ING Insurance U.S.

May 3, 2010

FILED ELECTRONICALLY

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

Re: RIN 1210-AB33; Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans

Ladies and Gentlemen:

With this letter, the companies that comprise ING Insurance U.S. ("ING") are submitting suggestions and comments responsive to the Department of Labor and the Department of Treasury (the "Agencies") Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans, 75 Fed. Reg. 5253, February 2, 2010. ING appreciates the Agencies' efforts to consider how the retirement security of participants in employer-sponsored retirement plans and in IRAs might be enhanced through regulations or other measures that would facilitate access to, and use of, lifetime income or other arrangements designed to provide a lifetime stream of income after retirement. ING, through its U.S. Retirement Services business, is a leading plan service provider in the defined contribution industry. In the United States, the business serves approximately 52,000 workplace retirement plans and 6.4 million plan participants, managing and administering more than $277 billion in combined assets. ING has a longstanding commitment to America's workforce, offering a diverse array of retirement products, services and plan solutions, as well as group insurance. In addition, ING for years has been a leading provider of guaranteed lifetime income products. Through its newly-organized ING Financial Solutions business, the company is at the forefront of offering simpler, lower-cost annuity and non-annuity products to retiring baby boomers and the rollover market.

Background

Americans today clearly shoulder a much greater burden than their predecessors when it comes to planning and saving for retirement. Fewer employers in the private sector are offering traditional, defined benefit pension plans these days – once a primary and reliable source of income for a large population of retirees. The future of Social Security is also uncertain, with many warning signs that question its viability. Most recently, experts have calculated that the system will pay out more in benefits this year than it receives in payroll taxes, a troubling milestone that was not expected until later this decade. On top of this, longer life expectancies and unforeseen costs, including those related to healthcare, pose greater risks to each individual's overall financial security.

Following the recent volatility in the financial markets, it has become increasingly clear that comprehensive planning and preparation is essential for a successful retirement. More needs to be done than simply accumulating a large account balance in a voluntary, workplace plan or an individual retirement arrangement (IRA), now the primary retirement savings vehicles for many investors. Establishing true retirement security requires that individuals create a sustainable strategy for converting one's account balance into a guaranteed income stream that can last for life, regardless of how long one lives or how the financial markets may perform in the future.

Given its leadership positions in the industry, ING is responding to the Request for Information with a view to providing useful information to help inform the Agencies in their considerations on how to improve the retirement security landscape for more Americans.

ING Response

ING strongly believes that participating in a defined contribution plan in the workplace is one of the first and best places to start saving for retirement. These plans are viewed by our customers and ING as the cornerstone of the nation's private retirement savings system and they offer a number of benefits such as the convenience of tax-deferred investing right from one's paycheck, the opportunity to receive additional assets when an employer provides matching contributions, and the ability to exercise choice and control over one's investment decisions.

However, ING also realizes that saving into a workplace plan will often not be enough in today's environment. While it remains extremely important to focus on "accumulation" or building up savings, it is just as important to focus on properly managing that amount during retirement to protect against the risk of outliving those assets. To that end, we believe an ideal retirement savings strategy should include both a plan to build up savings and create a guaranteed stream of income, or retirement "paycheck," from some portion of that savings that lasts throughout an individual's lifetime.

Today, the typical voluntary workplace plan provides ample opportunities for saving and building up one's assets, but fails to provide the tools and incentives for participants to learn how best to manage their assets during retirement, let alone purchase annuities or other lifetime income solutions. Industry data backs this up. Relatively few 401(k) plans offer participants the option to annuitize through the plan.

Accordingly, ING believes that one important way our private retirement savings system can and should be improved is by expanding the opportunities – both in-plan and out-of-plan – that promote greater awareness and encourage increased investments in guaranteed income options for workers.

First, while individuals today are free to purchase annuities or guaranteed income options outside of a defined contribution plan – using personal savings or withdrawing money from their workplace account upon retirement and rolling it over into a tax-qualified annuity contract – few are doing it. ING fully supports ways to reverse this trend, and we believe much can be done at the plan level to broaden awareness for this strategy.

Second, we believe there is tremendous potential to create new opportunities for investing in retirement security while participants are still within their plan. By thoughtfully designing the post-retirement phase of defined contribution plans to allow participants the ability to convert their wealth into annuitized income, the retirement plan of the future can become a more comprehensive vehicle through which individuals can accomplish their goals and achieve a greater level of security. We believe offering this type of product within a defined contribution framework is likely to increase both participation in the plan as well as the number of individuals who are better prepared for retirement.

Third, and possibly most important, is the need to address and eliminate a number of barriers that discourage employers from making these opportunities more readily available and desirable to participants and investors.

In short, the typical workplace plan is an effective savings vehicle – but not a complete one for providing overall retirement income security. While our responses to the Request for Information are laid out in comprehensive detail on pages 6-43 of this document, the following is a summary of the key themes and positions we support.

Summary of ING Key Positions

1. ***Significant opportunities exist at the workplace***.

ING broadly supports investing in guaranteed lifetime income options within a retirement plan. Few options exist today at the plan level, so we believe much more can be done within the defined contribution framework and we strongly encourage employers to add this type of feature to their plan. Retail products, such as individual IRAs or guaranteed income annuities, are also important vehicles for consumers to plan for and manage retirement assets.

2. ***Regulations must be simplified and clarified in order to address employer fiduciary and administrative concerns***.

ING believes it is essential that employers and those serving as plan fiduciaries be given the benefit of a streamlined fiduciary standard with more objective criteria than exists today under current ERISA regulations. In addition, some of the administrative burdens that come with carrying annuities need to be eased in order to attract more employers to offer these types of products.

3. ***Greater participant communication and education is needed***.

In order for more Americans to embrace and understand the use of guaranteed lifetime income options, ING believes more needs to be done in terms of financial literacy and education. When individuals are participating in a workplace plan, it is often the best time – and for many, the only time – to reach them with materials, resources and communications that can increase their financial literacy and positively influence their behavior.

4. *Offering and investing in guaranteed lifetime income options should be encouraged for employers and employees, but not mandated*.

Consistent feedback received from plan sponsors and plan participants indicates a clear preference for preserving choice and control when it comes to plan design and benefit distribution matters. In light of that preference, ING favors steps that would remove barriers to adding guaranteed lifetime income distribution options as well as provide incentives for these products, but not require their use.

5. *A desirable strategy for many workers would include investing a portion – but not all – of one's retirement assets in a lifetime income product*.

Plans that offer lifetime income distribution strategies tend to present this option to employees as an "all or nothing" decision with respect to their account balance. ING favors steps that would encourage employers to make the election decision easier by encouraging individuals to complete a financial plan and then commit only an appropriate portion of their account balance to a guaranteed income stream, while retaining control of the uncommitted balance.

In closing, we applaud the Department of Labor and the Department of the Treasury for offering the public an opportunity to comment on this very important topic of lifetime income options and retirement plans. We hope responses provided by ING to the various questions can shed some helpful light, and we would welcome the chance to further discuss this matter with you.

Sincerely,

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Chief Executive Officer, ING U.S.

Catherine H. Smith
Chief Executive Officer, ING U.S. Retirement Services

ING RESPONSE

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?

From the perspective of plan participants, the receipt of all or a portion of their retirement benefits in the form of lifetime payments presents some clear advantages. Among these are:

- Mitigating the risk of running out of assets too quickly during retirement by securing a guaranteed income stream for life.
- Helping to ease the overall burden of managing one's retirement spending by establishing more structure for drawing down resources.
- Protection against potential investment losses and downturns in the market.

A perceived disadvantage relates to concerns over loss of control and lack of ready access to an accumulated lump sum amount of savings. The perception problem is real and needs to be addressed. A growing body of research suggests that the perception problem interferes with fully rational decision-making concerning retirement plan distribution choices.

Innovations by guaranteed lifetime income providers have led to the development of products that provide lifetime income benefits while at the same time preserving an individual's right to access a lump sum savings amount in the event of an unanticipated cash need. More traditional annuity products can be used as a component part within a multi-faceted strategy for addressing retirement spending needs. We feel that participants are best served when provided a proper context or "frame" for considering retirement income needs.

When individuals are presented with materials related to plan distribution elections, retirement income considerations should be given at least equal weighting with investment alternatives. All too often, participants receive a lopsided presentation that emphasizes the investment side and devotes scant or no attention to income considerations.

At the same time, we think it is important for individuals to consider and plan for the possibility that they could live to an advanced age and need to plan wisely to address longevity risk. Our research suggests that individuals who tend to be unduly pessimistic about their survival probabilities may make more responsible planning decisions within a decision-making frame that requires giving thought to the risk that they might some day be a financial burden to their children – something most participants place a very high value on avoiding.

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?

The tendency of individuals to forego a lifetime income distribution option in favor of a lump sum or periodic distribution option can be attributed to a number of factors, several of which are psychological in nature. Listed below are the primary factors we observe in the day to day operation of our business, accompanied by our suggestions for steps that the Agencies could take to improve how individuals perceive and analyze lifetime income options.

1. The "One-Time Big Decision" Perception Phenomenon: Although individuals unquestionably place a high degree of value on security, our research and experience suggests that they place still a higher value on control. We have observed that, when faced with a guaranteed lifetime income election opportunity, participants tend to perceive the lifetime income option as an all or nothing decision that will result in a loss of control over the availability of their investment and which may leave them unable to meet unanticipated future cash needs. While many guaranteed lifetime income products do indeed involve an irreversible purchase decision, the decision to purchase lifetime income would be less daunting, and therefore more appealing, if steps were taken to reduce the magnitude of the decision. For instance, if individuals were encouraged to commit only an appropriate portion of their savings to a guaranteed income stream, while retaining control of the uncommitted balance, individuals would be less likely to be overwhelmed by the purchase decision.

2. Understanding of Risk: Participants generally do not understand the likelihood that they may live to an advanced age and therefore underestimate the risk of outliving their resources. Our customer interactions suggest that very often, an individual will tend to believe he will live only as long as his parents or grandparents did. While family genetics play a role in longevity, each generation of Americans has enjoyed a higher life expectancy than the prior one. Therefore, on average, individuals will live longer than their parents. Another problem is that the need for income to provide for a person's needs at ages 80 to 90 and beyond often seems quite distant to an individual in his or her 60s. Younger individuals often underestimate or lack a full appreciation for the costs – particularly healthcare-related costs – of maintaining their lifestyle in retirement. As a result, it often appears more appealing for an individual to preserve a high liquid asset balance in one's 60s than to have secure income planned for one's 80s and 90s.

   We are in favor of Agency actions to promote education about the likelihood of living to older ages and of the importance of securing income in those years. Plan statements should include information on individual life expectancies and the level of guaranteed lifetime income that can be purchased with all or a portion of the accumulated account balance. Also, our research has shown that individuals are more likely to take action to avoid the risk of becoming a potential financial burden to their children then they are to protect only themselves.

3. Lack of Awareness: Not all individuals planning for retirement are aware of all of the available options to guarantee lifetime income. They may have seen news items which suggest annuities are not a good investment. There may be misunderstanding about financial options which target retirement income versus those that guarantee it. Financial representatives may not be as familiar with products which guarantee lifetime income as they are with accumulation products.

4. Low-interest Rates: The low-interest rate environment that has prevailed during the last decade has created a further obstacle, leading many individuals who would otherwise take advantage of an annuity option to postpone their decision to annuitize until rates rise. Low rates promote borrowing (e.g. mortgage refinancing) but not long-term investing. Simple fixed income annuities are a long-term interest-rate driven investment.

5. Not Federally-insured: Individuals tend to be very familiar with the various federal agencies that protect against financial institution failure and are generally comfortable with the security provided by that sort of a federal backstop. But life insurers have no federal backstop that consumers can draw comfort from. Although the industry has an excellent record of meeting obligations to policyholders even in the rare instances where a life insurer has suffered financial difficulty, the workings of the state insurance guaranty associations are quite different from the federal agencies that most individuals tend to use as their frame of reference for how consumers should be protected from financial institution failures. The state guaranty associations provide non-uniform levels of coverage from state to state. Coverage is determined according to state of residency and can change quite dramatically when a person changes his principal residence from one state to another. Coverage levels are often difficult to understand and insurers are prohibited by law from referring to or otherwise advertising the availability of guaranty association coverage in connection with the sale of their products. When one considers the potential duration of an annuity contract -- which may provide coverage for 40 years or more – some consumers grow worried that the financial strength of a company they are comfortable with today may erode over ensuing decades. Ideally, the states would conform their guaranty association coverage laws in a way that would promote greater consumer confidence. Failing that, the industry needs a federal backstop in order to provide customers with the confidence they need to commit significant portions of their retirement savings to long term guarantees.

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?

Within a defined contribution plan construct, a variety of different options are available to assist participants in managing their income needs upon retirement. The most familiar of these turns the lump sum account balance into a guaranteed lifetime income stream through an in-plan annuity option. Annuity options within the plan can typically be structured in a number of ways, such as:

- Period certain with life annuity – the annuity benefit will be guaranteed for a specific number of years and will continue for the life of the annuitant assuming he/she survives through the guaranteed period
- Single life annuity – the annuity benefit will be paid to the participant for as long as he/she lives

- Joint life annuity – the annuity benefit will continue to be paid to a beneficiary even upon the death of the annuitant. There are several options offered with this type of annuity allowing the annuitant to determine what percentage of the benefit the surviving beneficiary will receive upon the death of the annuitant
- Variable single premium immediate annuity – provides for lifetime benefits but allows the individual's payment to change with movements in the marketplace

Where defined contribution plans utilize these types of income annuity options, it is common for guaranteed minimum interest rates and guaranteed minimum mortality rates to be included in the purchase rate basis of the group annuity contract at the point of issue. When an account balance is annuitized, the benefits will be calculated based on those guaranteed minimum rates. Many insurance companies will compare the guaranteed minimum rate against the current non-guaranteed single premium immediate annuity rates they offer in the market and automatically price the annuity at the better of the two rates.

Relatively few 401(k) plans in our customer base offer these types of annuity options. There are a number of reasons for this. At the forefront of these are fiduciary liability concerns and the administrative burdens associated with QJSA administration. A secondary reason is lack of utilization of annuity options by participants. Many plans come to the conclusion that if the potential liability and administrative burden of offering annuities is very high, and the participant take-up rate is low, taking advantage of the profit sharing exception by excluding the availability of annuity distribution forms might make the most sense.

In addition to annuity options, defined contribution plans may also allow a participant to set up systematic withdrawals from their account value. This would allow the participant to determine how much they want to withdraw from their account balance at a given frequency. These withdrawals can be based on life expectancy tables to help spread the account balance over the participant's lifetime. However, with this option it is important to point out that the payments are not guaranteed for the lifetime of the individual. Under these approaches, the risk that the participant's account balance will deplete to zero while they are still living remains uninsured and is borne by the participant.

Recently, a few insurance providers have introduced several options for defined contribution plans that allow participants to contribute toward lifetime income incrementally during the accumulation phase. These fall into two broad categories:

The first type is a fixed deferred income annuity where the participant's contribution is used to purchase shares of an income annuity. The income annuity will then start to payout at the retirement age. However, throughout the course of the accumulation phase, the participant will be able to keep track of the levels of lifetime income they have accrued.

The second type is commonly referred to as a Guaranteed Lifetime Withdrawal Benefit (GLWB). The GLWB may involve investing in a target date fund or lifestyle portfolios. The contributions that are deposited into this option will be exposed to the market volatility associated with the funds they are utilizing, but at certain points during the accumulation phase the participant will be able to lock-in the account balance to determine a level of withdrawals that is guaranteed for the life of the participant. Upon retirement, the participant will be allowed to take a certain percentage of the locked in account balance (also known as the "benefit base") every year as a withdrawal for the rest of their life. The account value will still be exposed to the volatility of the market, and if the account value goes to zero the insurance company will be responsible for continuing to pay a percentage of the benefit base.

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?

Typically, the annuitization options provided in group annuity contracts are offered to participants by plans only at retirement or following severance from employment, if at all. It is possible, however, to use these features to associate account contributions with the minimum guaranteed purchase rate basis in effect at the time the contribution is made. In that way, dollars contributed during periods when interest rates are more favorable can “lock in” that annuity purchase rate basis. Viewed from that perspective, the annuity purchase offer would be provided incrementally during the accumulation phase.

Newer benefits in the market such as the fixed deferred income annuity, and the Guaranteed Lifetime Withdrawal Benefit (GLWB) represent retirement income benefits that participants contribute to during the accumulation phase of their savings cycle and are incremental in nature. These product options were designed and marketed in order to get participants thinking about retirement income much earlier (during their working years) than they otherwise would. In turn, this approach promotes a better understanding of the potential advantages of spreading the cost of purchasing guaranteed income out over time. It also tends to promote better understanding of the costs of guaranteed income and the very real value associated with those guarantees. Educating participants about these concepts over the course of their careers would tend to promote a sounder basis for decision-making than under scenarios where participants are asked to evaluate the costs of guaranteed lifetime income for the first time at the point of retirement.

Fixed deferred income annuities are structured in a way that facilitates the purchase of shares of a deferred income annuity that pays income benefits at retirement. Each share that is purchased is worth a set amount of monthly income at a stated age. In this arrangement, the insurance provider takes on the investment risk associated with the income benefits. As contrasted with GLWB structures (discussed below) participants take on less risk with fixed deferred income annuity structures. Conversely, they also forego the upside potential associated with the equity investment exposure allowed under GLWBs.

GLWBs are often structured so as to allow participants to invest their contributions in a mutual fund. The available mutual funds may be restricted by the insurance provider of the product. However, at certain specified points during the accumulation phase, the account value will be locked-in creating an income base. The products are typically designed to allow the participant to be guaranteed a certain percentage of the income base in annual income for life beginning at retirement. This option still allows the participant to invest in the equity markets, even though their selection of mutual funds may be limited. While the participant is not purchasing explicit shares of income for retirement, each contribution will increase the income base from which the guarantee is calculated. At any given time, the participant will be able to determine the amount of annual retirement income he or she has guaranteed by multiplying the percentage guaranteed against their benefit base.

And, of course, the possibilities for developing newer forms of products to address lifetime retirement income needs are abundant. These could include return of premium concepts that could further alleviate concerns over access to funds and preserve a benefit for the participant’s estate.

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

In our customer base, we have seen very little activity involving the use of employer matching contributions or employer non-elective contributions to fund lifetime income. The notion of encouraging plan designs that utilize these features could have real merit, however, and is deserving of serious consideration.

We have observed the phenomenon where an employer that sponsors both a defined benefit (DB) and a defined contribution (DC) plan will sometimes freeze the DB plan, and simultaneously increase the level of DC matching contributions to help offset the loss of future DB accruals. In that situation, the concept of having an employer affirmatively direct its DC plan matching or non-elective contributions toward the purchase of guaranteed lifetime income has the potential to replace some of the future retirement security formerly provided through the DB plan.

This sort of a plan design could also help reduce some of the "all or nothing" decision paradigms that tend to overwhelm participants and prevent them from committing dollars to guaranteed income products.

In order for this type of idea to succeed, very strong and substantial fiduciary protections need to be established that would shield plan fiduciaries from the threat of future liability resulting from the selection of a guaranteed retirement income product provider.

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 is a robust array of lifetime income products that are available to individuals who have received distributions of accumulated retirement plan benefits. We tend to categorize these products among three basic groups:

1. Traditional Annuity Payment Options come in many different forms including:

   Benefit Payments made for a defined term:
   a. A certain period such as 10 years (these are not guaranteed for life)
   b. For the life of an individual
   c. For the longer life of two individuals

   Benefit Amounts:
   a. Fixed benefits which never change
   b. Fixed benefits which increase each year by a pre-determined amount
   c. Fixed benefits which increase each year by an index tied to inflation
   d. Variable benefits which increase or decrease according to the performance of the underlying investment options
   e. A combination of fixed and variable benefits as described above

f. There can be pre-determined reductions in benefits upon the first death with two-life income annuities

Benefits with Optional Features:

a. Death benefits: Cash refund (return of premium in excess of benefits already received) or Guaranteed Periods (payments continue after the annuitant's death through the end of the guaranteed period)
b. Liquidity: Options to commute all or part of the remaining guaranteed period benefit payments and/or life contingent benefit payments.
c. Flexible Period Option: For non-life contingent annuities, allow an individual to shorten or lengthen their annuity period (e.g. change a 15 year annuity period to a 20 year annuity period).
d. Minimum Benefits: For variable annuity benefit forms, there can be a pre-determined floor to the benefit amount.

2. Guaranteed Minimum Withdrawal Benefits (GMWB)

The GMWB is offered as an optional form of benefit within a variable or fixed annuity. The availability of income – defined as a percentage of a stated "benefit base" -- is guaranteed over the life of one or two individuals even in the event that the annuity contract no longer has any remaining assets. In other words, where regular income withdrawals (defined by the contract) deplete the contract of all of its assets, the insurance carrier will assume the liability to provide continued income benefits for as long as the individual(s) is alive.

GMWBs can have many features such as:

a. Increasing guarantees: The level of guaranteed income can increase if the contract's account balance increases a certain amount, if income withdrawals do not start until reaching a certain contract anniversary or a certain contract owner's age, or other pre-determined requirements.
b. Liquidity: A typical feature for an annuity prior to annuitization is that partial withdrawals can be taken as needed, or the entire contract can be surrendered. Depending on the contract, penalties may or may not apply. In addition, any partial withdrawals taken will impact the guaranteed withdrawal benefit amount.
c. Market exposure: One of the primary benefits of combining a GMWB with a variable annuity is that the individual can remain invested in the market while securing lifetime income. Depending on the contract, there may be investment limitations.

3. Stand-alone contingent guarantees

An annuity contract sometimes referred to as a "stand alone withdrawal benefit" or "contingent annuity contract." The contract provides guaranteed minimum withdrawal benefits that are linked to an investment account that the owner maintains with a financial institution unrelated to the insurer. If, during the owner's lifetime, the account is reduced to zero other than by reason of the owner withdrawing more than a prescribed annual amount from the account, the issuer of the contract will pay the owner a series of periodic payments for life.

Generally, the annuity purchase rights, if any, that are available in-plan do not transfer over to a new out-of-plan product into which the assets are rolled over. As the marketplace for in-plan guaranteed lifetime income products develops, much discussion has emerged over the question of "portability" and how to develop industry standards to permit the retention of in-plan benefits following a change of providers.

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 following items -- many of which are features and benefits that aim to make lifetime income products more attractive -- have a significant impact on the cost of providing guaranteed lifetime income:

1. Options to liquidate or accelerate benefits from a pre-determined benefit schedule.
2. Minimum guaranteed benefit levels for variable income benefits.
3. Benefit amounts tied to an inflation index.
4. Death benefits – including survivorship benefits.
5. Low interest rates which increase the cost to provide guaranteed income.
6. Long investment horizons and uncertainty in rates and future investment returns impact the credited rate that is available to pass along to the policyholder.
7. Unisex requirements can lead to overestimation of the female portion of annuitants when determining benefits (insurers bear the female/male distribution risk and will generally be conservative).
8. Underutilized ability to underwrite leads to self-fulfilling assumption of only insuring healthy annuitants, thereby lowering overall benefit amounts.
9. Benefit increasing features such as ratchets or roll-ups.
10. For guarantees related to variable accounts, volatility of the market will impact the cost of any hedging needed for the benefit which will ultimately impact the cost to the policyholder. Many new products seek to minimize this cost by limiting the underlying investment to index funds.

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)?

There are very compelling reasons for making lifetime income products available to participants through their plan. The availability of viable, attractive in-plan lifetime income options, when offered in combination with statement illustrations and other materials that help to properly frame and contextualize guaranteed income considerations, can do a great deal to rationalize retirement decision-making by educating consumers on how best to use these products, whether out of plan or in-plan.

Turning to the particulars of in and out of plan offerings, there are distinct advantages and disadvantages that accompany the in-plan and the out of plan purchase of guaranteed lifetime income benefits. One forum is not necessarily superior to the other.

Among the advantages of in-plan options are:

- The availability to dollar cost average the purchase price of the guarantee.
- Ease of benefit acquisition through an employer-facilitated save at work program.
- The availability of institutional or "group" pricing advantages.
- Potential for protection against downside investment risks over the accumulation phase of the savings cycle.

Countervailing disadvantages include:

- The portability issue has yet to be adequately addressed. Some products commute guaranteed benefits to a lump sum return of premium upon a change of plan provider – clearly a sub-optimal result from a retirement security perspective.
- The choice of providers and benefit designs is limited to those offered through the plan.

The advantages of out of plan options include:

- The availability of gender distinct pricing for males. (As discussed later in our response, we think this is a difference that needs to be addressed.)
- Freedom from in-plan portability concerns.
- There may be more income solutions to choose from based on the individual's unique income needs.

Countervailing disadvantages include:

- Point in time investment risk.
- The potential to be overwhelmed by the sheer number of choices available in the marketplace in the absence of a plan selection "filter."
- There is typically a minimum purchase payment requirement.
- Pricing likely to be "retail" and not "institutional".

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?

Plan fiduciaries are responsible for selecting and monitoring annuity providers in ERISA retirement plans. From the standpoint of fiduciary risk there is less exposure where the participant takes a distribution from the plan and then, post-distribution, secures a lifetime income vehicle (i.e. an out of plan annuity). In contrast, where the employer secures an annuity provider for the participant, there is a fiduciary concern with regard to which one is selected, and several key questions to address:

1) Will the employer be held responsible or financially liable in the event there are future issues concerning the provider's financial stability?
2) Are the fees reasonable relative to the benefits?
3) Will the annuity provide sufficient lifetime income?

The annuity provider selection safe harbor regulation under Department of Labor Regulation 404a-4 is extremely difficult to satisfy. Conditions for relief require the employer to demonstrate that it conducted an objective analysis of the provider's future ability to meet all of its payment obligations – a task that very few fiduciaries are willing or capable of undertaking. Understandably, these are burdens many employers do not want to take on, especially those that do not have the resources and in –house expertise. Accordingly, consideration should be given to a more specific and workable safe harbor standard that can alleviate these concerns and encourage more employers to offer annuities on an "in-plan basis". Plan fiduciaries need to have the comfort that, if they have made a prudent choice of guaranteed income providers and a participant has elected to receive guaranteed lifetime income from that provider, that the fiduciary will not be exposed to some residual liability relating to the provider's ability to perform some years down the road.

For "in-plan" annuities where a participant purchases a deferred annuity benefit with ongoing contributions (i.e. annuity units are purchased with each contribution) the DOL should also clarify the availability of ERISA section 404(c) during the accumulation phase and that the transfer restrictions associated with GMWB's are consistent with 404(c).

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?

Unfortunately, a large percentage of defined contribution plans continue to make only a single form of benefit distribution available to their participants. Even among those that permit more than one form of distribution, that freedom of choice is seldom highlighted or emphasized in benefit election materials. This often misleads participants into assuming that only a single distribution form is available.

If more plans were to allow multiple forms of distribution, and if participants were to understand the availability of these various distribution options, we believe that the environment for consideration and uptake of guaranteed lifetime income options could be substantially improved.

Allowing a participant to select more than one form of distribution would help to avoid the "all or nothing" conundrum, whether perceived or real, that often dissuades participants from electing to commit a portion of their retirement savings to a guaranteed lifetime income stream.

Ultimately, the benefit for employees would be in their ability to surrender a portion of their account balance to lock in a lifetime guarantee, while maintaining control over the remaining account balance to meet emergencies, or other needs. Partial annuities would also facilitate greater investment diversification by participants.

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?

Research conducted in the field of behavioral finance, including by our own ING Institute for Retirement Research, tells us that individuals face a host of emotional and psychological challenges when it comes to making participation, contribution and investment decisions within workplace retirement plans. Procrastination, inertia, heuristics (the application of "rules of thumb"), unrealistic expectations about outcomes, paralysis from sheer information overload and the fear of loss are some of the primary factors that contribute to the realities that contribute to retirement planning challenges. Due to these behaviors, many individuals fail to participate in their workplace plans at all, fail to contribute meaningful amounts (sometimes even up to a matched percentage), fail to project the expected income from their investment, and fail to wisely balance and allocate their investments (employer stock and stable value, the two most extreme asset classes on the risk reward spectrum, are the most "allocated to" classes within workplace plans for all age cohorts).

By logical extension, similar roadblocks exist when it comes to making income-generation decisions in the retirement phase of the defined contribution lifecycle. To some extent, the industry has implemented measures to help alleviate some of these behaviors during the accumulation phase: automatic plan features such as enrollment and contribution escalation, target date funds, managed accounts and in-plan advice are a promising start. Modeling tools (worksheets, on-line calculators), educational seminars, behavior-and demographic-targeted communications campaigns and clear ("Plain English") educational materials also help. With respect to annuitization or other income-generating strategies for retirees, similar measures – with some cautions – might be employed.

Automatic guaranteed lifetime income defaults hold tremendous promise and are clearly worth exploring. As with other automatic plan features, such as auto-enrollment and auto-contribution increase, the key is to develop mechanisms that promote desirable behaviors but at the same time preserve individual control by granting default opt-out rights. ING research tells us that participants place an extremely high value on choice and control and opt-out rights effectively preserve that choice and control. The QDIA rules under ERISA have done much to facilitate the adoption of auto-enrollment and auto-contribution features by plans by treating the default enrollment investment option as though it were affirmatively selected by the participant. We support an extension of that fiduciary relief to default enrollment of participants into guaranteed lifetime income distributions.

At the same time, communications materials that focus on retirement income anticipation – teaching individuals about their options for using their investment in retirement *in addition* to the present-day details about their plan and investment – should be integrated into the entire defined contribution experience. Statement illustrations of how much guaranteed retirement income can be purchased with an accumulated account balance would help to drive the retirement income consideration home over the course of a participant's career. Seminars, on-line resources and ongoing communications initiatives -- written in jargon-free, clear and commonly accessible language—are also vitally important.

Our industry should also not assume that individuals can generate a realistic retirement expectation based solely on their experience within one plan. A holistic view – one that is easy to generate and understand – should include other workplace plan retirement investments, IRAs and personal savings, Social Security benefits and defined benefit payments (if applicable), income, and family situations *in addition to* the potential income possibilities from investment in a specific plan. Below, we offer four concrete examples of behaviors that pose issues for the use of guaranteed lifetime income products by participants in retirement plans, accompanied by suggestions for addressing them:

Behavioral Problem #1: Information asymmetry
Consumers are more hesitant to make purchases when they feel their level of knowledge about the product or service is inferior to that of the seller. This is a classic example of information asymmetry.

Potential Solution #1: Standard labeling
The internet has been a powerful corrective agent for years now. For example, Research by Austan Goolsbee showed that "*the growth in Internet usage can explain about three quarters of*

the total declines in term life prices[1]" because "*the Internet reduces the time and effort necessary to search for the lowest-price product and therefore should lower overall prices, creating a more competitive marketplace.*"

When it comes to lifetime income products, we need standard cost/benefit disclosure much like the requirement for nutrition facts label on all products which was provisioned in the 1990 Nutrition Labeling and Education Act (NLEA), per the recommendations of the United States Department of Health and Human Services' Food and Drug Administration. It is reported that *"More than half of consumers in the United States often read the food label when buying a product for the first time"*[2] In the case of an annuity, a standard disclosure could translate the level of fees for every $1,000 invested in the product along with unitized benefits such as guaranteed income, spousal continuation, etc. Removing as much of the information gap without overwhelming consumers may result in higher adoption rates.

Behavioral Problem #2: Lack of trust

Consumers are increasingly skeptical of for-profit corporations. As a result, consumers do not believe corporations have their best interests in mind and are typically distrustful of any communication coming from corporations.

Potential Solution #2: Enable peer-to-peer communication

According to a Nielsen reports, "*Ninety percent of consumers surveyed noted that they trust recommendations from people they know, while 70 percent trusted consumer opinions posted online"* [3] Peer-based information can act as a significant motivator when it comes to overcoming inertia or enabling change. The theory goes: merely going through the act of comparing yourself to others will increase the likelihood of your attempting to improve your own situation[4]. This propensity is accentuated when the comparison is made between people of the same peer group. Providers should be encouraged to create forums whereby consumers can discuss the merits of guaranteed income products and solutions among their peer group.

Behavioral Problem #3: Hyperbolic discounting

Given two similar rewards, humans show a preference for one that arrives sooner rather than later. Humans are said to discount the value of the later reward, by a factor that increases with the length of the delay. The economist David Laibson has used hyperbolic discounting to explain why people simultaneously have large credit-card debts at a high interest rate and pre-retirement wealth growing at a lower interest rate. As predicted by hyperbolic discounting, the rewards provided by buying something today often outweigh the discounted displeasure of future payments. This leads to a sizable credit card debt.[5] In the case of lifetime income products, this

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[1] Life Insurance in the Information Age, Internet Comparison Sites Create Major Marketplace Change, Research by Austan D. Goolsbee is professor of economics at the University of Chicago Graduate School of Business.

[2] http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm202611.htm

[3] Global Advertising: Consumers Trust Real Friends and Virtual Strangers the Most, Nielsen, http://blog.nielsen.com/nielsenwire/wp-content/uploads/2009/07/pr_global-study_07709.pdf

[4] Peer effects have been shown to play a role in other contexts. For example, Sacerdote (2001) finds that college roommate assignments have an impact on GPA. Duflow and Saez (2002, 2003) find that 401(k) plan participation and the choice of vendor are both influenced by peers. Similarly, Hong, Kubik and Stein (2004) find that stock market participation is higher for social individuals. Noah J. Goldstein, Robert B. Cialdini, and Vladas Griskevicius (2008) find that using peer-based social norms has a greater impact on the propensity of individuals to reuse hotel towels to help save the environment

[5] A debt puzzle, David Laibson, Harvard University and NBER; Andrea Repetto, Universidad de Chile; Jeremy Tobacman, Harvard University, 2001

tendency is represented in the low take-up rate even after the consumer has been properly educated about the benefits.

Potential Solution #3: Putting a price on procrastination
Promote means by which people engage in long-term contracts that provide immediate or periodical benefits (or penalties). Examples include the use of annual tax breaks for contributions to a lifetime income product, and behavioral concepts such as stikk.com[6] - a website that helps people fulfill their goals by allowing them to risk their own money -- if they don't complete their self-described objectives, they lose the money.

Behavioral Problem #4: Loss-aversion
In prospect theory, loss aversion refers to the tendency for people to strongly prefer avoiding losses than acquiring gains. Some studies suggest that losses are as much as twice as psychologically powerful as gains. Loss aversion was first convincingly demonstrated by Amos Tversky and Daniel Kahneman.[7]

Potential Solution #4: Framing
Consumers view annuities as risky gambles rather than insurance. If we die early, we lose; if we live a long time, we win. Economists, and insurance companies, view annuities as insurance: not against dying but against the risk of outliving your wealth. Framing experiments have yielded much different outcomes in the take-up rate for annuities.

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?

In our experience, it is a huge oversimplification to base the annuity decision on basic or necessary expenses in retirement. Other factors to consider, at time of decision, include:

• Current age	• Potential "fixed" income sources
• Account balance	• Pension benefit
• Salary growth rates	• Social Security benefit / annual increase
• Contribution rate	• Required income replacement ratio
• Employer match rate	• Expenses / lifestyle in retirement
• Retirement horizon	• Costs / risks / returns of annuity *vs.* alternative options
• Life expectancy	
• Inflation rate	• Spousal and other dependent needs

Our direct, daily experience and our research strongly indicate that participants will need help with the following identifying factors relevant to the decision: finding relevant information; deciding if an annuity is a sound investment for their circumstances; and, if it is, determining what portion to annuitize.

Helping individuals make annuitization or other retirement income decisions requires a communication process that begins to build awareness of the need to plan — and the potential investment options — well before the point of decision at retirement.

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[6] Dean Karlan, Barry Nalebuff, Ian Ayres, Jordan Goldberg

[7] Prospect Theory: An Analysis of Decision under Risk, Daniel Kahneman; Amos Tversky, Econometrica, Vol. 47, No. 2. (Mar., 1979), pp. 263-292

Our experience strongly suggests that participants respond positively when they receive written education materials, hard copy and / or Web-based earlier in their career, that these communications are keyed to more universal reading level; that the communications make use of easy-to-understand graphical representations like comparative tables, charts, etc.; and that participants are provided online easy-to-use modeling / calculator tools.

Additionally, in order to make an even more informed and individualized decision, participants should have access to counseling by trained, objective advisers using sophisticated, proven technology and methodologies, as well as an opportunity for a final suitability review.

Our experience further suggests that only a joint effort on the part of sponsors, benefit servicers and payroll providers can ensure that participants have access to all the information they need fully to understand the relative merits of their options.

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 in-plan availability of one or more lifetime income distribution options would assist defined contribution participants in their retirement planning and spending considerations. At the very least, a plan that provides a lifetime income distribution option as an optional form of benefit would provide an opportunity for thoughtful consideration by participants of retirement income needs and protections against longevity, inflation and investment risks.

Despite these advantages, ING is not at this time recommending that lifetime income distribution options be a mandatory requirement for all defined contribution plans. Input that we have received from our plan sponsor and participant customers indicates a very strong preference for preserving choice and control over plan design and benefit distribution matters. For many plan fiduciaries, the burdens of the fiduciary liability and additional administration associated with lifetime income options would be unwelcome. In light of that strong preference, we favor steps that would encourage consideration and use of lifetime income distribution options, but would stop short of requiring their use. At the same time, we are keenly interested in seeing these liabilities and administrative complexities substantially reduced.

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?

When considering potential plan designs, employers commonly weigh the advantages and disadvantages of particular features.

Generally, the employer's overriding goal is to sponsor a plan that will advance its business objectives of attracting and retaining a skilled and qualified workforce by providing employees with means to save and attain a secure retirement through participation in the plan. Balanced against that objective are cost considerations – pure and simple. At the end of the day, employers tend to weigh the retirement security advantages of a particular design feature against the potential disadvantages that accompany that feature. Plan features that tend to be selected are those that present obvious advantages relative to cost.

The primary advantages of in plan guaranteed lifetime income options are that they can encourage setting and achieving retirement security goals. The problem for employers, however, is that more often than not, they come to the conclusion that the downsides outweigh the benefits.

However, there are ways to reduce these challenges. Many of the problems that currently impede employer selection of lifetime income options are a by-product of fiduciary risk and administrative burden. We believe there are a number of workable policy measures that, if implemented, stand to dramatically reduce the current levels of embedded costs that crop up in employer considerations of lifetime income options. By making a few changes to the regulations governing plans, it is possible to change the cost/benefit dynamic so that lifetime income options are more favorably considered by employers.

(a) Fiduciary Liability Risk. It is clear to us and many in our industry that the high burdens associated with fiduciary liability outweigh and impede the advantages of lifetime income option selection. The Department of Labor's 2008 clarification that the safest available annuity standard does not apply to defined contribution plans was an extremely positive first step to reducing the magnitude of the fiduciary liability impediment, but additional progress is needed.

First and foremost, it is imperative that regulatory guidance be developed and promulgated under which plan sponsors would be allowed to enjoy the same fiduciary protections with respect to participant selection of guaranteed lifetime income options that they now enjoy under the Section 404(c) regulations with respect to participant selection of accumulation investment options. Under a 404(c) plan, sponsors and fiduciaries are shielded from the potential liability that might otherwise arise from the investment results generated from a participant's exercise of investment control over his or her account balance. A similar construct could and should be developed under which participants would be provided information about the features and risks of a broad range of lifetime income options. With the proviso that plan fiduciaries remain responsible for the prudent selection and monitoring of the lifetime income option products, it should be made absolutely clear that the plan sponsor and fiduciary will be insulated from any downstream liability for the results of a participant's choice.

With respect to prudent selection and monitoring, the potential fiduciary liability that worries so many plan sponsors can be summed up rather easily: What will happen to me and my business, if the guaranteed lifetime income provider I prudently select today fails to perform by reason of financial impairment some ten or twenty or thirty years down the road? It is simply not a reasonable or logical construct to ask plan sponsors to assume the risk that they might be called upon to effectively indemnify participants who purchase lifetime income options through their own exercise of account balance control.

It is vital to clarify the guidelines that should apply to the prudent selection of a guaranteed lifetime income provider. The provider selection criteria under the 404a-4 Regulations are too vague and daunting for most plan fiduciaries to navigate or gain a sense of comfort. The regulations carry an implicit suggestion that in order to be prudent, a plan fiduciary must somehow acquire expert knowledge of the financial condition of various providers. Since acquisition of that level of knowledge is beyond the reasonable capabilities of most employers, the effect of the regulation prevents them from providing lifetime income products.

A more streamlined and straightforward approach to demonstrating prudence would produce better results. It must be made clear that in order to be prudent, a plan sponsor need not be required to exercise powers of omniscience or clairvoyance.

(b) QJSA Administration. Second to fiduciary liability, the costs associated with the administration of lifetime income options need to be reduced. The use of electronic means to accomplish QJSA administration is essential in order to promote efficiencies and reduce costs.

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

We have seen relatively little marketplace activity seeking to combine annuity income with reverse mortgage income.

Long term care insurance, addresses a key insurance coverage need, and should be considered as part of a complete retirement income plan.

Potential combinations of retirement income and long term care products have various advantages and disadvantages:

Advantages
- Protects the policyholder against longevity risk and provides regular income payments in retirement to replace the paychecks earned during the working phase of their life.
- Includes an added benefit if the policyholder enters a long term care facility, recognizing that the benefit level may not always be sufficient to cover the entire cost of the long term care institution.
- These types of products are ways for individuals to receive some additional security at a cheaper price compared to purchasing long term care insurance.

Disadvantages
- Provides less long term care coverage than a typical policy.
- Long investment horizon and uncertainty in rates and future investment returns impacts the credited rate available to pass along to the policyholder.
- Long term care benefits have to be carefully structured so the existing annuity distribution will be appropriately licensed to sell the product.
- Providers may incur additional expenses for maintaining a claim adjudicating unit as annuity providers typically don't have to verify claims.

Another compelling product combination analysis has to do with how to optimize a guaranteed retirement income payout stream with investment vehicles that preserve ready access to lump sum cash amounts. Combining annuities with other investments can be used very effectively to provide for retirement financial needs.

Retirees today generally count on receiving guaranteed lifetime income from Social Security and may also receive guaranteed payments under a defined benefit pension plan. If those sources are insufficient to generate a sufficient guaranteed income stream an optimal strategy would use an annuity to generate that additional income. Remaining assets would then be invested in an age and risk appropriate asset mix such as mutual funds or bank CDs. The non-annuity investments can be as simple and familiar as the individual chooses. Each component would provide the service it is designed to do - the annuity for lifetime income, the mutual fund for market exposure and the CDs for a fixed investment. All of this speaks to the need for participants to have access to expert assistance necessary to develop a thorough plan to address their needs and to identify the options available through various products for addressing longevity risk.

Below we list some of the pros and cons of combining a simple fixed income annuity with cash refund death benefit with a portfolio of mutual funds.

<u>Advantages to the Individual</u>
1. Very efficient means of protecting against longevity risk while maintaining market exposure.
2. The income annuity guarantees income over one or two lives with no loss of principal.
3. A mutual fund portfolio can efficiently offer multi-manager fund options with no investment restrictions and full liquidity.

<u>Advantage to Providers</u>
1. Very efficient scalable businesses. Both have relatively low expenses post-issue.
2. Utilizes strengths of both insurance companies and mutual fund companies.

<u>Current Disadvantages</u>
Required minimum distribution rules concerning annuity benefits do not work well for partial annuitizations. Please see our reply to Question 28.

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?

Part 1: Our first observation has to do with the pricing of in-plan annuities. Under current law, employer-sponsored plans are obligated to use unisex annuity rates. Yet sex-distinct annuity rates are used for purposes of pricing out-of-plan annuities. For defined contribution plans, the unisex annuity pricing requirement could discourage the use of in-plan guaranteed retirement income products.

Unisex rate requirements put plans at a pricing disadvantage relative to out-of-plan options. The availability of sex-distinct pricing outside of the plan encourages men to roll into an IRA to obtain the more advantageous rates. As a result, in-plan unisex rates tend to assume an all female retiree population. In considering this dilemma, we think that there are three distinct demographic groups that should be considered:

- Males who receive male-only rates because they rolled out of plan
- Females receiving heavily female weighted rates because they remained within plan
- Males receiving rates on a more heavily female-weighted basis because they remained within plan

The first two groups are at least receiving rates that are fair from an economic perspective. Unfortunately, the same cannot be said for those in the third group. Participants who fall into this category are at a distinct economic disadvantage.

Under unisex pricing, the insurer bears the male/female distribution risk. When insurance carriers set in-plan unisex annuitization rates, they must set a single rate which applies regardless of the proportion of males and females who select it. Insurers may apply a degree of conservatism by assuming a higher female proportion when setting rates than one would otherwise expect. For most providers, the female assumption embedded in unisex rates ranges between 60%-85%.

We see two potential solutions for solving this dilemma. One approach would be to remove the unisex requirement for in-plan annuitizations. The alternative would be to or require unisex rates for out-of-plan annuitizations. Unfortunately, the current situation creates an imbalance for defined contribution plan offerings relative to out-of plan solutions. Therefore we would strongly support a consistent, level, set of rules that would apply to both in-plan and out-of-plan offerings.

Part 2: We would also like to comment on some of the different behaviors we have noted concerning different behavioral patterns and behavioral drivers of male and female participants.

It is well known that women and men demonstrate different behaviors in retirement plans (analysis of both ING participant data and industry insights bear this out):

- Women contribute lower amounts of salary, in terms of both percentage and total dollars
- Fewer women participate at all
- Women tend to participate for fewer years
- Women have lower account balances
- Women tend to be more conservative investors

Consequently, when factors such as employer type and age band are taken into account, women have consistently lower account balances.

This dynamic exists for a host of reasons:

- Women are more likely than are men to spend time out of the workforce, generally for caretaker duties
- Women generally earn less than men ($0.81for every $1.00 earned by men)
- They receive less from Social Security (on average, 26% less than men)
- Only 28% of women earn a pension

…yet, women need their money to last longer. An average 65 year old man will live to be 82; an average 65 year old woman will live to age 85.

In broad terms, those plan sponsors who provide education, products, financial tools and messages can do a better job of focusing on the unique ways women can save more and work towards achieving retirement independence. Themes that resonate well with women, such as "empowerment" and "self-improvement" can be leveraged in communications. Initiatives should also consider and accommodate the many differences that make women more than a single niche market, including generational, cultural, circumstantial or otherwise.

For example, special consideration should be given to women who are single or head of a household. Research shows that this group saves less and faces an increased risk of underfunded retirement. There is a greater need for relevant, practical advice and tools to help them overcome substantial obstacles to saving, which can include anything from daily child rearing expenses to unexpected emergencies.

Understanding other key attributes can help to better connect with women, too. Studies have revealed that women are more likely to seek out advice than men, and tend to gather more data from multiple sources when making decisions. Women are also more "brand loyal," making purchasing decisions based on their relationship with a brand. Additionally, women are internet savvy -- and generally want solutions that make life easier.

Consideration of the different needs, preferences for learning and other circumstances of women – and solution approaches to helping them, extends to retirement income solutions. It is to be hoped that the dependability of defined income will have additional appeal to women, given that we know that "advice" has additional appeal to them, and that they generally demonstrate a more conservative investment nature.

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 provide it, and when and how is it provided to them?

There are multiple factors that plan participants need to consider when making decisions about whether and how much of their retirement savings should be allocated to guaranteed lifetime income products. Among these factors are items such as:

• Current age	• Potential "fixed" income sources
• Account balance	• Pension benefit
• Salary growth rates	• Social Security benefit / annual increase
• Contribution rate	• Required income replacement ratio
• Employer match rate	• Expenses / lifestyle in retirement
• Retirement horizon	• Costs / risks / returns of annuity *vs.* alternative options
• Life expectancy	
• Inflation rate	• Spousal and other dependent needs

Helping individuals make annuitization or other retirement income decisions requires an education process that begins to build awareness of the need to plan — and potential options — well before the point of decision at retirement. We are supportive of rules that would require that participant quarterly benefit statements include an illustration of the level of guaranteed lifetime retirement income that could be purchased by a participant's accumulation account balance.

Our experience strongly suggests that participants respond positively when they receive written education materials, hard copy and / or Web-based, well in advance of the decision-making event (throughout employment and at retirement). Moreover, these communications should be keyed to more universally understood reading level and make use of easy-to-understand graphical representations like comparative tables, charts, etc. Participants also benefit from online easy-to-use modeling / calculator tools.

Even these communication and education resources can be enhanced. In order to make a fully informed and personalized decision, participants should also have access to counseling by trained, objective counselors using sophisticated, proven technology and methodologies. Finally, participants should have an opportunity for a final suitability review.

Our experience further suggests that only a joint effort on the part of sponsors, benefit servicers and payroll providers can ensure that participants have access to all the information they need to better understand the relative merits of their options as they relate to their individual circumstances. This should include a comprehensive view of all the potential sources of retirement income (including Social Security and pension plans) and should not be limited to the defined contribution plan.

Currently, few sponsors offer lifetime income options in their plans' investment lineups, and as a result, there is little-to-no emphasis on educating participants during the time they accumulate their savings. As a result, most participants are not presented with the information they need to make the annuitization decision until retirement, at which point they have the option to either stay in plan or rollover to an investment vehicle outside the plan.

As more predictable, portable, competitively priced life-income options become available — and more sponsors include them in their investment lineups — the industry can do more to effectively educate and advise participants.

ING recommends that new standards be considered for plan communications. Education should be crafted according to the principles of adult learning theory and in consideration of the many behavioral and emotional "roadblocks" that many individuals have about making situation-appropriate financial decisions. These documents should also have clear guidelines about what information must be included, in order to assure that individuals who may be overwhelmed by prospectuses and technical information *still receive the information they need to make life-appropriate decisions.*

Currently, there is little-to-no emphasis on educating participants during the time they accumulate their savings even among those sponsors who do offer these. As a result, most participants are not presented with the information they need to make the annuitization decision until retirement, when they have the option to rollover to an investment vehicle outside the plan. Considering the "income generating" aspect of the DC investment should be an integral part of plan communications and messaging beginning with enrollment and continuing throughout the length of plan participation (and eligibility for non-participants).

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

Yes, we believe there is a need for some guidance and clarification on the matter of plan assets being used to pay for participant information.

ERISA Section 401(c)(1) states that the assets of a plan shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries, and defraying reasonable expenses of administering the plan. Similarly, ERISA Section 404(a)(1)(A) provides that a fiduciary shall discharge his duties with respect to the plan solely in the interest of the participants and beneficiaries for the exclusive purpose of providing benefits to participants and their beneficiaries, and defraying reasonable expenses of administering the plan.

In advisory opinion guidance the DOL has frequently noted that a decision on whether to pay a particular expense from plan assets is a fiduciary act governed by ERISA's fiduciary responsibility provisions.

As such, in order to use plan assets to pay for the expense of providing information to aid participants in selecting an in-plan or an out of plan lifetime income option, a plan fiduciary would need to conclude that incurring that sort of an expense would be consistent with ERISA – that the expense was a reasonable one to effect plan administration and was incurred for the purpose of providing benefits to participants and their beneficiaries.

Information Bulletin 96-1 helps to provide a basis for reaching a fiduciary conclusion that the provision of financial educational materials may be consistent with ERISA's exclusive purpose rule. The Bulletin recognizes "the importance of providing participants and beneficiaries, whose investment decisions will directly affect their income at retirement, with information designed to assist them in making investment and retirement-related decisions appropriate to their particular situations". The Bulletin then goes on to describe various categories of educational materials that a plan might provide to participants.

Unfortunately, the categories of educational materials that the Bulletin describes do not mention lifetime income payment options. The Bulletin describes two categories of educational material:

- Plan Information (information and materials that inform a participant or beneficiary about the benefits of plan participation, the benefits of increasing plan contributions, the impact of preretirement withdrawals on retirement income, the terms of the plan, or the operation of the plan; or information on investment alternatives under the plan such as descriptions of investment objectives and philosophies, risk and return characteristics, historical return information, or related prospectuses); and
- General Financial Information (information and material that inform a participant or beneficiary about general financial and investment concepts, such as risk and return, diversification, dollar cost averaging, compounded return, and tax deferred investment; historic differences in rates of return between different asset classes based on standard market indices; effects of inflation; estimating future retirement income needs, determining investment time horizons and assessing risk tolerance).

Because participant income at retirement will be affected not just by the investment decisions made during the account's accumulation phase, but also by the decision to purchase or to forego a guaranteed lifetime income product, the Bulletin would be improved by the addition of new language to the Plan Information and the General Financial Information descriptions that would extend to guaranteed lifetime income options.

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?

Plan sponsors remain concerned about the potential liability that might accompany efforts to educate participants on the advantages and disadvantages of lifetime income arrangements. These concerns could be addressed by regulatory guidance, such as the expansion of the Interpretive Bulletin 96-1 described in our response to question 18, above, that would clarify the guaranteed lifetime income concepts and include them as part of participant educational efforts.

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?

The availability of sound, easy to understand educational material is core to the successful operation of a participant directed defined contribution plan. Unfortunately, the educational materials available to most participants today focus almost exclusively on the plan's investment options. The topic of how to preserve one's accumulated account balance through guaranteed lifetime income products is given comparatively short shrift or, in many cases, ignored altogether.

That dynamic – the focus on investment products to the exclusion of guaranteed lifetime income products – is not in the best interests of plan participants who need to better understand how to preserve their retirement savings and make sure that it lasts for an adequate period of time in retirement.

For that reason, we support rules that would require that participant quarterly benefit statements illustrate the level of guaranteed lifetime retirement income that could be purchased by a participant's accumulation account balance. We also support enhanced educational materials for participants during the accumulation phase of their savings cycle as described above.

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?

Simply put, we believe the answer to this question is "yes." For many years, defined contribution plan participants have focused almost exclusively on the amount of their account balance, with little focus on what is at least as important an issue: how long can I expect my accumulated account balance to last in retirement?

The overriding purpose of defined contribution plans is to ultimately provide participants with the means to retire. Yet the focus on account balances and the exclusion of considering how long those account balances will last has led to a negative result: increasingly we hear stories of retirees who mistakenly believed they had adequate means to retire, but who then outspent or outlived their savings.

The focus on account balances can sometimes lead to an illusion of great wealth. Translating those account balance amounts into a stream of guaranteed lifetime income benefits tends to elicit a more sober and realistic appraisal of retirement readiness.

Even where plans do not offer annuity options, illustrating the amount of guaranteed lifetime income that can be purchased provides a much more complete assessment of retirement readiness. We believe seeing that illustration on a regular basis during the course of a career can assist participants in gauging the adequacy of their contribution levels and when it would be most appropriate to retire from the workforce. Our research has shown that individuals are motivated to address their retirement needs when they are presented with personalized information that is relevant to their personal retirement picture.

Providing an illustration of estimated income in retirement encourages better consideration by participants of their current savings and investment strategy and how they translate to a sustainable retirement income stream. Our experience strongly suggests that targeted, individualized communications, starting with benefit statements, can drive positive participant action.

Our work with participants tells us many savers are ready for and open to making positive changes to improve their retirement strategies when the right product, features and information is presented to them in a clear, succinct, personalized and engaging way. In fact, we have seen response rates as high as 35% in targeted participant education campaigns focused on retirement readiness and the need to close the gap between replacement income needs and the resources available to meet those needs.

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?

We think that the simplest and least complicated approach would be to express lifetime benefits using the same basic methodology that the Social Security Administration uses to estimate benefits on its annual statement.

The benefit statement illustration should display an annual pre-tax life-only annuity income amount in terms of today's dollars assuming no more contributions, with income beginning at the Social Security Normal Retirement Age and increasing annually at a projected inflation rate. This approach would indicate the level of standardized retirement income benefit that has been accumulated to date for the participant.

In addition, a projection based on the assumption that plan contributions continue at current levels could be shown. Benefits should be shown for a single life and for joint lives (non-reducing) assuming a spouse of the same age. This amounts to four projected benefit amounts:

	Age 67 Single Life	Ages 67 Joint Lives
No additional contributions	$10,000	$7,000
Continued contributions	$30,000	$21,000

This illustration and method of displaying it would provide participants with a concrete, understandable baseline measure of the "income value" of their accumulated benefits. At the same time, the administrative burden of producing the illustration would be minimal since only three data elements would be needed for each participant: age, account balance and current contribution level.

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 a source (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?

In order to accomplish the goal of providing a simple and easy-to-read benefit statement that converts a participant's accrued retirement assets into a lifetime income stream of payments, three key data elements of age, balance, and contribution level, are required. In addition to those three data elements, we recommend using the following assumptions for this calculation:

- An assumed net growth rate to be applied to the participant's account balance from the present to the date of Social Security normal retirement age.
- Mortality rates, interest rate, and inflation rate assumptions for determining the initial annuity income amount at the date of attaining the Social Security normal retirement age. The interest rate assumption should reflect an expense load in order to come as close as possible to reflecting the guaranteed lifetime income benefits available for purchase in the marketplace.
- An assumed inflation rate for the period prior to attaining the Social Security normal retirement age to help assure that the level of benefit being illustrated is shown in today's dollars.

We suggest that these assumptions be consistently applied across plans and updated annually. Standard forms of disclosures and caveats should also be prescribed to underscore for participants that the levels of income illustrated are merely an estimate and that the actual level of benefits available at retirement may vary materially from the levels projected. The assumptions underlying the projections should be available to participants in a manner similar to the assumptions underlying Social Security benefit projections.

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?

We believe that determining a participant's optimal income replacement ratio tends to be a highly personalized exercise. Factors that can materially affect the calculation can vary considerably from one individual to the next. For that reason, we do not think it would be appropriate to suggest or illustrate an income replacement ratio to a participant on a benefit statement.

Income replacement need determinations include:

- Taking into account anticipated reductions in expenses following retirement. These might include reduced income tax burdens, and the expense of saving for retirement.
- Estimating any anticipated increases in expenses following retirement, especially health care and health care insurance costs.
- Desired retirement age.
- Marital status and the level of need of dependents.
- Lifestyle considerations, including how active a retirement is planned for and the expense considerations that accompany those activities.
- Other forms of retirement income that might be available to the participant.

Our direct, daily experience and our research strongly indicate that participants will need help in identifying factors and information; deciding if an annuity is a sound investment for their circumstances; and, if it is, determining what portion to annuitize.

Helping individuals estimate their income replacement ratio need requires a communication process that begins to build awareness about the need to plan — and the potential options available to them — well before the point of decision at retirement.

We believe this education must be jointly supplied by sponsors, benefit servicers and payroll providers alike.

We also believe strongly in working with a trusted financial professional. Retirement planning by nature is a complex and daunting process. For many participants, some form of professional planning and decision-making advice can help them to better prepare a sound strategy that incorporates and properly accounts for lifetime income needs.

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?

General Impact of Survivor Annuity Requirements

It is our position that the rules underlying Internal Revenue Code Sections 401(a)(11) and 417 – which address the survivor annuity requirements and the notice and consent rules - introduce a significant and unfortunate degree of complexity to the administration of qualified plans that offer annuities. To illustrate their complexity, we have summarized the relevant sections below, which provide the following:

- That the normal form of benefit for a participant who does not die prior to his or her annuity starting date under a defined contribution plan (except for a plan that satisfies the profit sharing exception discussed below) is a Qualified Joint and Survivor Annuity (QJSA). A QJSA is an annuity for the participant with a survivor annuity of at least 50% for the surviving spouse.
- The normal form of benefit for a participant who dies prior to his/her annuity starting date (under a plan subject to the survivor annuity requirements) is a Qualified Pre-retirement Survivor Annuity (QPSA), which also provides a survivor benefit of at least 50% to the surviving spouse.
- Beginning with plan years beginning on or after December 31, 2007, plans subject to the survivor annuity requirements must also provide for a Qualified Optional Survivor Annuity (QOSA). Here, if the plan has a QJSA survivor benefit that is less than 75% of the benefit payable for the joint lives of the participant and spouse, the plan must also offer an optional annuity with a survivor benefit of at least 75%. If the plan has a QJSA at 75% or more, it must offer a QOSA at 50% survivorship.
- A participant may waive the QJSA/QPSA benefit form during an applicable benefit period and select an alternate form (e.g. lump sum, installments, optional annuity form); however the spouse must consent to this waiver. Spousal consent is also required for loans and hardship distributions. The waiver and consent form signature must be witnessed by a plan representative or notary public. The waiver may be subsequently revoked.
- A written explanation of the qualified joint and survivor annuity (J &S notice) must be provided to a participant not more than 180 days prior to the annuity starting date. This notice must explain the terms and conditions of the QJSA, the right to waive the QJSA and the conditions for such waiver, the rights of the spouse, and the right for a revocation. In addition, the plan must provide an explanation of differences in settlement choices along with the relative financial impact of each option, exact quotes upon request. A waiver of the QJSA rules is not valid unless this notice is provided.
- A written explanation of the qualified pre-retirement survivor annuity (QPSA) must be provided to participants generally between the ages of 32 and 35, or following the participant’s separation from service if earlier. A waiver of the QPSA may be made after age

35, provided the spouse consents in writing. A plan may permit a waiver of the QPSA before age 35 but it becomes invalid at age 35 and a new waiver and consent period must be provided. A plan may also permit the spouse to choose an alternate benefit form after the participant's death.

- Profit sharing plans (most 401(k) plans are designed as profit sharing plans) can avoid the survivor annuity (QJSA/QPSA) requirements if they meet certain requirements. These include a requirement to deem the participant's spouse as the 100% beneficiary in the event of the participant's death (note the QJSA/QPSA rules only require 50% survivorship). In addition, any form of lifetime annuity cannot be elected (either under the terms of the plan or the participant chooses not to). Where these requirements are met, the plan may offer a lump sum instead of a QJSA as the normal form of benefit. Note, however, that under this exception, any assets transferred from a plan that is subject to the J&S rules, remain subject to these rules following the transfer to the exempt plan.

Administrative Issues

The notice and consent requirements for both QJSA and QPSA are extremely cumbersome and complex. It is often extremely time consuming and costly for employers to comply with these rules. Failure to fully comply raises qualification concerns and can be financially burdensome to correct.

The issues inherent in notice and consent administration include:

- Cost and increased administrative processes around ensuring that each participant receives the required notice within the required timeframe.
- The content requirement of the required notice is excessive making the notice difficult to understand for participants and beneficiaries.
- Securing spousal consent and proper notarization.
- QPSA rules require an additional notice and a new waiver after age 35.

As a result of these administrative complexities, most 401(k) plans have sought to come within the requirements of the profit sharing exception by altogether declining to offer annuities. Note that one of the requirements for the exception is that the participant cannot elect any type of lifetime annuity. The easiest way to avoid the additional expense associated with issues related to the administrative burden is to not offer annuities under the plan.

These administrative complexities are in conflict with the objectives of plan administrators who are seeking to operate more efficiently and, increasingly, who are seeking to replace paper-based administration with procedures that are electronic.

DOL and IRS rules accommodating electronic delivery of notices and consent, however, as currently written, explicitly exclude situations where spousal consent is required.

In order to help overcome these impediments to the inclusion of guaranteed lifetime income options, we are urging:

- Simplified notice requirements. Placing general information on participant statements with a phone number to call or a website to go to for specifics or exact quotes would substantially alleviate the burden that now accompanies the lengthy notice and waiting period.
- Simplified content requirements for providing the information to participants who call or go to the website.
- The elimination of the age 32-35 notice and consent period rule for QPSA. A prior election should not automatically become invalid at age 35.

Permit spouses to have a pin that can be used to provide spousal consents electronically. Allow spouse to certify electronically that he or she has read and understands J&S form and to also consent to distribution.

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?

Possible Changes to QJSA and QPSA Rules.

Yes. We believe that the QJSA notice and spousal consent requirements have become antiquated and would benefit from streamlining and updating to make them compatible with electronic administration.

- The notice requirements should be simplified or replaced altogether with a simple notice that would appear on participant statements containing a phone number to call and a website to contact for specifics or exact quotes.
- Spouses should be assigned a PIN in order to facilitate the delivery of spousal consents electronically. The spousal certification that he or she has read and understands J&S form and to consent to an alternative form of distribution should be permitted to be delivered through electronic means.

The age 32-35 notice and consent period for QPSA serves no useful purpose yet is extremely burdensome. We think it should be eliminated. It makes little sense to invalidate otherwise valid elections simply because a participant has attained the age of 35.

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?

It is our position that for plans subject to the QJSA notice and consent rules, care must be taken to follow the rules at the time of a distribution election. In contrast, where a plan permits the accrual of guaranteed lifetime income benefits gradually, during accumulation, comparable notice and consent rules do not apply during the accumulation period.

Generally, in-plan annuity designs that permit the accumulation of benefits over time with increasing contributions and earnings come with surrender rights. An individual who accumulates a certain level of benefit has the ability to surrender that benefit and to transfer the resulting surrender proceeds to one or more of the plan's alternative investment options.

The policy question that arises in these arrangements relates to whether spouses are deserving of rights and protections at the point of distribution, and whether those same rights are present and deserving of protection during accumulation. A related, countervailing consideration has to do with permitting individual retirement plan participants to exercise control over the investment of his or her account balance. The laws governing retirement plans have never suggested that a married participant needs to have the consent of his or her spouse in order to make investment option elections and changes. In fact, the preservation of individual participant control over investment direction has been one of the hallmarks of defined contribution plan design and a significant factor in the appeal and success of those plans.

We would strongly oppose importing QJSA-style consent requirements to in-plan annuity accumulation structures. Doing so, would likely and dramatically undermine the potential appeal of those offerings by effectively requiring married participants who contribute to them to surrender the individual investment control that they now enjoy.

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 believe that the value of longevity insurance payments should be excluded from the RMD rules to encourage participants to purchase longevity protection coverage.

We also believe that the RMD rules should be modified in situations where a participant has an IRA invested in mutual funds and also has an IRA in annuity form. Under current rules, individual retirement annuity payments do not count toward the required minimum distribution amount for the mutual fund IRA. This results in excessive annual payments for affected participants. The rules should be changed so that the lifetime annuity payments offset the RMD requirement for other assets.

The following example demonstrates how the current RMD rules do not work well for a partial annuitization since they penalize an investor with higher RMD requirements:

- A 70 year-old male with $200,000 in IRA mutual funds has a $7,299 RMD (27.4 year distribution period).
- Should he use $100,000 to purchase an IRA income annuity, the annuity benefit would be $8,223 (ING’s 3/10/2010 rates).
- However, he can not use any of the annuity benefit to offset the mutual funds’ RMD.
- The $100,000 in IRA mutual funds would have a $3,650 RMD.
- This would be a total taxed income amount of $11,883. This is a 63% increase in his RMD.

Accordingly, we believe the RMD rules should be changed so that guaranteed lifetime benefits can offset other asset RMDs. For example, one method to accomplish this is to apply the RMD uniform table’s life expectancy values to the guaranteed income amount. Continuing the example above:

- Multiply the guaranteed income by the IRS 70 year-old single life expectancy of 17.0 to get a present value of $139,961.
- The combined actuarial present value of his assets are $139,961 + $100,000 = $239,961.
- The RMD is $239,961 / 27.4 = $8,758.
- The remaining RMD on the mutual funds is $8,758 - $8,223 = $535.

Note, this is still an increase in overall RMD relative to not annuitizing.

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?

Some state and local governments have allowed plan to plan transfers of 457 plan account balances to the government's defined benefit pension plan for purposes of purchasing additional retirement credits under the defined benefit program.

We have not seen an extension of that sort of plan to plan transfer allowance to retirement plans sponsored by private employers.

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

In our experience, the relatively small subset of plans that select annuity providers for the purpose of making benefit distribution do seek to avail themselves of the 404a-4 safe harbor. The challenge is that because 404a-4 is too daunting and too unwieldy for most fiduciaries to satisfy, the number of plans willing to embark upon an annuity selection process remains exceedingly low.

For all but the largest and most sophisticated plan sponsors, the bar set by the safe harbor is simply too high. Even if a small to mid-size employer was prepared to retain the expertise and incur the associated cost attendant with satisfying the "thorough and analytical search requirement" that employer would likely be stopped short by the safe harbor requirement that the fiduciary "appropriately concludes that, at the time of the selection, the annuity provider is financially able to make all future payments under the annuity contract." This is another good example of how the complexities associated with plan administration need to be reduced, particularly for small plans in order to encourage more plan creation.

In considering that component of the safe harbor, a fiduciary is likely to confront the following questions:

- The annuity provider I am interested in appears by all accounts to be financially stable and capable of meeting all of its obligations, but what if some future event should call that capability into question? With hindsight, will my selection be called into question and will I be exposed to financial liability?
- The operations of large financial institutions are complex. Particularly in the aftermath of the financial crisis, numerous questions remain open about how to analyze financial strength and capabilities. What am I to do about that? How do I factor those questions into my decision-making process?
- The selection of an annuity provider seems like a no-win proposition for me. Even if I do my very best to analyze the costs, strengths and capabilities of various providers and make what I think is a good decision for the plan, it seems as though if anything goes wrong in the future – even if the event doesn't happen until many years from now – I will be blamed and held responsible for having breached a duty.

If, as a matter of public policy, we want to encourage the use by plans of guaranteed lifetime income options, it is our position that plan fiduciaries must have more robust protections or complete relief from claims of fiduciary breach. Although the industry has an excellent record of meeting obligations to policyholders even in the rare instances where a life insurer has suffered financial difficulty, the workings of the state insurance guaranty associations are quite different from the federal backstops most fiduciaries tend to use as their frame of reference. The state guaranty associations provide non-uniform levels of coverage from state to state. Coverage is determined according to state of residency and can change quite dramatically when a person changes his principal residence from one state to another. Coverage levels are often difficult to understand and insurers are prohibited by law from referring to or otherwise advertising the availability of guaranty association coverage in connection with the sale of their products. When one considers the potential duration of an annuity contract -- which may provide coverage for 40 years or more – fiduciaries become worried that the financial strength of a company they are comfortable with today may erode over ensuing decades. Ideally, the states would conform their guaranty association coverage laws in a way that would promote greater consumer confidence. Failing that, we favor a federal backstop that would stand behind the performance of guaranteed lifetime income providers in order to provide fiduciaries with the support they need to engage in more confident decision-making.

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?

A number of our plan sponsor customers have expressed a great deal of discomfort with the 404a-4 safe harbor.

Plan fiduciaries seeking to come within the safe harbor are generally seeking a high degree of certainty that, when selecting an annuity provider and contract for benefit distributions from an individual account plan, they have followed a process that discharges their obligations under ERISA Section 404(a)(1)(B) by exercising the care, skill, prudence and diligence under the prevailing circumstances that a prudent man acting in a like capacity and familiar in such matters would use in the conduct of an enterprise of a like character and with like aims.

The problem is that is difficult, if not impossible, for a plan fiduciary to satisfy several of the safe harbor's elements with any degree of certainty. The following provisions illustrate this challenge:

1. Paragraph (b)(2) of the safe harbor requires that the fiduciary "appropriately considers information sufficient to assess the ability of the annuity provider to make all future payments under the contract." Annuity providers are life insurance companies that are regulated for solvency under state law. As a condition of maintaining a license to do business in a particular state, the insurer must file regular reports of its financial condition with the state regulators. An insurer will not be allowed to maintain its license in a particular state if the commissioner concludes that it is not financially sound. But paragraph (b)(2) does not say that a fiduciary must verify that the insurer is licensed to conduct an annuity business. Instead, it suggests that other information must be gathered and analyzed. Most plan fiduciaries are ill equipped to conduct that sort of an independent analysis. Even if an analysis were attempted, few fiduciaries would ever be able to conclude that they had made an "appropriate assessment" because no standard or criteria for appropriateness is offered.
2. Paragraph (b)(4) of the safe harbor requires the fiduciary to reach an "appropriate" conclusion that, "at the time of selection, the annuity provider is financially able to make all future payments under the contract". Here once again, because the safe harbor

requirement does not specify exactly what it is that a plan fiduciary must consider in order to reach an "appropriate conclusion" few fiduciaries are likely to find comfort.

3. Paragraph (b)(5) of the safe harbor requires, when necessary, that the fiduciary consult with an appropriate expert or experts for purposes of compliance with the other provisions of paragraph (b). For all but the largest and most sophisticated, plan fiduciaries, locating, retaining, and consulting with an expert capable of determining the financial capabilities of the annuity provider is unlikely. The paragraph is also unclear on what qualifications an appropriate expert would have. As a consequence, most plan fiduciaries cannot, as a practical matter, ever conclude to any reasonable degree of certainty that the safe harbor has been satisfied.

To facilitate the use of guaranteed lifetime income products by plans and participants without compromising the need to protect participants, a federal backstop that would stand behind the performance of guaranteed lifetime income providers is needed to provide fiduciaries and participants with the confidence they need to commit significant portions of their retirement savings to long term guarantees.

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?

As noted in our responses to previous questions, it is an unfortunate fact that, as currently written, the 404a-4 safe harbor strongly discourages the use of annuity products by plans because it is difficult if not impossible for most plan fiduciaries to satisfy the safe harbor criteria.

For that reason, we would oppose extending the 404a-4 safe harbor, as it is currently written, to other lifetime annuities or similar lifetime income products. Doing so would effectively shut down the in-plan usage of those products.

On the other hand, if the 404a-4 safe harbor were rationalized and re-written in a manner that could be easily and effectively applied by fiduciaries, there would be good reason to broaden its scope to extend beyond distribution annuities and to cover lifetime income products that are guaranteed.

Guaranteed lifetime income products, whether provided in the form of a distribution annuity, a minimum guaranteed withdrawal benefit, or some other form, all share in-common the promise of a specified level of lifetime income. It would be reasonable, therefore, to apply the same safe harbor criteria to the prudent evaluation of that guaranteed product.

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?

As an introduction for our response, we would like to briefly describe how it is that fixed deferred lifetime annuities work and how the fixed deferred lifetime annuity structure is being deployed in new ways through target date fund and similar offerings. We will then transition to a discussion of the potential uses of these products by 404(c) plans.

Under a fixed deferred lifetime annuity in-plan offering, each participant contribution directed to that investment option will purchase a piece of guaranteed future income. Those future payment obligations are typically supported by insurance company general account products.

These sorts of products typically permit the participant to surrender their investment and to re-invest the surrender proceeds in other investment alternatives offered under the plan.

Fees for these products are embedded in the purchase rates.

Some recent marketplace activity has involved incorporating an in-plan deferred fixed annuity as an asset class within a target date series of funds. Under this construct, each participant contribution buys shares of a fund of funds. One of the underlying funds provides guaranteed future income.

Advantages of these products include:

- Ability to lock-in guaranteed income during accumulation phase or payout in retirement
- Income amounts expected in retirement won't be affected by market performance
- Focuses participants on monthly budgeted payment in retirement rather than a lump sum which could provide participants an easier way to plan for retirement as they compare the payout amount with their monthly income prior to retirement
- The nature of the product helps individuals to plan for retirement as they look to achieve a comfortable level of monthly income in retirement during the accumulation phase
- Provider bears the investment risk rather than the participant
- Dollar cost averaging throughout the accumulation phase rather than risk a point in time purchase at retirement which could result in unfavorable pricing

Disadvantages

- The fee is typically embedded in the return and not explicit to the participant
- Can be disadvantageous to purchase in a low interest rate environment
- Access to funds is limited
- No exposure to the equity markets to participate in potential growth
- Typically no access to contributions made during the accumulation phase (if there is access it is typically associated with fees or penalties)
- May receive less than premiums paid during income phase if die early on in the income phase (assuming no death benefit is offered)
- The participant is reliant on the providers' claim paying abilities

We think it is imperative that participants utilizing these products understand how it is that they work. Most importantly, participants need to understand limits on transfer rights and that they risk the loss of their benefit base if they do not restrict their investments to particular funds. Participants also need to appreciate that excess withdrawals will diminish the benefit base and therefore the value of the guarantee. It is incumbent upon the industry to develop products that are clear, transparent and comprehensible so that participants will more readily understand and take advantage of guaranteed lifetime income opportunities.

To encourage 404(c) plans to include GMWB-types of investment alternatives in their plans, we think it would be sensible to clarify that the transfer restrictions associated with those products –- that is, the requirement that participants need to restrict their investments to particular funds and not exceed prescribed limits in order to maintain the benefit base – are reasonable ones and are not inconsistent with the 404(c) requirement that participants and beneficiaries be permitted to provide investment instructions with a frequency that is appropriate in light of the market volatility to which the investment alternative may reasonably be subject.

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?

Within the last couple of years, some providers have developed novel approaches to providing guaranteed lifetime income options within a defined contribution plan. Under this new class of products, instead of annuitizing the balance at time of retirement, the participant accrues a benefit over time, during the accumulation phase and need not ever annuitize in order to receive the benefit protection guarantees.

These types of products are typically referred to as Guaranteed Minimum Withdrawal Benefits. Under a typical GMWB structure, the participant builds up a “benefit base” that may exceed the market value of his account balance. At retirement the participant is entitled to withdraw a certain percentage of this benefit base each year for life. In the event that the market value of the participant’s account is exhausted, the insurer will step in and make the payment.
Recently, GMWBs have been incorporated into target date fund or lifestyle portfolio offerings. Among the advantages offered by these are:

- Income amounts expected in retirement won’t be affected by market performance
- The nature of the product helps individuals to plan for retirement as they look to achieve a comfortable level of monthly income in retirement during the accumulation phase
- The ability to lock in market gains at different points throughout the accumulation phase
- Dollar cost averaging throughout the accumulation phase rather than the risk of a point in time purchase at retirement which could result in unfavorable pricing
- Typically don’t have access to the money if need more than the scheduled monthly payment during the income phase
- Continued exposure to the equity markets to maximize growth during the accumulation phase
- Participant has full access to the account value during the accumulation phase and also during the income phase to the extent they need to take a withdrawal for an unforeseen circumstance
- If participant dies at any point, the money will be left to the heirs

The primary disadvantages are:

- May not be easily portable if the plan sponsor chooses to switch recordkeepers
- Withdrawals in excess of the allowed amount during the income phase will impact the guaranteed withdrawal amount in future years
- The structure of the product is complex and not easily understood.

We think it is imperative that participants utilizing these products understand how it is that they work. Most importantly, participants need to understand limits on transfer rights and that they risk the loss of their benefit base if they do not restrict their investments to particular funds. Participants also need to appreciate that excess withdrawals will diminish the benefit base and therefore the value of the guarantee.

To encourage 404(c) plans to include GMWB-types of investment alternatives in their plans, we think it would be sensible to clarify that the transfer restrictions associated with those products –- that is, the requirement that participants need to restrict their investments to particular funds and not exceed prescribed limits in order to maintain the benefit base – are reasonable ones and are not inconsistent with the 404(c) requirement that participants and beneficiaries be permitted to provide investment instructions with a frequency that is appropriate in light of the market volatility to which the investment alternative may reasonably be subject.

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?

Some plan sponsors have questioned whether investment alternatives that include guaranteed withdrawal rights are eligible for treatment as a QDIA. This has occurred despite the Department's addition in the final regulation of text confirming that "features ancillary" to an investment fund product or model portfolio will not cause the product or portfolio to fail to be a QDIA. We request that the Department clarify this matter by amending section 2550.404c-5(e)(4) (iv) of the final regulation to add "distribution or withdrawal guarantees" to the list of ancillary features.

Some product providers offer investment alternatives with ancillary features only to participants who have attained a certain age. There are various reasons for such product design decisions, including the fact that younger participants have little need in the short term, and should not be charged for, investment and distribution guarantees. Since this design decision necessarily limits the availability of an investment alternative only to certain plan participants, it may create a separate "benefit, right or feature" that must be subjected to testing under Treasury Regulation section 1.401(a)-4 to ensure that it is not currently or effectively available to "highly compensated employees" on a discriminatory basis. The potential burden to plan sponsors of additional nondiscrimination testing is an impediment to the availability of investment products with ancillary features. This burden is unreasonable if the need for testing is prompted by the design decision of a product provider unmotivated by any desire to favor highly compensated employees. We request that the Internal Revenue Service/Treasury Department clarify this matter by amending section 1.401(a)-4 to disregard age conditions with respect to any form of investment that includes guarantees or lifetime income features in determining the employees to whom a benefit, right or feature is currently available.

Since qualified default investment alternatives typically have to be adequately diversified, it may need to be clarified whether or not the guarantee portion of the option is adequately diversified given there is only one company responsible for paying the claims in the event that the account value is eroded by poor market performance.

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.

Generally, the employer's overriding goal is to sponsor a plan that will advance its business objectives of attracting and retaining a skilled and qualified workforce by providing employees with means to save and attain a secure retirement through participation in the plan. Balanced against that objective are cost considerations – pure and simple. At the end of the day, employers tend to weigh the retirement security advantages of a particular design feature against the potential costs that accompany that feature. Plan features that tend to be selected are those that present obvious advantages relative to disadvantages.

The advantages of guaranteed lifetime income options as promoters of retirement security goals are clear and obvious. The problem is that when employers evaluate the potential costs that accompany selection of those options, more often than not, they come to the conclusion that costs outweigh the benefits.

But it doesn't have to be that way. Many of the disadvantages that currently impede employer selection of lifetime income options are a by-product of fiduciary risk and administrative burden. Below, we will discuss a number of smart, sensible and effective policy measures that, if implemented, stand to dramatically reduce the current levels of embedded costs that crop up in employer considerations of lifetime income options. By making intelligent changes to the regulations governing plans, it is possible to change the cost/benefit dynamic so that the decision to offer lifetime income options in-plan can be weighed on a scale that is more balanced and less heavily weighted toward the disadvantages.

(a) <u>Fiduciary Liability Risk.</u> It is difficult, if not impossible; to overstate the high level of fiduciary liability cost that currently weight against and impedes lifetime income option selection. The Department of Labor's 2008 clarification that the safest available annuity standard does not apply to defined contribution plans was an extremely positive first step to reducing the magnitude of the fiduciary liability impediment, but additional guidance is needed.

First and foremost, it is imperative that regulatory guidance be developed and promulgated under which plan sponsors would be allowed to enjoy the same fiduciary protections with respect to participant selection of guaranteed lifetime income options that they now enjoy under the Section 404(c) regulations with respect to participant selection of accumulation investment options. Under a 404(c) plan, plan sponsors and fiduciaries are shielded from any potential liability that might otherwise arise from the investment results resulting from a participant's exercise of investment control over his or her account balance. A similar construct could and should be developed under which participant's would be provided information about the features and risks of a broad range of lifetime income options. With the proviso that plan fiduciaries remain responsible for the prudent selection and monitoring of the lifetime income option products, it should be made absolutely clear that the plan sponsor and fiduciary will be insulated from any downstream liability for the results of a participant's choice.

The potential fiduciary liability that beleaguers so many plan sponsors can be summed up rather easily: What, plan sponsors worry, will happen to me and my business, if the guaranteed lifetime income provider I prudently select today fails to perform by reason of financial impairment some ten or twenty or thirty years down the road? It is simply not a reasonable or logical construct to ask plan sponsors to assume the risk that they might be called upon to effectively indemnify participants who purchase lifetime income options through their own exercise of account balance control. This does not mean to suggest that participants should be left on their own and without recourse in the event of provider failure to perform. Rather, we would suggest that participants who have made a 404(c) -like selection of lifetime income options, providers should seek recourse through the same, robust sets of consumer protections that are available to participant's who purchase lifetime income vehicles outside of the plan.

In addition, it is vital to clarify the rules of the road that should apply to the prudent selection of guaranteed lifetime income provider. The provider selection criteria under the 404a-4 Regulations are too vague and too daunting for most plan fiduciaries to navigate or gain comfort from. The Regulations carry an implicit suggestion that in order to be prudent, a plan fiduciary must somehow acquire expert knowledge of the financial condition of various providers. Since acquisition of that level of knowledge is beyond the reasonable capabilities of most employers, the effect of the Regulation is to impede lifetime income product selection.

In order to make in-plan usages of guaranteed lifetime income options a success, it is essential that the fiduciary liability associated with the selection of a provider be substantially mitigated. To make that happen, the development of a more robust and uniform state insurance guaranty association coverage structure would be optimal. As an alternative to that, the industry and the government should also explore a federal government backstop that would stand behind the performance of guaranteed lifetime income providers in order to instill greater confidence in fiduciaries and participants that annuity payment obligations will be made even if there is a change in an insurers financial circumstances in the years and decades following its selection.

(b) Costs of QJSA Administration. Second to fiduciary liability, the costs associated with the administration of lifetime income options need to be reduced. The use of electronic means of QJSA administration is needed to promote efficiencies and reduce costs.

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?

The 404a-4 annuity selection safe harbor is one that is extremely difficult to satisfy even for fiduciaries of the largest and most sophisticated plans. For fiduciaries of smaller plans, the terms of the safe harbor are effectively impossible to satisfy.

To take advantage of the safe harbor, a small plan fiduciary is generally obligated to retain a knowledgeable expert to assist in an investigation of the annuity provider's financial strength and capability to make all future payments under the contract. The costs of satisfying that requirement are too great for all plans, but are particularly overwhelming for small plans.

What smaller entities need is a safe harbor that is not only protective of the interests of plan fiduciaries and beneficiaries but is also straightforward, simple to understand, and capable of being satisfied with reasonable effort and diligence.

The very mission of state insurance regulators is to make sure insurance companies operate on a financially sound basis. If needed, the state insurance department will immediately step in if it appears that an insurer will be unable to fulfill the promises made to its policyholders. These actions include taking over the management of an insurer through conservation or rehabilitation order, the goal being to get the insurer back into a strong solvency position.

State regulators have numerous actions they can take to prevent an insurer from failing. Claims from individual policyholders are given the utmost priority over other creditors in these matters - and, in the unlikely event that assets are not enough to cover these claims, there is still another safety net in place to protect consumers: the state guaranty funds. These funds are in place in all states. If an insurance company becomes unable to pay claims, the guaranty fund will provide coverage, subject to certain limits.

Strict solvency standards and keen financial oversight - based on conservative investment and accounting rules - continue to be the bedrock of state-based insurance regulation.

A key policy question that the Agencies need to confront can be summed up as follows:

At present, the language of the 404a-4 safe harbor suggests that defined contribution plan fiduciaries must somehow act as a "super regulator" of life insurance company distribution annuity products by independently evaluating the solvency of the company and reaching a conclusion about the company's ability to meet its payment obligations many years into the future. That requirement does not serve the interests of plan participants and beneficiaries who need the protections that guaranteed lifetime income products offer. Instead, it succeeds only in obstructing and blockading the use of those products. If the use of guaranteed lifetime income products by plans is to be encouraged, then the safe harbor must be changed and it is essential that the fiduciary liability associated with the selection of a provider be substantially mitigated. To make that happen, the development of a more robust and uniform state insurance guaranty association coverage structure would be optimal. As an alternative to that, the industry and the government should also explore a federal government backstop that would stand behind the performance of guaranteed lifetime income providers in order to instill greater confidence in fiduciaries and participants that annuity payment obligations will be made even if there is a change in an insurers financial circumstances in the years and decades following its selection.

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

Without making the changes we have suggested above, we believe establishing a lifetime income product as the default form of benefit payment would be unlikely, in and of itself, to materially influence the rate of employee plan contributions.

In our retirement services business, we have not noticed significant differences in the contribution levels between similarly situated 401(k) plans that offer a QJSA as the normal form of benefit and those that do not.

We also have seen instances where state and local government plans offer defined contribution plans that encourage through default or mandate that a significant percentage of retiree account balances be paid in the form of annuity. Notwithstanding those features, participant contribution levels have remained quite robust.

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?

The data required to respond to question no. 39 is not readily available.