offering lifetime income on a partial, gradual, or trial basis and exploring different ways to explain its advantages and disadvantages. To what extent are these or other behavioral strategies being used or viewed as promising means of encouraging more lifetime income? Can or should the 401(k) rules, other plan qualification rules, or ERISA rules be modified, or their application clarified, to facilitate the use of behavioral strategies in this context?*

DCIIA believes that use of defaults in connection with lifetime income products is critical, if not essential, to creating retirement income adequacy in the United States, again, with the caveat that the issues noted elsewhere in this response are addressed. The decline in the use of defined benefit plans combined with the unsure footing of Social Security and the volatility inherent in traditional defined contribution plan investments make it essential that we create an additional source of guaranteed lifetime income.

We know from research on behavioral science applied in the context of retirement plan investing that a significant percentage of participants will never take the time to educate themselves about lifetime income products or, if they do, will never act on the education they receive. We also know that the majority of participants age 55-59 are interested in guaranteed income or paycheck products. Many experts who have studied the problem of retirement income adequacy have recommended that some or all of participants' accounts in defined contribution plans be defaulted to a distribution option that provides guaranteed lifetime income payments. This research supports the view that if we take a "wait and see" approach to see if encouraging voluntary action will be enough to close the income gap, we are unlikely to be satisfied with the result and will have lost valuable time needed to close the retirement income adequacy gap.

While we support the use of defaults in connection with lifetime income options, we also believe it's critical that defaulted participants have the opportunity to opt out of the default without penalty, both before the default action occurs as well as for some administratively reasonable period of time after it occurs. There will always be a segment of participants who want to actively manage their account during retirement or who have other reasons why a lifetime income solution is not the right solution for them and we believe it is critical to support this category of participants, as well as those who are less active investors.

One of the key barriers in using defaults to cause participants to invest in lifetime income products and or to take distribution in the form of lifetime income vehicles has been the irrevocability (perceived or otherwise) of the investment decision. Lack of control over account balances and the "all or nothing" choice implied in many annuity products are among the core reasons why plans don't offer in-plan lifetime income products and, more specifically, why participants don't select them when taking a distribution from the plan. More recent products help address this problem by allowing participants control over how much of their account to invest in a lifetime income option, allowing them to invest gradually over time and make changes to their investment elections, and allowing access to and control over some or all of their account in the lifetime income investment during both the accumulation and withdrawal phases.

Creating a regulatory structure that would allow plans to default participants in to lifetime income investments and distribution options is essential for addressing the risk that participants will outlive their retirement savings. However, participants must have sufficient flexibility after the default has occurred to align the retirement income investment with their individual retirement income needs. Please see our response to Q 13 for more detail on this topic.

12. *How should participants determine what portion (if any) of their account balance to annuitize? Should that portion be based on basic or necessary expenses in retirement?*

If, and what amount to annuitize is a very individual decision based on the participant's own facts and circumstances.

We recommend that the DOL encourage plan participants to create or estimate a retirement budget taking into account items such as:

- Sources of fixed income, such as Social Security or pension income,
- Savings and assets available to generate supplemental income (via investment earnings and/or liquidated capital),
- Income earned from part-time or temporary work in retirement,

- Anticipated expenses in retirement split between “basic income needs” and “lifestyle income needs”, and
- Legacy and estate goals.

Inflation also needs to be addressed. While some income annuities or annuity options offer COLA features to keep pace with inflation, most do not. Income needs should be reviewed periodically in retirement and additional guaranteed income amounts may need to be secured

13. *Should some form of lifetime income distribution option be required for defined contribution plans (in addition to money purchase pension plans)? If so, should that option be the default distribution option, and should it apply to the entire account balance? To what extent would such a requirement encourage or discourage plan sponsorship?*

DCIIA as an organization supports lifetime income options in 401(k) plans, and supports the inclusion of those features in default options utilized for plan participants. DCIIA further believes that it should be simpler, easier, and less risky from a fiduciary perspective for plan sponsors to include these features. We believe that if the Agencies encouraged plan sponsors to incorporate lifetime income features in their plans that would be useful. We do not, however, believe that these features should be required, especially in the absence of clarity regarding any risks that sponsors may be taking be including these features in their plans. Further, such features are not always equally valuable for every plan sponsor – there may be specific workforce demographic or other benefit features (such as an open defined benefit plan) that would make the required inclusion of a lifetime income feature less appropriate. DCIIA strongly supports the basic tenets of “choice architecture,” and the concepts popularized in the book “Nudge,” by Sunstein and Thaler. More specifically, DCIIA supports designing defaults that lead to successful outcomes, but leaving choice, in this case, to both sponsors and participants.

Participants could be given access to low-cost, institutionally priced lifetime income options selected in accordance with fiduciary due diligence requirements. There is significant product innovation currently occurring with respect to lifetime income products and the Agencies should fashion rules that encourage future development by defining “lifetime income distribution option” in broad terms.

According the 2009 Hewitt study, “Trends and Experiences in 401(k) Plans”, 84% of 401(k) plan participants take distribution in the form of a lump sum payment and only 1% elect to take an annuity. With this wide gap, relying on voluntary choices by plan sponsors and plan participants will not be sufficiently effective in promoting retirement income adequacy and using a lifetime income option as the default distribution option is necessary to address the risk that a substantial number of participants will outlive their retirement income. Protections similar to those offered in the context of automatic enrollment, such as notice requirements and the opportunity to opt out without penalty are essential for the effective use of a default strategy. The products used as a default must be flexible enough to accommodate the necessary flexibility and must be attractive enough to defined contribution plan participants to promote a high “stick rate” similar to what we’ve experienced using automatic enrollment.

From a behavioral finance perspective, a mandated inclusion of a lifetime income feature that applied to 100% of the account balance as the default option would likely be viewed extremely negatively by both sponsors and participants. Alternatively, clear guidance that the selection and inclusion of lifetime income features is not only acceptable, but encouraged, with appropriate opt-out features, would allow plan sponsors to design default structures appropriate for their workforce and benefit plans, would harness the power of inertia, and would still give participants control over their account balances if they proactively chose not to utilize the lifetime income feature.

We believe that if lifetime income options are encouraged as the default distribution option with appropriate protections for plan sponsors (including protections similar to those offered under the QDIA rules), it will encourage plan sponsorship because it will make the plan more valuable to employees and will reduce the risk of claims brought by participants based on insufficient retirement income.

As is mentioned in Q26, the regulatory hurdles that plan sponsors currently face with items such as the qualified joint and survivor annuity rules become a hindrance to adding retirement income products to a plan, particularly as a default option.

14. *What are the impediments to plan sponsors' including lifetime income options in their plans, e.g., 401(k) or other qualification rules, other federal or state laws, cost, potential liability, concern about counterparty risk, complexity of products, lack of participant demand?*

There have been a variety of barriers or impediments that have limited the widespread adoption of lifetime income solutions within qualified plans. The discussion below is by no means comprehensive, but addresses some of the reasons behind sponsor reluctance to offer these solutions to their participants.

Annuities are complex financial products. Historically, plan sponsors and their advisors have used metrics such as an investment's expense ratio as a key metric when comparing various investment options. Lifetime income features introduce new requirements for comparing options, including, but not liimited to, the cost of the underlying investment content, and the amount of future income purchased today at some price. The lack of comparability across different types of products, as well as the difficulty of comparing accumulation products (such as mutual funds) with distribution options (such as annuities) has clearly been a key inhibiting factor in sponsor adoption to date.

It is not practical or realistic to expect plan sponsors to bear the risk associated with understanding annuity pricing nuances – let alone determine if the annuity benefits provide value to plan participants – without some form of fiduciary relief or specific guidelines to help plan sponsors endorse the products. The industry is working to improve the transparency of these products and the cross-comparability, but this issue remains contentious.

Counterparty risk is also a concern. Selecting an insurer (in the case of a lifetime guaranteed product design) could be done by relying on a company's current financial and claims-paying ratings from a 3rd party ratings agency (e.g., Moody's, S&P, Fitch, A.M. Best, etc.). While a company's financial and claims-paying ratings can be interpreted as a good indication of a company's stability, it cannot predict its long term viability. This is especially relevant given the long-term nature of immediate annuity guarantees. However, rating agencies have also come under fire for failing to predict and quantify the risk exposure that many firms had to annuity living benefits in 2008 and 2009.

The DOL would clearly need to offer additional safe harbor guidelines to relieve sponsors of fiduciary responsibility in both cases.

15. *What are the advantages and disadvantages of approaches that combine annuities with other products (reverse mortgages, long term care insurance), and how prevalent are these combined products in the marketplace?*

As noted in Q. 6, DCIIA's mission is focused on solutions which are offered to participants still affiliated with qualified workplace retirement plans. While we are aware that there is some product innovation with respect to the designs alluded to above in the "pure" retail space, we are not aware of those designs being offered in the qualified, employer-sponsor arena.

16. *Are there differences across demographic groups (for example men vs. women) that should be considered and reflected in any retirement security program? Can adjustments for any differences be made within existing statutory authority?*

DCIIA has elected not to comment on this question.

As an association, we support the efforts of plan sponsors to improve the retirement outcomes of all of their participants.

Participant Education

The Department of Labor issued Interpretive Bulletin 96–1 (29 CFR 2509.96–1) to clarify that the provision of investment education, as described in the Bulletin, will not be considered the provision of ''investment advice,'' which would give rise to fiduciary status and potential liability under ERISA for plan participants' and beneficiaries' investment decisions.

17. *What information (e.g., fees, risks, etc.) do plan participants need to make informed decisions regarding whether to select lifetime income or other arrangements designed to provide a stream of income after retirement? When and how (i.e., in what form) should it be provided? What information currently is provided to participants, who typically provides it, and when and how is it provided to them?*

The following should be included in the information provided to participants:

- Fees – the expenses of the product
- Penalties – if there are penalties for non-scheduled withdrawals from the product.
- Amount of income for the participant – the annual income the participant will receive which may be dependent on when they begin the distributions.
- Underlying investments of the product – is it in the general account of the provider or are their underlying investments the participant can select?
- Features of the product – are there guaranteed amounts? Is it adjusted for inflation? Is there a spousal benefit and if so in what amount?

The plan sponsor would provide the information to the participant based on facts and features they receive from the product provider. The information should be available to the participant in paper and electronic format before they purchase the lifetime income solution.

18. *Is there a need for guidance, regulatory or otherwise, regarding the extent to which plan assets can be used to pay for providing information to help participants make informed decisions regarding whether to select lifetime income or other arrangements designed to provide a stream of income after retirement, either via an in-plan or out of plan option?*

Yes. DCIIA believes that there the need to educate plan participants about lifetime income is a public policy and moral imperative. However, legal and regulatory concerns seem to be getting in the way of advancements in this area. As a general matter, the consideration of whether an expense for education is in fact an eligible plan expense (and, therefore, able to be paid for from plan assets) involves a review of the duties of loyalty and prudence under ERISA. Specifically, Section 401(c)(1) provides that the assets of a plan shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries, and defraying reasonable expenses of administering the plan and ERISA Section 404(a)(1)(A) provides that a fiduciary shall discharge his duties with respect to the plan solely in the interest of the participants and beneficiaries for the exclusive purpose of providing benefits to participants and their beneficiaries, and defraying reasonable expenses of administering the plan. Moreover, a plan fiduciary must establish and follow a prudent process to evaluate whether an expense meets these standards.

It seems clear that providing plan participants with the education and tools that they need to appreciate, measure and fully consider their individual retirement income needs falls squarely within the dictates of ERISA. That said, the ultimate determination of whether expenses are reasonable and necessary must be made by the plan fiduciaries pursuant to their fiduciary duties under ERISA to act prudently and for the exclusive purpose of providing benefits to the participants and their beneficiaries and defraying reasonable administrative expenses. While this standard may seem relatively straight forward to apply in the lifetime income context, it can be very difficult for a plan sponsor/fiduciary to act without guidance from the DOL. Thus, the DOL can help promote the adoption of education programs in this area by providing plan fiduciaries with published rules or regulations regarding the standards that it will use in reviewing the use of plan assets to pay for retirement income educational efforts implemented using plan assets.

19. *What specific legal concerns do plan sponsors have about educating participants as to the advantages and disadvantages of lifetime income or other arrangements designed to provide a stream of income after retirement? What actions, regulatory or otherwise, could the Agencies take to address such concerns?*

It is important that the DOL encourage plan sponsors and other plan fiduciaries to help plan participants understand and evaluate their retirement income needs. The information that plan participants need to make informed decisions about lifetime income arrangements is significantly different than the information that a plan sponsor/fiduciary needs to consider in offering such options, and selecting the appropriate provider(s). For example, in selecting annuity provider for its plan, DOL guidance instructs a fiduciary to consider: the ability of the annuity provider to administer the payments of benefits under the annuity to the participants and beneficiaries and to perform any other services in connection with the annuity, the cost of the annuity contract in relation to the benefits and administrative services to be provided under such contract, taking into account the amount and nature of any fees and commissions, the annuity provider's experience and financial expertise in providing annuities of the type being selected or offered, the annuity provider's level of capital, surplus and reserves available to make payments under the annuity contract, the annuity provider's ratings by insurance ratings services. Consideration should be given to whether an annuity provider's ratings demonstrate or raise questions regarding the provider's ability to make future payments under the annuity contract, the structure of the annuity contract and benefit guarantees provided, and the use of separate accounts to underwrite the provider's benefit obligations, the availability and extent of additional protection through state guaranty associations, and any other information that the fiduciary knows or should know would be relevant to evaluating the annuity provider's ability to make all future payments and the relationship between the costs and the benefit and administrative services to be provided under the annuity contract.

As we have identified elsewhere in this RFI, it is critical that the fiduciary selection process be made simpler. This would encourage fiduciaries to adopt/establish lifetime income solution(s)while the fiduciary process would continue to protect plan participants. Additionally, an education process for plan participants that focuses more narrowly on identifying an individual's retirement income needs and identifying the investment products can be used to help meet and secure these retirement income needs would also benefit sponsors and participants. Plan fiduciaries must feel secure that they will not be exposed to additional risks/liability as a consequence of providing education and/or advice to participants on lifetime income consideration and solutions. Plan sponsor would likely take a good deal of comfort in the adoption of safe harbors (and/or other guidance) from the DOL that support plan sponsor/fiduciary effort in this area.

20. *To what extent should plans be encouraged to provide or promote education about the advantages and disadvantages of lifetime annuities or similar lifetime income products, and what guidance would be helpful to accomplish this?*

Given that one of the impediments to the use of lifetime income products has been the lack of participant understanding, it is important that plans be encouraged to educate participants on the advantages and disadvantages of lifetime annuities or other lifetime income products. Guidance may include providing retirement income comparisons for various products (both lifetime income and non-lifetime income).

Plan participants clearly need to be educated on the benefits and drawbacks of lifetime income products. Beyond the product features, benefits and costs, participants also need to understand why they have to spend down their retirement savings carefully.

Participant education is an area where the DOL has an opportunity to demonstrate practical leadership. The DOL should consider producing generic educational content and perhaps hosting calculators and planning tools on a trusted, impartial website for the public to use when making these decisions. From the plan sponsor perspective, encouragement would be preferred to mandates or additional complex notice requirements.

Disclosing the Income Stream That Can Be Provided From an Account Balance

ERISA section 105 requires defined contribution plans to furnish to each participant an individual benefit statement, at least annually, that includes the participant's ''accrued benefits,'' i.e., the individual's account balance.

21. *Should an individual benefit statement present the participant's accrued benefits as a lifetime income stream of payments in addition to presenting the benefits as an account balance?*

Yes. This may be one of the single most important changes to the current 401(k) system that can be made. The sooner we begin to shift the mindset of participants away from DC plans as "savings plans," and toward "retirement plans," the more successful they will be as retirement plans. That means conditioning participants to think about their account balance as a stream of future income as early and as often as possible.

Translating the amount saved into a future income estimate will serve to remind participants that their DC plan accumulations are needed to generate income throughout retirement. Additionally, when they see that $100,000 may only generate $700 of monthly income for life, the participant may be incented to save more aggressively.

Some providers have already taken steps to make this information available to plan participants. DCIIA encourages continued innovation on this topic. It is also critical that the assumptions utilized to create an income example be reasonable, and that sponsors do not bear additional liability for providing such estimates.

22. *If the answer to question 21 is yes, how should a lifetime stream of income payments be expressed on the benefit statement? For example, should payments be expressed as if they are to begin immediately or at specified retirement ages? Should benefit amounts be projected to a future retirement age based on the assumption of continued contributions? Should lifetime income payments be expressed in the form of monthly or annual payments? Should lifetime income payments of a married participant be expressed as a single-life annuity payable to the participant or a joint and survivor-type annuity, or both?*

Without limiting the incorporation of either current or future lifetime income product designs, future income benefits could be expressed as follows:

Accumulated account value:

- Project the account balance to ages 60, 65, and/or 70.
- Calculate balances based on current contribution rate. Ideally, also show the benefit of increasing contributions by 1% or 2% higher than the current rate. This shows the benefit of increased savings.
- Assume investment returns of 0%, 4% and 8% to the retirement age.

Annuity benefits:

- Show the monthly income amount based on the accumulated account values. Most people who budget do so on a monthly basis vs. annual basis.
- Single and Joint Life annuity or withdrawal values should be shown.
- Also consider showing non-guaranteed income amounts using a 4% or 5% annualized withdrawal rate.

23. *If the answer to question 21 is yes, what actuarial or other assumptions (e.g., mortality, interest, etc.) would be needed in order to state accrued benefits as a lifetime stream of payments? If benefit payments are to commence at some date in the future, what interest rates (e.g., deferred insurance annuity rates) and other assumptions should be applied? Should an expense load be reflected? Are there any authoritative tools or sources (online or otherwise) that plans should or could use for conversion purposes, or would the plan need to hire an actuary? Should caveats be required so that participants understand that lifetime income payments are merely estimates for illustrative purposes? Should the assumptions underlying the presentation of accrued benefits as a lifetime income stream of payments be disclosed to participants? Should the assumptions used to convert accounts into a lifetime stream of income payments be dictated by regulation, or should the Department issue assumptions that plan sponsors could rely upon as safe harbors?*

    We recommend that the DOL solicit technical illustration guidelines and parameters from impartial regulatory and industry associations such as FINRA, the NAIC and/or Society of Actuaries.

    Due to the fluid nature of financial product pricing and market benchmarks, we also recommend that the DOL provide general guidance on assumptions (again, with the input from regulatory and industry experts) in the form of safe harbors and not dictate by regulation.

24. *Should an individual benefit statement include an income replacement ratio (e.g., the percentage of working income an individual would need to maintain his or her preretirement standard of living)? If so, what methodology should be used to establish such a ratio, such as preretirement and post-retirement inflation assumptions, and what are the impediments for plans to present the ratio in a meaningful way to participants on an individualized basis?*

    Please see also our response to question 21. In particular, we would emphasize the importance of the assumptions used in creating lifetime income or replacement ratio examples.

    Income replacement ratios can be misleading and lead to inappropriate planning for those close to retirement. For participants within 10 years of retirement, we recommend estimating retirement expenses as described in Question 12.

    For younger plan participants, income replacement ratios may provide high-level “rule of thumb” guidance. However, it is important to disclose that income replacement ratios normally do not take into account “retirement lifestyle” expenses and expectations. Other factors like inflation, health care costs, and changing income levels need to be factored in to the estimates as well.

401(k) and Other Plan Qualification Rules

Income Tax Regulations that apply specifically to lifetime annuities include: 26 CFR 1.401(a)–11, 26 CFR 1.401(a)–20, 26 CFR 1.401(a)(9)–1 through 26 CFR 1.401(a)(9)–9, 26 CFR 1.417(a)(3)–1, and 26 CFR 1.417(e)–1.

25. *How do the 401(k) or other plan qualification rules affect defined contribution plan sponsors’ and participants’ interest in the offering and use of lifetime income? Are there changes to those rules that could or should be made to encourage lifetime income without prejudice to other important policy objectives?*

    As noted elsewhere in our response, concerns about the eligibility or appropriateness of lifetime income options in a qualified plan context has been an impediment to sponsors adopting them. An important change the agencies could make to encourage the use of lifetime income options is the creation of a clear safe harbor, so that plan sponsors are aware that they can incorporate these features in their plans, perhaps even as a default, without exposing themselves to undue fiduciary risk, or running the risk that the plan will somehow be in violation of the plan qualification rules simply by offering a lifetime income option.

26. *Could or should any changes be made to the rules relating to qualified joint and survivor annuities and spousal consents to encourage the use of lifetime income without compromising spousal protections?*

The qualified joint and survivor annuity rules present administrative burdens and complexities when applied in the context of certain lifetime income products and changes to those rules would encourage the use of lifetime income products without compromising spousal protections.

The vast majority of 401(k) plans today take advantage of the option under IRC § 401(a)(11)(B)(iii) and Treas. Reg. § 1.401(a)-20, Q&A 3(a) to provide for a 100% spousal death benefit (unless waived) in lieu of offering QJSA or QPSA benefits. The reason most 401(k) plans are designed this way is that most participants and beneficiaries waive the QJSA and QPSA benefits even when they're available, and implementing the survivor annuity rules creates significant costs and administrative burdens due to the notice, waiver, revocation and spousal consent requirements.

Under current IRS rules if a participant selects payment in the form of a life annuity the exception to the survivor annuity rules is no longer available and plans must comply with the QJSA and QPSA rules. It is not clear under the code and regulations, or under recently issued Private Letter ruling 200951039, whether lifetime income products like GLWBs that do not involve annuitization of participant accounts trigger application of the survivor annuity rules and this confusion is a barrier to adoption of these lifetime income products.

It is recommended that the Agencies clarify that lifetime income products in which participants maintain and control an account balance supporting the lifetime income guarantee and where the participant's account balance is never irrevocably converted to an annuity are not life annuities for purposes of the survivor annuity rules. The result should not vary due to the possibility that at some point during the payout phase (after the supporting account balance is depleted) the lifetime income payments will be paid by the guarantor. The result should also not vary based on the fact that a single election by the participant triggers payment from their account balance until depleted and from the insurer after depletion.

Clarifying that certain lifetime income products are not life annuities triggering compliance with the survivor annuity rules will not diminish spousal protections enjoyed under the current structure. The vast majority of 401(k) plan distributions today are made to participants in the form of a lump sum distribution upon separation from service with no spousal protections. Lifetime income and annuity products are almost universally offered in the form of either a single or joint and survivor payout structure and, with respect to guaranteed minimum withdrawal type products, any account balance remaining at the time of a participant's death is paid to their beneficiary, which typically is the spouse. Therefore, even without the QJSA and QPSA rules applying, spouses are likely to receive a larger portion of 401(k) plan distribution amounts if a lifetime income product is selected than they do when benefits are paid in the form of a lump sum distribution upon separation from service.

27. *Should further guidance clarify the application of the qualified joint and survivor annuity rules or other plan qualification rules to arrangements in which deferred in-plan insurance annuities accumulate over time with increasing plan contributions and earnings?*

Yes, further guidance on application of the qualified joint and survivor rules to in-plan annuities is necessary. Please see our response to Q 26 above for more detail on this issue.

28. *How do the required minimum distribution rules affect defined contribution plan sponsors' and participants' interest in the offering and use of lifetime income? Are there changes to those rules that could or should be made to encourage lifetime income without prejudice to other important policy objectives? In particular, how are deferred annuities that begin at an advanced age (sometimes referred to as longevity insurance) affected by these rules? Are there changes to the rules that could or should be considered to encourage such arrangements?*

Required minimum distribution (RMD) rules can play a role in discouraging plan sponsors from offering lifetime income solutions. Since violation of RMD rules create a significant tax penalty, any potential lifetime income solution must carefully consider all situations to ensure violation of RMD rules is avoided. Ultimately, a plan sponsor might conclude that any RMD violation that occurred with dollars in their sponsored plan would reflect negatively on the sponsor. Such a conclusion discourages plan sponsors from supporting lifetime income solutions. Any guidance that alleviates this sponsor concern would help encourage adoption of lifetime income solutions.

Current RMD rules also discourage usage of certain lifetime income solutions. In particular, longevity insurance is significantly impacted by RMD rules. The efficiency of longevity insurance relies on the gap between the purchase date of the insurance and the date income begins. By delaying the beginning of the income phase, an individual can purchase income at a substantial discount. A typical policy might have a purchase date at age 65 with income beginning at age 80. Mortality between 65 and 80 creates a substantial discount on late-life income. However, this type of insurance policy is disadvantaged given current RMD rules. If purchased with qualified dollars, the value of this policy counts in the RMD calculation, but the policy itself does not generate any income until age 80. What happens if there are insufficient funds outside of the insurance policy to pay for the required minimum distribution implied by the value of the policy? That concern has kept longevity insurance providers from accepting qualified dollars for policies with payouts that begin after age 70. To remedy this situation, we recommend that longevity insurance policies be exempted from the RMD calculation. Current RMD rules exempt immediate annuity purchases from the RMD calculation. Extending that exemption to cover longevity insurance is justified on the grounds that under many circumstances a portfolio combining liquid assets and longevity insurance can create a more desirable lifetime income solution (higher income and/or increased flexibility). In fact, given the policy benefits of sharing mortality risk, consideration should be given to exempting any insurance contract that focuses solely on life-contingent payments. Current RMD rules unnecessarily hinder the development of lifetime income solutions based on longevity insurance and should be updated accordingly.

Longevity Insurance Overview

Longevity insurance (sometimes referred to as a deferred annuity or a longevity annuity) allows an individual to purchase life-contingent income that begins at a future date. For example, a longevity insurance policy purchased at age 65 may have income payments that do not begin until age 80. The payouts from the policy are inexpensive because they are contingent upon living to an advanced age to collect. Recent research has demonstrated that longevity insurance arrangements maximize the income benefit per insurance premium dollar spent. For example, Scott, 2008 estimates that "for a typical retiree, allocating 10%-15% of wealth to a longevity annuity creates spending benefits comparable to an immediate annuity allocation of 60% or more." Moreover, since insurance costs tend to be proportional to the premium payment, longevity insurance can help minimize insurance costs (see, for example, Scott et al., 2009).

Longevity insurance research implies that individuals looking to allocate only a portion of their assets to insurance can typically improve their income level by utilizing longevity insurance instead of traditional immediate annuities. Since few individuals want to fully annuitize their assets, longevity insurance could play an important role in the creation of desirable lifetime income solutions.

References

Scott, J.S. 2008. The Longevity Annuity: An Annuity for Everyone? *Financial Analysts Journal*. 64(1): 40-48.

Scott, J.S., Watson, J.G. and Hu, Wei-Yin, 2009. What Makes a Better Annuity? Pension Research Council Working Paper 2009-03. (forthcoming – *Journal of Risk and Investment*)

29. Are employers that sponsor both defined benefit and defined contribution plans allowing participants to use their defined contribution plan lump sum payouts to "purchase" lifetime income from the defined benefit plan? Could or should any actions be taken to facilitate such arrangements? Should plans be encouraged to permit retirees who *previously took lump sums to be given the option of rolling it back to their former employer's plan in order to receive annuity or other lifetime benefits?*

Any clarity the agencies can provide on the ability to view both defined benefit and defined contribution plan benefits holistically would enhance the entire retirement benefits offering, for those participants fortunate enough to have access to both types of plans. A variety of studies suggest that defined benefit plans can produce low-cost retirement income benefits, and if it were possible for DC plan participants to share in those savings, it would improve outcomes for those participants. DCIIA would support clarification with respect to the interaction between the two types of plans.

Selection of Annuity Providers

The Department of Labor's regulation 29 CFR 2550.404a–4 contains a fiduciary safe harbor for the selection of annuity providers for the purpose of benefit distributions from defined contribution plans.

30. To what extent do fiduciaries currently use the safe harbor under 29 CFR 2550.404a–4 when selecting annuity providers for the purpose of making benefit distributions?

In our experience 401(k) plans, particularly those in the small to mid market, do not offer traditional annuities as a benefit distribution option and therefore do not use the current safe harbor for selecting annuities. The administrative costs of complying with the spousal annuity rules and the lack of clarity in the current safe harbor are some of the reasons why annuity options are not typically offered.

31. To what extent could or should the Department of Labor make changes to the safe harbor under 29 CFR 2550.404a–4 to increase its usage without compromising important participant protections? What are those changes and why should they be made?

It is not clear whether the current regulatory safe harbor for annuities applies to some of the newer guaranteed lifetime income products or, if they do, how it applies in the context of these products. Anecdotally, some plan sponsors and their advisors, believe that even if the current safe harbor did apply to these newer in-plan solutions, it would not provide sufficient protection for the plan sponsor from a fiduciary perspective.

It would be helpful to create a new fiduciary safe harbor providing guidance on the selection and monitoring of deferred annuities, GMIBs. GLWBs, GMWBs (not an exhaustive list) or other lifetime income solutions and products that do not work like traditional single premium immediate annuities.

Fiduciaries will be most comfortable relying on a safe harbor if it is very clear on the steps they must take and the variables they should consider when selecting a lifetime income products. The guidance should be flexible enough to accommodate a broad array of lifetime income products/solutions to both facilitate the current product array, and encourage product innovation. Following are areas of core concern to fiduciaries that should be addressed by the safe harbor.

- *Selecting the Guarantor of Lifetime Income Payments:* Plan fiduciaries are very concerned about their potential liability in selecting a guarantor and in particular the risk they take if the guarantor is not able to make promised payments in the future. The safe harbor should allow plan fiduciaries to rely extensively on protections offered by state insurance laws. To the extent an independent review of insurance company solvency is appropriate; the safe harbor should identify the specific type of information that should be reviewed when selecting a guarantor (ratings information, performance history, etc.). Fiduciaries should be able to rely on publicly available information unless they have actual knowledge of non-public information. The safe harbor should clarify that if the decision to select a particular guarantor was prudent at the time made, plan fiduciaries will not be held liable if at some point in the future the financial circumstances of the guarantor change.

- *Monitoring the Guarantor of Lifetime Income Payments:* Lifetime income products pose a unique challenge to fiduciaries in fulfilling their obligation to monitor plan investments and to respond appropriately if an investment is found to no longer be suitable for the plan. If a plan decides to eliminate a lifetime income investment altogether, participants already invested in the product may pay substantial early withdrawal penalties, or may lose the benefit of guarantees they've already paid for. The safe harbor likely should presume that the monitoring of existing investments would utilize the same types of information utilized in the initial selection of the lifetime income feature. Additionally, the safe harbor should clarify that if the selection of the guarantor was prudent at the time made, and if upon determining that current investment in the product is no longer prudent the plan fiduciary disallows access to new investors, fiduciaries will not be liable for any losses suffered by pre-existing investors.
- *Evaluation of Product Features:* The safe harbor should identify key product features that plan fiduciaries should evaluate when selecting an appropriate product for their plan. The list should be presented as representative and not all inclusive in order to take in to account future product development. The representative list should include features such as:
  - *The level of guaranteed payments offered*
  - *The degree (if any) to which the payments provide some protection against the erosion of purchasing power due to future inflation*
  - *Any conditions or restrictions on receiving the guaranteed payments*
  - *The level of access participants have to their account balance during both the accumulation and distribution phases*
  - *The effect, if any, on market experience on the level of guaranteed payments and, if there is such an effect, the quality of the underlying investments*
- *Product Portability*: Many lifetime income products are not readily transferable in the event of a change in service providers. Plan sponsors are concerned with balancing their fiduciary role in selecting and monitoring service providers with their fiduciary responsibility to plan participants in not causing them to lose benefits or incur unreasonable expenses. This problem could be resolved by allowing participants in this situation to roll their lifetime income investment in to an IRA, as discussed more fully in the response to Q 14. Absent this change to plan distribution rules, plan sponsors should be given guidance on how to evaluate portability. For example, they should be protected from liability if there are a reasonable number of other providers who will either record keep the guaranteed product, or who will cooperate with the current product provider to maintain the product in the plan. Additionally, reasonable recordkeeper reluctance to support multiple product designs in the absence of clarity regarding the acceptability of these products limits portability between recordkeeping platforms.
- *Fees:* Lifetime income products charge fees or incorporate costs in a variety of ways and plan fiduciaries should be given guidance about how to compare cost in relation to specific product features, as well as in comparison to other similar products. Fee transparency on immediate annuities may never be entirely possible. The level of income generated is typically the main basis of comparison among immediate annuities. Also, attempting to compare GLWBs, immediate annuities, ALDAs and other designs (e.g., non-guaranteed products) is quite complex, and perhaps guidance that encourages a non-biased comparison of the pros/cons of each kind of product would be most helpful.

32. *To what extent could or should the safe harbor under 29 CFR 2550.404a–4 be extended beyond distribution annuities to cover other lifetime annuities or similar lifetime income products? To which products should or could the safe harbor be extended?*

Please see our response to Q 31.

ERISA Section 404(c) ERISA section 404(c) and 29 CFR 2550.404c–1 provide defined contribution plan fiduciaries with limited relief from the fiduciary responsibility provisions of ERISA where a participant or beneficiary exercises control over the assets in his or her account.

33. *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? 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? What are the advantages and disadvantages of such products to participants? What information typically is disclosed to the participant, in what form, and when? To what extent could or should the ERISA 404(c) regulation be amended to encourage use of these products?*

34. *To what extent do ERISA 404(c) plans currently provide lifetime income through variable annuity contracts or similar lifetime income products? What are the advantages and disadvantages of such products to participants? What information about the annuity feature typically is disclosed to the participant, in what form, and when? To what extent could or should the ERISA 404(c) regulation be amended to encourage use of these products?*

Qualified Default Investment Alternatives

ERISA section 404(c)(5) provides that, for purposes of ERISA section 404(c)(1), a participant in a defined contribution plan will be treated as exercising control over the assets in his or her account with respect to the amount of contributions and earnings if, in the absence of an investment election by the participant, such assets are invested by the plan in accordance with regulations of the Department of Labor. The Department of Labor's regulation 29 CFR 2550.404c–5 describes the types of investment products that are qualified default investment alternatives under ERISA section 404(c)(5).

35. *To what extent are plans using default investment alternatives that include guarantees or similar lifetime income features ancillary to the investment fund, product or model portfolio, such as a target maturity fund product that contains a guarantee of minimum lifetime income? What are the most common features currently in use? Are there actions, regulatory or otherwise, the Agencies could or should take to encourage use of these lifetime income features in connection with qualified default investment alternatives?*

The topic of incorporating lifetime guarantees within a default option is one that is garnering significant interest in the plan sponsor and consultant communities, but it appears that few, if any, plan sponsors have been willing to take on the perceived risks of incorporating a lifetime income option in their default option. Plan sponsors, consultants and recordkeepers remain leery of the lack of clarity surrounding potential fiduciary exposures associated with both the products themselves, and more specifically, the potential or perceived increased exposure associated with incorporating such a feature in the default option. While the current regulations regarding QDIA's do not specifically exclude annuities or other lifetime income features, other issues noted elsewhere in this response reflect the concerns that sponsors and their advisors have regarding the incorporation of lifetime income features as a default option.

This is unfortunate. As we have discovered as an industry, the power of default structures to create better savings outcomes is undisputed – participation rates, deferral rates and diversification metrics are all measurably improved, and often the biggest gains occur for the lowest-paid components of the workforce, which has traditionally been under-represented in defined contribution plans. If the default option choice architecture has had such a positive effect on the accumulation phase for participants, why wouldn't we want to harness that power to the benefit of participants as they enter the distribution phase? Why would we cease offering professional oversight and intermediation and scale pricing as participants are faced with the more complex set of choices associated with decumulation? There are definitely actions that the Agencies could take which would either alleviate sponsor concerns, or, better yet, encourage plan sponsors to incorporate lifetime income features in their default structures. Safe harbors regarding feature selection and inclusion, much like the clarity surrounding the selection of QDIA's would be the single most significant action which would remove the hurdles to sponsor action.

Comments Regarding Economic Analysis, Regulatory Flexibility Act, and Paperwork Reduction Act

Executive Order 12866 (EO 12866) requires an assessment of the anticipated costs and benefits of a significant rulemaking action and the alternatives considered, using the guidance provided by the Office of Management and Budget. In addition, the Regulatory Flexibility Act (RFA) may require the preparation of an analysis of the economic impact on small entities of proposed rules and regulatory alternatives. For this purpose, the Agencies consider a small entity to be an employee benefit plan with fewer than 100 participants. The Paperwork Reduction Act (PRA) requires an estimate of how many ''respondents'' will be required to comply with any ''collection of information'' requirements contained in regulations and how much time and cost will be incurred as a result. The Agencies in this section of the RFI are requesting comments that may contribute to any analyses that may eventually need to be performed under EO 12866, RFA, and PRA, both generally and with respect to specific areas identified in questions 36 through 39.

36. *What are the costs and benefits to a plan sponsor of offering lifetime annuities or similar lifetime income products as an in-plan option? Please quantify if possible.*

37. *Are there unique costs to small plans that impede their ability to offer lifetime annuities or similar lifetime income products as an in-plan option to their participants? What special consideration, if any, is needed for these small entities?*

While most of the issues associated with in-plan lifetime income products are common to plans of all sizes, small plans do have additional considerations. Some of the in-plan income products available in the marketplace today are available only to plans with significant assets. In addition, there may be developmental costs associated with a lifetime income offering that are beyond the budget of a small plan sponsor. Finally, the recordkeeping platforms that service smaller plans may not be willing to take on the development associated with a lifetime income offering until there is a more compelling level of demand from clients, and a standardized approach to recordkeeping such options is in place.

38. *Would making a lifetime annuity or other lifetime income product the default form of benefit payment have an impact on employee contribution rates? If so, in which direction and why?*

It is unclear that defaulting participants into a lifetime income products would change their savings rates during the accumulation phase. One of the goals of the "automated" 401(k) plan is to move participants to default levels of contributions and contribution escalation. Data on defaulted participants in other contexts suggest that few participants make changes to their plan. It is unlikely that the form of the payout benefit at retirement would be enough to change their savings rate behavior during their working years.

It is possible to hypothesize a mandated, 100% immediate annuitization approach that would alienate a certain subset of the employee population, and would cause them to decrease their qualified savings (as some of the early comments to this RFI have indicated). One of the benefits of the current default architecture is that there are no mandates – sponsors can choose to default participants in certain ways, and participants always have the right to reverse those default decisions. As long as the lifetime annuity product referenced in the question follows a similar default architecture, participants should be open to the inclusion as a default payout structure, and unlikely to alter their qualified savings plan behavior during the accumulation phase.

39. For plans that offer lifetime annuities or similar lifetime income products, what percentage of eligible workers elect to annuitize at least some of their retirement assets and what percentage elect to annuitize all of their assets?

There are a variety of surveys that cover this topic, but the simple conclusion from all of the survey literature is that a tiny minority of participants elect to annuitize any of their retirement savings. This is true for qualified plans that offer in-plan solutions, but is also true if the aggregate data on qualified assets is broken down by various investments and annuities. Using the broadest possible definition of annuities, which would encompass variable products which have optional payout features, less than 10% of retirement savings are annuitized. Often, the choice of annuitization is "framed" as an all-or-nothing selection, with the default being no annuitization. Not surprisingly, when faced with that specific choice architecture, participants opt for lump-sum payouts.