

110TH CONGRESS  
1ST SESSION

# S. 1010

To amend the Internal Revenue Code of 1986 to encourage guaranteed lifetime income payments from annuities and similar payments of life insurance proceeds at dates later than death by excluding from income a portion of such payments.

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## IN THE SENATE OF THE UNITED STATES

MARCH 28, 2007

Mr. SMITH (for himself, Mr. CONRAD, Ms. SNOWE, Ms. COLLINS, and Mrs. CLINTON) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to encourage guaranteed lifetime income payments from annuities and similar payments of life insurance proceeds at dates later than death by excluding from income a portion of such payments.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Retirement Security  
5 for Life Act of 2007”.

1 **SEC. 2. EXCLUSION FOR LIFETIME ANNUITY PAYMENTS.**

2 (a) LIFETIME ANNUITY PAYMENTS UNDER ANNUITY  
3 CONTRACTS.—Section 72(b) of the Internal Revenue Code  
4 of 1986 (relating to exclusion ratio) is amended by adding  
5 at the end the following new paragraph:

6 “(5) EXCLUSION FOR LIFETIME ANNUITY PAY-  
7 MENTS.—

8 “(A) IN GENERAL.—In the case of lifetime  
9 annuity payments received under one or more  
10 annuity contracts in any taxable year, gross in-  
11 come shall not include 50 percent of the portion  
12 of lifetime annuity payments otherwise includ-  
13 ible (without regard to this paragraph) in gross  
14 income under this section. For purposes of the  
15 preceding sentence, the amount excludible from  
16 gross income in any taxable year shall not ex-  
17 ceed \$20,000.

18 “(B) COST-OF-LIVING ADJUSTMENT.—In  
19 the case of taxable years beginning after De-  
20 cember 31, 2008, the \$20,000 amount in sub-  
21 paragraph (A) shall be increased by an amount  
22 equal to—

23 “(i) such dollar amount, multiplied by

24 “(ii) the cost-of-living adjustment de-  
25 termined under section 1(f)(3) for the cal-  
26 endar year in which the taxable year be-

1           gins, determined by substituting ‘calendar  
2           year 2007’ for ‘calendar year 1992’ in sub-  
3           paragraph (B) thereof.

4           If any amount as increased under the preceding  
5           sentence is not a multiple of \$500, such amount  
6           shall be rounded to the next lower multiple of  
7           \$500.

8           “(C) APPLICATION OF PARAGRAPH.—Sub-  
9           paragraph (A) shall not apply to—

10           “(i) any amount received under an eli-  
11           gible deferred compensation plan (as de-  
12           fined in section 457(b)) or under a quali-  
13           fied retirement plan (as defined in section  
14           4974(c)),

15           “(ii) any amount paid under an annu-  
16           ity contract that is received by the bene-  
17           ficiary under the contract—

18           “(I) after the death of the annu-  
19           itant in the case of payments de-  
20           scribed in subsection (c)(5)(A)(ii)(III),  
21           unless the beneficiary is the surviving  
22           spouse of the annuitant, or

23           “(II) after the death of the annu-  
24           itant and joint annuitant in the case  
25           of payments described in subsection

1 (c)(5)(A)(ii)(IV), unless the bene-  
2 ficiary is the surviving spouse of the  
3 last to die of the annuitant and the  
4 joint annuitant, or

5 “(iii) any annuity contract that is a  
6 qualified funding asset (as defined in sec-  
7 tion 130(d)), but without regard to wheth-  
8 er there is a qualified assignment.

9 “(D) INVESTMENT IN THE CONTRACT.—  
10 For purposes of this section, the investment in  
11 the contract shall be determined without regard  
12 to this paragraph.”.

13 (b) DEFINITIONS.—Subsection (c) of section 72 of  
14 the Internal Revenue Code of 1986 is amended by adding  
15 at the end the following new paragraph:

16 “(5) LIFETIME ANNUITY PAYMENT.—

17 “(A) IN GENERAL.—For purposes of sub-  
18 section (b)(5), the term ‘lifetime annuity pay-  
19 ment’ means any amount received as an annu-  
20 ity under any portion of an annuity contract,  
21 but only if—

22 “(i) the only person (or persons in the  
23 case of payments described in subclause  
24 (II) or (IV) of clause (ii)) legally entitled  
25 (by operation of the contract, a trust, or

1 other legally enforceable means) to receive  
2 such amount during the life of the annu-  
3 itant or joint annuitant is such annuitant  
4 or joint annuitant, and

5 “(ii) such amount is part of a series  
6 of substantially equal periodic payments  
7 made not less frequently than annually  
8 over—

9 “(I) the life of the annuitant,

10 “(II) the lives of the annuitant  
11 and a joint annuitant, but only if the  
12 annuitant is the spouse of the joint  
13 annuitant as of the annuity starting  
14 date or the difference in age between  
15 the annuitant and joint annuitant is  
16 15 years or less,

17 “(III) the life of the annuitant  
18 with a minimum period of payments  
19 or with a minimum amount that must  
20 be paid in any event, or

21 “(IV) the lives of the annuitant  
22 and a joint annuitant with a minimum  
23 period of payments or with a min-  
24 imum amount that must be paid in  
25 any event, but only if the annuitant is

1 the spouse of the joint annuitant as of  
2 the annuity starting date or the dif-  
3 ference in age between the annuitant  
4 and joint annuitant is 15 years or  
5 less.

6 “(iii) EXCEPTIONS.—For purposes of  
7 clause (ii), annuity payments shall not fail  
8 to be treated as part of a series of substan-  
9 tially equal periodic payments—

10 “(I) because the amount of the  
11 periodic payments may vary in accord-  
12 ance with investment experience, re-  
13 allocations among investment options,  
14 actuarial gains or losses, cost of living  
15 indices, a constant percentage applied  
16 not less frequently than annually, or  
17 similar fluctuating criteria,

18 “(II) due to the existence of, or  
19 modification of the duration of, a pro-  
20 vision in the contract permitting a  
21 lump sum withdrawal after the annu-  
22 ity starting date,

23 “(III) because the period between  
24 each such payment is lengthened or  
25 shortened, but only if at all times

1 such period is no longer than one cal-  
2 endar year, or

3 “(IV) because, in the case of an  
4 annuity payable over the life of an an-  
5 nuitant and a joint annuitant, the  
6 amounts paid to the surviving annu-  
7 itant after the death of the first annu-  
8 itant are less than the amounts pay-  
9 able during the joint lives of the two  
10 annuitants.

11 “(B) ANNUITY CONTRACT.—For purposes  
12 of subparagraph (A) and subsections (b)(5) and  
13 (x), the term ‘annuity contract’ means a com-  
14 mercial annuity (as defined by section  
15 3405(e)(6)), other than an endowment or life  
16 insurance contract.

17 “(C) MINIMUM PERIOD OF PAYMENTS.—  
18 For purposes of subparagraph (A), the term  
19 ‘minimum period of payments’ means a guaran-  
20 teed term of payments that does not exceed the  
21 greater of 10 years or—

22 “(i) the life expectancy of the annu-  
23 itant as of the annuity starting date, in the  
24 case of lifetime annuity payments de-  
25 scribed in subparagraph (A)(ii)(III), or

1                   “(ii) the life expectancy of the annu-  
2                   itant and joint annuitant as of the annuity  
3                   starting date, in the case of lifetime annu-  
4                   ity payments described in subparagraph  
5                   (A)(ii)(IV).

6                   For purposes of this subparagraph, life expect-  
7                   ancy shall be computed with reference to the ta-  
8                   bles prescribed by the Secretary under para-  
9                   graph (3). For purposes of subsection  
10                  (x)(1)(C)(ii), the permissible minimum period of  
11                  payments shall be determined as of the annuity  
12                  starting date and reduced by one for each sub-  
13                  sequent year.

14                  “(D) MINIMUM AMOUNT THAT MUST BE  
15                  PAID IN ANY EVENT.—For purposes of subpara-  
16                  graph (A), the term ‘minimum amount that  
17                  must be paid in any event’ means an amount  
18                  payable to the designated beneficiary under an  
19                  annuity contract that is in the nature of a re-  
20                  fund and does not exceed the greater of the  
21                  amount applied to produce the lifetime annuity  
22                  payments under the contract or the amount, if  
23                  any, available for withdrawal under the contract  
24                  on the date of death.”.

1           (c) RECAPTURE TAX FOR LIFETIME ANNUITY PAY-  
2 MENTS.—Section 72 of the Internal Revenue Code of  
3 1986 is amended by redesignating subsection (x) as sub-  
4 section (y) and by inserting after subsection (w) the fol-  
5 lowing new subsection:

6           “(x) RECAPTURE TAX FOR MODIFICATIONS TO OR  
7 REDUCTIONS IN LIFETIME ANNUITY PAYMENTS.—

8           “(1) IN GENERAL.—If any amount received  
9 under an annuity contract is excluded from income  
10 by reason of subsection (b)(5) (relating to lifetime  
11 annuity payments), and—

12                   “(A) the series of payments under such  
13 contract is subsequently modified so any future  
14 payments are not lifetime annuity payments,

15                   “(B) after the date of receipt of the first  
16 lifetime annuity payment under the contract an  
17 annuitant receives a lump sum and thereafter is  
18 to receive annuity payments in a reduced  
19 amount under the contract, or

20                   “(C) after the date of receipt of the first  
21 lifetime annuity payment under the contract the  
22 dollar amount of any subsequent annuity pay-  
23 ment is reduced and a lump sum is not paid in  
24 connection with the reduction, unless such re-  
25 duction is—

1           “(i) due to an event described in sub-  
2           section (e)(5)(A)(iii), or

3           “(ii) due to the addition of, or in-  
4           crease in, a minimum period of payments  
5           within the meaning of subsection (e)(5)(C)  
6           or a minimum amount that must be paid  
7           in any event (within the meaning of sub-  
8           section (e)(5)(D)),

9           then gross income for the first taxable year in  
10          which such modification or reduction occurs  
11          shall be increased by the recapture amount.

12          “(2) RECAPTURE AMOUNT.—

13                 “(A) IN GENERAL.—For purposes of this  
14                 subsection, the recapture amount shall be the  
15                 amount, determined under rules prescribed by  
16                 the Secretary, equal to the sum of—

17                         “(i) the excess of—

18                                 “(I) the amount that was ex-  
19                                 cluded from the taxpayer’s gross in-  
20                                 come under subsection (b)(5) for all  
21                                 taxable years prior to the modification  
22                                 or reduction described in paragraph  
23                                 (1), over

24                                 “(II) the amount that would have  
25                                 been excludible under such subsection

1 for such taxable years had such modi-  
2 fications or reductions been in effect  
3 at all times, plus

4 “(ii) interest for the deferral period at  
5 the underpayment rate established by sec-  
6 tion 6621.

7 “(B) DEFERRAL PERIOD.—For purposes  
8 of this subsection, the term ‘deferral period’  
9 means the period beginning with the taxable  
10 year in which (without regard to subsection  
11 (b)(5)) the payment would have been includible  
12 in gross income and ending with the taxable  
13 year in which the modification described in  
14 paragraph (1) occurs.

15 “(3) EXCEPTIONS TO RECAPTURE TAX.—Para-  
16 graph (1) shall not apply in the case of any modi-  
17 fication or reduction that occurs because an annu-  
18 itant—

19 “(A) dies or becomes disabled (within the  
20 meaning of subsection (m)(7)),

21 “(B) becomes a chronically ill individual  
22 within the meaning of section 7702B(c)(2), or

23 “(C) encounters hardship.”.

24 (d) LIFETIME DISTRIBUTIONS OF LIFE INSURANCE  
25 DEATH BENEFITS.—

1           (1) IN GENERAL.—Section 101(d) of the Inter-  
2           nal Revenue Code of 1986 (relating to payment of  
3           life insurance proceeds at a date later than death)  
4           is amended by adding at the end the following new  
5           paragraph:

6           “(4) EXCLUSION FOR LIFETIME ANNUITY PAY-  
7           MENTS.—

8           “(A) IN GENERAL.—In the case of  
9           amounts to which this subsection applies, gross  
10          income shall not include the lesser of—

11           “(i) 50 percent of the portion of life-  
12          time annuity payments otherwise includible  
13          in gross income under this section (deter-  
14          mined without regard to this paragraph),  
15          or

16           “(ii) the amount in effect under sec-  
17          tion 72(b)(5).

18          “(B) RULES OF SECTION 72(b)(5) TO  
19          APPLY.—For purposes of this paragraph, rules  
20          similar to the rules of section 72(b)(5) and sec-  
21          tion 72(x) shall apply, substituting the term  
22          ‘beneficiary of the life insurance contract’ for  
23          the term ‘annuitant’ wherever it appears, and  
24          substituting the term ‘life insurance contract’

1           for the term ‘annuity contract’ wherever it ap-  
2           pears.”.

3           (2) CONFORMING AMENDMENT.—Section  
4           101(d)(1) of such Code is amended by inserting “or  
5           paragraph (4)” after “to the extent not excluded by  
6           the preceding sentence”.

7           (e) EFFECTIVE DATE.—

8           (1) IN GENERAL.—The amendments made by  
9           this section shall apply to amounts received in cal-  
10          endar years beginning after the date of the enact-  
11          ment of this Act.

12          (2) SPECIAL RULE FOR EXISTING CON-  
13          TRACTS.—In the case of a contract in force on the  
14          date of the enactment of this Act that does not sat-  
15          isfy the requirements of section 72(c)(5)(A) of the  
16          Internal Revenue Code of 1986 (as added by this  
17          section), or requirements similar to such section  
18          72(c)(5)(A) in the case of a life insurance contract,  
19          any modification to such contract (including a  
20          change in ownership) or to the payments thereunder  
21          that is made to satisfy the requirements of such sec-  
22          tion (or similar requirements) shall not result in the  
23          recognition of any gain or loss, any amount being in-  
24          cluded in gross income, or any addition to tax that  
25          otherwise might result from such modification, but

1       only if the modification is completed prior to the  
2       date that is 2 years after the date of the enactment  
3       of this Act.

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