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Improving Access to Lifetime Income for Women: The Time to Act Is Now

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Research indicates that retirement savings are likely to be inadequate for many Americans, and particularly for women.[1] Recent losses in the stock market and poor economic conditions underscore that many U.S. workers are at risk of having insufficient income to provide for a secure retirement. Social Security benefits, which are lifelong, inflation-adjusted, and virtually universal, provide a solid foundation for retirement security, particularly for women. But Social Security benefits were not designed to be the sole source of income in retirement. Most Americans who save for retirement do so through the employer-based retirement system.[2] Unfortunately, even those individuals who participate in the employer-based retirement system run a substantial risk of outliving their savings.

As a result, ensuring access to a reliable stream of income throughout an individual's lifetime is important for all Americans, and particularly for women, who on average live longer, earn less, and spend less time in the workforce than men.[3] Policymakers are turning their attention to the issue. For example, in February, the De-

[1] *See generally* U.S. Gov't Accountability Office, Women Face Challenges in Ensuring Financial Security in Retirement, GAO-08-105 (Oct. 2007), *available at* http://www.gao.gov/new.items/d08105.pdf; Tori Finkle et al., Inst. for Women's Policy Research, The Economic Security of Older Women and Men in the United States (Dec. 2007), *available at* http://www.iwpr.org/pdf/BPD480.pdf.

[2] *See* Ruth Helman, Mathew Greenwald and Associates, & Craig Copeland and Jack VanDerhei, Employee Benefit Research Inst., Issue Brief No. 340, The 2010 Retirement Confidence Survey: Confidence Stabilizing, But Preparations Continue to Erode 34 (2010), *available at* http://www.ebri.org/pdf/briefspdf/ebri_ib_03-2010_no340_rcs.pdf.

partments of Labor and Treasury issued a Request for Information (RFI) Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans (20 PBD, 2/2/10),[4] while the Senate Special Committee on Aging held a hearing on the subject in June (115 PBD, 6/17/10; 37 BPR 1405, 6/22/10).[5] We believe that the time is ripe to improve access to and awareness of the benefits of lifetime income in retirement.

This article has three parts. The first part outlines the importance of guaranteed lifetime income to retirement security, especially for women. The second part advances two specific policy proposals: requiring employer-sponsored defined contribution plans to offer lifetime income options and informing workers about lifetime income options. Finally, the third part argues against two alternative policy proposals: providing tax-preferred treatment of annuity income and weakening existing spousal protections.

I. The Importance of a Stream of Lifetime Income, Especially for Women

The Employee Benefit Research Institute recently found that almost half of all early baby boomers (age 56 to 62) are at risk of having insufficient retirement resources to pay for their basic retirement expenses and uninsured health care costs.[6] Only half of all workers have access to retirement savings plans through their employers, and only 40 percent participate.[7] The continuing shift from defined benefit (DB) plans to defined contribution (DC) plans has exacerbated the challenge of securing adequate retirement income by shifting the risk and burden of financing retirement from employers to employees. Currently, very few women have access to a DB pension plan,[8] and thus to the secure lifetime income payments that DB pensions provide.

Across the board, DC plan balances are woefully inadequate for ensuring a secure retirement, but for a number of reasons, women save even less in DC plans.[9] Women's retirement savings are lower because women in general earn less than men: their wages are lower even when they work full-time, year-round, and they are more likely to take time out of the workforce or work part-time for caregiving at some point during their careers.[10] The Retirement Security Project found that in 2004, the median female worker near retirement with a defined contribution plan or IRA held $34,000 in her retirement accounts, while her male counterpart held $70,000.[11]

Women then need to make these more limited retirement savings extend over a longer lifespan. Because defined contribution plans typically pay out account balances as lump sums at retirement as opposed to annuities, workers bear the risk of managing their account balances so they can provide additional support over their lifetimes and, for many, the lifetime of a surviving spouse.

This ''longevity risk''—in which a retiree outlives his or her retirement savings—is especially manifest for women, because women on average live longer than men and spend more years alone.[12] Individuals can use their savings to purchase annuities from insurance companies, but they face a number of challenges:

- 1. Annuity products are expensive and confusing.
- 2. Few insurance companies offer annuities that provide inflation-adjusted monthly payments (and the effects of inflation can be significant).
- 3. Insurance companies generally charge similarly situated women more than men for an annuity in the individual market.
- 4. Individuals must have confidence in the ability of the company offering the annuity to continue to make payments for decades to come, but protections vary around the country.

Moreover, there are other reasons for which individuals may be reluctant to purchase annuities, such as the desire to leave a bequest or have enough liquid assets to deal with unplanned expenses. Although insurance companies offer options that address some of these issues, increasing the number of options reduces lifetime income, increases costs, and also creates complexity.

Increasing women's ability to receive distributions from their employer-based retirement savings accounts as lifetime income payments could address some of these challenges and bring them closer to achieving a secure retirement.

II. Requiring a Lifetime Income Option and Passing the Lifetime Income Disclosure Act Could Increase Lifetime Income for Women

As the foregoing suggests, there are a number of reasons that many workers, including many women, will not have enough income to supplement Social Security through their retirement. And there are a variety of ways that this shortfall could be addressed. In our view, there are two particularly promising policy proposals that could have a significant impact on women and other vulnerable workers.

Require a Lifetime Income Option. Employer-based defined contribution plans, which dominate in the employer-based retirement savings system, should be

[3] Leslie E. Papke, Lina Walker, & Michael Dworsky, The Retirement Security Project, Retirement Security for Women: Progress to Date and Policies for Tomorrow 1–5 (2008), *available at* http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Retirement_security/RSP-PB_Women_FINAL_4.2.2008.pdf.

[4] Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans, 75 Fed. Reg. 5,253 (Feb. 2, 2010).

[5] *The Retirement Challenge: Making Savings Last a Lifetime: Hearing before the S. Spec. Comm. on Aging,* 111th Cong. (2010).

[6] Jack VanDerhei and Craig Copeland, Employee Benefit Research Inst., Issue Brief No. 344, The EBRI Retirement Readiness Rating:™ Retirement Income Preparation and Future Prospects 1 (2010), *available at* http://www.ebri.org/pdf/briefspdf/EBRI_IB_07-2010_No344_RRR-RSPM.pdf.

[7] Craig Copeland, Employee Benefit Research Inst., Issue Brief No. 336, Employment-Based Retirement Plan Participation: Geographic Differences and Trends, 2008, at 8 fig.1 (2009), *available at* http://www.ebri.org/pdf/briefspdf/EBRI_IB_11-2009_No336_Ret-Part.pdf.

[8] Papke, Walker, & Dworsky, *supra* note 3, at 4 tbl. 1.

[9] *Id.* at 4.

[10] NWLC calculations based on Bureau of Labor Statistics, Dep't of Labor, Women in the Labor Force: A Databook 69–72 tbl. 20 (Sept. 2009), *available at* http://www.bls.gov/cps/wlf-databook-2009.pdf.

[11] Papke, Walker, & Dworsky, *supra* note 3, at 4.

[12] *Id.* at 1, 5.

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required to offer workers the option to receive their retirement savings in the form of an annuity if they exceed a minimum amount.

There are distinct advantages to lifetime income payment options offered through employer-sponsored plans, as compared to annuities purchased from a private insurance company. First, women would not face higher prices than men when purchasing annuities through an employer-sponsored plan, as they would on the open market. Federal law prohibits employers from requiring women to pay more than men for annuities offered through employer-based retirement savings plans.

In addition, employer-based retirement savings plans may be able to negotiate lower fees overall, premised on a group rate—which is particularly important for workers with lower account balances (who are disproportionately women). Further, as increasing numbers of participants in employer-sponsored plans select annuities, costs (and risk) could be spread out while concomitantly reducing the price of annuities.

Finally, lifetime income options offered through employer-based retirement plans would benefit women, because they would trigger important spousal protections. If a participant in a DC plan elects an annuity, joint and survivor protections apply. This means that, as in a DB plan, the default form of benefit for married participants is an annuity that provides a benefit for the joint life of the worker and his or her spouse, and, after the worker's death, a reduced benefit that continues for the life of the spouse. The spouse can waive the survivor annuity. Because women rely more heavily on a spouse's pension benefits,[13] such spousal pension protections disproportionately help women. Indeed, spousal benefits in DB plans have been shown to substantially boost women's pension income.[14] But many fewer employers offer DB plans, and, unless a DC plan includes an annuity and a participant elects lifetime payments, current law does not provide commensurate spousal rights to DC plans.

Currently, most participants in DC plans take distributions of their benefits in the form of a lump sum at retirement or roll their account balances over into another tax-qualified retirement savings plan when they change jobs prior to retiring, without any involvement from their spouses.[15] Thus, a substantial pool of retirement wealth—approximately $6.3 trillion in 2008[16]—is shielded from joint decision making and can be placed out of the reach of spouses when they need it most. Requiring DC plans to offer a lifetime income option would expand the protections available to spouses in those plans.

For all the reasons discussed above, requiring DC plans to offer a lifetime income payout option would benefit workers, including the most vulnerable workers and women.

Inform Workers About Lifetime Income Options. Although workers understand that traditional DB pensions provide a lifetime income stream, few workers conceptualize their DC plan balances in terms of a potential lifetime stream of income.[17] This is because, as discussed above, few DC plans offer annuities and, in addition, many people are unaware that they can purchase annuities on the open market with their retirement savings account balances. Instead, participants are left to determine on their own how to appropriately draw down from their savings so they can meet current needs without exhausting their assets prematurely.

Consequently, lifetime income options should be offered in conjunction with significant educational efforts for plan participants. For example, the Lifetime Income Disclosure Act (S. 2832), introduced in 2009 by Senators Bingaman, Isakson and Kohl, would require 401(k) plans to inform participants of the projected monthly retirement income they could purchase, based on their existing 401(k) account balance.[18] The bill models the proposed statements after current annual Social Security statements, which tell Americans the amount of benefits they can expect to receive in retirement based on current earnings. While the bill does not mandate or even facilitate the purchase of annuities through DC plans, it would afford participants personalized information about the purchasing power of their retirement savings. This would enable plan participants to better plan for retirement, by raising awareness of the need for secure lifetime income in retirement and helping them understand in a concrete way what income they could receive from their savings. Passing the Lifetime Income Disclosure Act would therefore be an important step forward.

III. Tax-Preferred Treatment of Annuity Income and Weakening Spousal Protections Would Not Help, and Would in Fact Undermine, Women's Retirement Security

Tax Incentives. There have been numerous proposals over the last decade to encourage people to purchase annuities on the open market by providing tax incen-

[13] According to NWLC calculations based on the 1998 Health and Retirement Study, 87 percent of married women as opposed to 31 percent of married men relied on their partner's pension income.

[14] Frank Porell & Beth Almeida, Nat'l Inst. on Retirement Security, The Pension Factor: Assessing the Role of Defined Benefit Plans in Reducing Elder Hardships 4, 5 tbl. 2 (July 2009), *available at* http://www.nirsonline.org/storage/nirs/documents/pension_factor_web.pdf.

[15] *See* Ken McDonnell, *Retirement Annuity and Employment-Based Pension Income, Among Individuals Age 50 and Over: 2008*, EBRI Notes (Employee Benefit Research Inst., Washington, D.C.), May 2010, at 17, *available at* http://www.ebri.org/pdf/notespdf/EBRI_Notes_05-May10.IAs.pdf (finding, based on 2009 data from Hewitt Associates, that only 14 percent of employers who offered tax code Section 401(k) plans offered annuity options, while 100 percent offered lump-sum distributions, and that 99 percent of retirees who were offered annuity options in their 401(k) plans instead elected to receive a lump-sum distribution).

[16] Craig Copeland, Employee Benefit Research Inst. Issue Brief No. 333, Employment-Based Retirement Plan Participation: Geographic Differences and Trends, 2008, at 4 fig.1 (2009), *available at* http://www.ebri.org/pdf/briefspdf/EBRI_IB_8-2009_No333_SCF.pdf.

[17] U.S. Gen. Accounting Office, GAO-10-632R, Retirement Income: Challenges for Ensuring Income Throughout Retirement 10 (2010), *available at* http://www.gao.gov/new.items/d10632r.pdf.

[18] Lifetime Income Disclosure Act, S. 2832, 111th Cong. (2009).

tives.[19] Generally, these incentives take the form of excluding annuity payments, up to a certain amount, from income tax. To begin with, if an annuity were purchased with funds from a DC account or an IRA, the individual would be receiving a tax benefit *on top of* the tax-favored treatment already accorded to those funds (including exclusion from income for contributions to DC plans and certain IRA contributions, deferred taxation on account balance investment growth, and deferred taxation on rollovers into certain IRAs).

In addition, excluding annuity payments from income provides the greatest tax benefits to individuals in higher tax brackets. These higher-income individuals are already more likely to have sufficient retirement savings to be able to have a retirement investment strategy that includes purchasing annuities, raising the question of whether such a tax incentive would simply reward such individuals for doing what they would have done anyway, even without the tax incentive.

Therefore, excluding annuity income from taxable income is unlikely to have a significant effect upon low- and moderate-income tax filers, while reducing revenues needed to fund vital services and control long-term deficits. In contrast, requiring lifetime income options to be offered from DC plans has no revenue impact and offers benefits (simplicity, protections against sex discrimination, likely lower costs) that are equally available and beneficial for workers across a wide range of incomes.

Spousal Protections. In addition, some groups have recommended (for example, in the RFI comments (85 PBD, 5/5/10; 37 BPR 1083, 5/11/10) and in testimony submitted to the Senate Aging Committee) amending the qualified joint and survivor annuity (QJSA) rules, which provide important spousal protections, asserting that this would encourage employers to offer annuity options by reducing costs and/or limiting employers' fiduciary liabilities.[20] Specific modifications that have been proposed include:

- Eliminating QJSA requirements altogether for annuities in DC plans;
- Issuing guidance specifying that electing an annuity at the investment stage or participating in certain types of new annuity products does not trigger QJSA rules; and
- Providing for the use of particular electronic technologies, including PIN numbers, in effectuating QJSA requirements.

We are sympathetic to employers' concerns regarding administrative burdens and costs. But some of these proposals (such as the first and second) would effectively eliminate the spousal protections that apply under current law to annuities offered under DC plans. And spousal protections are vital to women, who are more likely than men to rely on their spouses' retirement benefits. Among widowed spouses, 21 percent of widows—compared to just 5 percent of widowers—receive pension benefits based on the pension of a deceased spouse.[21] Spousal pension protections, moreover, have been demonstrated to increase women's retirement security. After Congress passed the Retirement Equity Act of 1984 (REA), which made a QJSA the default for defined benefit pension plans for married workers, the number of married men who provided a survivor annuity for their spouses increased 15 percent,[22] ensuring a more secure retirement for many more widows. In contrast, it is unclear whether weakening the QJSA rules would in fact induce more plans to offer lifetime income options (since at least one association of investment companies has stated that the reason that plan sponsors do not offer annuities is not the QJSA requirements but low demand from participants).[23]

We are also concerned about proposals that seek to expand the use of electronic technologies to administer QJSA requirements. Advocates of this proposal contend that allowing employers to make greater use of electronic technologies in this context would ease administrative costs, and again, we understand that is important to employers. However, the expanded use of electronic technologies has the potential to place spousal protections in jeopardy.

For example, ERISA requires that spouses consent to waive spousal pension benefits, in writing, in the presence of a notary public or plan administrator.[24] This is intended to reduce the possibility of fraud, given the importance of the benefit being waived. The Department of the Treasury recently considered the extent to which electronic technologies should be employed in the transmission of spousal consent.[25] During the period for public comment to the Department's proposed rulemaking, some urged that, for example, spouses could be issued a PIN number, with which spousal consent could be effectuated through a website or telephonically. The Treasury Department concluded in its final regulations that a spouse could provide consent with an electronic signature, in the presence of a notary public or plan administrator, but rejected the use of PIN numbers or telephonic technologies.[26] Indeed, the Treasury

[19] *See, e.g.,* Retirement Security Needs Lifetime Pay Act of 2009, H.R. 2748, 111th Cong. (2009).

[20] *See, e.g.,* MetLife, Comments in Response to Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans 15–16 (May 3, 2010), *available at* http://www.dol.gov/ebsa/pdf/1210-AB33-695.pdf; ING Insurance U.S., Comments in Response to Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans 31 (May 3, 2010), *available at* http://www.dol.gov/ebsa/pdf/1210-AB33-635.pdf; Vanguard, Comments in Response to Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans 20 (May 3, 2010), *available at* http://www.dol.gov/ebsa/pdf/1210-AB33-691.pdf.

[21] Pension & Welfare Benefits Admin., U.S. Dep't of Labor, Retirement Benefits of American Workers: New Findings from the September 1994 Current Population Survey tbl.D11 (1995), *available at* http://www.dol.gov/ebsa/programs/opr/redbook/d_11.htm.

[22] U.S. Gen. Accounting Office, GAO/HRD-92-49, Pensions Plans: Survivor Benefit Coverage for Wives Increased After 1984 Pension Law 7 (1992) (examining data from 1984–1989), *available at* http://archive.gao.gov/t2pbat6/146159.pdf.

[23] *See, e.g.,* Investment Co. Inst., Comments in Response to Request for Information on Lifetime Income Options 25 (May 3, 2010), *available at* http://www.dol.gov/ebsa/pdf/1210-AB33-650.pdf.

[24] 29 U.S.C. § 1055(c)(2)(A).

[25] Use of Electronic Technologies for Providing Employee Benefit Notices and Making Employee Benefit Elections and Consents, 71 Fed. Reg. 61,877, 61,882–83 (Oct. 20, 2006) (codified at 26 C.F.R. § 1.401(a)21), *available at* http://edocket.access.gpo.gov/2006/pdf/E6-17528.pdf.

[26] *Id.* at 61,882.

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regulations provided instead that electronic procedures may be used to effectuate spousal consent *only* if ''reasonably designed to preclude any person other than the appropriate individual from making the election,''[27] and, in particular, if the procedures ''provide the same safeguards for participant elections as are provided through the physical presence [before a notary or plan administrator] requirement.''[28] Thus, we believe that broadening the use of electronic technologies beyond what has recently been permitted through regulation poses a serious threat to spousal rights.[29]

[27] 26 C.F.R. § 1.401(a)–21(d)(3) (2009).

[28] 26 C.F.R. § 1.401(a)–21(d)(6)(iii) (2009).

[29] Commentators, including NWLC and the Pension Rights Center, submitted that the use of electronic media to waive a survivor annuity, even to the extent permitted under the regulations, presents authentication concerns, among other things. *See* 71 Fed. Reg. 61,877, 61,882 (Oct. 20, 2006) *available at* http://edocket.access.gpo.gov/2006/pdf/E6-17528.pdf.

In sum, spousal protections in retirement savings are extremely important for women, and reducing those protections in the hope of encouraging employers to offer greater access to lifetime income presents a significant risk that policymakers should not take.

Conclusion

The time is right to take steps to increase women's – and all workers'— retirement security by increasing access to lifetime income options and awareness of the retirement income crisis. There's no silver bullet, but proposals requiring DC plans to offer lifetime income options and to provide 401(k) participants with the estimated monthly annuity payments that would result from purchasing an annuity with their 401(k) account balance, hold significant promise. Policymakers should take the opportunity to take serious action today to improve retirement security in the future.