Genworth
Financial

November 13, 2007

FILED ELECTRONICALLY

Office of Regulations and Interpretations
Employee Benefits Security Administration (EBSA)
Room N-5669
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Re: Proposed Regulation on Selection of Annuity Providers

Dear Sir or Madam:

Genworth Financial, Inc. and its affiliated insurance companies ("Genworth") appreciate the opportunity to comment on the regulation proposed by the Department of Labor (the "Department") regarding selection of annuity providers for individual account plans. Genworth, which issues insurance products providing lifestyle protection, retirement income, investment and mortgage insurance needs for millions of customers, shares the Department's goal of facilitating the use of annuities and increasing levels of annuitization in qualified retirement plans. While we appreciate the Department's effort to clarify the fiduciary standards that apply to the selection of an annuity contract as an optional form of distribution from an individual account plan, we believe the safe harbor outlined in the Department's proposed regulation will have the unintended consequence of obstructing the use of annuities in these plans by establishing detailed and complex requirements for annuities that do not exist for comparable fiduciary decisions. We believe the general fiduciary standards of Section 404 of Employee Retirement Income Security Act ("ERISA") would adequately safeguard the interests of participants when annuities are chosen as either a distribution or investment option. We also believe that a rigid safe harbor would only serve as a barrier that would deny participants access to the retirement income planning tools they now critically need.

Retirement Planning Is Dramatically Changing For Millions Of Americans

Demographic and economic factors are converging to weaken existing governmental and employer-provided financial safety nets. As a result, individuals must now take more responsibility for ensuring their retirement security and have an increased need for a pension-like benefit, which only annuity products can provide[1].

[1] The Department's proposed regulation states "In this environment, annuities offer one means by which retirees may ensure a lifetime income". To our knowledge, annuities are the only commercially available product fiduciaries can use to provide a guaranteed level of lifetime

Regulation Should Support Innovation and Lifetime Income Protection

Since 401(k) plans have historically focused on accumulation and asset allocation, limited options exist for workers to plan for retirement income and simultaneously address longevity risk. In response, group variable annuity products have been created to significantly expand workers' investment options in 401(k) plans. As we have previously discussed in conversations with the Department, Genworth's 401(k) annuity investment option combines an account balance with a retirement income focus, allowing participants to maintain a balanced portfolio with equity exposure up to and through retirement, with a guaranteed floor of income that provides protection against longevity risk. Participant contributions are made to a separate account, which invests in an underlying diversified portfolio. Additionally, participants can transfer assets into and out of the annuity at any time prior to retirement without penalties and participants continue to enjoy liquidity post-retirement. Rather than asking participants to self-insure longevity risk through their own investment and withdrawal decisions, Genworth assumes the longevity risk and provides an income guarantee regardless of the performance of the underlying diversified portfolio. This is one example of innovative annuity solutions that are being considered by plan sponsors to meet the retirement income needs of plan participants.

While we believe Genworth's group variable annuity product would compare favorably with other issuers' annuity products under the analysis in the proposed regulations, we are concerned that plan fiduciaries will never advance to that level of scrutiny because the regulation as a whole will be perceived as imposing an unduly stringent and cumbersome standard of review for plan fiduciaries – one that has limited relevance to many annuity investment and distribution options, including Genworth's.

In situations where an annuity is selected as an investment and/or distribution option in an individual account plan, the plan fiduciary has a general duty under ERISA to act prudently and in the exclusive interest of plan participants. While it would be appropriate for the plan sponsor to consider the long-term nature of the annuity promise, Genworth believes this analysis can and should be accomplished under the general fiduciary standards of ERISA. Creating a heightened fiduciary process (real or perceived) around the selection of an annuity option in an individual account plan would discourage plan sponsors from making these innovative solutions available to plan participants. This is especially true in an evolving and innovative market place where other investment or distribution options are being created to provide regular payouts

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income for retirees. If the safe harbor requirements for annuities require more than general fiduciary standards and are significantly different than those for non-guaranteed products, plan fiduciaries will be unwilling to offer a guaranteed level of lifetime income through plan annuity options.

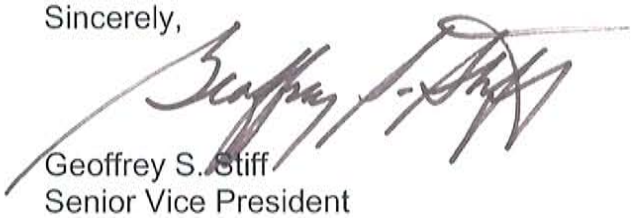
over a period of time (imitating some characteristics of an annuity), but without the unique lifetime guarantees associated with annuities. As an example, although a participant's interest might be best served by an annuity's longevity protection, the plan fiduciary might gravitate toward a systematic withdrawal arrangement (since that decision would be subject only to ERISA's general fiduciary standards). The plan participant could therefore be denied access to a critical retirement planning tool and longevity protection.

Conclusion

A heightened and one-size-fits-all fiduciary standard around the selection of an annuity in an individual account plan is inappropriate and unwarranted, and would serve to bias plan sponsors against a number of existing and yet-to-be created financial products that play an important role in providing retirement income security for plan participants. We urge the Department to focus its regulation around core fiduciary principles that will be flexible enough to accommodate the diversity of annuity products available to defined contribution plan sponsors. The detailed checklist approach of the current safe harbor is not well-suited to the broad range of current (and future) annuity products, many of which should merit significantly differing analyses on the part of plan fiduciaries.

We appreciate the opportunity to comment on these important matters. We are available to answer any questions or provide additional information if that would be of assistance.

Sincerely,



Geoffrey S. Stiff
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