

February 2, 2010

DOL and Treasury Request Information on Lifetime Income Options for Retirement Plan Participants

On February 2, 2010, the Department of Labor (DOL) and the Treasury Department jointly published [a request for information](#) (RFI) regarding lifetime income options in retirement plans and individual retirement accounts. The purpose of the RFI, which was issued pursuant to the regulatory agendas of both departments, is to solicit views, suggestions and comments from the public – including plan sponsors, service providers and financial intermediaries – regarding whether, and, if so, how, DOL and Treasury “could or should enhance retirement security of qualified plan participants and IRA owners by facilitating access to, and use of, lifetime income or other arrangements designed to provide a lifetime stream of income after retirement.”

The Administration continues to express a strong interest in this topic. On January 25, the Administration’s Middle Class Task Force issued a factsheet, as a [preview of its full report](#) (expected this month), that includes as one of four elements for strengthening 401(k) plans a system for “promoting the availability of annuities and other forms of guaranteed lifetime income.” The Administration’s “Green Book” [FY2011 budget proposal](#), issued on February 1, similarly notes that “[w]orkplace retirement savings arrangements ... could be used as a platform to provide and promote retirement distributions over the worker’s lifetime.”

The RFI itself specifically contemplates a possible review of existing guidance or other regulations and subsequent rulemaking. It consists of 39 questions organized into the following eight sections:

- **General.** These 15 questions are a mix of (i) requests for information generally regarding the availability, form and usage of lifetime income options in retirement plans and IRAs and (ii) policy questions about the advantages and disadvantages of lifetime payments, legal and other impediments to their utilization, possible plan and product structures for providing lifetime income, and related questions.
- **Participant Education.** Four questions inquire empirically and normatively about (i) the information available to participants about lifetime income options, and (ii) legal issues involving that information, including under the ERISA “investment education” vs. “investment advice” dichotomy.
- **Disclosing the Income Stream that Can Be Provided from an Account Balance.** Four questions ask whether and how projected lifetime income payments should be included in annual benefit statements to participants.
- **401(k) and Other Plan Qualification Rules.** Five questions explore issues in lifetime payments that may arise under tax qualification rules for retirement plans, including the survivor annuity and required minimum distribution rules.
- **Selection of Annuity Providers.** These three questions focus on DOL’s fiduciary safe harbor for the selection of annuity providers for purposes of benefit distributions from defined contribution plans, and inquire about the use of, and possible improvements to, that safe harbor.

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- **ERISA Section 404(c).** Similarly, two questions ask about the use of fixed deferred annuities, variable annuities and similar products in plans that rely on the fiduciary safe harbor for participant-directed retirement plans.
- **Qualified Default Investment Alternatives.** One question requests information and suggestions about lifetime income guarantees in connection with QDIAs.
- **Comments Regarding Economic Analysis, Regulatory Flexibility Act and Paperwork Reduction Act.** In anticipation of various regulatory requirements that might apply to any future rulemakings on these issues, the departments request comments on costs, benefits and other consequences of offering lifetime annuities or similar products in retirement plans generally, and in small plans in particular.

Responses to the RFI are due May 3, 2010.



If you have any questions about this development, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

Daniel M. Buchner	202.383.0869	daniel.buchner@sutherland.com
Adam B. Cohen	202.383.0167	adam.cohen@sutherland.com
Jamey A. Medlin	404.853.8198	jamey.medlin@sutherland.com
Alice Murtos	404.853.8410	alice.murtos@sutherland.com
Joanna G. Myers	202.383.0237	joanna.myers@sutherland.com
Robert J. Neis	404.853.8270	robert.neis@sutherland.com
Vanessa A. Scott	202.383.0215	vanessa.scott@sutherland.com
W. Mark Smith	202.383.0221	mark.smith@sutherland.com
William J. Walderman	202.383.0243	william.walderman@sutherland.com
Carol A. Weiser	202.383.0728	carol.weiser@sutherland.com