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October 15, 2010

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, D.C. 20210  
**ATTN: Lifetime Income Joint Hearing**

Re: Joint Public Hearing on Lifetime Income – Written Comments

Ladies and Gentlemen:

This comment letter is submitted on behalf of the group of financial service companies for which FMR LLC is the parent company (collectively, "Fidelity Investments"). This letter supplements testimony provided at a joint public hearing held by the U.S. Department of Labor and the U.S. Treasury Department (the "Agencies") on September 14-15, 2010.

Fidelity Investments companies provide investment management, recordkeeping, brokerage, directed trustee and custodial services to thousands of retirement plans covering millions of participants and to more than 8.5 million individual retirement accounts ("IRAs"). Fidelity Investments currently provides an array of funds, products and services designed to provide plan participants and IRA investors with a stream of income in retirement, including an annuity purchase service utilized by an increasing number of IRA investors.

**Background:**

The Agencies had issued a Request for Information ("RFI") on a broad range of issues relating to lifetime income after retirement for participants and beneficiaries in individual account plans and individual retirement plans. Fidelity Investments submitted written comments in response to the RFI. Testimony at the joint hearing was provided on behalf of Fidelity Investments by Elizabeth L. Heffernan, Vice President, Personal and Workplace Investment Product Management, and her testimony addressed some of the challenges confronted in developing educational materials and tools or services for plan participants and their beneficiaries on lifetime income.

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The dramatic growth of participant-directed 401(k) and other defined contribution plans in the early 1990's prompted the need for more robust investment education for participants. Plan administrators and service providers began developing educational materials, services and on line tools that could provide participants with a more concrete view of diversified asset allocation, including model portfolios consisting of investment options offered in their plan. Interpretive Bulletin 96-1 (the "Bulletin") was issued in response to the concerns of plan sponsors and service providers that such assistance could be deemed to constitute investment advice under ERISA. The Bulletin expressed an "increasing recognition of the importance of providing participants and beneficiaries, whose investment decisions will directly affect their income at retirement, with information designed to assist them in making investment and retirement-related decisions appropriate to their particular situations."

#### **Interpretive Bulletin 96-1 and Lifetime Income:**

As demonstrated by the extensive response to the RFI, attention has shifted to the manner in which participants withdraw their 401(k), 403(b), and IRA funds in retirement. Plan sponsors and their service providers will need to develop additional educational tools for participants who are near or starting retirement to help them make thoughtful investment decisions with respect to their "spend-down" phase. Similar assistance will be needed for IRA investors. In both the RFI and the invitation to testify at the joint hearing, the Agencies asked for comments regarding the application of the Bulletin to a participant's retirement or distribution phase.

As an initial matter, the 2009 ERISA Advisory Council on Welfare and Pension Plans recommended that the Department of Labor immediately amend the Bulletin to expand its scope to the distribution phase of retirement planning in order to help improve the financial literacy of the participant population. The Council report referred to distribution options and in-plan and out-of-plan payments. The Council report also noted that the 2007 and 2008 Advisory Council reports had included similar recommendations.

Corresponding to educational tools that illustrate investment diversification during the participant's active years of participation, new tools could provide the participant user with a fund or product category model allocation that would be intended to reflect the time horizons and risk profiles expressed by the participant. Our experience to date suggests that there is no one approach for retirees because of the vast differences in personal situations. Ultimately the user may be shown an illustration with a mix or model of actual funds or income producing products as one possible way to achieve the category allocation based on the user's stated preferences. An interactive tool could also give the user an opportunity to change the illustration and substitute other products and funds.

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It appears that the legal framework for such educational tools is covered by the approach provided in the Bulletin, even though certain aspects, including those unique to investments producing guaranteed income, are not specifically addressed in the Bulletin. Nevertheless, the tool would still be intended to assist participants in making their own investment and retirement-related decisions appropriate to their particular situation.

We do not see anything in the current wording of the Bulletin that would prevent its application to this kind of educational tool. Indeed, the Bulletin confirms that it is only a safe harbor and that no inferences should be drawn with respect to services not specifically described therein. It also refers to education about estimating retirement income needs. Nevertheless, particularly in light of the increased focus on forms of distribution in retirement, we think that Department of Labor clarification and confirmation of its application with respect to lifetime income would be beneficial to service providers, plan sponsors, participants and IRA owners alike.

In particular, we suggest that the Department add a specific reference to the allocation of assets to lifetime income in the general investment principles examples of investment education in subparagraph (d)(2). In addition, subparagraphs (d)(3) and (d)(4) should be expanded to include model portfolios for hypothetical participants with similar time horizons and risk profiles that include funds or products that are intended to provide a stream of income during a participant's retirement years.

We also strongly suggest that the Department add a new fifth category of educational materials to paragraph (d) that addresses a participant's consideration of lifetime products that are available outside the plan. As noted in the RFI and confirmed by many of the responses by participants in the private retirement system, most 401(k) and other individual account plans don't offer annuity products, either as an in-plan or as a distribution option. That is, the modeling could inform the participant of possible options in investing or allocating funds withdrawn from the plan. Such additional guidance would provide comfort to plan sponsors that want to better prepare their participants for the more complicated decisions to be made for a participant's retirement years.

Finally, the Bulletin imposes a number of conditions if the educational service or tool illustrates diversified asset allocation by providing model portfolios comprised of investment options offered by the participant's plan:

- (1) all material facts and assumptions on which the model portfolios are based must be disclosed;

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- (2) the participant must be notified of the availability of other plan investments with similar risk and return characteristics; and
- (3) the participant must be reminded of the need to consider his or her non-plan assets in any decision-making by the participant.

All of these conditions would appear to be equally applicable in providing model lifetime income illustrations for hypothetical participants with different time horizons and risk profiles, and we request the Department to confirm that this is the case. This is particularly important because the retirement phase for a participant does introduce a new dynamic, namely that the participant may withdraw his or her entire plan balance, either gradually as an income stream or as a lump sum. The lump sum may in turn be rolled over to an IRA, so that lifetime income may be obtained instead through the IRA.

As noted above, the Bulletin states that educational materials that include model portfolios should remind the participant to consider his or her non-plan plan assets in assessing whether the plan account asset allocation is suitable for his or her needs. The retirement phase warrants an additional emphasis on this issue because the participant may need to consider products not available from the plan to fulfill his or her preferences for lifetime income.

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In conclusion, we appreciated the opportunity to testify at the public hearing and submit this supplemental material. Please let me know if any additional information would be helpful in your deliberations.

Respectfully,



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