H.R. 1

To amend the Internal Revenue Code of 1986 to encourage guaranteed lifetime income payments by excluding from income a portion of such payments.

IN THE HOUSE OF REPRESENTATIVES

Mr. POMEROY introduced the following bill; which was referred to the Committee on _______________________

A BILL

To amend the Internal Revenue Code of 1986 to encourage guaranteed lifetime income payments by excluding from income a portion of such payments.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Retirement Security Needs Lifetime Pay Act of 2009”.

SEC. 2. EXCLUSION FOR LIFETIME INCOME PAYMENTS.

(a) LIFETIME INCOME PAYMENTS UNDER ANNUITY CONTRACTS.—Subsection (b) of section 72 of the Internal
Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(5) **Exclusion for lifetime income payments.**—

“(A) **In general.**—In the case of lifetime income payments received under one or more annuity contracts (which are not taken into account under subparagraph (B)) in any taxable year, gross income shall not include 50 percent of the portion of such payments which would (without regard to this paragraph) be includible in gross income under this section. For purposes of the preceding sentence, the amount excludible from gross income in any taxable year shall not exceed $10,000.

“(B) **Lower percentage exclusion and separate limitation for annuities provided under certain retirement plans.**—In the case of lifetime income payments received under any qualified retirement plan (as defined in section 4974(c)), or any eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(c)(1)(A), gross income shall not include 25 percent of the portion of
such payments which would (without regard to this paragraph) be includible in gross income under this section. For purposes of the preceding sentence, the amount excludible from gross income in any taxable year shall not exceed $5,000 (twice such amount in the case of a joint return).

“(C) Cost-of-living adjustment.—In the case of taxable years beginning after December 31, 2010, the dollar amounts in subparagraphs (A) and (B) shall each be increased by an amount equal to—

“(i) such dollar amount, multiplied by

“(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2009’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of $100, such amount shall be rounded to the next lower multiple of $100.

“(D) Application of paragraph.—Subparagraphs (A) and (B) shall not apply to—
“(i) any amount received under a defined benefit plan,

“(ii) any amount paid under an annuity contract that is received by the beneficiary under the contract—

“(I) after the death of the annuitant in the case of payments described in subsection (c)(5)(A)(ii)(III), unless the beneficiary is the surviving spouse of the annuitant, or

“(II) after the death of the annuitant and joint annuitant in the case of payments described in subsection (c)(5)(A)(ii)(IV), unless the beneficiary is the surviving spouse of the last to die of the annuitant and the joint annuitant, or

“(iii) any annuity contract that is a qualified funding asset (as defined in section 130(d)), but without regard to whether there is a qualified assignment.

“(E) INVESTMENT IN THE CONTRACT.—

For purposes of this section, the investment in the contract shall be determined without regard to this paragraph.”.
(b) DEFINITIONS.—Subsection (c) of section 72 of such Code is amended by adding at the end the following new paragraph:

“(5) LIFETIME INCOME PAYMENTS.—

“(A) IN GENERAL.—For purposes of subsections (b) and (x), the term ‘lifetime income payment’ means any amount received as an annuity under any portion of an annuity contract, but only if—

“(i) the only person (or persons in the case of payments described in subclause (II) or (IV) of clause (ii)) legally entitled (by operation of the contract, a trust, or other legally enforceable means) to receive such amount during the life of the annuitant or joint annuitant is such annuitant or joint annuitant, and

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

“(I) the life of the annuitant,

“(II) the lives of the annuitant and a joint annuitant, but only to the
extent that the requirement of subparagraph (D) is met,

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

“(IV) the lives of the annuitant and a joint annuitant with a minimum period of payments or with a minimum amount that must be paid in any event, but only to the extent that the requirement of subparagraph (D) is met.

“(iii) EXCEPTIONS.—For purposes of clause (ii), annuity payments shall not fail to be treated as part of a series of substantially equal periodic payments—

“(I) because the amount of the periodic payments may vary in accordance with investment experience, reallocations among investment options, actuarial gains or losses, cost of living indices, a constant percentage (not less than zero) applied not less fre-
quently than annually, or similar fluctuating criteria,

“(II) due to the existence of, or modification of the duration of, a provision in the contract permitting a lump sum withdrawal after the annuity starting date,

“(III) because the period between each such payment is lengthened or shortened, but only if at all times such period is no longer than one calendar year,

“(IV) because the payments are reduced on account of a qualified domestic relations order (within the meaning of section 414(p)) which becomes effective after the commencement of the annuity payments, or

“(V) because, in the case of an annuity payable over the lives of the annuitant and a joint annuitant, the amounts paid after the death of the annuitant or joint annuitant are less than the amounts payable during their joint lives.
“(B) Minimum Period of Payments.—

For purposes of subparagraph (A), the term ‘minimum period of payments’ means a guaranteed term of payments that does not exceed the greater of 10 years or—

“(i) the life expectancy of the annuitant as of the annuity starting date, in the case of lifetime income payments described in subparagraph (A)(ii)(III), or

“(ii) the life expectancy of the annuitant and joint annuitant as of the annuity starting date, in the case of lifetime income payments described in subparagraph (A)(ii)(IV).

For purposes of this subparagraph, life expectancy shall be computed with reference to the tables prescribed by the Secretary under paragraph (3). For purposes of subsection (x)(1)(C)(ii), the minimum period of payments shall be determined as of the annuity starting date and reduced by one for each subsequent year.

“(C) Minimum Amount That Must Be Paid in Any Event.—For purposes of subparagraph (A), the term ‘minimum amount that
must be paid in any event’ means an amount payable to the designated beneficiary under an annuity contract that is in the nature of a refund and does not exceed the greater of the amount applied to produce the lifetime income payments under the contract or the amount, if any, available for withdrawal under the contract on the date of death.

“(D) SPECIAL RULES FOR JOINT ANNUITANTS.—For purposes of subclauses (II) and (IV) of subparagraph (A)(ii), the requirement of this subparagraph is met only to the extent that—

“(i) the annuitant is the spouse of the joint annuitant as of the annuity starting date,

“(ii) the difference in age between the annuitant and joint annuitant is 15 years or less,

“(iii) in the case of any payment received under an annuity contract described in subsection (b)(5)(A), such payment is made to or for the benefit of the individual who furnished the consideration for such annuity contract, or
“(iv) in the case of any payment received under a plan described in subsection (b)(5)(B), such payment is made to or for the benefit of the employee or the individual for whose benefit the plan was established.

“(6) Annuity contract.—For purposes of paragraph (5) and subsection (b)(5), the term ‘annuity contract’ means a commercial annuity (as defined by section 3405(e)(6)), other than an endowment or life insurance contract.”.

(c) Recapture Tax for Lifetime Income Payments.—Section 72 of such Code is amended by redesignating subsection (x) as subsection (y) and by inserting after subsection (w) the following new subsection:

“(x) Recapture Tax for Modifications to or Reductions in Lifetime Income Payments.—

“(1) In General.—If any amount received under an annuity contract is excluded from income by reason of subsection (b)(5) (relating to exclusion for lifetime income payments), and—

“(A) the series of payments under such contract is subsequently modified so any future payments are not lifetime income payments,
“(B) after the date of receipt of the first lifetime income payment under the contract an annuitant receives a lump sum and thereafter is to receive annuity payments in a reduced amount under the contract, or

“(C) after the date of receipt of the first lifetime income payment under the contract the dollar amount of any subsequent annuity payment is reduced and a lump sum is not paid in connection with the reduction, unless such reduction is—

“(i) due to an event described in subsection (e)(5)(A)(iii), or

“(ii) due to the addition of, or increase in, a minimum period of payments within the meaning of subsection (e)(5)(B) or a minimum amount that must be paid in any event (within the meaning of subsection (e)(5)(C)),

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

“(2) Recapture Amount.—

“(A) In General.—For purposes of this subsection, the recapture amount shall be the
amount, determined under rules prescribed by
the Secretary, equal to the excess of—

“(i) the amount that was excluded
from the taxpayer’s gross income under
subsection (b)(5) before the modification
or reduction described in paragraph (1),
over

“(ii) the amount that would have been
excludible under such subsection if such
modification or reduction had been in ef-
fact at all times,

plus interest for the deferral period at the un-
derpayment rate established by section 6621.

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

“(3) EXCEPTIONS TO RECAPTURE TAX.—Para-
graph (1) shall not apply in the case of any modi-
fication or reduction that occurs because an annu-
itant—
“(A) dies or becomes disabled (within the meaning of subsection (m)(7)),

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

“(C) encounters hardship.”.

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

(1) IN GENERAL.—Subsection (d) of section 101 of such Code (relating to payment of life insurance proceeds at a date later than death) is amended by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following new paragraph:

“(3) EXCLUSION FOR LIFETIME INCOME PAYMENTS.—

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

“(i) 50 percent of the portion of lifetime income payments (within the meaning of section 72(c)(5), applied with the substitutions described in subparagraph (B)) otherwise includible in gross income under this section (determined without regard to this paragraph), or
“(ii) the amount in effect under section 72(b)(5)(A).

“(B) Recapture and other special rules.—For purposes of this paragraph, rules similar to the rules of subparagraphs (D) and (E) of section 72(b)(5) and section 72(x) shall be applied by substituting ‘beneficiary of the life insurance contract’ for ‘annuitant’ and ‘life insurance contract’ for ‘annuity contract’ therein.”.

(2) Conforming amendment.—Paragraph (1) of section 101(d) of such Code is amended by inserting “or paragraph (3)” after “to the extent not excluded by the preceding sentence”.

(e) Effective date.—

(1) In general.—The amendments made by this section shall apply to amounts received in taxable years beginning after the date of the enactment of this Act.

(2) Special rule for existing contracts.—In the case of a contract in force on the date of the enactment of this Act that does not satisfy the requirements of section 72(c)(5)(A) of the Internal Revenue Code of 1986 (as added by this section), or requirements similar to such section
72(c)(5)(A) in the case of a life insurance contract, any modification to such contract (including a change in ownership) or to the payments thereunder that is made to satisfy the requirements of such section (or similar requirements) shall not result in the recognition of any gain or loss, any amount being included in gross income, or any addition to tax that otherwise might result from such modification, but only if the modification is completed prior to the date that is 2 years after the date of the enactment of this Act.

SEC. 3. FACILITATING LONGEVITY INSURANCE.

(a) IN GENERAL.—Paragraph (9) of section 401(a) of the Internal Revenue Code of 1986 is amended by inserting after subparagraph (H) the following new subparagraph:

“(I) LONGEVITY INSURANCE.—

“(i) IN GENERAL.—For purposes of this paragraph, any value attributable to longevity insurance shall be disregarded in determining the value of an employee’s interest under a plan prior to the first date that payments are made under the longevity insurance.
“(ii) Longevity insurance defined.—For purposes of this subparagraph, the term ‘longevity insurance’ means an annuity payable on behalf of the employee under which—

“(I) payments commence not later than 12 months following the calendar month in which the employee attains age 85 (or would have attained age 85),

“(II) payments are made in substantially equal periodic payments (not less frequently than annually) over the life of the employee or the joint lives of the employee and the employee’s designated beneficiary, taking into account the rules of clause (i) of section 402(e)(7)(D), except as otherwise provided in subclause (III) of such section,

“(III) prior to the death of the employee, the annuity does not make available any commutation benefit, cash surrender value, or other similar feature, and
“(IV) except as provided in rules prescribed by the Secretary, in the case of an employee’s death prior to the date that payments commence, the value of any death benefits paid may not exceed the premiums paid for such annuity, plus interest compounded annually at 3 percent.

“(iii) Adjusting Age.—For purposes of clause (ii)(I), the Secretary shall annually increase age 85 to reflect increases in life expectancy (as determined by the Secretary) that occur on or after January 1, 2009, except that any such increased age which is not a whole number shall be rounded to the next lower whole number.”

(b) Rules.—Not later than one year after the date of enactment of this Act, the Secretary of the Treasury shall prescribe rules under which all or a portion of a participant’s benefits under any plan described in section 402(c)(8)(B) of the Internal Revenue Code of 1986 may be treated as longevity insurance under the rules of section 401(a)(9)(H) of such Code.
(c) **Effective Date.**—The amendments made by this section shall apply to years beginning after December 31, 2010.

**SEC. 4. SPECIAL RULES FOR ANNUITIES RECEIVED FROM ONLY A PORTION OF A CONTRACT.**

(a) **In General.**—Subsection (a) of section 72 of the Internal Revenue Code of 1986 is amended to read as follows:

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“(a) General Rule for Annuities.—If any amount is received as an annuity (whether for a period certain or during one or more lives) under any portion of an annuity, endowment, or life insurance contract—

“(1) except as otherwise provided in this chapter, gross income includes such amount,

“(2) such portion shall be treated as a separate contract for purposes of this section,

“(3) for purposes of applying subsections (b), (c), and (e), the investment in the contract shall be allocated pro rata between each portion of the contract from which amounts are received as an annuity and the portion of the contract from which amounts are not received as an annuity, and

“(4) a separate annuity starting date under subsection (c)(4) shall be determined with respect to
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each portion of the contract from which amounts are received as an annuity.”.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to amounts received in taxable years beginning after the date of the enactment of this Act.

(2) NO INFERENCE AS TO PRIOR YEARS.—Nothing in the amendments made by this section shall create an inference as to the treatment of amounts received under any portion of an annuity, endowment, or life insurance contract in any taxable year beginning on or before the date of the enactment of this Act.