

**Testimony of
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Lifetime Income
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Good morning. My name is Amy Matsui, and I am Senior Counsel at the National Women's Law Center. The Center is a nonpartisan nonprofit public policy organization located in Washington, D.C. I work in the Center's Family Economic Security program area, which focuses on economic issues important to women and their families, including retirement security.

The Center commends the Departments of Labor and Treasury for making expanded access to lifetime income payments from employer-sponsored pension plans a regulatory priority. We appreciated the opportunity to submit comments, in conjunction with a number of other organizations committed to women's retirement security.¹ We also are grateful for the opportunity to testify at today's hearing.

Introduction

Research indicates that retirement savings are likely to be inadequate for many Americans, and particularly for women.² While there is a substantial gender gap in all sources of retirement income, the disparity between women's and men's employer-sponsored defined contribution (or DC) account accumulations is especially pronounced. This gender gap in retirement savings is largely attributable to women's work patterns: women in general earn less than men; they are more likely to work part-time; and they are more likely to take time out of the workforce at some point during their careers.³ It is not surprising, then, that in 2004, the median female worker near retirement with a defined contribution plan or IRA held less than half of the assets held by her male counterpart (\$34,000, compared to \$70,000).⁴

¹ American Association of University Women, American Federation of State, County, and Municipal Employees, National Consumers League, National Organization for Women, National Women's Law Center, OWES Task Force of the National Council of Women's Organizations, OWL, and the Pension Rights Center, Response to Request for Information, *available at* <http://www.dol.gov/ebsa/pdf/1210-AB33-640.pdf>.

² *See generally* U.S. Gov't Accountability Office, Women Face Challenges in Ensuring Financial Security in Retirement, GAO-08-105 (Oct. 2007), *available at* <http://www.gao.gov/new.items/d08105.pdf>; Tori Finkle et al., Inst. for Women's Policy Research, The Economic Security of Older Women and Men in the United States (Dec. 2007), *available at* <http://www.iwpr.org/pdf/BPD480.pdf>.

³ NWLC calculations based on Bureau of Labor Statistics, Dep't of Labor, Women in the Labor Force: A Databook 69-72 tbl.20 (Sept. 2009), *available at* <http://www.bls.gov/cps/wlf-databook-2009.pdf>.

⁴ Leslie E. Papke, Lina Walker, & Michael Dworsky, The Retirement Security Project, Retirement Security for Women: Progress to Date and Policies for Tomorrow 4 (2008), *available at*

Unfortunately, women need more, not fewer, retirement savings than men, because they are likely to live longer than men and spend more years living alone. The National Women's Law Center thus supports requiring employer-sponsored defined contribution plans to offer lifetime income options. With intensive education efforts⁵ and over time, we are confident that participants will become more familiar with lifetime income options and can be expected to elect such options with higher frequency.⁶

The Department requested testimony on a number of specific topics. My testimony will cover two of those topics: Specific Participant Concerns Affecting the Choice of Lifetime Income Relative to Other Options and Alternative Designs of In-Plan and Distribution Lifetime Income Options.

Specific Participant Concerns Affecting the Choice of Lifetime Income Relative to Other Options

With regard to the first topic, I will cover three participant concerns as they pertain to women: cost of lifetime income options, access to assets, and amount of assets.

1. *Costs of lifetime income options*

Lifetime income options offered through DC plans are likely to be less expensive for women than annuities available to individuals from insurance companies. First, annuities offered through insurance companies are priced using gender-distinct mortality tables, which can result in women receiving lower monthly benefits than men for the same investment in an annuity contract.⁷ In contrast, DC plans are required to offer annuities that are calculated without regard to gender, as required by Title VII of the Civil Rights Act of 1964. Second, lifetime income options offered through DC plans are likely to be lower-priced than annuities offered to individuals on the open market because of

http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Retirement_security/RSP-PB_Women_FINAL_4.2.2008.pdf.

⁵ Providing participants with benefit statements that estimate the annuity that could be purchased with the existing account balance, as proposed by the Lifetime Income Disclosure Act, S. 2832, 111th Cong. (2009), currently before the Senate, could also help condition the workforce to think of their retirement savings in terms of lifetime income. In contrast, the National Women's Law Center does not believe that tax incentives, such as excluding annuity payments, up to a certain amount, from income tax, will provide much assistance to participants – especially the low- to moderate-income participants who might benefit most from increased access to lifetime income options.

⁶ According to TIAA-CREF, which has offered annuity options in its plans for many years and has offered lump sum options since approximately 1996, approximately 30 percent of participants select partial annuities, and about 17 percent choose to fully annuitize, in recent years. TIAA-CREF Responses to Request for Information 3 (May 3, 2010), available at <http://www.dol.gov/ebsa/pdf/1210-AB33-625.pdf>.

⁷ For example, one annuity calculator estimated that a 64-year-old male in the District of Columbia who purchased a fixed immediate single-life annuity with \$34,000 from an insurance company could expect monthly annuity payments of \$208. In contrast, a 64-year-old female in the District of Columbia who purchased the same kind of annuity with the same amount could expect monthly annuity payments of \$193. ImmediateAnnuities.com, Instant Annuity Calculator, <http://www.immediateannuities.com> (search run by NWLC September 10, 2010).

institutional pricing.⁸ In addition, if plans were required to offer lifetime income options, it would be expected that the price of annuities would drop further as increasing numbers of participants select annuities.

Several commentators observed in their RFI comments that the gender-neutral pricing required under DC plans would discourage male participants from selecting annuities.⁹ However, gender-neutral annuity pricing is required in DC plans under current law, and I am not aware of any evidence indicating that gender-distinct pricing is a reason that impacts male DC plan participants' decisionmaking, much less causes them to not select annuities.¹⁰ Moreover, it is possible that the difference between gender-preferential and gender-neutral pricing would be mitigated as a result of institutional pricing if DC plans were required to offer lifetime income options. But in any event, the Departments should not seek to change longstanding antidiscrimination protections on such a speculative basis.

2. Access to Assets.

Commentators have also noted that individuals may be reluctant to purchase annuities because they want to have enough liquid assets to deal with unplanned expenses.¹¹ Low- and moderate-income participants, in particular, may be especially concerned that their entire account balance would be “locked” into a lifetime income product. The Center therefore recommended in its joint Comments that participants should be given the option of receiving some portion of their account balance as lifetime income, so long as the amount to be annuitized meets some minimum threshold.

The amount of that minimum threshold is obviously a critical question for the Departments to resolve. In our experience, even relatively small amounts of dependable lifetime income can be significant for low- and moderate-income workers. The minimum account balance policies in defined benefit (DB) and Federal Thrift Savings plans are instructive: DB plans must annuitize benefits with a present value in excess of \$5,000,¹² and the Federal Thrift Savings Plan must do so for account balances above \$3,500.¹³ With regard to these systems, therefore, policymakers have determined that those amounts, which would result in only very small monthly payments, are significant enough to warrant annuitization. We reiterate our recommendation from our joint RFI

⁸ American Academy of Actuaries, Lifetime Income RFI 1-2 (May 3, 2010), *available at* <http://www.dol.gov/ebsa/pdf/1210-AB33-690.pdf>.

⁹ *See, e.g.*, American Academy of Actuaries, *supra*, at 9 (“[r]equired use of gender neutral rates that are relatively unfavorable for males, such that the incongruity of having such rates within plans and sex-distinct rates outside of plans *could lead to . . .* males electing out-of-plan annuities . . . or electing annuities less frequently.”) (emphasis added).

¹⁰ *See, e.g.*, Lincoln Financial Group, Comments for Lifetime Income RFI 3 (May 3, 2010) (“Participants *are likely aware* that males can receive higher lifetime benefits through sex-distinct rates in an Individual Retirement Annuity than an in-plan unisex lifetime annuity required by law.”), *available at* <http://www.dol.gov/ebsa/pdf/1210-AB33-647.pdf> (emphasis added).

¹¹ *See generally, e.g.*, Jeffrey R. Brown, Univ. of Ill. and Nat'l Bureau of Econ. Research, Financial Education and Annuities (2008), *available at* <http://www.oecd.org/dataoecd/38/0/44509379.pdf>.

¹² 26 U.S.C. § 411(a)(11).

¹³ 5 U.S.C. § 8435(g).

comments, and encourage the Departments of Labor and Treasury to conduct a joint study to determine an appropriate minimum account balance for purchase of an annuity with the needs and likely account balances of low- and moderate-income workers in mind.

3. *Level of Assets in a DC Plan Account.*

Some participants may be concerned that the assets that they have been able to accumulate in one employer's DC plan are insufficient to make a lifetime income payout option "worth their while." Although participants can contribute up to \$16,500 per year under current law, few workers, especially low- and moderate-income workers, do so.¹⁴ Only 6 percent of women making a contribution to a 401(k)-type plan made the maximum contribution in 2005, compared to nearly 12 percent of men making contributions.¹⁵

However, participants may have other retirement savings accumulated with other employers, since the average worker has multiple jobs during his or her career.¹⁶ Thus, as a worker nears retirement, he or she may have retirement savings in one or more DC plans, and/or in one or more IRAs.

Many women have saved enough throughout their careers to provide for a modest, but not insignificant, supplement to Social Security. In 2004, the median 401(k) and/or IRA account balances for women ages 55 to 64 was \$34,000.¹⁷ One annuity calculator estimated that a 64-year-old female in the District of Columbia who purchased a fixed immediate single-life annuity with \$34,000 from an insurance company could expect monthly annuity payments of \$193.¹⁸ Although it would be virtually impossible to live off these monthly payments alone, they would provide an important boost to Social Security payments, which average about \$1,000 per month.¹⁹

¹⁴ In 2005, only 1.3% of workers with a family income between \$20,000 and \$29,999 and making a contribution to a 401(k) type plan made the maximum contribution while 14.6% of those with incomes of \$75,000 did so. Craig Copeland, *Ownership of Individual Retirement Accounts (IRAs) and 401(k)-Type Plans*, EBRI Notes (Employee Benefit Research Inst., Washington, D.C.), May 2008, at 6 fig.3, available at http://www.ebri.org/pdf/EBRI_Notes_05-2008.pdf. In 2010, individuals 50 and over can contribute a maximum of \$22,000 a year.

¹⁵ Copeland, *supra*, at 6 fig.3.

¹⁶ The average person born in the later years of the baby boom (individuals born from 1957 to 1964) held 10.8 jobs from age 18 to age 42. Press Release, Bureau of Labor Statistics, Number of Jobs Held, Labor Market Activity, and Earnings Growth Among the Youngest Baby Boomers: Results from a Longitudinal Survey (June 27, 2008), available at <http://www.bls.gov/news.release/pdf/nlsoy.pdf>.

¹⁷ Papke, Walker, & Dworsky, *supra* note 3, at 4 tbl.1. In comparison, the median 401(k) and/or IRA account balance for men ages 55 to 64 was \$70,000 in 2004. *Id.* The average account balances for this age group, which includes a small number of high-earning individuals, are much higher: \$91,700 for women and \$219,500 for men. *Id.*

¹⁸ ImmediateAnnuities.com, Instant Annuity Calculator, <http://www.immediateannuities.com> (search run by NWLC September 10, 2010).

¹⁹ The average monthly Social Security retired worker benefit for women in March 2010 was \$970.56. See Soc. Sec. Admin., Beneficiary Data, Benefits Awarded by Type of Beneficiary, <http://www.ssa.gov/OACT/ProgData/awards.html> (search run by NWLC June 10, 2010).

Unfortunately, unless an individual could aggregate his or her accumulated retirement savings in the 401(k) account that offered a lifetime income payout, he or she would be unable to maximize his or her lifetime income payments. Under current law, a DC plan may, but is not required to, accept rollovers from other qualified retirement accounts.²⁰ We therefore recommended in our Joint Comments that plan administrators be required to accept rollovers from other qualified plan accounts and conduit-type IRAs.

Alternative Designs of In-Plan and Distribution Lifetime Income Options

In 1984, Congress passed the Retirement Equity Act (REA). Pursuant to the REA, the default form of benefit for married participants in defined benefit plans is a Qualified Joint and Survivor Annuity (or QJSA). A QJSA provides an annuity for the joint life of the employee and his or her spouse, and a survivor annuity of at least 50 percent for the spouse after the employee's death. The spouse can waive the QJSA, following certain procedures established by statute.

Congress' intent in enacting the REA was, in part, to "provide for greater equity under private pension plans for workers and their spouses and dependents by taking into account changes in work patterns, the status of marriage as an economic partnership, and the substantial contribution to that partnership of spouses who work both in and outside the home." The need for that equity has not diminished thirty-six years later, as DB plans have been increasingly supplanted by retirement savings plans such as 401(k)s. But the protections of the REA do not apply if married DC plan participants do not elect to receive their benefits in the form of a life annuity. A married participant can make the decision to take a lump sum or roll the account balance into an IRA when he or she retires or changes jobs without any input from his or her spouse.²¹

Spousal pension protections are vital to women, who are more likely than men to rely on their spouses' retirement benefits. One recent study indicated that almost 24 percent of all women aged 60 and over received DB pension income from their spouse's former employer, compared to about 7 percent of men, in 2006.²² The spousal protections applicable to DB pensions, more specifically, have a significant impact on women's retirement security. After Congress passed the REA, the number of married men who provided a joint and survivor annuity for their spouses increased 23 percent.²³ In 2006, women aged 60 and over received a median survivor benefit of \$7,850 per year – a not

²⁰ 26 U.S.C. § 401(a)(31)(E); 26 C.F.R. § 1.401(a)(31)-1, Q&A 13 (2009).

²¹ Some spousal protections do apply in 401(k) plans. Specifically, a participant in a 401(k) plan must obtain spousal consent before designating a beneficiary other than the spouse who would receive the account balance if the participant died while participating in the plan. 26 U.S.C. § 417(a)(2). This means, effectively, that a spouse is protected against having the 401(k) assets go to someone else if the participant dies while enrolled in the plan, but *not* against having the assets go to another beneficiary if the participant changes jobs and rolls over the 401(k) balance into an IRA.

²² Frank Porell & Beth Almeida, Nat'l Inst. on Retirement Security, *The Pension Factor: Assessing the Role of Defined Benefit Plans in Reducing Elder Hardships* 4, 5 tbl.2 (July 2009), available at http://www.nirsonline.org/storage/nirs/documents/pension_factor_web.pdf.

²³ U.S. Gen. Accounting Office, GAO/HRD-92-49, *Pensions Plans: Survivor Benefit Coverage for Wives Increased After 1984 Pension Law* 7 (1992) (examining data from 1984–1989), available at <http://archive.gao.gov/t2pbat6/146159.pdf>.

insignificant amount.²⁴ Moreover, the data suggest that DB pension survivor benefits help lower-income older women avoid poverty: a disproportionate number of women receiving DB pension survivor benefits fell within the second-lowest income quintile, rather than the lowest income quintile, in 2006 – suggesting that DB pension survivor benefits made the difference.²⁵ The importance of spousal pension benefits, and in particular the survivor benefits provided through a QJSA, therefore, should not be minimized.

Some groups have recommended amending the QJSA rules as applied to some or all lifetime income options that might be offered through DC plans, asserting that this would encourage employers to offer lifetime income options. For example, some commentators urged that QJSA protections should be eliminated,²⁶ or should not apply to distributions from “hybrid” products with an annuity component.²⁷ Similarly, to the extent that some commentators urged the agencies to allow lifetime income options through rollover IRAs facilitated by employers,²⁸ it should be noted that antidiscrimination and QJSA protections would not apply to annuities purchased through IRAs under current law.

We are sympathetic to employers’ concerns regarding administrative burdens and costs, although at least one association of investment companies has stated that the QJSA requirements are not the reason that plan sponsors do not offer annuities.²⁹ But some of these proposals would effectively eliminate spousal protections, which are required under current law to annuities offered by DC plans, and which are so important to women’s

²⁴ Email from Frank Porell, Professor of Gerontology, John W. McCormack Graduate School of Policy Studies, University of Massachusetts Boston, to Jasmine Tucker, Policy Fellow, National Women’s Law Center (Sept. 13, 2010) (on file with NWLC).

²⁵ *Id.* Forty-two percent of women receiving DB pension survivor benefits were in the second income quartile, which greatly surpassed the percentage of such women in the first income quartile (15%), third income quartile (19%), fourth income quartile (17%), and fifth income quartile (7%). *Id.*

²⁶ *See, e.g.*, Institutional Retirement Income Council, Comments in Response to Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans 17 (May 3, 2010) (“[I]n order to simplify the process and reduce the cost [of traditional and deferred fixed income annuities], legislation would be needed to remove [the] barrier [of QJSA requirements] toward greater acceptance of these types of retirement income solutions.”), *available at* <http://www.dol.gov/ebsa/pdf/1210-AB33-629.pdf>; ASPPA, Response to RFI on Lifetime Income Options 16 (May 3, 2010) (“Regulatory clarification is needed on application of the spousal consent rules to annuitization other than on a joint and survivor basis.”), *available at* <http://www.dol.gov/ebsa/pdf/1210-AB33-642.pdf>.

²⁷ *See, e.g.*, Lincoln Financial Group, Comments for Lifetime Income RFI 17-20 (May 3, 2010), *available at* <http://www.dol.gov/ebsa/pdf/1210-AB33-647.pdf>.

²⁸ *See* Defined Contribution Institutional Investment Association, Lifetime Income RFI Comment Letter 8 (May 3, 2010) (“We believe that both in-plan and voluntary distribution arrangements facilitated through IRA rollovers should be designed as qualified institutional offerings.”), *available at* <http://www.dol.gov/ebsa/pdf/1210-AB33-656.pdf>; *see also* Committee of Annuity Insurers, RIN 1210-AB33 Comment Letter 32-33 (May 3, 2010) (expressing Committee’s belief that annuity purchase platforms “serve a useful function by facilitating the purchase of lifetime income products through IRAs” and encouraging agencies to issue regulations that would encourage employers to give their employees access to annuity purchase platforms).

²⁹ *See, e.g.*, Investment Co. Inst., Comments in Response to Request for Information on Lifetime Income Options 25 (May 3, 2010), *available at* <http://www.dol.gov/ebsa/pdf/1210-AB33-650.pdf>.

retirement security. If plans are required to offer lifetime income options to further the goal of expanding access to lifetime income to counter the retirement insecurity faced by many workers who participate in DC plans, that goal would be undermined by eliminating spousal protections required under current law. This would create a loophole in retirement security policy that particularly affects women, and especially low- and moderate-income women.

We are also concerned about proposals that seek to expand the use of electronic technologies to administer QJSA requirements beyond what is permitted under current regulations.³⁰ ERISA requires that spouses who choose to do so waive spousal pension benefits, in writing, in the presence of a notary public or plan administrator.³¹ This is intended to reduce the possibility of fraud, given the importance of the benefit being waived. The Department of the Treasury recently considered the extent to which electronic technologies should be employed in the transmission of spousal consent.³² The Treasury regulations provided that electronic procedures may be used to effectuate spousal consent *only* if “reasonably designed to preclude any person other than the appropriate individual from making the election,”³³ and, in particular, if the procedures “provide the same safeguards for participant elections as are provided through the physical presence [before a notary or plan administrator] requirement.”³⁴ Accordingly, the Treasury regulations allow spouses to provide consent with an electronic signature, in the presence of a notary public or plan administrator,³⁵ but explicitly reject the use of PIN numbers or telephonic technologies. The use of PIN numbers or telephonic technologies present authentication concerns that would threaten spousal rights;³⁶ if new technologies are developed that would provide the same security as the physical presence requirement, alternatives could be considered.

In sum, spousal protections in retirement savings are extremely important for women, and reducing those protections in the hope of encouraging employers to offer greater access to lifetime income presents a significant risk that policymakers should not take.

Conclusion

In conclusion, I appreciate the opportunity to testify at today’s hearings, and I look forward to responding to any questions that may relate to the areas covered in my testimony. Thank you.

³⁰ See, e.g., American Benefits Counsel, Re: Request for Information – Lifetime Income (RIN 1210-AB33) 5 (May 3, 2010), available at <http://www.dol.gov/ebsa/pdf/1210-AB33-646.pdf>.

³¹ 29 U.S.C. § 1055(c)(2)(A).

³² Use of Electronic Technologies for Providing Employee Benefit Notices and Making Employee Benefit Elections and Consents, 71 Fed. Reg. 61,877, 61,882–83 (Oct. 20, 2006) (codified at 26 C.F.R. § 1.401(a)-21), available at <http://edocket.access.gpo.gov/2006/pdf/E6-17528.pdf>.

³³ 26 C.F.R. § 1.401(a)-21(d)(3) (2009).

³⁴ 26 C.F.R. § 1.401(a)-21(d)(6)(iii) (2009).

³⁵ *Id.* at 61,882.

³⁶ See 71 Fed. Reg. 61,877, 61,882 (Oct. 20, 2006) available at <http://edocket.access.gpo.gov/2006/pdf/E6-17528.pdf>.