

**SENATE SPECIAL COMMITTEE ON AGING
HEARING “THE RETIREMENT CHALLENGE:
MAKING SAVINGS LAST A LIFETIME.”**

TESTIMONY

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Chairman Kohl, Ranking Member Corker and Members of the Committee, my name is Cathy Weatherford and I am President and CEO of the Insured Retirement Institute (IRI). On behalf of our member companies, IRI appreciates the opportunity to provide testimony for your hearing entitled: "The Retirement Challenge: Making Savings Last a Lifetime". As you know, IRI has been very engaged on the Request for Information (RFI) on lifetime income arrangements from the Departments of Labor and Treasury and with the Government Accountability Office study request by this Committee. We applaud the Committee's focus on retirement security and the benefits of annuities and other guaranteed lifetime income strategies.

IRI is dedicated to the growth and better understanding of guaranteed lifetime income products. IRI represents all segments of the annuity, insured retirement product and retirement planning industries with over 300 member organizations, including insurance companies representing over 85% of the market, distribution firms, including broker-dealers and banks, investment management firms, and industry service providers. IRI's mission is to promote consumer confidence in the value and viability of insured retirement strategies by: supporting and encouraging industry adherence to high ethical principles; promoting better understanding of the insured retirement value proposition; developing and promoting best practice standards to improve value delivery; and advocating before public policy makers on critical issues affecting insured retirement strategies.

As you may know, I have over 30 years of regulatory experience, including over half of that time as an elected Insurance Commissioner and Insurance Department staff in the State of Oklahoma. Most recently, I served as CEO of the National Association of Insurance Commissioners for 12 years where I worked with over 50 state insurance commissioners to craft important consumer protections, including critical measures aimed at safeguarding our senior citizens. I joined IRI because my life's work is perfectly aligned with the mission of the organization.

Need for Guaranteed Lifetime Income Products

As Americans are living longer and spending 20-30 years in retirement, they are facing greater obstacles to saving for retirement. The role of guaranteed investment products in helping investors achieve a financially secure retirement has never been more important. According to AARP, someone who lives to be 62 has an almost 50% chance of living to be older than 90. And, we know that 33% of all boomers have not saved anything for retirement. Annuities are the only financial products that guarantee lifetime income throughout retirement. When you consider the retirement reality in America – defined by the unsure footing of Social Security, the near disappearance of pension plans, and the record losses in 401(k) plans – it is clear that Americans planning for retirement must have a second form of guaranteed retirement income.

More and more, financial advisors are seeing the value of guaranteed lifetime income products. Historically, in the financial advisor channel, as distinguished from the traditional life agent channel, only about 20% of financial advisors used annuities in developing client portfolios. A survey conducted in December 2009 by Mainstay Investments of financial advisors found that in the wake of the market crisis,



most investors were extremely concerned about market risk and that almost all (91%) of the financial advisors surveyed were making changes to their client’s retirement portfolios.¹ The increased use of guaranteed income products is a major component of the change, with 75 percent of the financial advisors surveyed stating that they are now selling guaranteed lifetime income products to their clients. Furthermore, among those who do not presently offer guaranteed lifetime products, 20 percent indicated that they plan to offer them in the “near future”. Clearly, we see a strong trend in the use of insurance retirement products to help all Americans take advantage of the benefits of guaranteed lifetime income strategies. The laws and regulations governing these products need to assure that all consumers, including workers in 401(k) plans, have access to these products.

Guaranteed Lifetime Income Products Available to Consumers

We are aware that the Committee knows what an annuity is, but given this is a public testimony, let me briefly share what an annuity is and what types of products are available to consumers today. An annuity is a retirement savings and income product—a tool that can first build a person’s savings and then convert those savings into a guaranteed stream of income during retirement no matter how long a person lives. In 2008 alone, life insurers paid almost \$1 trillion in annuity benefits payments to citizens across the country, and as of the end of 2008, Americans had more than \$2.2 trillion invested in all types of annuity contracts. In a variable annuity, earnings are linked to the performance of subaccounts of the annuity, which are similar to mutual funds, as selected by the contract owner.

Over the last 5-8 years, based on market demand, insurers have developed new annuity features to protect against market fluctuation, called guaranteed minimum living benefits (GLBs), most often referred to as a GLB rider. At least eighty-four percent (84%) of all variable annuities are now sold with these guaranteed minimum benefits, like the most popular Guaranteed Minimum Withdrawal Benefit (GMWB). This feature guarantees that the contract owner will receive the same minimum payout in retirement even if the value of the owner’s investment goes down, like so many did over the past two years. For example, if \$100,000 invested drops in value to \$65,000, the investor’s income stream stays at 5% of at least \$100,000, not 5% of \$65,000. We know annuity owners have been greatly satisfied in the product performance after seeing the value of the promised income stream from their annuities remained constant and not decrease during the market crisis. In short, GLBs allow variable annuity contract owners to take advantage of market gains with downside protection from potential market losses for purposes of receiving guaranteed income for life.

In the case of defined contribution plans, such as 403(b), 401(k) and Section 457 plans, some include one or more annuities as an investment alternative (more prevalent for public employers and for smaller plans of private sector employers), while others may limit participant investments to a variety of mutual funds. The standard distribution choices at retirement for these plans are lump sum or systematic withdrawals for a period of years or for life based on an Internal Revenue Code life expectancy calculation. Generally, most participants elect a lump sum distribution, which exposes the participants to investment or life style risks, and results in them potentially outliving their benefits. For this reason, plan sponsors should be encouraged to offer annuities as a distribution option. For those plans or IRAs that either consist of or include annuity contracts, individual or group, such contracts generally offer a broad range of annuitization options. Those options generally encompass most if not all of the options commonly available under

¹ MainStay Investments, “Financial Advisors Study”, April 6, 2010.



defined benefit plans. The contracts also provide additional options, as well as a contractual right to any other form of annuity that is mutually agreed upon by the parties to the contract. The following types of annuity contracts are available through employer-sponsored plans:

Immediate Annuity-An annuity that is purchased with a single lump sum. Income payments begin within a short period—less than 13 months. Immediate annuities can be either fixed or variable.

Deferred Annuity- An annuity contract that is purchased either with a single premium or with periodic payments to help save for retirement. The contract owner determines the point at which accumulated principal and earnings are converted into a stream of income.

Guaranteed Minimum Living Benefits (GMLB)- A benefit that protects against investment risks by guaranteeing the level of account values or annuity payments. There are three types—guaranteed minimum income benefits, guaranteed minimum accumulation benefits, and guaranteed minimum withdrawal benefits.

Guaranteed Minimum Income Benefit (GMIB)- A guarantee that ensures, under certain conditions, that the owner may annuitize the contract based on the greater of (a) the actual account value or (b) a payout base equal to premiums credited with a defined interest rate or the maximum anniversary value of the account prior to annuitization.

Guaranteed Minimum Accumulation Benefit (GMAB)- A guarantee that ensures that the contract value of a variable annuity will be, at least, equal to a certain minimum amount after a specified number of years.

Guaranteed Minimum Withdrawal Benefit (GMWB)- A guarantee that promises that a certain percentage (usually 5-7%) of a guaranteed benefit base (often paid premiums) can be withdrawn annually until the base is completely recovered, regardless of market performance or the actual account balance, or for the lifetime of the contract owner or both spouses, depending on the type of product selected.

IRI's Response to the Administration's RFI

In April 2010, IRI provided a comprehensive response to the Administration's RFI regarding Lifetime Income Options for Participants in Retirement Plans. (See attached full IRI RFI response) IRI's RFI responses were developed through a two-month process involving over 70 experts from a wide cross-section of our members who provided input for our response. The IRI working group included guaranteed lifetime income experts from all of the various industries who are members of IRI including: insurance companies, distribution firms, including broker-dealers and banks, investment management firms, and industry service providers. In order for the Agencies to promote the use of guaranteed lifetime income strategies, we requested the Administration to take the following steps:

- Implement measures that will incentivize employers to make guaranteed lifetime income strategies available for employees inside employer-sponsored retirement plans;
- Help to make guaranteed lifetime income solutions attractive for investors outside of employer-sponsored plans, including in individual retirement accounts, by incentivizing their use and educating Americans about their benefits;



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- Simplify rules and relieve administrative burdens for employers who wish to include guaranteed lifetime income products as investment or distribution options in their retirement plans; and
 - Encourage the provision of high-quality educational materials to individuals by eliminating the current administrative barriers and regulatory uncertainty.

In our complete RFI response, we focused on the following specific issues among others:

Education

- **Plan Sponsor Fiduciary Liability for Providing Educational Material about Lifetime Income Products.** We advocated for changes to Interpretive Bulletin 96-1 to clarify that plan sponsors providing information about guaranteed lifetime income products will not constitute investment advice, and therefore, providing such advice will not create liability for the plan sponsor.
- **Required Disclosure of Lifetime Income Payment on Benefit Statements.** We promoted a required disclosure of an estimate of accrued benefits as a guaranteed lifetime income stream of payments on individual benefit statements. We specifically referenced our support for the Lifetime Income Disclosure Act sponsored by Senators Bingaman, Isakson, and Chairman Kohl as a good template for the Department of Labor to develop assumptions and guidelines for a model disclosure.
- **Sufficient Information about Guaranteed Lifetime Income Products.** The ERISA 404(c) regulations require a plan sponsor to provide participants with “sufficient information” to make investment decisions between plan options. We asked for clarification about what constituents “sufficient information” in the case of guaranteed lifetime income.

Plan Sponsors Duties

- **Plan Sponsors’ Liability for Selecting and Monitoring Lifetime Income Products and Providers.** There is a need for clarity surrounding the duty of a plan sponsor to prudently select and monitor lifetime income investment options and the providers of such options. There was wide agreement that the safe harbor provided in Department of Labor regulations that plans sponsors currently follow during the selection process should be revised. We believe that the safe harbor has not been widely utilized because of concerns about the current provider elements. We also believe that the safe harbor is just as appropriate for other guaranteed lifetime income products as they are for distribution annuities.
- **Plan Sponsors’ Potential Liability for Participants’ Election of a Lifetime Income Product.** Plan sponsors of participant-directed defined contribution plans rely on ERISA 404(c) for limited relief from fiduciary liability for any losses that might otherwise result from a participant’s imprudent election of an investment option under the plan. However, 404(c) does not make reference to a participant’s election of a guaranteed lifetime income product that leads to a particular type of payout of the account. These products carry the additional risk regarding the claims-paying ability of the provider in the distant future. Thus, a participant’s election of a guaranteed lifetime income product is more than just an investment decision. It is also permanent election of a form of payout.

We asked the Agencies to clarify if 404(c) relieves a plan sponsor of fiduciary liability for a participant's irrevocable election of a form of payout benefit.

- **Plan Sponsors Potential Liability for Investing Participants' Accounts in a Default Investment.** The Department of Labor has issued a safe harbor that provides limited fiduciary relief for certain default investments. The Qualified Default Investment Alternative (QDIA) regulations do not permit stable value funds (which often carry a lifetime income option) to be a QDIA; however, there is language in the regulation which states that funds that meet the qualification requirements of the regulations (such as retirement date funds) can have "ancillary" features such as "annuity purchase rights, investment guarantees, death benefit guarantees, or other features." We have advocated for regulatory certainty that products that otherwise qualify as a QDIA do not become disqualified simply because they have guaranteed lifetime or withdrawal rights. We also argued that DOL should revisit its exclusion of stable value products (such as fixed products that include guaranteed annuity purchase rates) as one of the options that could be used as the QDIA. The fact that there is a guaranteed feature should not disqualify these products from being QDIAs.

Portability

- **Lack of Portability (Provider Change or Product Removal).** We discussed the lack of portability as a big concern for plan sponsors, and the IRA rollover rules do not currently offer a clear solution. If plan sponsors change plan service providers and move the plan to another vendor, the lifetime income product may not be portable to the new provider, and the participants will lose the benefit of the guarantees for which they have already paid. We look forward to working with this Committee and the Treasury Department to address this portability issue. We think it is essential to determine if statutory changes to the Internal Revenue Code are necessary with respect to provisions related to 401(k), 403(b), 457(b) and other plan types.

Notice, Waiver and Spousal Consents

- **Qualified and Joint Survivor Rules Current Administrative Burdens.** We outlined the administrative burdens and complexities when the QJSA rules are applied in the context of guaranteed lifetime income products, including the requirements for notice, waiver, revocation, and spousal consents. Under current IRS rules, if a participant selects payment in the form of a life annuity, the exception to the survivor annuity rules is no longer available, and plans must comply with the QJSA and QPSA rules. It is not clear under the IRS Code or its Private Letter Ruling whether guaranteed lifetime income products like GLWBs that do not involve annuitization of participant accounts trigger application of the survivor annuity rules. We advocated for clarification that guaranteed lifetime income products in which the participants maintain control of an account balance supporting the lifetime income guarantee are not life annuities for the purposes of the survivor annuity rules. We believe that a plan participant's election of guaranteed living benefits (or automatic enrollment into such a structure) should not trigger QJSA/QPSA rules until such time that income has been deemed irrevocably annuitized and the income start date has been determined.



Required Minimum Distribution Rules

- **Changes to the Required Minimum Distribution (RMD) Rules.** The current RMD rules for annuity contracts inhibit offering annuity features that could address the following concerns: (i) longevity risk, (ii) retirees' anticipated inflation risk, and (iii) material unanticipated changes in a retiree's cash-flow needs during retirement. Among other requests that we made, we believe that pure longevity annuities (i.e., lifetime payout starting at an advanced age at/near life expectancy) should be carved out of the RMD rule.

We would welcome the opportunity to work with the Committee and the Administration in the future as you consider changes to the laws and regulations that would break down the barriers to the availability and use of guaranteed lifetime income products by all Americans including workers in employer-sponsored retirement plans. We hope that this testimony will be useful as we all continue to work toward the goal of helping all Americans achieve real retirement security.

