



April 5, 2018

The Honorable Orrin G. Hatch
104 Hart Office Building
Washington, DC 20510

The Honorable Ron Wyden
221 Dirksen Senate Office Bldg.
Washington, D.C., 20510

Re: Comments on the Retirement Enhancement and Savings Act of 2018 (RESA 2018 S. 2526)

Dear Senator Hatch and Senator Wyden:

On behalf of the Institutional Retirement Income Council (IRIC), we are writing to provide IRIC's views on the important issues addressed in The Retirement Enhancement and Savings Act of 2018 (S. 2526) ("RESA"). We share the concerns expressed by you, as the sponsors of RESA, in particular those related to expanding and preserving retirement savings as well as certain administrative improvements and appreciate the substantive and practical approach being taken in the proposed legislation dealing with the critical issue of lifetime retirement income.

IRIC is comprised of and represents the collective views of a broad cross-section of service providers in the Defined Contribution industry. The mission of IRIC is to facilitate the culture shift of defined contribution plans from supplemental savings programs to programs that provide retirement security through lifetime income. By providing a forum for insightful, solutions-oriented thought leadership on institutional retirement income, IRIC is promoting the need for retirement income adequacy for defined contribution plan participants. IRIC members believe in and promote the concept that 401(k) and similar plans need to become distribution income vehicles and not merely savings vehicles.

We believe that the legislation as proposed will help encourage plan sponsors to include lifetime income products in their plans (for example, many insurers today offer a guaranteed minimum withdrawal benefit or "GMWB" product as a type of guaranteed income investment within a defined contribution plan). When a plan offers a GMWB, participants can receive lifetime income distributions directly from their DC plan instead of being required to take a distribution and roll over to more expensive retail products. The additional security this legislation provides is significant. Many participants and sponsors do not realize the institutional buying power a retirement plan has with its investment provider, insurance carrier and / or recordkeeper. Large plans can offer investments with fees as low as 0.1% to 0.2% while investment fees in IRAs can be substantially higher than 1%.

The same is true for guaranteed income products. For example, one insurer that offers a GMWB in the retail market has an all-in fee that can exceed 3%, depending on the investments selected, while in the institutional market, the all-in fee can be at or below 1.5%. Over many years, this difference in fees can have a dramatic effect on a participant's retirement security. In fact, in May of 2016, *Plan Sponsor Journal* reported that "... Paying just 1% more in fees would cost a Millennial more than \$590,000 in sacrificed returns over 40 years of saving. . ."

Keeping assets in institutionally priced funds and income products through the D.C. system offers Americans an efficient way to buy guaranteed income that can provide them additional security through their retirement years. Every day, \$1 billion dollars leaves defined contribution plans and is rolled over to the retail / rollover IRA part of the financial services marketplace. Thus, the opportunity for real enhanced security for American workers is quite significant as baby boomers continue their march to retirement. Said plainly, in our view RESA will greatly enhance America's retirement security.

IRIC and its members strongly support the concept of providing defined contribution participants with:

- Additional knowledge on their own retirement readiness through "income" projections on participant statements
- The ability to protect the benefits of an investment in a guaranteed income product in the event their plan sponsor decides to no longer offer the guaranteed product
- The security and comfort associated with an approved methodology to ensure appropriate fiduciary review of the insurer offering the guarantee

We appreciate the fact that RESA will make significant strides in bringing additional security to future retirees.

In keeping with this goal, IRIC offers the following comments on these general points.

1. **Additional knowledge on their own retirement readiness through "income" projections on participant statements**

Summary: IRIC believes that viewing defined contribution balances as a stream of income in addition to the dollar amount will be a valuable education for participants, which will enhance their retirement security. We suggest that RESA make it clear that in issuing its model disclosure the Department of Labor can use either the current balance / accrued benefit or the projected balance / projected accrued benefit under the plan.

IRIC agrees with the notion that converting a participant's balance and accrued benefit into useful "income" figures will help participants understand their income, security and retirement readiness. A significant issue, however, is the amount on which the projection is to be based. In 2013, in its proposal on income projections on participant statements, the Department of Labor suggested that the rule would require that the current balance and current accrued benefit be **projected** to normal retirement age:

"(vi) If the participant has not reached normal retirement age as defined under the plan, the current dollar value of the **projected** (emphasis added) account balance at normal retirement age" ...would be used based on certain assumptions.

IRIC agrees with this concept. As the legislation moves forward, we believe it should be made clear to the Department of Labor that the term "lifetime income stream equivalent" could be based on the current **or projected** accrued benefit. In the current draft of RESA, it could be interpreted by some to preclude the projection of a participant's balance to the participant's normal retirement age. Section 203(b) of the bill states:

"For purposes of this subparagraph, the term *lifetime income stream equivalent of the total benefits accrued* means the amount of monthly payments the participant or beneficiary would receive if the **total accrued benefits** of such participant or beneficiary were used to provide lifetime income streams described in subclause (III), based on assumptions specified in rules prescribed by the Secretary." [Emphasis added]

If the language is intended to limit the projection to the current balance, this could lead to serious unintended consequences. For example, if a participant with a small balance received a lifetime income equivalent, it would reflect a nearly meaningless lifetime income figure. This might actually discourage the participant from further participation in the plan because the participant might think, "If all I'm going to get is \$5.00 a month, why should I bother putting money away

in this plan?” But if the amount is projected out to normal retirement age using reasonable assumptions, the participant would, in our view, see the benefit of continued participation.

While there have been past regulatory attempts to require lifetime income projections for participants, they have not come to fruition. Thus, we agree as stated in RESA that this important disclosure requirement should be enacted through the legislative process with a directive to the DOL to issue regulations and a model disclosure. We further believe that directing the DOL to draft regulations that are consistent with existing rules that define “Lifetime Income Streams,” as an annuity under ERISA Section 205(d), will drive the consistent message American workers need.

We also submit that it is important for the legislation and subsequent regulations to assure plan sponsors that they will be protected from liability in providing these projections. Thus, the limitation of liability afforded plan sponsors in the legislation is, in our view, essential to the success of the lifetime income projection process.

2. The ability to protect the benefits of an investment in a guaranteed income product in the event their plan sponsor decides to no longer offer the guaranteed product

Summary: The portability provision in RESA will break down a barrier to adoption of guaranteed products, thereby enhancing and protecting American’s retirement security.

One of the barriers to offering and adopting guaranteed products is the possibility that participants would be forced to surrender their guaranteed stream of income if the plan sponsor no longer offers the insurance contract or investment vehicle that will provide the guaranteed income. This can have a detrimental effect on the security of the participant who is forced to liquidate the investment. Consider the following two examples:

- A. Suppose a participant age 56 who wants to retire in three years decided to transfer \$200,000 of his / her assets into a balanced fund that offers a guaranteed minimum withdrawal benefit. The benefit requires the insurance company to calculate the guaranteed income on the Income Base (the Income Base is the highest market value on the anniversary date of the contract) and not on the current market value of the investment. If the markets fell 20% over the next two years, the participant would be protected because the income he / she would receive would be based on \$200,000 (the income base) and not the market value of \$160,000. However, if the plan sponsor decided to no longer offer this GMWB investment, the participant would lose his / her guarantee, the fees he / she paid would have been for naught, and the participant would then have to invest the \$160,000 into different available investment options within the plan. This participant would not have the security needed to retire when planned. However, the provisions in RESA enable this participant to rollover to an Individual Retirement Annuity or receive a Plan Distributed Annuity from the plan, both of which preserve his / her income base of \$200,000, even though he/she has not otherwise experienced a distributable event (generally termination of employment, death, disability or, in the case of a 401(k) plan, achieving age 59-1/2 when the plan so provides)
- B. Similar to the above, suppose a participant had purchased a deferred fixed annuity (DFA) within the plan and had been contributing to this DFA over the last 10 years at a variety of interest rates that were in affect at the time of the purchase. Further, assume that the plan sponsor no longer wants to offer this investment and assume that the current interest rates are lower when the decision is made than they were over the prior 10 years. Since the participant under current law does not have a distributable event, he / she would be required to accept the current market value ascribed to the DFA he/she purchased. Additionally, if the low interest rate environment persists, that participant upon retirement would purchase a new DFA (or immediate annuity) in the retail market and the amount of income the participant purchased would be far less than the amount purchased during the 10 year pay-in period described above. The ability to purchase institutionally priced deferred income with dollar cost averaging can be beneficial to near retirees and helps mitigate the “point in time” interest rate risk that retirees face when making annuity purchases at retirement with a lump sum. RESA 2018 would enable this participant to keep his/her guaranteed income and preserve the security in the retirement plan by enabling

this participant to rollover to an Individual Retirement Annuity or receive a Plan Distributed Annuity, both of which preserve his / her guaranteed stream of income.

We recognize that IRAs can be liquidated at any time for any reason by the IRA owner. Thus, the ability to rollover Lifetime Income Investments within a DC plan could give rise to leakage concerns. However, we submit that participants who purchase investments with lifetime income guarantees are not interested in monetizing and liquidating their guaranteed income. We believe they will either leave the GMWB product in the employer plan (if the plan so permits) or they will rollover their GMWB product to protect their retirement income.

Thus, IRIC does not believe that the enhanced rollover provisions will increase leakage. In fact, we submit that the additional awareness of guaranteed income by Americans who have this type of benefit will lead to additional awareness of retirement security and will have the effect of abating leakage from our retirement system.

In 2015, representatives of IRIC met with Treasury officials regarding issues under the Internal Revenue Code related to GMWB products. In discussing the portability issue, the Treasury officials asked us to determine if a rollover to an IRA product would provide the portability needed to preserve the benefit, but at higher retail fees. Through a survey of our members and others in the industry, we determined that portability was widely available, but *not* at an increased cost. We described the results of our survey as follows in a follow-up letter we sent to Treasury at that time:

“Portability (of guaranteed products in defined contribution plans) is available by all providers to an IRA product. Also, at least four providers (perhaps more) have parallel IRAs that have either the same fees as the institutional version of the GMWB product or an IRA version that is less expensive than their retail version.”

There has been no erosion of these facts in the intervening years.

3. The security and comfort associated with an approved methodology to ensure appropriate fiduciary review of the insurer offering the guarantee

Summary: Fiduciary risk has been identified as the principal reason plan sponsors have not adopted guaranteed income products. The safe harbor in the legislation is a sensible and efficient way to proceed. The safe harbor also provides to participants significant fiduciary oversight and protection while giving plan sponsors a safe harbor road map to meet their fiduciary duty regarding the adoption of lifetime income products.

IRIC appreciates the fiduciary safe harbors in the legislation. Leveraging the state regulatory requirements is, in our view, a sensible way for plan fiduciaries to ensure the financial strength of the insurer and determine that it can meet the claims paying obligation of the guaranteed products offered in the DC plan.

We have heard consistently that a key barrier to inclusion of guaranteed income in D.C. plans is the perceived fiduciary risk such products will have on the fiduciary committee / employer. In fact, in 2016 Willis Towers Watson surveyed more than 200 large plan sponsors and asked: *How important are the fiduciary risks of lifetime income products as a barrier to adopting a lifetime income solution today?* Approximately half (48%) of plan sponsors identified fiduciary risk as extremely important and almost all (99%) plan sponsors identified this risk as either moderately important, very important or extremely important.

The well thought out representations in the legislation that the employer should receive from the insurer is, in our view, a way to certify the financial strength of the insurer that will provide protections to participants and at the same time comfort to plan fiduciaries that they can safely select a lifetime income product for the plan. It strikes the right balance of a sound fiduciary process with assurance to the plan fiduciaries that they are not taking on significant liability. It enables a consistent and straight forward approach that can leverage a repeatable fiduciary process while making use of available information that financially sound insurers will have or can readily prepare. We believe that this safe harbor will introduce

additional guaranteed income into the DC system by the strongest and most financially stable insurers. In short, we believe the legislation will further a number of policy objectives while ensuring participants will have products that are financially sound with fiduciary oversight and protections.

We recognize that the legislation has additional positive retirement changes. Because of the principal focus of this organization, however, we have reserved our comments to those provisions that we believe will be the most impactful to our mission and the retirement security of America's workforce.

Policy rational

Retirees in a defined contribution plan system face a number of risks:

- Longevity risk, *i.e.*, the possibility that they will outlive their retirement savings;
- Investment risks;
- Distribution risks, *i.e.*, that they will spend their retirement savings too fast;
- Inflation risk; and
- Cognitive risk, *i.e.*, the impairment of a senior to make financial decisions as they age.

Many institutional guaranteed income products address these risks.

We favor any legislative or regulatory initiatives that helps to promote a steady stream of income for a growing segment of the population and prevents Americans from falling victim to the wealth effect of a large lump-sum and spending it too early in retirement. We favor any legislative or regulatory initiatives that helps protect Americans from the risks that retirees face. We favor any legislative or regulatory initiatives that helps protect retirement savings in recognition of the expected increases in health care costs and long-term care requirements. We believe that the elements of RESA discussed above will have positive policy benefits well beyond providing for additional retirement security, and we appreciate your sponsorship of this important legislation.

The members of the IRIC Regulatory Committee, Bruce Ashton, William Charyk, Douglas McIntosh, Jr. and Robert Melia, participated in the preparation of this letter

Please contact either William Charyk or Robert Melia with any questions or thoughts you would like to share.

Sincerely,

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AND

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