



Filed Electronically

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Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5669  
U.S. Department of Labor  
200 Constitution Ave., NW  
Washington, DC 20210

Re: **Lifetime Income Solutions Request for Information**

Ladies and Gentlemen:

The SPARK Institute, Inc.<sup>1</sup> appreciates this opportunity to respond to the Request for Information (“RFI”) that was issued by the Department of Labor (“DOL”) and the Department of the Treasury (together, the “Agencies”) on February 2, 2010 regarding the availability and use of lifetime income solutions in connection with retirement plans. The SPARK Institute’s members include retirement plan service providers and investment managers, including record keepers, mutual fund companies, and insurance companies who will be among those responsible for developing products and providing services to make retirement income solutions more accessible to Americans. Our members will also ultimately play a critical role in educating plan sponsors and participants about the various lifetime income products and services available to them, both within and outside of employer-sponsored retirement plans.

At the outset, we commend the Agencies for issuing the RFI and providing retirement plan industry stakeholders an opportunity to share their collective expertise. As a whole, the industry is keenly aware of the need for solutions that can provide lifetime income options to working Americans. While Social Security provides the foundation for this lifetime income, too many Americans are dependent solely on this source. Closing the gap between Social

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<sup>1</sup> The SPARK Institute represents the interests of a broad based cross section of retirement plan service providers and investment managers, including banks, mutual fund companies, insurance companies, third party administrators and benefits consultants. Members include most of the largest firms that provide record keeping services to employer-sponsored retirement plans, ranging from one-participant programs to plans that cover tens of thousands of employees. The combined membership services more than 62 million employer-sponsored plan participants.

**SHAPING AMERICA’S RETIREMENT**

Security and personal savings must be an urgent priority to avoid the possibility that an entire generation will face poverty in retirement.

Encouragingly, the retirement plan and investment management industries have provided solutions in the past and continue to develop new solutions. All of The SPARK Institute's members recognize that retirement income is a critical component of financial planning, and their various business models create a broad spectrum of ideas and solutions to this issue. The SPARK Institute believes that the Agencies can and will play an important role in making retirement income solutions more readily available and understandable to plan sponsors and participants, allowing them to choose what is most appropriate for them. We do not advocate any particular product or service and urge the Agencies to maintain a competitive environment where a diverse mix of solutions are available, with plan sponsors and participants retaining the discretion to voluntarily utilize the option(s) that best meets their needs.

It is important to note that the retirement plan and investment management industries are actively working to provide and increase access to lifetime income solutions. For example, products exist today that can be record kept and standards are being developed to make administration easier and more efficient across the board. The retirement plan industry is structured to deliver education, and is collectively learning to do so in ways that are faster, easier, and more affordable for plan sponsors and participants. We are also learning how to address portability issues. This has already been accomplished with respect to retail lifetime income solutions, and some of the lessons learned there are being adapted for the institutional side. However, as discussed more fully in our response, a number of barriers exist in connection with employer sponsored retirement plans.

The SPARK Institute is also developing standards that can be used by various lifetime income providers in exchanging data with record keepers. This will help mitigate the challenges faced by all lifetime income product providers in obtaining and exchanging information from plan record keepers (when they are different companies). This initiative is being undertaken by a task force of more than 30 companies, including all the major providers of lifetime income products, as well as the leading record keepers of defined contribution ("DC") plans. A successful introduction of standard file layouts in this area could have a significant impact on reducing the cost and subsequent availability of these types of arrangements to participants.

Despite these strides, as noted above, significant barriers to lifetime income products exist - and it is here that we believe the Agencies can have the greatest impact. Plan sponsors are reluctant to offer these solutions, creating a lack of access for millions of plan participants, largely due to concerns about fiduciary standards. The Agencies can help mitigate plan sponsor's fears by providing broad, permissive and clear guidance.

Our responses to the RFI and our positions set forth herein reflect the views of the vast majority of our members, who collectively service more than 62 million DC plan participants. We note that our responses are intended to provide the information requested by the Agencies in an impartial manner, and are not intended to advance a position for or against certain

products and services. In certain responses we urge the Agencies to provide additional relief and guidance in order to facilitate the provision of information and education to participants and retirees related to lifetime income solutions, and to assist plan sponsors as they determine the best course of action.

## SECTION 1- GENERAL

### Question 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?**

A wide variety of lifetime income products are currently available in the marketplace, the advantages and disadvantages of which can vary depending on their specific features. The specific advantages and disadvantages described below may be more (or less) significant for one product than another. Please see our response to Question 3 for a more detailed description of major product types.

#### **A. Advantages**

Perhaps the most significant advantage to participants of receiving some or all of their plan benefits in the form of lifetime payments is that it can provide a floor amount of income that is guaranteed for life. For many American workers, Social Security and pension benefits, if available, may not provide enough guaranteed income to cover their basic living expenses. Receiving some or all benefits in the form of lifetime payments can also help mitigate certain financial and other risks, and protect savers from exercising bad financial judgment. The advantages are discussed in greater detail below.

1. Mitigation of longevity risk by guaranteeing a stream of income to cover basic living expenses - Traditionally, this need has been met by pension plans and Social Security payments. However, with many employers having terminated or frozen pension plans in favor of DC plans, American workers must increasingly rely on DC plan accounts, as well as Individual Retirement Accounts (“IRAs”) and personal savings for financial security in retirement. Additionally, Americans are living longer, and the average worker expects to spend 20 or more years in retirement. The combination of the factors listed above has resulted in the potential risk that many participants may outlive their savings. Using some or all of the DC savings balance to generate a lifetime income stream can provide a layer of financial security throughout the length of the retirement period.
2. Mitigation of market risk by “locking in” investment gains or offering a fixed rate of return - Financial markets’ fluctuation over time and recent experiences have reminded everyone that severe volatility can occur and can quickly erode retirement savings. For retirees and savers who are close to retirement, diminished account balances can significantly reduce their retirement income, particularly when withdrawals are made during market downturns. Lifetime payment options associated

with some products can mitigate these risks by providing a fixed rate of return (fixed annuities) or by “locking in” investment gains without exposing participants to the risk of investment losses (e.g., “GMIBs” and “GMWBs” as defined in our response to Question 3).

3. Mitigation of asset management risk by effectively managing distributions for participants - Retirement plan participants often lack the ability, desire or discipline to develop and follow a long term disciplined retirement income distribution strategy. The vast majority of participants over-estimate the amount of money that they can withdraw from their retirement savings for living expenses and under-estimate the length of time that they need their savings to last. The resulting mistaken financial decisions can have significant and long-lasting, even permanent, negative consequences for retirees. Facilitating access to financial guidance, education and advice may help mitigate these risks.

## **B. Disadvantages**

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

1. Loss of Flexibility/Access to Assets - For some products, the decision to receive benefits in the form of lifetime payments may be irrevocable. In addition, some products do not allow the participant to withdraw assets above the scheduled payments without significant penalties. If the decision to receive lifetime payments is irrevocable and in the form of an annuity, the participant’s estate could be reduced if the participant dies prematurely without a sufficient death benefit. The participant’s estate would not be similarly reduced if the lifetime payment is not in the form of an annuity. However, certain products currently on the market afford a higher degree of flexibility, including the ability to access the principal or cancel the guarantee without penalty.
2. Timing - If the timing of the annuity election is not flexible, the participant may find that the annuity is not appropriate from tax and long-term 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 payout (much like deferring receipt of Social Security benefits). It is important to note that many lifetime income products available today allow flexibility with respect to the timing for when payments commence.
3. Cost - Products which offer guaranteed lifetime income options typically require additional fees to cover the cost of the guarantees. In addition, the pricing of lifetime income products can be complex with differing methodologies for fee disclosure. The cost implications may not be readily apparent to many participants.
4. Single Carrier Risk - The majority of lifetime income guarantees are currently backed by a single insurance company. If the insurance company backing these guarantees becomes insolvent or goes bankrupt, the participant could be at risk of not receiving their full amount of guaranteed income throughout retirement. Such risk is mitigated by protections provided by state life and health insurance guaranty associations.

Furthermore, insurer insolvency has historically been a rare event due to strict reserving requirements and state monitoring.

5. Point-in-time Risk - Certain fixed annuity income options will be impacted by the risk that annuity rates change on a weekly or daily basis. Participants who purchase a distribution annuity in a low interest rate environment will receive lower long-term payments than participants who do so when interest rates are higher and annuity rates are more favorable. This risk can be mitigated by incremental purchases of either traditional annuities or annuities with living benefits. We note that this risk does not apply with respect to products that allow participants to benefit from market gains during both the accumulation and distribution phases.
6. Inflation - Some guaranteed income products do not offer inflation protection. Without a cost of living adjustment (“COLA”) or inflation adjustment feature, retirees’ purchasing power will erode over time. However, some guaranteed income products offer the option of a COLA or inflation protection and many variable annuities offer market participation and potential growth, while still providing minimum withdrawal and or income benefits for life. We note that this risk does not apply with respect to lifetime income products that adjust for market gains.

It is important to note that product providers continue to innovate and create new products that are specifically designed to address and further mitigate many of the disadvantages described above. The descriptions above may not necessarily apply to all products available in the market today.

### **C. Non-Guaranteed Products and Services**

We note that, in addition to annuitizing retirement savings, other financial products and services are available. For example, some investment firms have introduced income replacement funds and managed payout funds that generate regular, but non-guaranteed payments for retirees. Further, systematic withdrawal programs can also be established to generate non-guaranteed retirement income payments. Although these products and services do not provide guarantees they can provide participants greater flexibility and control over their retirement savings compared to annuitized products.

### **Question 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?**

Many of the DC plan participants who do have access to a plan's lifetime income option take their balance in a lump sum and roll that lump sum over to an IRA, often to consolidate multiple accounts, as well as gain access to a broader array of options and more flexible distribution arrangements. Additionally, IRA owners may take partial distributions, as they need the money, take systematic withdrawals, or simply leave the money to accumulate and ultimately take required minimum distributions. It is estimated that in 2010, \$515 billion in qualified plan account balances will be available for lump sum distributions. Approximately \$265 billion are projected to be rolled over into IRAs.<sup>2</sup> To the extent those assets are ultimately used to purchase annuities, participants may be paying a higher price for receiving guaranteed lifetime payments than they may otherwise pay for receiving the same benefit directly through their DC plan.

Other factors that may lead to DC plan participants declining to utilize lifetime income arrangements include the following:

1. Desire to Maintain Greater Flexibility - Many participants want to maintain flexibility to respond to unexpected financial needs or to leave bequests for their heirs. Such participants are less willing to make an irrevocable decision with their retirement savings, even if it offers a competitive long-term investment return. We note, however, that some lifetime income products provide flexibility for participants to take excess withdrawals or provide a death benefit (e.g., lump sum payment to the contract owner's heirs).
2. Lack of Understanding - Many participants do not understand retirement income products and the features that are available, especially as the "next generation" of retirement income options enter the market. 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 retirement income product features, coupled with differing naming conventions and descriptions of these features make it more difficult for participants to understand their retirement income options. Research shows that annuities are widely misunderstood and often have a negative perception in the marketplace, with the majority of participants unaware of how broadly features may differ between different types of lifetime income products and among different providers. Additionally, financial advice from professionals who understand retirement income products is generally not readily available to plan participants when they retire or leave the plan.
3. Costs - Products that offer guaranteed lifetime income distribution options typically require additional fees relative to non-guaranteed options and many participants do not understand the value of the guarantee that they receive for the added costs.
4. Counterparty Risk of Seller Insolvency - 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 or go bankrupt. Such risk is mitigated by protections provided by state life and health insurance guaranty associations. Insurer insolvency has historically been a rare event due to strict reserving requirements and state monitoring. Additionally, for participants with

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<sup>2</sup> Brightwork Partners, "Distributions from Qualified Plans, Projected to 2010."

larger balances, the risk can be further mitigated by splitting the lifetime income among multiple insurance carriers.

5. Poor Financial Judgment - Unfortunately, many plan participants may disregard the need for lifetime income and spend savings inappropriately.

### Question 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?**

Traditionally, the types of lifetime income options available to participants directly from plans included distributions from defined benefit plans (which by definition provide lifetime income), or potentially the option to annuitize DC plan assets at retirement. Some DC plans make systematic withdrawals or installment distributions available, in addition to making Required Minimum Distributions (“RMDs”) available, as required by law. However, very few DC plans offer any type of in-plan lifetime income option.<sup>3</sup>

Recent innovations have increased the types of lifetime income options that are currently available to DC plan participants. Among the most significant innovations are in-plan options that allow participants to guarantee a level of lifetime income before retirement. These products typically utilize fixed annuities or variable annuities (with “GMWB” or “GMIB” features) to provide the lifetime income benefit. However, these products are not yet widely available to DC plan participants because a relatively low number of plan sponsors have added them as options in their plans.

The following is a summary of in-plan options that are available to DC plan participants.

1. In-Plan Deferred Fixed Annuities - Under this option, participant contributions are allocated to a deferred fixed income annuity. That means that the participant purchases guaranteed pieces of future income with each contribution. In effect, the purchases are ladder together to create a future income stream. Generally, transfers are also allowed into the program. Contributions are typically invested in an insurance company general account. Under this option the participant’s income potential is maximized at the time of their investment but the participant has no upside appreciation potential based on financial market gains.

At retirement, the participant receives a guaranteed lifetime income stream through an annuity. The participant must annuitize their account at retirement (i.e., turn over their

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<sup>3</sup> DC plans, that are not money purchase pension plans, are the only qualified plans that do not include a lifetime income option, largely because they were not originally intended to be a primary source of retirement savings. As a result, access to lifetime income options under DC plans has been limited.

account balance in exchange for the lifetime income stream). However, depending on the program design, the participant may be able to liquidate his or her income benefit either during accumulation or at retirement.

This option also includes “In-Plan Deferred Fixed Annuities as an Asset Class within a Target Date Series of Funds.” Under that particular option, one of the underlying funds provides guaranteed future income.

2. In-Plan Guaranteed Minimum Income Benefit (“GMIB”) - Under this option, the participant buys into a fund (typically, an insurance company separate account) that provides a minimum income benefit with the potential for upside appreciation. The upside appreciation would come from the investment performance of the fund that is associated with the annuity; typically, this is a balanced fund (mix of equities and fixed income assets). The minimum (floor) income benefit is determined by using a conservative annuity purchase rate, which is the current or present cost of the annuity based on such factors as the age and gender of the contract owner and the features/benefits of the annuity.

Upon retirement, the participant receives the higher of the minimum income guarantee floor or the income generated by the current annuity purchase rate applied to the market value of the account. Payments are typically made over the participant’s lifetime with a period certain (i.e., a minimum number of years of payments). The participant must annuitize their account at retirement. Once the annuity is purchased, generally there is no liquidity. However, the participant may also choose to withdraw the market value of his or her account in a lump sum.

3. In-Plan Guaranteed Lifetime Withdrawal Benefit (“GLWB”) or Guaranteed Minimum Withdrawal Benefit (“GMWB”) - Under this option, participants generally accumulate assets in a target-date or target risk (conservative, moderate or aggressive) fund (typically, an insurance company separate account), and at a specified age (e.g., 50) the assets are moved into the guaranteed fund component. The market value of the assets is used to determine the benefit base. A percentage withdrawal rate is then applied to the benefit base to determine the guaranteed withdrawal amount. For example, an account with a market value of \$100,000 and a withdrawal rate of 5% would generate a guaranteed annual income of \$5,000. Each year, often on the participant’s birthday, positive investment performance will result in a reset or “step up” of the asset base to the increased current value of the assets; however, the benefit base is kept unchanged at the prior level in the event of a market decline.

Under this option the participant does not have to annuitize his account upon retirement. Instead, the participant is eligible to withdraw the guaranteed withdrawal amount, while leaving the remaining assets in the market. For example, if the asset base was \$100,000 and the guaranteed withdrawal percentage was 5%, there would be a \$5,000 guaranteed annual withdrawal amount. Withdrawals in excess of this amount are permitted but could reduce future guaranteed withdrawals. In the event that the participant dies before their account has been depleted to fund guaranteed payments, any remaining account balance is

passed to their plan beneficiary. There is no guarantee of the participant's principal. Instead, the income stream is guaranteed.

The foregoing is a general summary and we note that within each of these product categories, product structures and features may vary further based on factors such as the underlying portfolio selected (especially if target date funds are utilized), age of eligibility to contribute to the product, age at which the guarantee is implemented, the age lifetime income becomes available, withdrawal options, death benefits, and use of single/multiple insurer guarantees.

Finally, we note that some plans allow participants to elect to have their account balances paid to them during retirement in installments or a systematic distribution approach. These arrangements involve no guarantees of principal or income and the account balances are subject to market fluctuation.

#### Question 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 can be a viable alternative to annuitization at the retirement date. There are essentially two in-plan product designs – Guaranteed Living Benefit (“GLB”) riders attached to group annuities and fixed Deferred Income Annuities (“DIAs”).

GLB riders offer an income guarantee via either a GMIB or GMWB rider. These products allow participants to invest in approved subaccounts and guarantee a future income benefit based on a separate stepped up value (“benefit base”). Participants can access the stepped up value only by initiating the withdrawal or income benefit. The benefit base cannot be accessed for the single sum cash value, although the market value of the subaccounts remains accessible subject to reductions in the benefit base, plan and Internal Revenue Code (“IRC”) restrictions.

DIAs 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 (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. These may be offered on a standalone basis or integrated into a target date/risk fund.

Under these options plan participants are able to:

1. Invest in guaranteed income incrementally while saving for retirement that can create a dollar-cost-averaging benefit that cannot be achieved via a single point in time purchase. This is particularly true when utilizing fixed DIAs or GMWBs.
2. Create an income floor that can replicate the benefit of a traditional defined benefit plan.
3. Purchase guaranteed monthly income incrementally without the “sticker shock” that many retirees sense when comparing the monthly income benefit provided by a Single Premium Immediate Annuity (“SPIA”) to the cash outlay required to purchase such a benefit.
4. Benefit from GLB riders that provide a form of “portfolio insurance” that can reduce the impact of large investment losses immediately prior to retirement.
5. See the income guarantees they have purchased over time which can serve to show participants their progress and remind them that their retirement savings need to be used efficiently to generate income for a long time horizon.

### **Question 5**

No Response.

### **Question 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?**

There are a number of guaranteed and non-guaranteed or portfolio-based options available for participants outside of the plan. These include:

1. Immediate Income Annuities - Most insurers offer a variety of immediate lifetime income options that offer a stream of fixed (or guaranteed), variable, or a combination of fixed and variable income payments during retirement.
2. Income from a Portfolio - An investor (typically using taxable rather than tax-deferred assets) can choose to receive income from a portfolio of bank deposits, bonds, mutual funds or other securities.
3. Systematic Withdrawals from a Portfolio - An investor may establish a program that automatically withdraws a dollar or percentage amount on a monthly, quarterly or annual basis. Most retirement plan record keepers already offer this service. A plan participant can set up a systematic withdrawal strategy on their own, or work with a certified financial planner to develop one.

4. Guaranteed Minimum Withdrawal Benefits - Some variable lifetime income products are designed as IRA rollover vehicles that can preserve the GWMBs provided by in-plan GWMB products.
5. RMDs - Participants remain in the plan and begin to receive RMD payouts required after age 70 ½. Plan and IRA service providers will calculate and distribute the amounts required.
6. Payout Funds - Payout funds combine an investment portfolio along with a distribution or payout strategy. Some payout funds expect to pay regular distributions over a fixed period, such as 10 years. Other payout funds expect to make regular payments over time, in perpetuity, like a college endowment. Like all mutual funds, the payments are not guaranteed and are subject to various risks. They also provide daily liquidity.

Significant innovation continues to take place in this area of the marketplace in an effort to develop lifetime income products and solutions that are responsive to the varying needs of retirees in a wide variety of circumstances, similar to the GMIBs, GMWBs, and DIAs described earlier.

### Question 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?**

The cost of lifetime income products can be considered in two distinct categories: (1) Costs of the features of a lifetime income product based on its design (“design costs”), and (2) Costs of administering the lifetime income product as an investment option for a DC plan (“administration costs”).

**A. Design Costs** - Lifetime income products are available in many forms, and the design of a lifetime income product has a direct impact on its cost. The design cost of a product to a participant is expressed explicitly as the combination of the administrative fee, mortality fee, discount rate, or implicitly as a reduction in the fixed rate of return of the product. The following attributes of lifetime income products may affect design costs.

1. Timing

- Costs will vary between lifetime income products purchased at a single point in time and income features that are purchased over a period of time.
- Interest rate fluctuation can have a significant impact on the cost of these products.
- Point-in-time purchases may have dramatically different costs depending on whether the product selected is intended to provide an immediate benefit or to generate income at some future date. However, price does not vary over time or due to interest rates for all products such as GMWB products and systematic withdrawal products.

- The availability of early benefit elections for a life-contingent payment also carries pricing implications.
2. Nature of Income Provided
    - Products with features such as inflation protection or floor guarantees will cost more than products that simply distribute the existing balance over a period of time.
    - Ratchet features, in which the guaranteed amount is evaluated periodically, and adjusted upwards to reflect asset growth, add more cost to a product.
  3. Accessibility
    - Products in which a participant makes an irrevocable commitment to receive an income stream are priced differently (and generally more modestly) than products that allow continued access to the account balance, either through increased or non-scheduled withdrawals or through distribution of the balance remaining at the time of death.
    - Lifetime income products, in which the election is irrevocable, but survivor benefits may be available for a death that occurs either pre- or post-commencement of benefit payments, have different pricing considerations, as do products that allow for additional deposits to the account once the benefit has commenced.
  4. Investment Structure
    - Product pricing is affected by the investment structure. Some products are simply structured withdrawals, with a specified distribution withdrawal amount each period. Others are true annuities, while others provide a guaranteed income stream based on an initial amount and then convert to a lifetime income product once the account has been exhausted.
    - Some products use a dedicated fund that is expressly designed for purposes of providing an income stream. Others utilize an insurance wrapper for an existing fund in the plan.
  5. Portability
    - Some in-plan products offer a rollover option so that participants who have been paying for the feature can retain access to it even after terminating and leaving the plan. In some cases, moving the product outside of the plan can result in a different fee structure than was associated with the in-plan option.
    - Some products do not offer an option to roll over, and the participant will be faced with the opportunity costs and potential administrative burdens associated with having to keep the balance in the plan in order to retain access to the product.
  6. Insurance Company Risk Management - Insurance companies use various strategies to ensure that sufficient assets will be available to fund promised lifetime income payments, consistent with obligations under governing state insurance laws, and these strategies can involve costs. For example, in living benefits products (e.g., GMWBs) where participants remain invested in the capital markets and receive the benefit of

market gains while being protected against market losses, a hedge fund strategy might be used and there are costs associated with managing the hedge fund.

**B. Administration Costs** - Adding insurance products to the investment line-up of a DC plan requires the identification and compliance with a number of additional requirements, including state insurance laws, and additional compliance infrastructure. The responsibility for compliance and other administrative costs will be the subject of negotiation between insurers, record keepers and plan sponsors, and may ultimately be borne by plan participants if applied against plan assets. The following insurance product design features and state insurance law requirements will result in new or additional administration costs:

1. Sales Process

- Insurance products may generally be sold only by agents or brokers who are licensed by the applicable state insurance department(s) and appointed by the insurance company to sell its products. Non-insurance company record keepers may need to have their sales employees obtain and maintain licenses, which would require additional employee training, state insurance department paperwork and licensing and appointment fees.
- Because insurance licensing requirements are based on the state residence of the plan participants who might be purchasing the insurance products, 50-state insurance licensing could be required.
- In order for participants to get information about products, they would have to call the insurance company directly, or be transferred by the record keeper. That would require additional representative training and call routing.
- The Employee Retirement Income Security Act (“ERISA”) imposes fiduciary responsibilities on entities that manage and control plan assets (e.g., holding assets in trust and bonding requirements) at the federal level, with specific rules governing insurance company general and separate accounts. ERISA generally does not preempt state insurance licensing requirements that may apply to third party administrators that make insurance products available to plans.

2. Free Look Period

- State insurance laws mandate that certain insurance policy owners be provided with a “free look” period, which is generally a short period of time (e.g., 10-30 days) during which the purchaser can cancel his or her policy and receive a refund.
- Some insurance products offered to retirement plan participants include a free look period, which is not compatible with the processes of many record keepers (i.e., record keepers that are unaffiliated with an insurance product provider), cannot easily be automated and is not necessarily scalable.

3. Data Sharing

- Lifetime income products vary in terms of how the guaranteed benefit is calculated and reported to the contract owner. Data interfaces are required in order to pass contribution information and, potentially, a calculated guarantee amount, between various parties associated with tracking the value of the benefit and reporting it to the participant.

- The complexity and number of data interfaces required between the record keeper and the insurance company issuing the product can have a significant impact on the administration cost of the product. We note that The SPARK Institute’s information sharing and data standards project, described at the beginning of this letter, is intended to help mitigate these costs.
4. Changing Providers - Additional costs may be incurred if the plan sponsor opts to change recordkeeping providers. Changing to a new record keeper may result in unanticipated costs if development is required to implement an existing lifetime income option that is not currently supported by the new record keeper.
  5. Full Integration with Planning and Guidance Tools - Many proprietary planning and guidance tools currently offered to plan participants may not have the capability to adequately incorporate lifetime income products. This is primarily because the value of the guaranteed aspect of the income product is determined and maintained by the insurance product provider, rather than the record keeper who often provides the planning tools. Additionally, lifetime income products are not currently categorized in terms of asset classes, which is necessary in order for them to be taken into account under many of the tools. To integrate these products into the tools would require development efforts, and cost, to share the necessary data, and the development of a methodology to assign lifetime income products into asset classes or otherwise account for them. We note that The SPARK Institute’s information sharing and data standards project, described at the beginning of this letter, is intended to help mitigate the data sharing costs. In addition, we understand that at least one investment planning and advice provider is preparing new tools that will incorporate lifetime income products into its guidance and advice products and services.
  6. Communication and Education - Plan sponsors that include lifetime income products within their plans may wish to educate their plan participants on the nature of the products, how they work, and when it might be appropriate for a plan participant to use them. Given the complexity and relative newness of some of these products, the initial effort to educate participants will add costs.

### Question 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)?**

Lifetime income options, both within and outside of a retirement plan, offer a number of advantages to participants. Regardless of whether lifetime income is delivered in or outside of a plan, it is essential that these solutions be accessible to American workers. The Agencies should help encourage employers and plan sponsors to make these distribution choices available, as well as help workers to understand their importance.

On a comparative basis, in and out-of-plan options have advantages and disadvantages:

#### **A. In-plan Advantages:**

1. Institutional or Group Pricing - Institutional or group pricing is generally used when products are made available through retirement plans. This could result in higher monthly income for participants than comparable out-of-plan products.
2. Commissions - Commissions may be reduced or eliminated on products that are sold on a group basis.
3. Unisex Mortality Tables - For women, the use of unisex mortality tables (required for employment based plans to comply with the Equal Pay Act) generally would provide a greater benefit than a comparable out-of-plan product. For men, the use of unisex tables would increase their cost but this might be offset by the use of group rates.
4. Fiduciary Oversight - A plan fiduciary or other plan representative (i.e., in the case of a non-ERISA covered plan) selects and monitors lifetime income options and thereby relieves participants of the need to conduct extensive due diligence.
5. Commission-free Rollovers - There is the potential that a participant could roll over an in- plan product commission free and preserve the associated benefit upon termination of employment.
6. Dollar Cost/Interest Rate Averaging - The risk that participants will be exposed to low interest rates or market corrections when a lifetime income product is purchased in its entirety at retirement (i.e., sequence of return risk) is addressed by the potential to use dollar cost/interest rate averaging by incremental purchases of lifetime income over a number of working years.

#### **B. In-plan Disadvantages:**

1. Fees for Unused Guarantees - If participants decide they don't want or need guaranteed income after a period of participation/contributions to a product, they may incur fees for guarantees they may never use.
2. Limited Options - The number of in-plan products offered to participants may be limited to one or just a few.
3. Lack of Involvement in Product Selection - Since a plan fiduciary or other plan representative selects the product provider, the participant may not be as fully engaged in the selection process.
4. In-plan Products may not be Portable - This creates substantial administrative and record keeping challenges in the event an employer decides to replace the current plan record keeper. Many record keepers do not currently have the capability to service and maintain records with respect to many of the lifetime income products that are available. However, as noted above, The SPARK Institute is working to address this issue by developing data sharing standards that can be used by various lifetime income providers and record keepers.
5. Complexity of Multiple Accounts - Due to job mobility, participants may accumulate only a small benefit or have the added complexity of accumulating several small lifetime income benefits from each of several employers' plans in which they participated over their working careers.

6. Administrative Burdens - The additional administrative burdens and spousal consent requirements necessary to comply with the qualified and joint and survivor annuity rules causes sponsors of most DC plans to avoid offering in-plan lifetime income options.

### **C. Out-of-plan Advantages**

1. Unisex Mortality Tables - When products are made available outside of an employment based retirement plan, the Equal Pay Act rules do not apply. This results in the use of sex- distinct mortality tables, which is advantageous for men since it could lead to greater (less costly) benefits for them; however, it is disadvantageous for women, since sex-distinct tables provide lesser (more costly) benefits for them.
2. Greater Product Choice - Individuals with the inclination and motivation may be able to find a product that is more customized to their needs. The universe of lifetime income products, choice of providers, and forms of distribution that are available outside of the plan is significantly greater than what is available in the plan.
3. Retirement Account Consolidation - Individuals with accounts in multiple retirement plans are able to consolidate their retirement savings in one lifetime income product.

### **D. Out-of-plan Disadvantages**

1. Sequence of Return Risk - Individuals are less likely to purchase lifetime income products out-of-plan on a sequential or incremental basis, thereby increasing their sequence of return risk. Therefore, at the time they make a purchase, they are more exposed to investment and interest rate risk.
2. Individual Decisions - Unless they employ the services of a financial advisor or these services are available under the plan, individuals are faced with making long term financial decisions about products requiring substantial sophistication and expertise without assistance. This could discourage individuals from making these choices. Even if an advisor is consulted, individuals may feel uncomfortable or challenged in making these types of decisions.
3. Costs - Participants may pay higher costs, including purchasing retail priced investment options outside of a plan.

## **Question 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?**

A plan that offers features and benefits that are important to employees can help build employee goodwill and loyalty. To the extent that participants are interested in learning about lifetime income strategies, providing education about various strategies, products and services may be considered an advantage from a plan sponsor standpoint.

There are a number of potential disadvantages and issues for plan sponsors that can be grouped into three categories as discussed below.

- A. Product Complexities** - The plan sponsor of an ERISA covered plan serves as a fiduciary to the plan, and therefore must fulfill a number of specific responsibilities when choosing a guaranteed income provider, including using plan assets to pay for necessary and reasonable plan expenses, and minimizing the risk of large investment losses by offering a diversified menu of investment options.

These are difficult issues for a plan sponsor to address when choosing a retirement income guarantee. All the products on the market have different guarantee levels, different participant options and different prices. Choosing the product with the appropriate guarantee for the price level, while assuring that only “necessary and reasonable” expenses are incurred, can be challenging.

- B. Regulatory Uncertainties** - There are a number of regulatory uncertainties that are discussed here and in other parts of our response. Some of the uncertainties relate to the ERISA Section 404(c) fiduciary safe harbor, the Qualified Default Investment Alternative (“QDIA”) safe-harbor, choice of a guarantee provider, and the applicability of the Qualified Joint and Survivor Annuity (“QJSA”) and Qualified Pre-retirement Survivor Annuity (“QPSA”) rules to certain lifetime income options.
1. Lack of Clarity Regarding Section 404(c) Safe Harbor - ERISA Section 404(c) requires that a plan must provide a variety of investment options, and also that the participants be provided “sufficient information to make informed investment choices.” The safe harbor was not written with lifetime income products in mind, so it is unclear how the products and their features are covered by 404(c) and what is required to leverage its protection.
  2. QDIA Issues - The Pension Protection Act (“PPA”) specifies three types of QDIAs including target date funds, target risk funds and a dynamic asset allocation process. However, the QDIA regulations do not address products that convert savings into guaranteed income streams and whether these may be used as a QDIA. Please see our response to Question 35 for additional information about this issue.
  3. Safe Harbor Protection for Selection of Lifetime Income Providers - Plan sponsors do not fully understand what they must do to satisfy the safe harbor for the selection of lifetime income providers. The current rules are perceived to be too onerous for a plan to consider lifetime income options. The safe harbor requires that plan sponsors make a very long-term forecast on the viability of the insurance company, but most plan sponsors lack the expertise and access to information needed to make such judgments.
  4. Applicability of QJSA and QPSA Rules - As discussed in our responses to Questions 26 and 27, it is not clear to plan sponsors what aspects and types of lifetime income products are considered life annuities triggering survivor annuity rules.

### **C. Administrative Challenges**

1. **Information Sharing** - As noted throughout this response, information sharing between the lifetime income product provider and record keeper is a significant challenge that we are trying to mitigate by developing industry standards.
2. **Communicating Transfer Restrictions** - Plan sponsors must communicate restrictions on transferring into and out of investment choices. In the case of lifetime income products, presumably this could require that the plan sponsor clearly communicate the impact, if any, on the underlying guarantee.
3. **RMD Rules** - Depending on a lifetime income product's guarantee structure, current RMD rules may require a retiree to take payments that exceed the guaranteed amount available to them. The guarantee might be structured around a design that provides payments that increase over time, or the insurer may take a different view on longevity than that reflected in the RMD tables. This creates added complexity that the plan sponsor must consider.
4. **QJSA and QPSA Requirements** - The notice, waiver, revocation and spousal consent requirements under the QJSA and QPSA rules impose significant administrative burdens and expenses on plan sponsors.

#### **Question 10**

No response.

#### **Question 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?**

The PPA allows DC plan sponsors to automatically enroll employees in plans, and to default their investments into QDIAs, such as target-date funds or managed accounts. These PPA provisions have led to a significant increase in enrollment in plans that take advantage of auto-enrollment. Hewitt Associates reports that plans that implement auto-enrollment

increase participation rates of new hires from an average of 78% to 90%.<sup>4</sup> In addition, 67% of new hires in automatic enrollment plans allocate their entire contribution to the default investment, versus 21% of new hires who are not in automatic enrollment plans.<sup>5</sup> Target-date funds have been the main beneficiary of this trend, in part, because the value proposition of these products, a ready-made diversified portfolio with automatic re-balancing, is easy for most DC plan participants to understand and appreciate. In plans that have elected to use QDIAs, more than 80% are using target-date funds as the QDIA.<sup>6</sup> The example of PPA's auto enrollment features demonstrates that behavioral strategies, such as auto-enrollment, can work effectively if applied in a manner that has appeal to participants. Accordingly, we recommend that the Agencies facilitate access to a wide range of lifetime income solutions so that employers can select the one(s) that best fit the needs of their employees. Specifically, the Agencies should:

1. Clarify the types of lifetime income solutions that could qualify for QDIA status. Please see our response to Question 35 for additional information.
2. Encourage employers to provide flexible lifetime income solutions with opt-out features and full fee transparency to increase adoption.
3. Educate employers about allowing participants to use less than their entire account balance to purchase guaranteed lifetime income (partial annuitization).

### **Question 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?**

These questions are the subject of recent industry discussion and studies that continue to evolve. Additionally, it is likely that the theories and practices on these issues will change as the retirement plan industry, lifetime income products and services, and the regulatory environment evolve. Ultimately, what portion of an individual's account balance, if any, should be annuitized is a personal decision that participants should be allowed to make for themselves, and not dictated by any legal mandate.

We note however, that at least one recent study on these questions suggested a plausible "rule of thumb" for participants to annuitize sufficient wealth immediately upon retirement to at least secure a household's required minimum standard of living. "Given the difficulties in managing the decumulation of unannuitized wealth and the severe consequences of missteps,

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<sup>4</sup> Hewitt Associates, "Trends & Experience in 401(k) Plans," 2007, and "Automatic Enrollment Boosts Participation and Retirement Savings," 2007.

<sup>5</sup> Vanguard Center for Retirement Research, "Measuring the Effectiveness of Automatic Enrollment," December 2007.

<sup>6</sup> "Improving Plan Diversification Through Re-enrollment in a QDIA," Vanguard Strategic Retirement Consulting, September 2008.

all households approaching retirement should consider annuitizing sufficient financial assets to secure at least their minimum required standard of living.”<sup>7</sup>

As noted in our responses to other questions in the RFI, we recommend that the DOL adopt policies and issue guidance that will encourage and enable service providers and plan sponsors to provide education and retirement planning tools with information such as that noted above to help participants make decisions about how much to annuitize.

### **Question 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?**

The SPARK Institute supports the Agencies’ efforts to improve retirement income adequacy through a variety of strategies, including making lifetime income distribution options more available to participants in DC plans. This is a time of tremendous innovation in the retirement income industry. Product providers and record keepers are aggressively working together to develop new products and services that meet plan participants needs, and that can be made readily available in and outside of employer sponsored plans. We recommend that the Agencies allow investment managers, product providers, record keepers, plan sponsors, and others in the retirement plan community to continue to develop products, services and tools for participants before further considering a mandate.

### **Question 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 are a number of real or perceived impediments that plan sponsors currently face when considering in-plan lifetime income options. Many of these products are new and some can be fairly complex. Plan sponsors must become familiar with them and then determine whether or not their details are readily comprehensible to participants. Since participant demand has historically been low, sponsors may be reluctant to make a commitment of time and money to introduce a lifetime income product.

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<sup>7</sup> “Making Your Nest Egg Last a Lifetime,” Anthony Webb, Center for Retirement Research at Boston College (September 2009).

In discussing these products, plan sponsors have also expressed concern about their fiduciary risk in offering lifetime income products. Not only are they faced with the prospect of ensuring due diligence in connection with the initial selection of a vendor, they are faced with administrative challenges should they later decide that an active vendor is no longer a prudent selection. In such a situation, the costs incurred by the participant (e.g., benefit guarantee costs) could be lost or forfeited before they receive the benefit that they had paid for because the IRC does not currently provide that this situation constitutes a distributable event, which otherwise would permit a rollover distribution to an IRA designed to preserve the accumulated income guarantee.

Until the new generation of lifetime income products gains increased acceptance in the marketplace, the administrative infrastructure required to support them won't become fully developed. Costs associated with the introduction and ongoing support of lifetime income products impact the overall administrative costs for the plan, which are often passed through to participants. Sponsors may not want to increase plan costs for a product that may be underutilized. However, as more sponsors adopt such programs, the costs to implement them will be amortized over a larger base. That increase could drive the economies of scale that would make the costs associated with lifetime income products more palatable to both sponsors and plan participants.

#### **Question 15**

No response.

#### **Question 16**

No response.

### **Section II – Participant Education**

#### **Question 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?**

For the typical household, creating a comprehensive retirement income plan is a complex but critical process that includes many of the same considerations that a household faces while saving for future retirement (e.g., understanding investment alternatives, creating and implementing an investment strategy, and choosing investment and tax advisors), but also includes additional questions such as:

1. How much can they afford to spend without running out of money too soon?
2. How to manage or payoff any outstanding debt?
3. What portion of expenses is already covered by lifetime sources of income such as Social Security and pensions?
4. How to protect against inflation?
5. How to cover expenses that are difficult to predict (e.g., health and long-term care)?
6. Will income needs and sources of income change substantially during different phases of retirement (e.g., working part-time for a period in retirement, a few years remaining on a mortgage, downsizing of a residence, and extensive travel in the first couple of years of retirement)?
7. Should home equity be used to help sustain income, and how?
8. How to ensure that income lasts as long as needed, particularly if the participant and spouse are in good health or have a history of longevity in the family?
9. How do legacy objectives, if any, fit with the retirement income plan?

Each participant's plan balance is likely to be just one of several potential sources of retirement income. Most households will have Social Security benefits, and some may also have one or more pensions, accounts in more than one plan, IRAs and other investments, continuing income from full or part-time jobs, or assistance from family members. Determining how best to utilize these multiple sources of income, including which to draw on first and which products or approaches to use to provide that income, can be complex and very different for each participant. Ultimately, a well constructed retirement income plan is developed at the household level, rather than at any given plan, account or even the individual level.

Just as most plans provide education and many provide advice as to how to save for retirement and an investment strategy to meet individual goals, we urge the Agencies to encourage plan sponsors to provide education and advice to help participants with retirement income planning and provide information about lifetime income arrangements. The education provided should address how these arrangements (and other alternatives) can fit into an overall financial plan and what role they can play in helping to achieve specific objectives in the plan. The Agencies could encourage this type of educational assistance by issuing guidance that is comparable to Interpretive Bulletin ("IB") 96-1.

**A. What Information do Plan Participants Need?** - The following is a list of examples of the types of information that participants need:

1. An overview of all available income options and how they work.
2. The advantages and disadvantages of each income option available under the plan and how they could fit into a retirement income plan.
3. For each option, the underlying investments and whether the investment is guaranteed or can fluctuate.

4. Specifics as to any other guarantees offered and who provides the guarantee.
5. Detail regarding how contributions (premiums) are invested, such as the underlying investment portfolio and whether a participant will participate in the investment results.
6. The main risks associated with purchasing an income option, such as:
  - Credit risk
  - Mortality risk
  - Interest rate risk
  - Inflation risk
7. The costs/fees associated with lifetime income with details, such as:
  - The amount or rate of the fees (may include how the fees are calculated).
  - Whether fees are guaranteed or subject to change.
  - Whether fees are implicit or explicit.
  - Any restrictions or conditions for getting access to guarantees or the income stream, such as:
    - Holding the income option within the plan throughout the payment phase.
    - Withdrawals will reduce the guaranteed benefit and may be subject to a liquidation adjustment/fee.
8. The following information and awareness of certain considerations would also be useful to help participants determine if a particular income option is right for them.
  - Their personal need for guaranteed monthly income to supplement Social Security and other sources of guaranteed income.
  - The need for protection against outliving their retirement savings.
  - The need for predictable income in retirement to cover essential expenses.
  - General health and history of longevity in the family and how that might impact the choice of one option over another.
  - The possibility of having to use retirement savings for unexpected expenses.

**B. What Information Currently is Provided to Participants?** - While individual practices vary depending on the product and service provider involved, the information that is provided may include some or all of the following:

1. Product information - Basic disclosure and product information in the employer's or record keeper's plan materials and participant website intended to provide the information a participant needs to make an informed decision to invest, such as risks, costs, conditions, and limitations.
2. Educational material - General information that describes how lifetime income options and strategies fit into an overall retirement plan.

3. Transaction information - Transaction activity (e.g., contributions, withdrawals, transfers) and the impact of the activity on the value of the income option are detailed on participant statements.

**C. Who Typically Provides It?** - Product provider and plan sponsor websites provide information and educational materials that outline the need for lifetime income, lifetime income options, and income planning tools including income gap calculators and income projection tools. However, practices can vary depending upon whether the provider of the income option is also the plan record keeper.

1. In-plan Lifetime Income Options - Generally, the plan sponsor or its record keeper typically provides the information to participants. The product issuer typically creates the disclosure document and educational materials, and may provide on-site enrollment assistance at the plan's initial enrollment meeting. Financial representatives (i.e., registered representatives of broker/dealer firms, registered investment advisers or insurance producers) and group enrollment specialists employed by record keepers or investment providers may provide periodic enrollment assistance to the plan sponsor on an ongoing basis.
2. Out-of-plan Lifetime Income Options - Generally information is provided by a financial advisor or financial services firm that offers the option. The information is often provided within the context of a range of retirement and investing solutions. Such information is regulated by various government agencies, e.g., the Securities & Exchange Commission ("SEC") and state insurance departments, and by the Financial Industry Regulatory Authority ("FINRA"). In addition, some plan sponsors may make participants aware that options are available outside of the plan through rollovers to an IRA or IRA annuity and include some basic information.

**D. When and How is it Provided to Them?**

1. In-plan Lifetime Income Options

Participants may be provided this information in the same manner as the other investment options, including enrollment material, within investment line-up detail, upon initial contribution into the option, via employer communications, and through the record keeper's participant website. Transactions impacting the in-plan option (e.g., contributions, withdrawals, transfers) are reflected in quarterly or annual participant benefit statements.

2. Distribution Income Options

Participants may be provided with income information as part of their plan overview materials and retirement income educational materials. In particular, participants who are nearing retirement should be provided with retirement distribution options, including an income option.

### 3. Delivery Options

Information may be delivered in the form of hard copy, via the internet and in-person meetings. Participants may have access to on-line tools that demonstrate income projections, as well as real-time income quotes, to assist them in understanding how an income option can fit into their overall retirement plan. Requiring participants to receive information in paper format adds significant cost to the educational process and overall plan administration. We encourage the Agencies to review their electronic disclosure rules to make it easier for service providers to communicate with participants in electronic formats.

#### **Question 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?**

The SPARK Institute requests that the DOL clarify that plan assets can be used to pay for providing information to help participants make informed decisions about in-plan arrangements, and information about out-of-plan options available to them upon separation from service or a change in provider by the plan sponsor. While it is generally understood that plan assets can be used for education regarding in-plan options, there is considerable uncertainty with respect to out-of-plan options. In order for plan participants to fully understand their options and what may be most appropriate for them, plan sponsors should be permitted to educate participants about both options and to pay for such education using plan assets. Absent broad, permissive and clear guidance that using plan assets to pay for providing such information is permitted, plan sponsors are likely to be reluctant to assume this role.

#### **Question 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?**

As mentioned throughout this response, there are substantial regulatory constraints under ERISA, federal securities laws and state insurance laws that can make it challenging for plan sponsors and providers to communicate effectively in “plain English” to participants about lifetime income solutions. Existing rules and regulations require that plan sponsors and providers use very technical language about the products and services that are available to participants. As a result, participants may be less likely to understand and use the lifetime income options that are available to them.

Plan sponsors are also concerned about crossing the line from providing participant education to providing advice and becoming an investment fiduciary. The SPARK Institute recommends that the DOL provide additional guidance specifically stating that providing information about lifetime income options, available both inside and outside of the plan, is not investment advice. Without clear and permissive guidance, plan sponsors will most likely be unwilling to provide participants with any information that could cause the plan sponsor to assume additional fiduciary responsibility with respect to participant decisions about retirement income products.

Additionally, as noted in our response to Question 18, plan sponsors are concerned about being able to use plan assets to provide education about out-of-plan options. We request that the DOL provide the guidance noted in our response to Question 18.

Plan sponsors are also concerned that participants who do not fully understand the features, limitations, costs, benefits and other details of in-plan options may assign blame to the plan sponsor for results that they do not like or cannot control even though the plan sponsor acted properly. For example, if a plan sponsor makes a fiduciary assessment that a particular product is no longer appropriate and must be removed from the plan, participants would be faced with the prospect of losing the guarantee for which they have been paying. Since switching providers does not constitute a distributable event, participants would not have the option to retain the guarantee by rolling it over. Such a situation would place the sponsor in an impossible position and potentially expose them to litigation.

In addition to the requests and suggestions made above, The SPARK Institute requests that:

1. The DOL issue guidance that is comparable to IB 96-1 to explicitly cover educational materials related to lifetime income options, and to clarify that the person or entity that provides education does not become a fiduciary with respect to the plan and plan participants as a result of providing education.
2. That the DOL clarify that information about life expectancies, historic investment returns, the impact of various withdrawal rates, longevity risk, market sequence risk, and other similar information is “education” and not advice.

### **Question 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?**

See answer to Question 19.

**Section III - Disclosing the Income Stream  
That Can Be Provided From an Account Balance**

**Question 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?**

The SPARK Institute recommends that as a DC plan “best practice,” participants’ accrued benefits should be expressed annually on individual benefit statements as both an account balance, and as a lifetime income stream. Presenting the balance as a lifetime income stream will help participants understand where they stand today, how much income they might expect in retirement, and will give them a more realistic understanding of how much they need to save to cover their retirement income needs.

Plan sponsors should be encouraged to provide this information and should have the ability to decide when and how it is provided to best suit the needs of each plan’s population. In order to encourage plan sponsors to express accrued benefits as a lifetime income stream as part of a voluntary program, a fiduciary safe harbor should be designed. More details regarding our recommendations for a safe harbor are contained in our response to Question 23.

**Question 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?**

The SPARK Institute believes it is important to strike a balance between showing lifetime income in a manner that is consistent across retirement accounts so participants with more than one retirement account can understand and compare them, and allowing plan sponsors the flexibility to show the benefits in a manner that is most relevant to their population of participants.

### Question 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?**

The SPARK Institute recommends that the DOL create a safe harbor that will protect plan fiduciaries that provide participants with information on lifetime income payments. Our recommendations for a safe harbor are as follows:

1. The safe harbor should protect all plan fiduciaries and service providers from claims brought by plan participants, beneficiaries, or others arising from reliance on any information contained in a lifetime income projection that meets the conditions of the safe harbor. The safe harbor should also protect plan fiduciaries and service providers from potential liability for including additional illustrations and projections that may be more relevant to a particular population of participants (e.g., participants who also are covered by a defined benefit plan, or who have access to an in-plan-option) as long as reasonable assumptions are used. Additionally, the safe harbor should provide protection for illustrations based on a systematic withdrawal approach whereby participants would receive income payments based on earnings generated from their account and would have a principal balance available to beneficiaries upon the participant's death.
2. The safe harbor should require that participants be provided with information with respect to their benefits in the form of an account balance and a lifetime income stream using consistent assumptions and methodologies defined in the safe harbor. Participants should be provided with information about the assumptions used and should also be given general information to assist with understanding the projections (e.g., an abbreviated mortality table and definitions of key terms such as "guarantee".)
3. The DOL should issue a safe harbor notice along with the safe harbor.

## Question 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 pre-retirement standard of living)? If so, what methodology should be used to establish such a ratio, such as pre-retirement 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?**

The SPARK Institute does not recommend requiring individual benefit statements to include a participant-specific income replacement ratio. In order to be meaningful, this calculation requires incorporating information that is unique to each participant and that is not maintained on retirement plan record keeping systems. For example, any such illustration should incorporate the availability of other income or assets (e.g., spousal income or assets), the opportunity for inheritance, health, and other factors. Further, the concept of a replacement ratio based on current income levels is not relevant to all age groups. For example, a 22-year old may expect to be earning 2 to 3 times their current rate of pay in their peak earning years so an income replacement ratio based on their current rate of pay would not be meaningful.

Many plan sponsors already provide general information about income replacement ratios or participant-specific ratios generated through individualized communication about the participant's unique financial circumstances. The SPARK Institute believes that this practice should be encouraged by clarifying that providing this information is education and is not fiduciary advice, and including in the safe harbor referenced in our response to Question 23, protection for fiduciaries that use reasonable methods and assumptions when illustrating income replacement ratios.

## Section IV - 401(k) and Other Plan Qualification Rules

### Question 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 in our responses to Questions 14 and 19, the potential lack of portability of the lifetime income option when a plan sponsor switches investment providers can deter plan sponsors from including lifetime income options in their plans. Plan sponsors are concerned about the impact on participants' ability to maintain their income guarantees from an in-plan option if the sponsor switches product providers. Plan sponsors are also concerned about potential claims brought by participants as a result of making a provider change. The SPARK Institute urges the Agencies to work with the regulated community to address these concerns and develop a solution.

Additionally, the QJSA and QPSA rules impact plan sponsors' decisions. Plan sponsors would be more likely to offer lifetime income options that are not life annuities triggering QJSA and QPSA rules which are seen as burdensome to them. For a more detailed discussion of these rules, please see our response to Question 26.

### **Question 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 QJSA rules present significant administrative burdens and complexities. The vast majority of 401(k) plans today take advantage of the option under IRC Section 401(a)(11)(B)(iii) and Treas. Reg. Section 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. Under this option, if a participant elects to receive a distribution in the form of a life annuity, it triggers application of the QJSA and QPSA rules. Complying with these rules imposes a significant administrative burden and expense on plan sponsors due to the notice, waiver, revocation and spousal consent requirements.

The SPARK Institute recommends that the IRC and regulations be amended to clarify that in-plan lifetime income products that allow participants to freely move in and out are not life annuities for purposes of the survivor annuity rules. The result should not vary based upon the fact that at some point during the payout phase (after the supporting account balance is depleted) the lifetime income payments will have the characteristics of a traditional lifetime annuity.

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.

## Question 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?**

Plan sponsors may continue to be reluctant to add in-plan deferred insurance annuities because of the lack of certainty surrounding these rules – both as to whether and when they apply and what must be done to comply with them. Although the Internal Revenue Service (“IRS”) issued Private Letter Ruling (“PLR”) 200951039 (December 2009), as discussed below, uncertainty remains with regard to many of these new in-plan lifetime income benefits. Our members have differing views with respect to the issues, as is discussed more fully below. It is likely that most plan sponsors will generally take the most conservative approach available to avoid potential plan disqualification. The lack of guidance for lifetime income products offered within DC plans as in-plan “accumulation” vehicles under which participants can make ongoing contributions and reallocations serves as a real impediment to employers offering these products.

In the IRS PLR 200951039, the insurer had sought a ruling that the QJSA requirement only applied when the contract converted to full annuitization. However, the IRS held that the QJSA requirements applied at the time the annuity option was elected, prior to the beginning of ongoing periodic payments from the annuity account balance, even though the account balance could be fully surrendered (or partially withdrawn) at any time. The IRS also held that the required QJSA payment form only applied to the actual periodic payments made after full (irrevocable) annuitization.

Part of the IRS’s analysis may have been based upon the fact that the transition from the first phase to the second phase was automatic – no further election was needed for the contract to become annuitized. This ruling seems to leave a great deal of uncertainty regarding the applicability of the QJSA requirement for the treatment of GMWB products where the ongoing contributions purchase a defined future income stream but which can be cashed out (and reallocated to other plan investment options) at any time. Again, this uncertainty is likely to cause employers to be reluctant to adding these new income options under their plans.

Some of our members believe that the rules should be clarified to confirm that the QJSA and QPSA rules only apply to in-plan accumulation annuity products offering lifetime income guarantees at the time that the participant's investment in the contract (i.e., their account balance invested in the lifetime income product) is irrevocably annuitized, and only if the payout form is over the participant’s lifetime. That is, the QJSA and QPSA rules only apply if and when a participant's account balance in a lifetime income product is irrevocably converted to lifetime income payments and the participant no longer has any control over their account balance, such as the right to take distributions in excess of the guaranteed payment amount, or to leave any remaining account balance to heirs in the event the participant dies before their investment in the contract is depleted.

These members believe the fact that lifetime income payments may be made by the insurance company guaranteeing the contract in the event the participant's account balance is not sufficient to fund all guaranteed lifetime income payments should not trigger application of the survivor annuity rules at that juncture. The costs of applying the survivor annuity rules (both administrative and underwriting costs) and supplying a joint and survivor annuity to people who are of advanced age would be significant. Further, since the participant would have already paid for the lifetime income benefit out of their account balance, any conversion to a new lifetime income product would involve additional and unnecessary costs.

A different viewpoint held by some of our members is that the QJSA rules become applicable to a participant's account at the time the participant elects any annuity benefit form, even though annuity distributions may be deferred. This is consistent with the conclusion in PLR 200951039. However, in the case of a deferred annuity, it is not clear when a participant's annuity starting date occurs for the purpose of delivering and executing QJSA notices, waivers and spousal consents. Clarification from the IRS should apply to all deferred annuities offered under a retirement plan, including annuities that include features such as GLWBs and GMWBs. In addition, under this viewpoint, the use of these types of annuities would be encouraged by confirmation that a spouse's consent that is structured as a general consent under Treasury Regulations Section 1.401(a)-20 Q&A-31(c), permits a participant to subsequently accelerate and modify payments without obtaining additional spousal consents.

### **Question 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?**

The IRS has two separate sets of rules for determining the amount required to be distributed from a qualified retirement plan to a participant after the later of the year he or she attains age 70½ or retires. Which set of rules applies depends on whether the participant's accrued benefit is in the form of an individual account under a DC plan or is annuitized. It is important to clarify which set of rules applies to the different payout phases of a lifetime income product.

Additionally, we request that the Agencies issue guidance regarding the following:

1. Permit a participant in a DC plan who has a distribution/payout annuity (subject to the 1.401(a)(9)-6 RMD rule) and investments with an account balance (subject to the 1.401(a)(9)-5 RMD rule) to aggregate the two for RMD purposes under 1.401(a)(9)-5 RMD rule using the fair market value of the payout annuity.

2. Issue a “waiver” of the RMD requirements for a Pure Longevity Annuity (lifetime payout starting at an advanced age at or near life expectancy (e.g., age 80 or 85)) to encourage people to provide for a means to avoid outliving their assets. This should not present a policy issue as it does not result in hoarding retirement assets for one’s heirs but rather encourages use for retirement needs.
3. Raise the RMD age to at least age 75. Since the current rule was established, life expectancy has increased significantly and many people choose to work beyond age 70½.

### Question 29

No response.

## Section V – Selection of Annuity Providers

### Question 30

No response.

### Question 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?**

The safe harbor currently requires the fiduciary to conclude “at the time of the selection” that the product provider is financially able to make all future payments under the contract. The safe harbor permits fiduciaries to make this determination either at the time the provider is selected for distribution of benefits to a specific participant or, alternatively, when the provider is selected to provide contracts at future dates provided that the fiduciary periodically reviews the continuing appropriateness of the conclusion.

In-plan lifetime income features are complex and sponsors are concerned that participants who do not fully understand the workings of these products may attribute a breach of fiduciary duty to events that they do not like or cannot control. For example, if a plan sponsor makes a fiduciary assessment that a particular product is no longer appropriate and must be removed from the plan, participants would be faced with the prospect of losing the guarantee for which they have been paying. Since switching providers does not constitute a distributable event, participants would not have the option to retain the guarantee by rolling it over. As noted above, we are concerned that this exposes plan sponsors to potential litigation which is a significant disincentive to usage of these lifetime income products.

We believe that the DOL could increase use of the safe harbor by providing additional guidance regarding the selection of a lifetime income product provider to provide contracts at future dates. We request that the DOL:

1. Confirm that when a fiduciary initially selects a provider to provide lifetime income contracts at future dates, and when a fiduciary later reviews the continuing appropriateness of that decision, the fiduciary's actions will be judged based on the circumstances prevailing both at the time of the initial selection and the subsequent review.
2. Issue guidance that expressly authorizes a fiduciary to rely on public information available at the time of review unless the fiduciary has non-public information indicating that the provider's public information includes material misrepresentations.
3. Clarify that a plan sponsor can switch providers resulting in the loss of a lifetime income option previously selected by a participant. This could be addressed through amendments to DOL Reg. Section 2550.404a-4 by extending the safe harbor to a broad array of lifetime income products and clarifying that as long as the decision to select a lifetime income investment product was prudent at the time it was made, plan fiduciaries will not be held liable in the event the financial institution backing the product is unable to fulfill its obligation to pay promised benefits in the future.

We also would urge the DOL to undertake a review of the regulation to determine whether it would be appropriate to simplify the conditions or considerations that must be taken into account so as to enable small employers to utilize the safe harbor without engaging an independent expert.

### **Question 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?**

If the safe harbor is extended beyond distribution annuities, it should broadly cover the new array of products that have been developed, for example, GMWBs and GMIBs.

### Question 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?**

The following is a combined response for Question 33 and 34.

- A. **Extent of Usage** - While not yet in widespread use, there are a number of lifetime income products offered as DC investment alternatives in plans utilizing ERISA Section 404(c). These products are offered through fixed deferred income group annuity contracts or group variable annuity contracts with minimum withdrawal/income guarantees. Their values typically can be re-allocated to other investments at a participant's election. The specifics of these options are covered in another section of this response.
- B. **Use as Core Alternatives** - Typically, lifetime income options are used as non-core investment options. One of the barriers to their use as a core option is the fact that there is usually only one fund in a plan with a guaranteed option. Consequently, the conditions for a core fund, in particular the diversification requirement, may not be satisfied. It is unclear how lifetime income options can satisfy the core fund requirements when there is only one such option in a plan.
- C. **Advantages and Disadvantages** - The advantages and disadvantages of fixed deferred lifetime annuities are discussed in responses to other questions in the RFI.
- D. **Information Disclosure** - Disclosure regarding fixed deferred lifetime annuities is discussed in responses to other questions in the RFI.
- E. **Amending ERISA 404(c)** - In-plan lifetime income options should be covered under ERISA Section 404(c), just like any other in-plan investment option made available in a DC plan. In-plan annuities typically can have a lifetime payout feature but are otherwise simply a traditional accumulation investment option. While some unique restrictions may apply, these in-plan annuities can be cashed out and reinvested in the same manner as other plan investment options.

We urge the DOL to clarify that such in-plan lifetime income options are not subject to any additional level of fiduciary review, since plan sponsors meet their appropriate fiduciary responsibility through the appropriate due diligence for these products at initial purchase and ongoing monitoring. Additionally, we request that the DOL clarify that if risks arise with a provider of lifetime guarantees, there is no fiduciary liability if the plan sponsor has followed the due diligence and monitoring process.

### Question 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?**

Please see our response under Question 33 above.

## Section VI – Qualified Default Investment Alternatives

### Question 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?**

Although industry-wide utilization data is not readily available, based on the information provided to us by our members, it appears that only a small percentage of DC plans that make guaranteed income products available are using them as the plan's QDIA. In part, this is because these alternatives are early in their product evolution.

The growth of target date funds in recent years supports the power of the QDIA concept. Given the tendency of many participants to take a passive role with respect to complex retirement planning decisions, we believe that if lifetime income options are only made available as an investment that requires a participant's affirmative investment election, the usage rate by participants may remain low.

The Agencies should consider the following issues with respect to lifetime income solutions and the QDIA safe harbor rules:

**A. Guarantees as an “Ancillary” Feature** - New arrays of products that provide guaranteed lifetime income (such as GMWBs and GMIBs) have been designed to address participants' concerns about traditional annuity products. In most cases, these new products have underlying investments that meet current QDIA definitions.

However, there is some confusion whether insurance guarantees that are offered in conjunction with these products represent an “ancillary” feature of the investment vehicle. The DOL should determine whether this type of guarantee is considered an “ancillary”

feature of an investment fund product or model portfolio. If considered to be “ancillary,” the DOL should provide clarification or guidance that would assure employers that the product would not fail as a QDIA.

- B. QDIA Protection In Participant Distribution Phase** - To the extent that QDIA protection is available for lifetime income products, it is important that such protection extends into the participant distribution phase.
- C. Disclosure Requirements** - Lifetime income products can be complex, so full disclosure to plan sponsors and participants is extremely important. Additional information regarding disclosure is provided in our responses to the questions in Section II regarding participant education.

## **Section VII - Comments Regarding Economic Analysis, Regulatory Flexibility Act, and Paperwork Reduction Act**

### **Question 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.**

Many of the cost drivers for including lifetime income products in DC plans have been identified in previous answers. Industry-wide reliable quantifiable data on these costs are not readily available. However, we believe that it is critical for accurate cost data to be included in any analysis of changing the regulatory structure to facilitate the use of lifetime income products, particularly any changes that would involve mandates. The SPARK Institute is willing and able to develop quantifiable data on record keeper costs for implementing regulatory changes and will do so upon request of the Agencies in connection with any contemplated regulatory changes.

### **Question 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?**

As noted throughout this response, one of the most significant issues facing lifetime income product providers and plan record keepers is the ability to share information with each other in a cost effective electronic manner. Although the standards we are developing will make the information process more cost effective, small plans will likely incur higher relative costs than will large plans because they generally have less internal resources and expertise available to deal with the complexities. Additionally, smaller employers’ plans will generally not have asset levels that will qualify them for the same breakpoint pricing that larger employers’ plans with larger asset bases are able to use to help defray costs.

The cost and pricing issues for small plans are not unique to lifetime income solutions. As the Agencies know, these issues and potential fiduciary liability are among the impediments to greater access for American workers to employer-sponsored retirement plans. The SPARK Institute recently developed the Universal Small Employer Retirement Savings Program (“USERSP”) concept to create a simplified and cost-effective savings plan for small employers. The program will help solve the retirement plan coverage issue for tens of millions of American workers who currently don’t have access to employer-sponsored plans. We encourage the Agencies to consider the USERSP concept. Copies of the USERSP concept summary were provided to the Agencies when it was originally introduced. We are happy to provide additional copies upon request. It can also be downloaded from our website at [www.sparkinstitute.org](http://www.sparkinstitute.org).

**Question 38**

No response.

**Question 39**

No response.

\* \* \* \* \*

We thank you for the opportunity to comment on this very important effort and for your consideration of our views. The SPARK Institute is available to provide additional information and clarification to the Agencies regarding these matters. Please do not hesitate to contact us at (704) 987-0533.

Respectfully,



Larry H. Goldbrum  
General Counsel