Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

RIN 1545–BJ04

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Parts 2509, 2520 and 2550

RIN 1210–AB33

Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans

AGENCY: Employee Benefits Security Administration, Department of Labor; Internal Revenue Service, Department of the Treasury.

ACTION: Request for information.

SUMMARY: The Department of Labor and the Department of the Treasury (the "Agencies") are currently reviewing the rules under the Employee Retirement Income Security Act (ERISA) and the plan qualification rules under the Internal Revenue Code (Code) to determine whether, and, if so, how, the Agencies could or should enhance, by regulation or otherwise, the retirement security of participants in employer-sponsored retirement plans and in individual retirement arrangements (IRAs) by facilitating access to, and use of, lifetime income or other arrangements designed to provide a lifetime stream of income after retirement. The purpose of this request for information is to solicit views, suggestions and comments from plan participants, employers and other plan sponsors, plan service providers, and members of the financial community, as well as the general public, on this important issue.

DATES: Comments must be submitted on or before May 3, 2010.

ADDRESSES: You may submit written comments to any of the addresses specified below. Any comment that is submitted to either Agency will be shared with the other Agency. Please do not submit duplicates.

Department of Labor. Comments to the Department of Labor, identified by RIN 1210–AB33, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *E-mail: e-ORI@dol.gov.* Include RIN 1210–AB33 in the subject line of the message.

• *Mail:* Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Lifetime Income RFI.

All submissions received must include the agency name and Regulation Identifier Number (RIN) for this rulemaking. Comments received will be posted without change to *http://www.regulations.gov* and *http://www.dol.gov/ebsa,* and made available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210, including any personal information provided. Persons submitting comments electronically are encouraged not to submit paper copies.

Internal Revenue Service. Comments to the IRS, identified by REG–148681–09, by one of the following methods:

• *Mail:* CC:PA:LPD:PR (REG–148681–09), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

• *Hand or courier delivery:* Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–148681–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments (IRS REG–148681–09).

All submissions to the IRS will be open to public inspection and copying in Room 1621, 1111 Constitution Avenue, NW., Washington, DC from 9 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Ward or Luisa Grillo-Chope, Office of Regulations and Interpretations, Employee Benefits Security Administration (EBSA), (202) 693–8500 or Peter J. Marks, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), Internal Revenue Service, Department of the Treasury, at (202) 622–6090. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

A. Background

The Agencies are issuing this request for information in furtherance of their efforts to promote retirement security for American workers. The Secretary of Labor's overarching vision for the work of the Department of Labor is to advance good jobs for everyone. Good jobs provide wages that support families, and rise with time and productivity. Good jobs also provide safe and healthy working conditions. Finally, good jobs, no matter the type or income level, provide retirement security. Consistent with these objectives, the Department of the Treasury strives to promote economic growth, stability, and economic security, including retirement security, for American workers, and oversees the federal tax expenditures for retirement savings and security.

Retirement security is provided to many workers through defined benefit pension plans sponsored by their employers. Employers that sponsor defined benefit pension plans are responsible for making contributions that are sufficient for funding the promised benefit, investing and managing plan assets (as fiduciaries), and bearing investment risks because the employer, as plan sponsor, is required to make enough contributions to the plan to fund benefit payments during retirement. In addition, when the defined benefit pension plan pays (or offers to pay) a lifetime annuity, it provides (or offers to provide) protection against the risk of outliving one's assets in retirement (longevity risk).

Department of Labor data, however, show a trend away from sponsorship of defined benefit plans, toward sponsorship of defined contribution plans. The number of active participants in defined benefit plans fell from about 27 million in 1975 to approximately 20 million in 2006, whereas the number of active participants in defined contribution plans increased from about 11 million in 1975 to 66 million in 2006.[1]

While defined contribution plans have some strengths relative to defined benefit plans, participants in defined contribution plans bear the investment risk because there is no promise by the employer as to the adequacy of the account balance that will be available or the income stream that can be provided after retirement. Moreover, while defined benefit plans are generally required to make annuities available to participants at retirement, 401(k) and other defined contribution plans typically make only lump sums available. Furthermore, many traditional defined benefit plans have converted to lump sum-based hybrid plans, such as cash balance or pension equity plans, and many others have simply added lump sum options. Accordingly, with the continuing trend away from traditional defined benefit plans to 401(k) defined contribution plans and hybrid plans, including the associated trend away from annuities toward lump sum distributions, employees are not only increasingly responsible for the adequacy of their savings at the time of retirement, but also for ensuring that their savings last throughout their retirement years and, in many cases, the remaining lifetimes of their spouses and dependents.

In recognition of the foregoing, the Agencies are considering whether it would be appropriate for them to take future steps to facilitate access to, and use of, lifetime income or other arrangements designed to provide a stream of income after retirement. This includes a review of existing regulations and other guidance and consideration of whether any such steps would enhance the retirement security of participants in retirement plans, taking into account potential effects on and tradeoffs involving other policy objectives. To that end, this request for information (RFI) sets forth a number of questions that are generally organized into categories under which the Agencies may be able to provide additional guidance if appropriate. This RFI also includes a number of questions pertaining to the economic impact of rulemaking, and to impediments beyond the statutory requirements, if any.

[1] The number of active participants in 1975 and 2006 are not directly comparable because of adjustments in the definition of a participant. Please see a detailed explanation of the adjustment in U.S. Department of Labor, Employee Benefits Security Administration, "Private Pension Plan Bulletin Historical Tables and Graphs," February 2009, p. 1–9. See *www.dol.gov/ebsa/pdf/1975-2006historicaltables.pdf.*

Commenters are not limited to these questions and are invited to respond to all or any subset of the questions, but the Agencies request that commenters relate their responses to specific questions when possible.

Similar considerations arise when participants decide how to take retirement distributions from an IRA (including an IRA that holds rollover distributions from qualified retirement plans). Further, participants often elect to take lump sum distributions where they are available from defined benefit plans, which may also be rolled over to an IRA. Commenters are encouraged to address these contexts as well, identifying the particular types of arrangements to which their comments relate.

All comments will be considered, and comments supported by references to empirical data will be particularly appreciated. In considering the questions set forth in this RFI, commenters are encouraged to take into account the following studies and commentary:

2009 GAO Report

In July 2009, the Government Accountability Office (GAO) published Report GAO–09–642 entitled, "Private Pensions: Alternative Approaches Could Address Retirement Risks Faced by Workers but Pose Trade-offs." The GAO found that workers face a number of risks in both accumulating and preserving pension benefits. The GAO found, in relevant part, that:

> Workers that receive lump-sum distributions, in particular, face several risks related to how they withdraw, or "draw down" their benefits, including:
>
> • Longevity risk—retirees may draw down benefits too quickly and outlive their assets. Conversely, retirees may draw down their benefits too slowly, unnecessarily reduce their consumption, and leave more wealth than intended when they die.
>
> • Investment risk—assets in which pension savings are invested may decline in value.
>
> • Inflation risk—inflation may diminish the purchasing power of a retiree's pension benefits.

Commenters are encouraged to consider this GAO report in reviewing the issues identified in this RFI. This report may be accessed at *http://www.gao.gov/new.items/d09642.pdf.*

2007 GAO Report

In November 2007, the GAO published Report GAO–08–8 entitled, "Private Pensions: Low Defined Contribution Plan Savings May Pose Challenges to Retirement Security, Especially for Many Low-Income Workers." The GAO concluded that only 36 percent of workers participated in a current defined contribution plan in 2004, with the total median account balance (for workers with a current or former DC plan, including rolled-over retirement funds) of only $22,800. The median account balance was $50,000 for workers age 55 to 64 and $60,600 for those age 60 to 64. The report is relevant to this RFI because the need for lifetime income may be most acute among workers who have small but significant retirement savings balances. Commenters are encouraged to consider this GAO report in reviewing the issues identified in this RFI. This report may be accessed at *www.gao.gov/new.items/d088.pdf.*

2003 GAO Report

In July 2003, the General Accounting Office (GAO) published Report GAO–03–810 entitled, "Private Pensions: Participants Need Information on Risks They Face in Managing Pension Assets at and During Retirement." The GAO concluded that:

> The decreasing number of employer-sponsored pension plans that offer only life annuities at retirement and the increasing percentage of retiring participants who choose benefit payouts other than annuities suggest that, in the future, fewer retirees may receive pension income guaranteed to last throughout retirement. The growth in the number of DC plans, along with the increasing availability of lump sums from DB plans, means that retirees will face greater responsibility and choices for managing their pension and other assets at and throughout retirement. Depending on their choices, retirees could be at greater risk of outliving their pension and retirement savings plan assets or ultimately having insufficient income to maintain their standard of living through their retirement years.
>
> Such risks underscore the need for providing enhanced information and education to participants about their available payout options, the issues they may face in managing retirement assets, and how different options may mitigate, or increase, these risks. As part of their responsibility, retirees will have to weigh certain pros and cons of different ways to manage and preserve pension assets. Currently, the notices that plan sponsors must furnish to retiring participants are not sufficient to help them choose payout options that suit their individual circumstances, while assuring adequate levels of such income to the extent possible. Our expert panel suggested that providing several types of information, such as on risks that could affect retirement income security, could help retiring participants make more informed decisions regarding how they balance income and expenditures during retirement.

This report, which did not recommend executive branch action, nonetheless recommended that the Congress may wish to consider amending ERISA to require plan sponsors to provide participants with a notice on risks that individuals face in managing their income and expenditures at and during retirement. Commenters are encouraged to consider this GAO report in reviewing the issues identified in this RFI. This report may be accessed at *http://www.gao.gov/new.items/d03810.pdf.*

ERISA Advisory Council Reports

In 2007, the ERISA Advisory Council's Working Group on Financial Literacy of Plan Participants and the Role of the Employer undertook a study of numerous issues relating to increasing the financial decision-making skills of plan participants. The Working Group issued a report containing, among others, the following recommendation: "The Working Group recommends that the Department of Labor expand the reach of [Interpretive Bulletin 96–1] by changing and updating it. As innovation continues in the financial marketplace, educational initiatives will need to address items heretofore not necessarily addressed in 96–1. 96–1 needs to address information, education, and advice in the de-accumulation stage as well as the accumulation phase. Further, as innovation continues in this area, 96–1 needs to be continually updated." Commenters are encouraged to consider this report in reviewing the issues identified in this RFI. This report may be accessed at *http://www.dol.gov/ebsa/publications/AC-1107a.html.*

In 2008, the ERISA Advisory Council's Working Group on the Spend Down of Defined Contribution Assets at Retirement undertook a study on the types of guidance that could help plan sponsors and plan participants make better informed decisions regarding plan investment and insurance vehicles that provide periodic or lifetime distributions. The Working Group issued a report containing, in relevant part, the following recommendations: (1) Expand the reach of Interpretive Bulletin 96–1 by adapting it to the spend down phase; (2) clarify that products which are eligible qualified default investment alternatives while participants are actively participating in the plan will continue to so qualify; (3) encourage, authorize, endorse and facilitate plan communications that use retirement income replacement formulas based on final pay and other reasonable assumptions in employee benefit statements on an individual participant basis; and (4) enhance plan sponsor and participant education by publishing and regularly updating information about the distribution options available to participants in defined contribution plans. Commenters are encouraged to consider this report in reviewing the issues identified in this RFI. This report may be accessed at *www.dol.gov/ebsa/publications/2008ACreport3.html.*

B. Request for Information

The purpose of this notice is to solicit views, suggestions and comments from plan participants, plan sponsors, plan service providers and members of the financial community, as well as the general public, to assist the Agencies in evaluating what steps, if any, they could or should take, by regulation or otherwise, to enhance the retirement security of participants in employer-sponsored retirement plans and IRAs by facilitating access to, and use of, lifetime income or other arrangements designed to provide a stream of lifetime income after retirement. To facilitate consideration of the issues, the Agencies have set forth below a number of matters and specific questions with respect to which views, suggestions, comments and information are requested. In addition to addressing any or all of the matters and questions referred to below, interested persons are encouraged to address any other matters they believe to be germane to the Agencies' consideration of lifetime annuities and similar lifetime income issues, particularly as they relate to defined contribution plans and defined benefit plans that distribute benefits as lump sums.

General

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?

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?

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?

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?

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

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?

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?

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)?

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?

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?

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?

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?

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?

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?

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?

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?

Participant Education

The Department of Labor issued Interpretive Bulletin 96–1 (29 CFR 2509.96–1) to clarify that the provision of investment education, as described in the Bulletin, will not be considered the provision of "investment advice," which would give rise to fiduciary status and potential liability under ERISA for plan participants' and beneficiaries' investment decisions.

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

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?

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?

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?

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

ERISA section 105 requires defined contribution plans to furnish to each participant an individual benefit statement, at least annually, that includes the participant's "accrued benefits," *i.e.,* the individual's account balance.

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

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?

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 sources (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?

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?

401(k) and Other Plan Qualification Rules

Income Tax Regulations that apply specifically to lifetime annuities include: 26 CFR 1.401(a)–11, 26 CFR 1.401(a)–20, 26 CFR 1.401(a)(9)–1 through 26 CFR 1.401(a)(9)–9, 26 CFR 1.417(a)(3)–1, and 26 CFR 1.417(e)–1.

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?

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?

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?

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?

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?

Selection of Annuity Providers

The Department of Labor's regulation 29 CFR 2550.404a–4 contains a fiduciary safe harbor for the selection of annuity providers for the purpose of benefit distributions from defined contribution plans.

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?

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?

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?

ERISA Section 404(c)

ERISA section 404(c) and 29 CFR 2550.404c–1 provide defined contribution plan fiduciaries with limited relief from the fiduciary responsibility provisions of ERISA where a participant or beneficiary exercises control over the assets in his or her account.

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?

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?

Qualified Default Investment Alternatives

ERISA section 404(c)(5) provides that, for purposes of ERISA section 404(c)(1), a participant in a defined contribution plan will be treated as exercising control over the assets in his or her account with respect to the amount of contributions and earnings if, in the absence of an investment election by the participant, such assets are invested by the plan in accordance with regulations of the Department of Labor. The Department of Labor's regulation 29 CFR 2550.404c–5 describes the types of investment products that are qualified default investment alternatives under ERISA section 404(c)(5).

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?

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

Executive Order 12866 (EO 12866) requires an assessment of the anticipated costs and benefits of a significant rulemaking action and the alternatives considered, using the guidance provided by the Office of Management and Budget. In addition, the Regulatory Flexibility Act (RFA) may require the preparation of an analysis of the economic impact on small entities of proposed rules and regulatory alternatives. For this purpose, the Agencies consider a small entity to be an employee benefit plan with fewer than 100 participants. The Paperwork Reduction Act (PRA) requires an estimate of how many "respondents" will be required to comply with any "collection of information" requirements contained in regulations and how much time and cost will be incurred as a result.

The Agencies in this section of the RFI are requesting comments that may contribute to any analyses that may eventually need to be performed under EO 12866, RFA, and PRA, both generally and with respect to specific areas identified in questions 36 through 39.

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.

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?

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?

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?

Signed at Washington, DC, this 27th day of January 2010.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

Signed at Washington, DC, this 27th day of January 2010.

Nancy J. Marks,

Division Counsel/Associate Chief Counsel, Tax Exempt and Government Entities, Internal Revenue Service, Department of the Treasury.

Signed at Washington, DC, this 26th day of January 2010.

J. Mark Iwry,

Senior Advisor to the Secretary, Deputy Assistant Secretary for Retirement and Health Benefits, Department of the Treasury.

[FR Doc. 2010–2028 Filed 2–1–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 107

[Docket No. PHMSA–2009–0201 (HM–208H)]

RIN 2137–AE47

Hazardous Materials Transportation; Registration and Fee Assessment Program

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: PHMSA is proposing to adjust the statutorily-mandated registration and fee assessment program for persons who transport, or offer for transportation, certain categories and quantities of hazardous materials. PHMSA's proposal would provide that, for registration years beginning in 2010–2011, the annual fee to be paid by those registrants not qualifying as a small business or not-for-profit organization would increase from $975 (plus a $25 administrative fee) to $2,975 (plus a $25 administrative fee). The proposed fee increase is necessary to fund the national Hazardous Materials Emergency Preparedness (HMEP) grants program at its authorized level of approximately $28,000,000.

DATES: Submit comments by March 4, 2010.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number PHMSA–2009–0201 by any of the following methods:

- *Fax:* 202–493–2251.
- *Mail:* Dockets Management System; U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: Include the agency name and docket number PHMSA–2009–0201 (HM–208H) or Regulatory Identification Number (RIN) RIN 2137–AE47 for this rulemaking at the beginning of your comment. All comments received will be posted without change to *http://www.regulations.gov* including any personal information provided. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard.

Docket: You may review the public docket through the Internet at *http://www.regulations.gov* or in person at the Dockets Operations office at the above address (See **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Mr. David Donaldson, Office of Hazardous Materials Planning and Analysis, PHMSA, (202) 366–4484, and Ms. Deborah Boothe or Mr. Steven Andrews, Office of Hazardous Materials Standards, PHMSA, (202) 366–8553.

SUPPLEMENTARY INFORMATION:

I. Background

Since 1992 PHMSA has conducted a national registration program under the mandate in 49 U.S.C. 5108 for persons who offer for transportation or transport certain hazardous materials in intrastate, interstate, or foreign commerce. The purposes of the registration program are to gather information about the transportation of hazardous materials, and to fund the Hazardous Materials and Emergency Preparedness (HMEP) grants program and additional related activities. *See* 49 U.S.C. 5108(b), 5116, 5128(b). PHMSA may set the annual registration fee between a minimum of $250 and maximum of $3,000. *See* 49 U.S.C. 5108(a)(2), 5108(g)(2)(A).

Since 2006, the annual registration fee has been set at $250 (plus a $25 processing fee) for small businesses and not-for-profit organizations and $975 (plus a $25 processing fee) for all other registrants. *See* 49 CFR 107.612(d). Because PHMSA had accumulated a surplus following a prior adjustment in 2000 (*see* 65 FR 7297, 7309 [Feb. 14, 2000]), notwithstanding a temporary reduction between 2003 and 2006, since Fiscal Year 2008, we have been able to fully fund the obligation limit of $28,318, 000 in the Consolidated Appropriations Act of 2008 (Pub. L. 110–116 [121 Stat. 1295], November 13, 2007), and the Omnibus Appropriations Act, 2009 (Pub. L. 111–8 [123 Stat. 945], March 11, 2009). However, that surplus has now been reduced to $1,500,000, and it is necessary to adjust registration fees in order to collect additional monies in the 2010–2011 and following registration years and fully fund the current authorization and expected budget requests of $28.3 million for Fiscal Years beginning in 2010. This can be done by leaving the annual registration fee at $250 (plus a $25 processing fee) for those persons who are a small business or not-for-profit organization and increasing to $2,975 (plus a $25 processing fee) the annual fee paid by all other persons required to register.

II. HMEP Grants Program

A. Purpose and Achievements of the HMEP Grants Program

The HMEP grants program, as mandated by 49 U.S.C. 5116, provides Federal financial and technical assistance to States and Indian tribes to "develop, improve, and carry out emergency plans" within the National Response System and the Emergency Planning and Community Right-To-Know Act of 1986 (Title III), 42 U.S.C. 11001 *et seq.* The grants are used to: (1) Develop, improve, and implement emergency plans; (2) train public sector hazardous materials emergency response employees to respond to accidents and incidents involving hazardous materials; (3) determine flow patterns of hazardous materials within a state and between states; and (4) determine the need within a state for regional hazardous materials emergency response teams.

The HMEP grants program encourages the growth of the hazardous materials planning and training programs of state, local, and tribal governments by limiting the Federal funding to 80 percent of the cost a state or Indian tribe incurs to carry out the activity for which the grant is made. *See* 49 U.S.C. 5116(e).