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Submitted via electronic delivery

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

Attn: RIN 1210-AB33, Lifetime Income RFI

Ladies and Gentlemen:

SIFMA appreciates the opportunity to provide information to the Department of Labor and the U.S. Treasury ("Agencies") as you consider the advantages and disadvantages of facilitating lifetime income options in plan design and encouraging participants to use lifetime income options as part of their retirement planning strategies. We believe it is very important for the Agencies to take a very deliberative approach in formulating new policies in this arena. The Agencies that participated in this RFI have a regulatory mandate. It is not appropriate for a government agency to take a position that would "facilitate" lifetime income options in plans. Rather, the Agencies should have an agnostic view toward any particular investment product.

SIFMA would like to highlight our recommendations and concerns as follows:

The Departments of Labor and U.S. Treasury are urged to adopt the following recommendations: enhance relevant agency websites to include generic examples of converting account balances to annual income. In addition, the Department should make available a brochure discussing the questions employers and participants should ask when considering a lifetime income option to promote awareness of the role lifetime income may play in retirement.

SIFMA does not support proposals to require plan sponsors to offer any particular investment option nor would we support the option of defaulting participants into annuity or lifetime income guarantee options. Finally, SIFMA believes requiring disclosure of an "annuitized amount" will result in new costs to retool systems with little, if any benefit to plan participants. Other alternative approaches would serve the educational purpose of such a requirement at a much lower cost and likely with less potential of misleading participants.

- 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?*

As participants retire, they must consider how best to manage the sources of income that will be available to them in retirement. This includes Social Security, any personal savings, any additional savings or eligibility to receive a benefit from a qualified plan, real estate equity, and continued income from part-time work. The risks faced by retirees include longevity risk, inflation risk, and investment risk. Lifetime income options are by no means the only tool that can help manage these risks.

While many participants are concerned that their savings will not “last” throughout their life, participants have shown a strong preference to maintain control over their own finances, particularly at retirement age. Indeed, a number of studies have shown that participants prefer to take their retirement distributions and roll them into an Individual Retirement Account (IRA). In the IRA, participants have flexibility to purchase an Individual Retirement Annuity, establish a systematic withdrawal program, and invest their savings in an array of options not typically available through their employer’s plan. This preference for flexibility and control does not mean that participants avoid annuities and other forms of lifetime income entirely. Research conducted by the Investment Company Institute found that 22 percent of the survey group had chosen to annuitize all or a portion of their defined contribution account balance.¹ Additionally, 9 percent of survey respondents indicated that a fixed annuity option was selected as an IRA investment later.

Finally, SIFMA urges the Department to consider the impact of encouraging lifetime income options on retirement adequacy. Research published by the Investment Management Association in the United Kingdom analyzed a variety of distribution methods. The research found that in many instances, a lifetime income option resulted in lower retirement income than a systematic withdrawal strategy.²

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 reasons for the low usage of lifetime income options are referenced as part of the question. “Poor decision-making” seems to suggest a subjective view by the Department

¹ Defined Contribution Plan Distribution Choices At Retirement, page 45. Investment Company Institute, Fall 2008.

² Modelling Income Drawdown Strategies, Research Paper, Investment Management Association.

which neither SIFMA nor the majority of participants share. Some participants do seem to be engaging in rational decision-making with respect to their retirement planning; the absence of advice from professionals continues to make that decision-making more difficult. Studies indicate that women are more likely to annuitize than men. Older age participants are more likely to annuitize than younger participants.³

To the extent that every participant can roll his or her lump sum into an IRA and select a lifetime income provider of his choice, it is difficult to see why government action would be required. Indeed, given the strong interest in maintaining flexibility and control, it is not apparent that requiring or even encouraging default to a retirement income solution would have significant impact on participant choices but may indeed, cause unnecessary concern, as the comments received by the Department would appear to indicate. As noted by the Vanguard research, in defined benefit plans where the joint and survivor annuity is the default, participants actively work to avoid the default form of distribution.

The tax benefits of non-qualified annuities may also play a role. It is common for investors to use non-qualified assets to purchase an annuity because the tax treatment of the distributions is more favorable assuming a long-term investment strategy. Distributions from tax-qualified accounts are taxed at ordinary income and the investor may wish to defer paying those taxes.

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 many types of individual retirement annuities available in the market; many more than would be available to a particular participant in a particular plan if the employer were encouraged or required to select a particular lifetime income option, and impose it on participants. The individual annuity market permits the participant to have access to a customized solution.

We are aware of a handful of insurance providers that offered an IRA rollover option for participants who had invested in a lifetime income option through the employer. However, the option to rollover the account was not available in every state. SIFMA members also report that plan sponsors and participants struggle to gain an understanding of the potential limits on the ability to roll over the annuity and the ramifications if they leave a particular employer. Even where the option to rollover to an IRA of the same issuer is available, the participant may be at a disadvantage. If the participant is younger and has many years to work before retirement and

³ Lump Sum or Annuity? An Analysis of Choice in DB Pension Payouts, page 4, Vol. 30. Vanguard Center for Retirement Research, November 2007.

can't afford to make additional contributions, or the amount invested was small, the participant may be left with a small benefit at retirement.

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 mortality and expense charges are the most expensive features associated with an annuity. However, other features, such as guaranteed return on principle and the year certain payment are features that are almost as costly.

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)?

One advantage is that where the plan sponsor provides an annuity option, a fiduciary other than the participant presumably does due diligence on the annuity provider. In addition, a group contract may offer a lower fee structure than might be available to a participant alone.

However, the choice that the employer makes will likely be a fairly generic option that may not be as suitable to a particular participant's situation as he or she might select. In addition, without significantly more education, it is likely that some workers may purchase an annuity when it may well be inappropriate to do so. The high turnover rate characteristic of many workers means that amounts contributed to lifetime income options may be too low to provide a meaningful income replacement opportunity and will be difficult to manage given the few opportunities to rollover the investment to an IRA.

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 sponsor who elects to make a lifetime income option available to the participants is assuming additional fiduciary responsibility to select and monitor the insurer. The firm's expense of offering a plan when a lifetime income option is offered is also likely to increase. Most 401(k) plan sponsors are interested in limiting their fiduciary responsibility; being required to monitor an insurer throughout the life of a participant who selected an annuity option, and the added responsibility of dealing with any insurer who becomes insolvent, is a disincentive to plan sponsors.

10. How commonly do plan sponsors offer participants the explicit choice of using a portion of their account balances to purchase a lifetime annuity, while leaving the rest in

the plan or taking it as a lump sum distribution or a series of ad hoc distributions? Why do some plan sponsors make this partial annuity option available while others do not? Would expanded offering of such partial annuity options--or particular ways of presenting or framing such choices to participants--be desirable and would this likely make a difference in whether participants select a lifetime annuity option?

If offered, a partial annuity option would likely be generic and would not be as suitable as other partial annuity options that would be available outside of the plan. We are aware of some insurers who offer a lifetime option on partial account balances, and permit the remaining account balance to be converted to a life time option later. Withdrawal options are often severely restricted, either carrying a market value adjustment or an installment payout over a range of time frames – 5 years or even 10 years. Other options include a non-level payout, a 10% lump sum with the first monthly payment, a payout deferred until the date minimum required payments are required to begin, etc. Even where the option is offered, participants seldom select it. Where participants have selected it, many do not understand that the choice will lead to restrictions on rollovers and additional fees and adjustments.

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?

SIFMA does not believe it would be helpful for governmental policymakers to encourage lifetime income default distribution strategies in employer plans. Behavioral research with its application to retirement plans is still in its infancy. Taking advantage of participant inaction to further the goal of increasing retirement savings is one thing; however, using such inertia to force a participant into an annuity is something quite different. Most would agree that no harm is done when participants are automatically enrolled into a 401(k) plan even if the participant wouldn’t have participated absent the default arrangement. Annuitizing all or a portion of a participant’s account on the other hand is not always in the best interest of the participant especially if the participant already has a significant portion of their retirement assets in annuity form, is in poor health, requires liquidity, or is annuitizing in a low-interest rate environment. Formulating regulatory or statutory changes without additional research is premature and possibly will cause harm to participants. A number of lifetime income options are already available in the market – more are being added. Government regulation at this point, before there is an opportunity to determine whether the new products serve a perceived need will likely lead to distortions which will hinder more innovation in this area.

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?

Most participants will need the help of an investment professional to determine what portion, if any, of their account balance to annuitize. The decision should be based on a holistic assessment of the individual's circumstances which is not something most plan sponsors are able to do. For many participants, assets in the defined contribution plan may be just one source of income in retirement. Other participants may not have a large enough balance to justify annuitizing and it may not be feasible to consolidate other assets with an employer. Many participants choose to rollover their assets to the Individual Retirement Account because it provides an array of choices and flexibility to evolve as the individual's needs evolve. Sadly, fewer participants will have access to such holistic information and advice due to the guidance issued, or about to be issued, by the Department on such topics as the investment advice exemption and the investment advice fiduciary definition.

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?

We do not support requiring any form of lifetime income distribution option, nor do we support requiring lifetime income options to be used as a default option with respect to some or all of the account. Current regulation on plan sponsors already creates a disincentive to establish and maintain plans. Additional requirements which add to the responsibilities of the plan sponsor and increase the potential for fiduciary liability will only exacerbate this situation.

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?

Generally, plan sponsors are concerned about potential liability. The Department's pronouncements on the "safest available annuity", lack of participant demand and a reduction in the perceived size of the benefit due to the cost of the lifetime income option, especially where it is tailored to provide even minimal flexibility. Where an accumulation is only a few thousand dollars, the amount of the monthly payment is unattractively low.

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

There are significant differences across demographic groups that need to be considered. These differences are some of reason why a one choice fits all solution in a particular retirement plan makes little sense. Employers will also have employee populations that are diverse, making it very difficult for them to offer a lifetime income option that would meet the needs of their workforce.

Participant Education

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 a participant, who typically provides it, and when and how is it provided to them?

We think it is critical that participants understand how to realistically assess their retirement income needs. This would include information on available investments, economic factors, fee information, risk tolerance, the need to consider health factors, and access to other sources of income. If the participant determines that a guaranteed product may be suitable, the participant must also consider insurance company solvency risk; risks attendant to so-called “guaranteed funds” and whether the guarantees are real, unconditional, or subject to elimination due to factors outside a participant’s control. However, disclosure material we are aware of is inconsistent. The plan sponsor or other administrator would be at a disadvantage in analyzing the information, digesting it, and then presenting it to participants in a manner that is understandable and relevant to the individual participant and would likely object to the additional fiduciary duty of synthesizing some other financial institution’s disclosure.

Of course, presenting information on lifetime income options should be done in a holistic way. Plan sponsors may provide access to educational resources but these resources are typically limited to information about investment options available under the plan. Very few plan sponsors offer retirement counseling to participants that incorporates the range of issues that should be considered as part of retirement planning.

Section 514 of ERISA may make it difficult for the Federal Government to require insurers to provide this information but there appears to be no protection for plan sponsors who offer a lifetime income option but do not provide the information that participants need to assess the “safety” of the advertised guarantee. The fiduciary performing due diligence will likely encounter difficulty in accessing and understanding the information. Participants acting alone will experience even greater difficulties.

The ability to consult an advisor would be of significant help to plan sponsors, participants and those with IRAs. Unfortunately, fewer advisers will be able to discuss these issues at a reasonable cost. This is likely one of the major reasons that many participants prefer to take a lump sum distribution from the plan and roll the assets to an IRA where they will have access to more robust counseling and potentially advice on how to invest and preserve their various sources of income.

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?

No. The guidance provided by the Department of Labor is satisfactory. Plan assets can be used to provide information on plan distribution options and plan assets surely can be used for education on plan options as the Department has made clear in IB 96-1. We do not believe it would be appropriate under existing guidance for the plan to pay for advice or education on out of plan retirement income options, like reverse mortgages, with plan assets. Larger plan sponsors may provide robust education and counseling for employees nearing retirement but these types of program are not paid for with plan assets. However, the DOL should ensure that participants are able to receive advice and guidance from an advisor on all of the assets – whether in the plan or not – should he or she choose that option.

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?

The Department has significantly limited the ways in which meaningful investment advice can be provided to participants, and indeed, SIFMA intends to request that the Department clarify whether advice can be given on manager programs and whether to rollover assets to an individual retirement account or individual retirement annuity.

Even more concerning to plan sponsors and fiduciaries is Advisory Opinion 2005-23A. This opinion has cast grave doubt on whether any person who could be deemed a fiduciary can advise a participant on the benefits of a rollover. It appears that while the Department is concerned about retirement choices of participants, its own recent rulings and regulations move participants away from the kind of advice that is critical to sound retirement planning.

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?

We believe that it would be helpful for the Agencies to use websites to educate plan sponsors and participants about the role lifetime income products have in retirement, as well as other sources of retirement income. However, we do not believe a plan sponsor should be required to provide education to participants, including with respect to any particular aspect of retirement planning. There are already significant barriers to plan sponsorship. Requiring plans to pay for education will not be helpful; indeed, participants would say that the education,

because it must be hypothetical, not individualized, and may not contain recommendations for the particular individual, is also not helpful. Moreover, to the extent that the education makes the plan sponsor a fiduciary for the participant's investment choices or distribution choices, it will be a further disincentive to the establishment or maintenance of plans.

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

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

We believe that the cost of this type of disclosure requirement significantly outweighs any potential benefit. This provision will have the unfortunate consequence of forcing service providers who already have started providing a monthly or annual withdrawal amount on the benefit statement to retool their systems at additional cost, as well as the ongoing cost of providing individualized information which relies on another set of actuarial calculations. We are also concerned this type of requirement will confuse participants should they believe that a monthly lifetime payment is available to them since it is "disclosed" on their statement. Finally, if a plan sponsor offered some type of guaranteed withdrawal product, how would the plan sponsor conform the disclosure for that investment option with the assumptions that would ultimately have to be approved by the Department? (The above response is intended to address the follow up items in Question 22 and 23 as well.)

SIFMA notes that the 2008 ERISA Advisory Council Working Group on Decumulation recommended that the Department encourage or facilitate this type of disclosure but did not endorse this disclosure as a requirement. The Department could be helpful by increasing the visibility of its electronic educational resources and potentially, encouraging plan sponsors to link to the Department's website and its wealth of material. We note that the Department theoretically already provides access to calculators – including those maintained by AARP and other groups. Another alternative to consider would be to provide a table on the Department's website that shows a typical monthly payment for every \$10,000 invested in a lifetime income product.

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?

Again, we think a required disclosure of this nature is a concern. There is not widespread agreement on the preferred income replacement ratio nor the assumptions that would be used to determine the ratio. How does one assume a value for equity in one's home? Other outside assets? Style of living? Health? Age of children? These very questions underscore the need for

investment and retirement planning advice for participants on an individualized basis. To the extent that the Department makes this advice impossible from the hundreds of thousands of financial professionals who are affiliated with financial institutions who also market retirement products, it casts real doubt on the Department's efforts in this area.

401(k) and Other Plan Qualification Rules

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?

We do not believe that any changes in the consent rules would be helpful, after balancing the issues involved.

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?

We think that the minimum distribution rules thwart a participant's ability to retain flexibility for health and income changes in their retirement. SIFMA has long supported adjusting the age for required minimum distributions to reflect increased life expectancy rates. However, any changes to minimum distribution rules should apply equally to lifetime income products and other products. SIFMA would be very concerned about changes to the RMD rules that would establish discriminatory treatment.

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

This is a potential policy opportunity the Department should explore. On one hand, it would be unwise to facilitate this if the repayment of distributions would cause a plan sponsor to suffer additional funding burdens. In the absence of a funding deficit however, it could provide new incentives to employers if this was a voluntary option.

Selection of Annuity Providers

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?

As the Agencies are aware, the Pension Protection Act directed the agency to revise the safe harbor. On October 6, 2008, the Department published final regulations regarding the safe harbor for individual account plan annuity providers. The final regulation eliminates many of the criteria as well as the requirement that an independent expert be consulted when the plan sponsor lacks expertise. We think the Department has addressed this issue. The 2008 Working Group also reviewed this issue and agreed that the Department's revised regulation "substantially addressed" their recommendation.⁴

ERISA Section 404(c)

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?

We do not believe lifetime income options should be required as a core option under ERISA 404(c).

Qualified Default Investment Alternatives

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

The use of QDIAs with a lifetime income feature is very limited. SIFMA is aware that some products contain a floor of a specific amount of income. However, several of these products have also been withdrawn from the market. QDIA providers do not describe these products as containing a guarantee. The Department specifically chose not to permit annuity

⁴ ERISA Advisory Council, Report on the Spend Down of Defined Contribution Assets At Retirement, 2008.

products with a stable value feature as QDIAs. We assume that at the time, the Department balanced equity exposure for younger employees against lifetime income and determined that the former was the more important policy concern.

In 2008, a working group of the ERISA Advisory Council recommended that the QDIA regulation be updated to extend the safe harbor to options that extended into the distribution phase. We think these changes are premature at this time.

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

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

As we have noted, the data on this point are very isolated to a few plans and we think it would be unhelpful to extrapolate that data to all participants. The Department could add questions to the Form 5500 to capture more reliable data on which to base these very critical and far-reaching policy decisions. We also believe the Agencies should be careful about relying only on data regarding annuitization activity through the plan. As previously cited research demonstrates, participants are rolling over to an IRA and in a number of situations, choosing to annuitize. In an IRA, the account holder will have access to more options and will also maintain flexibility that may be needed over the course of their retirement.

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We thank the Agencies for the opportunity to provide comments and we appreciate the thoughtfulness of the questions included in the RFI. Please do not hesitate to contact the undersigned if you have any questions.

Sincerely,

Liz Varley
Managing Director