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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
Attention: Lifetime Income RFI

RE: RIN 1210-AB33: Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans

Ladies and Gentlemen:

Great-West Retirement Services ("Great-West")ⁱ provides record keeping and other services to over 4 million retirement plan participants and we appreciate this opportunity to comment on the Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans ("RFI"). Great-West is committed to helping plan participants secure a financially comfortable retirement and commends the Employee Benefits Security Administration ("EBSA"), as well as the Treasury Department, for their efforts to improve retirement income adequacy.

Great-West offers a variety of products and services to participants, including a recently introduced guaranteed lifetime income product, that are designed to assist participants in preparing for a successful retirement. From our experience in working with plan participants, as well as from our review of the literature on retirement income adequacy and participant savings and investment behavior, we believe that providing a source of guaranteed income from defined contribution plan investments is essential to ensuring a reasonable level of retirement income adequacy in this country.

We strongly support the use of default strategies in connection with offering guaranteed lifetime income products. Participants in defined contribution plans represent a variety of investor types. What we have seen from working with participants (both directly and through financial consultants), and as supported by research on retirement plan investor typesⁱⁱ is that in any plan population there will usually be about 20% of participants who want to actively manage their account without help, another 20% who want help but want to ultimately make their own decisions, 50% who want decisions made for them, and 10% who are indifferent to

their retirement plan. If we don't utilize defaults as supported by behavioral finance research, we must accept the consequence that the majority of participants will retire without any guaranteed income from their defined contribution plan. We can expect this result to occur in spite of education and product availability and simply as a result of inertia.

While we support the use of default strategies to improve retirement income adequacy for passive investors, we also support robust participant educational efforts and protections for plan fiduciaries who want to reach the 40% of participants who either want to invest on their own, or want help with investing. These active investors should be provided the tools and resources they need to execute their individual financial decisions. Any default strategy should incorporate opportunities to opt out without penalty or restriction, both before and for a reasonable period of time after the default occurs, to allow these active investors to implement their individual investment decisions.

We believe that a retirement income policy which reflects and accommodates the needs of all types of participant investors will have the greatest chance of success in closing the retirement income gap and we thank you again for the opportunity to comment on this important policy issue.

Sincerely,



Charles Nelson
President, Great-West Retirement Services

ⁱ Great-West Retirement Services[®] refers to products and services provided by Great-West Life & Annuity Insurance Company, FASCore, LLC, First Great-West Life & Annuity Insurance Company, White Plains, New York and their subsidiaries and affiliates.

ⁱⁱ Lucas, Laura, "Meeting the Financial Planning Needs of a Diverse and Paradoxical 401(k) Population", Benefits Quarterly, December, 2002

**Response to Request for Information Regarding Lifetime Income Options
for Participants and Beneficiaries in Retirement Plans**

Provided by Great-West Retirement Services®¹

May 3rd, 2010

General Questions

1. From the standpoint of plan participants, what are the advantages and disadvantages for participants of receiving some or all of their benefits in the form of lifetime payments?

The advantages and disadvantages to participants will vary based on the type of lifetime income product they are invested in. Generally, the main advantage to plan participants is they can count on a reliable source of income they won't outlive and that isn't at risk of loss due to market volatility. Key disadvantages in some products are that participants may lose control over their account balance and some products may be difficult to understand and evaluate. Any and all references to "account", "account balance" or "account value" throughout this RFI response may refer to total account or one fund in an account, depending on the product specifics.

Great-West offers a product known as a "Guaranteed Lifetime Withdrawal Benefit" or "GLWB", more fully described in response to Q 3. Key advantages of GLWB products are:

A. Protection Against Longevity Risk

GLWB products pay guaranteed income for the life of the participant (or for the second to die if a joint and survivor distribution option is selected) so they cannot outlive their retirement income.

B. Protection Against Market Losses

Once the guarantee is activated (generally 10 years before the participant's expected retirement date), a benefit base is established from which lifetime income payments are calculated. The benefit base can go up with market gains but can never go down as a result of market losses. Participants can therefore count on a reliable level of lifetime income payments.

C. Opportunity to Benefit from Market Gains

Participants in GLWB products are typically invested in asset allocation funds and remain exposed to the potential upside of the capital markets throughout the accumulation and

¹ Great-West Retirement Services[®] refers to products and services provided by Great-West Life & Annuity Insurance Company, FASCore, LLC, First Great-West Life & Annuity Insurance Company, White Plains, New York and their subsidiaries and affiliates.

distribution phases until their account is depleted, at which point the guaranteed payments are made from assets of the insurer. Typically the value of the underlying GLWB account is reviewed annually and if the value of the account is higher than the benefit base, the benefit base is raised to equal the value of the underlying account (this feature is typically referred to as a “ratchet” or “high water mark” feature).

D. Inflation Protection – Increased Exposure to Equity Markets Throughout Retirement

Participants invested in GLWB products will have a higher exposure to the equity markets in retirement years as compared to non GLWB investors because they are protected against downside market risk while benefiting from positive market experience. According to an Ibbotson study², this model provides higher total income for participants while decreasing income risk as compared to stand-alone traditional mutual fund portfolios.

E. Protection Against Sequence of Returns Risk

As we saw with the market crash of 2008 and its impact on employees nearing retirement who had significant exposure to the financial markets, a large loss at or near the time of retirement can have a devastating effect on the amount retirement income available to retirees because that is the time when retirees typically have their greatest account balance. In GLWB products participants invest over a long time horizon (typically ten or more years) during which their account value is protected against market losses so they eliminate the sequence of return risk.

F. Protection Against Poor Investment Decision Making During Retirement

Participants who do not have ready access to professional financial help are unlikely to effectively manage a lump sum distribution such that it pays a reliable source of income which will last a lifetime. Loss of cognition late in life can also present a barrier to effective investment decision making. By investing in a GLWB, participants remain in a single asset allocation fund and do not make investment decisions regarding that account throughout their retirement years in order to secure guaranteed lifetime income.

G. Control Over Account

One of the challenges in motivating participants to invest in lifetime income products is concern with losing control over their account. Participants worry that if their financial or other life circumstances change they will be locked in to an investment that no longer meets their needs. GLWBs address this concern by maximizing the amount of control participants have over their account. Typical features of GLWBs are:

- During the accumulation phase, participants have complete control over their account balance so they can transfer funds in or out of the GLWB investment, take loans or hardship withdrawals, etc. without incurring any additional fees or penalties (although transfers out may impact the amount of lifetime income available).

² Ibbotson Associates, Inc., “Allocation to Deferred Variable Annuities with GLWB for Life”, January, 2009

- During the withdrawal phase, participants can take withdrawals in excess of the guaranteed withdrawal amount as needed to meet current financial needs. Any withdrawals will typically reduce the amount of future lifetime income payments.
- If a participant dies before their account has been depleted, any funds remaining in the account are passed to their plan beneficiary.

H. Fee Transparency

Fees for GLWB products typically consist of an asset management fee and a fee for the guarantee, both of which are commonly expressed as a basis point fee. Participants are familiar with basis point fees from their exposure to mutual fund investments and can understand what they are paying for the investment.

I. Net Value to Participant (Cost versus Benefit)

Participants pay a fee for the benefit of receiving guaranteed lifetime income and the amount of the fee will vary based on product features such as the level of guarantee, the degree of flexibility over the account, and other variables. However, the Ibbotson research identified in item D above, as well as other research on the relative economic value of GLWBs³ support the conclusion that in-plan GLWBs offer the least costly method (looking at total costs – both out of pocket and market gain/loss costs) for providing guaranteed income for life.

GLWB products also involve some disadvantages to participants. Key disadvantages are:

A. Lack of Portability of Benefit Base

If the plan moves to a service provider that does not support the GLWB product, and if the participant cannot rollover his or her GLWB investment into an IRA that supports the product, the value of the guarantee (and of payments made by the participant to purchase the guarantee) may be lost. There is currently an industry wide effort to prevent this through cooperation among service providers and we anticipate finalizing this solution no later than 12/31/2010. It should also be noted that when a participant's account balance exceeds their benefit base, portability is much less of a concern because they will not lose the benefit of the ratchet feature.

B. Provider Solvency Risk

Participants are paying for a guarantee today that an insurance company is obligated to make payments on in the future. If for any reason that insurance company is unable to pay, participants will still have access to their account balance but may lose the benefit of the guarantee.

There are typically two strategies used in GLWB products to address the "ability to pay" risk. The first one is controlled by the product provider using an investment strategy referred to as "hedging" to ensure that market volatility will not impair their ability to pay promised benefits

³ Brown, Jeffrey, Ph.D, "Automatic Lifetime Income as a Path to Retirement Income Security", August, 2009

when due. The goal of the hedge strategy is to offset changes in the value of the guarantee with changes in the value of hedge instruments. These sophisticated investment strategies utilize derivatives to offset the capital market risks. There are many different strategies available to do this, but the most popular programs utilize dynamic hedging. Dynamic hedging allows the provider to rebalance their portfolio as necessary in order to maintain the same sensitivity to market parameters as the guarantee.

The other protection against “ability to pay” risk arises from the fact that these products are insurance products governed by state insurance laws and may also be subject to state and federal securities law requirements. Protections under these laws include:

- Maintaining reserves sufficient to cover the level of risk taken
- Routine, comprehensive reporting to, and examination by, state insurance regulators
- Mandatory participation in state guarantee associations that protect all policy holders within that state
- Review of all marketing materials used to sell the product.

2. Currently, the vast majority of individuals who have the option of receiving a lump sum distribution or ad hoc periodic payments from their retirement plan or IRA choose to do so and do not select a lifetime income option. What explains the low usage rate of lifetime income arrangements? Is it the result of market failure or other factors (e.g., cost, complexity of products, adverse selection, poor decision-making by consumers, desire for flexibility to respond to unexpected financial needs, counterparty risk of seller insolvency, etc.)? Are there steps that the Agencies could or should take to overcome at least some of the concerns that keep plan participants from requesting or electing lifetime income?

There are a myriad of reasons why participants elect lump sums over lifetime income payments at retirement. Based on our experience at Great-West, key reasons include:

- **Lack of availability.** Many defined contribution plans do not offer or promote lifetime income options to their participants. Concerns with fiduciary risk when selecting and monitoring lifetime income products, uncertainty regarding their status as QDIAs, lack of clarity regarding providing participant education, and concern with compliance costs and risks under the survivor annuity rules negatively impact product availability.
- **Poor planning during the accumulation phase.** Participants do not save enough and/or do not invest wisely so their resulting account balances at retirement are not large enough to provide meaningful lifetime income payments.
- **Lack of professional financial help.** For most participants, the first time they are presented with an investment option offering lifetime income from their retirement plan account is when they retire or otherwise terminate from employment. The investment education provided by plan sponsors is typically focused on the accumulation phase, not the distribution phase, so participants are not armed with good information when making their decisions. The products providing lifetime income have different features than mutual funds, which is the type of investment product participants get the most education about, so the lack of understanding creates a barrier to investing.
- **Concern with losing control over their account balance.** Many of the products that provide lifetime income require participants to annuitize their account balance.

Participants are concerned with not having access to funds they might need and with not being able to provide a death benefit to their beneficiaries - particularly if they die at an early age.

The Agencies can take steps to increase the likelihood that participants will elect lifetime income products. Following is a brief overview of recommended steps, which in some cases are cross-referenced to other RFI responses that discuss the recommended step in more detail.

- **Require defined contribution plans to show participants their account balance expressed as a lifetime income stream on an annual basis. (Qs 21 – 24).** This will encourage participants to save more and plan more effectively for retirement during the accumulation phase. It will also introduce them to concepts relevant to retirement income products, thus making it more comfortable to choose those products.
 - **Encourage plan sponsors to educate participants about lifetime income products by clarifying what is education and what is fiduciary advice in the context of these products (Qs 18 – 20).** Participants need to receive this education throughout the process of planning for retirement, not just when they reach retirement. Plan sponsors are in the best position to do this cost effectively, but they are concerned with fiduciary risk under current guidelines on what constitutes advice versus education.
 - **Create a fiduciary safe harbor for selecting lifetime income products that encompasses a broad product array (Qs 31-33).** The current safe harbor is targeted to annuity products and does not encompass other types of lifetime income products. There has been significant product innovation in the past few years and that is likely to continue and possibly accelerate. Plan sponsors are not familiar with these products or how to evaluate them and would be more likely to choose them if the Department of Labor were to define safe harbor fiduciary standards for selection.
 - **Address potential barriers in the Internal Revenue Code that create administrative burdens and/or raise concerns about plan qualification in offering lifetime income products (Qs 25-29).** Issues under the survivor annuity rules and potentially the required minimum distribution rules are an impediment to the inclusion of some “in-plan” retirement income products.
 - **Facilitate portability of lifetime income products (Q 14).** Portability of in-plan lifetime income products can be a barrier to their inclusion in defined contribution plans. The Agencies could improve portability by allowing participants to rollover a lifetime income product to an IRA account in the event the guarantee or other product specific benefits would otherwise be lost as the result of a vendor change.
3. What types of lifetime income are currently available to participants directly from plans (in-plan options), such as payments from trust assets held under a defined benefit plan and annuity payments from insurance contracts held under a defined contribution or defined benefit plan?

Most defined contribution plans do not offer lifetime income options. Lifetime income investment options available to defined contribution plans generally include deferred annuities (DAs), guaranteed lifetime income benefits (GLIBs), and guaranteed lifetime withdrawal benefits (GLWBs). All of these products allow participants to make ongoing contributions into the product during the accumulation phase, guarantee income for life, and involve a benefit

guaranteed by an insurance company. There are variations within each of these product types, but following are key features that are constant.

- **DAs** – Participant contributions are invested in a fund (a fixed income fund for fixed annuities, or an array of funds for variable annuities) and participants have control over the fund during the accumulation phase, although early withdrawal charges may apply. Once the account is annuitized (generally in connection with a plan distribution) participants no longer have control over their account. Fees are embedded in the purchase rate.
- **GLIBs** – During the accumulation phase participant contributions are invested in mutual funds or other investment products and explicit investment and insurance fees are charged. Favorable performance of the underlying investments will enhance future income but negative performance does not reduce future income. Upon retirement the account is annuitized so participants no longer have control over their account and the payout rate is set.
- **GLWBs** – During both the accumulation and distribution phases participant contributions are invested in mutual funds or other investment products and the value of the guaranteed income amount increases with positive market experience, but does not decrease with negative market experience. The account is never annuitized and participants retain control over their account balance during both the accumulation and distribution phases. The guaranteed withdrawal rate is calculated as a percentage of the participant’s benefit base. Explicit investment fees are charged from the initial investment and an additional guarantee fee is charged at some specified point prior to reaching the minimum withdrawal age.

Great-West recently introduced a GLWB product to its customers. Specific features of the Great-West product are:

- It is offered in the context of an overall strategy for retirement plan investing that is individualized at both the plan and participant level.
- The date for commencing investment in the guarantee component of the GLWB is generally age 55 or 10 years prior to the participant’s expected retirement date.
- Contributions to the GLWB are invested in index funds packaged as either a balanced fund or a target date fund.
- Contributions and earnings establish a benefit base, which is used to determine the guaranteed income withdrawal amount. Investment earnings increase the benefit base (and therefore the guaranteed withdrawal amount) on the “ratchet date”. Excess withdrawals (i.e. withdrawals in excess of the guaranteed amount) decrease the benefit base but negative market experience does not.
- Excess withdrawals allow the participant to withdraw any amount up to their account balance at any time. This allows the participant absolute flexibility in managing unexpected expenses.
- The guaranteed withdrawal amount is a specified percentage of the participant’s benefit base that varies based upon the age when payments begin. For example, a 65 year old would receive payments at a 5% rate, while an 80 year old would receive payments at a 7% rate. The earliest a participant can begin receiving guaranteed payments is age 55.

- Guaranteed withdrawals are funded from the participant’s account balance until exhausted, at which point the payment obligation is assumed by Great-West as the insurer. Any amounts remaining in the participant’s account upon death is passed to their beneficiary.
 - Participants have flexibility re/the manner in which guaranteed payments are received, including the option to take a single or joint and survivor form of lifetime payments, as well as the schedule for receiving payments.
 - Participants entitled to receive an eligible rollover distribution have the option of rolling in to an IRA that mirrors the plan product (once approved in the participant’s state and declared effective by the Securities and Exchange Commission), so they do not lose any of the benefits through rollover.
 - Depending on the GLWB fund, participants pay an investment management fee and, once the guarantee period begins (generally age 55), a fee for the guarantee feature. All fees are fully disclosed to both plan sponsors and plan participants and plan sponsors pay no fees for including this product in their plan.
 - Great-West utilizes a hedging strategy to manage its risk in offering and supporting this product.
4. To what extent are the lifetime income options referenced in Question 3 provided at retirement or other termination of employment as opposed to be offered incrementally during the accumulation phase, as contributions are made? How are such incremental or accumulating annuity arrangements structured?

All of the products referenced in item #3 above are offered incrementally during the accumulation phase. Key challenges to offering these options during the accumulation phase include real or perceived risks to plan fiduciaries and compliance costs and challenges posed by the survivor annuity and other tax qualification rules. Product features vary in key respects, including:

1. The extent to which participants have access to, and control over, the underlying account balance during both the accumulation phase and the guaranteed withdrawal phase.
2. The type of investments underlying the product (mutual fund based or fixed income) and the extent to which exposure to positive market earnings continues during the withdrawal phase.
3. The manner in which fees are charged (explicit fee, embedded in earnings rate or level of guaranteed payments, or a hybrid).
4. The consequences of early withdrawals (additional fees, reduction of guaranteed payments, etc.).
5. The extent and manner to which additional contributions and earnings affect the level of guaranteed lifetime payments.
6. Whether there is a “waiting period” (i.e. a period during which a fee for the guarantee feature is charged but guaranteed payments are not available).
7. Whether the product provider is also the insurer and the manner in which the risk of the guarantee is managed by the insurer.
8. The level of access participants have to their account during both the accumulation and withdrawal phases (loans, hardship withdrawals and other distributions).

9. Restrictions to access such as minimum and/or maximum ages, ability to roll or transfer funds in from other accounts or investments, etc.

5. To what extent are 401(k) and other defined contribution plan sponsors using employer matching contributions or employer nonelective contributions to fund lifetime income? To what extent are participants offered a choice regarding such use of employer contributions, including by default or otherwise?

In the Great-West product participants can choose to invest salary deferrals, matching contributions, and employer nonelective contributions in the lifetime income investment. Plan sponsors can also choose to utilize the lifetime income fund as the plan's default fund. Investing employer contributions into a lifetime income fund may be particularly attractive to plan sponsors who either have eliminated, or are considering eliminating, a defined benefit plan.

6. What types of lifetime income or other arrangements designed to provide a stream of income after retirement are available to individuals who have already received distributions from their plans (out-of-plan options), such as IRA products, and how are such arrangements being structured (fixed, inflation adjusted, or other variable, immediate or deferred, etc.)? Are there annuity products under which plan accumulations can be rolled over to an individual retirement annuity of the same issuer to retain the annuity purchase rights that were available under the plan?

Participants in some plans can elect either an in-plan immediate annuity or an out of plan rollover annuity. The key distinction is that the annuity option available is chosen by the plan sponsor for in-plan annuities, while participants can elect from a wide array of annuity providers when selecting a rollover annuity. In either event the participant's benefit is annuitized at the time of purchase and they no longer have any account balance to control or access.

There are also IRA products with features similar to the GLWB products described in response to Question 3. With state approval and once declared "effective" by the Securities and Exchange Commission, participants who invest in the Great-West GLWB product can roll to a Great-West IRA and retain the guarantee and purchase rights that were available under the plan.

7. What product features have a significant impact on the cost of providing lifetime income or other arrangements designed to provide a stream of income after retirement, such as features that provide participants with the option of lifetime payments, while retaining the flexibility to accelerate distributions if needed?

If a product feature is added to lifetime income product it could add additional costs. By providing additional benefits or flexibility with respect to the guaranteed payments, the amount that an insurance company will have to charge will increase as the amount of risk increases. In the case of products that offer flexibility in the underlying investments, the more aggressive the investment option the more it costs the insurance company to maintain the future guarantees. While the participant could enjoy an increased return, the flexibility will increase the risk for the insurance company and those costs will be added to the product.

Another concept to consider is risk pooling. The more participants that go into a pool, the more guaranteed lifetime income the participants can receive. When participants have the ability to withdraw from pool, it has implications for the reserves annuity providers are required to hold. Product features offer a great deal of benefits for participants and each insurance company will price options differently depending on the hedges they use to back the guaranteed payments.

Other product features that impact cost include:

- Providing the guarantee on investment vehicles which cannot be hedged
 - Frequency of benefit base changes
 - Escalation features
 - Regulations which require significant hard copy communication or disclosures that cannot be provided electronically
 - Features that potentially increase the payout rate.
 - Payment structures that do not create incentives for participants to delay starting payouts
 - Service provider compensation
8. What are the advantages and disadvantages for participants of selecting lifetime income payments through a plan (in-plan option) as opposed to outside a plan (e.g., after a distribution or rollover)?

The advantages and disadvantages to participants vary based on the type of lifetime income product utilized. The response provided below is applicable to participants using GLWB type products. Additional information on the advantages of GLWB products is contained in response to Q 1.

- A key advantage of in-plan GLWB products is that they allow participants to have an extended period of time (typically 10 or more years) of participation in the investment before retiring while being protected from downside market risk. This provides the security of a known “floor” of retirement income and protects against the risk that a market correction at or near their retirement date may significantly reduce the amount of retirement income available.
- GLWBs contain a “ratchet” feature whereby the value of the benefit base (and consequently the lifetime income payments) is increased on a periodic basis (typically annually) to reflect positive earnings in the underlying account. The benefit base is not reduced by market downturns. This provides participants the opportunity to continue to benefit from exposure to the equity markets without risk of loss to their retirement income.
- Participants have the flexibility to add contributions to their lifetime income account including contributions subject to IRC limits, transfers from other investments in the plan, or rollovers from other retirement plan accounts. During the time period where these options are available they are receiving information at least annually, and have access to planning tools on a daily basis, informing them of the level of lifetime income their account will provide. Participants can take advantage of this extended time period

during which they have multiple options to increase their investment in lifetime income, as well as reliable information about where they stand, in order to plan effectively for retirement.

- The selection of in-plan GLWBs is done by a plan fiduciary subject to ERISA's fiduciary due diligence rules, which also require ongoing monitoring of the investment. Out of plan options are typically chosen by the participant who may or may not have access to expert help in selecting the product.
- Plan sponsors provide ongoing education and support around the lifetime income investment product.
- Participants will typically pay less for in-plan options due to the advantages of institutional pricing as compared to retail pricing.

There are some disadvantages to in-plan GLWBs. Key disadvantages are:

- Under the current regulatory structure there are real or perceived additional fiduciary risks to plan fiduciaries, compliance risks, and administrative costs involved with offering in-plan GLWBs. See our response to Q 14 for more detail re/these issues.
- In the current marketplace there are challenges to the portability of in-plan GLWBs. If the plan sponsor elects to move to a new service provider that does not support the GLWB product the participant is invested in and the participant is not eligible for a distribution, there is a risk the participant will lose the value of the guarantee. Great-West is currently working on an industry initiative through SPARK to address the portability concern and we expect that solution to be available no later than December 31, 2010.

9. What are the advantages and disadvantages from the standpoint of the plan sponsor of providing an in-plan option for lifetime income as opposed to leaving to participants the task of securing a lifetime income vehicle after receiving a plan distribution?

The advantages and disadvantages to plan sponsors vary based on the type of lifetime income product utilized. The response provided below is applicable to plan sponsors using GLWB type products.

Key advantages to plan sponsors are:

- GLWBs can significantly increase the likelihood that participants will be able to retire with guaranteed income, particularly when used as the default investment option in an automatic enrollment plan. See our response to Q 1 for a full list of benefits to plan participants from investing in GLWBs. Successful financial outcomes for participants increase employee satisfaction and decrease the risk of claims against plan fiduciaries.
- Many plan sponsors maintain frozen defined benefit plans, creating a situation where a portion of their work force has access to a retirement plan offering guaranteed lifetime

income and a portion of their work force does not. Offering a lifetime income option helps to address issues of fairness across the employee population.

- Offering a lifetime income option gives plan sponsors the opportunity to educate and support participants through both the accumulation and distribution phases of retirement.

Key disadvantages to plan sponsors are:

- As with all plan investments, the plan sponsor bears the fiduciary responsibility for selecting and monitoring the product.
- Participants require information and education about this type of investment.
- GLWB products may not be fully portable and may pose challenges if the plan sponsor wishes to move to a new service provider that doesn't support the product. The industry is working to address this problem through a cooperative effort and we anticipate having a solution in place no later than 12/31/2010.
- There are compliance concerns under existing Agency rules, discussed more fully in Q 14.

10. How commonly do plan sponsors offer participants the explicit choice of using a portion of their account balances to purchase a lifetime annuity, while leaving the rest in the plan or taking it as a lump sum distribution or a series of ad hoc distributions? Why do some plan sponsors make this partial annuity option available while others do not? Would expanded offering of such partial annuity options—or particular ways of presenting or framing such choices to participants—be desirable and would this likely make a difference in whether participants select a lifetime annuity option?

Within the Great-West customer base annuity options are typically not offered due to the costs associated with complying with the survivor annuity rules. In the Great-West GLWB product there are no minimum contribution requirements or other restrictions on the portion of a participant's account that can be invested in the product so participants can effectively accomplish partial annuitization of their account balance.

We believe that by offering participants flexibility regarding how much of their account to invest in a lifetime income product, particularly in a context where they do not lose control over, or access to, the funds invested in the guaranteed product, participants will be more likely to invest in a lifetime income option. The simplicity of GLWBs in terms how easy it is for participants to change their mind about how much income they need to plan for and what withdrawal amounts they need also encourages the choice of a lifetime income option.

11. Various “behavioral” strategies for encouraging greater use of lifetime income have been implemented or suggested based on evidence or assumptions concerning common participant behavior patterns and motivations. These strategies have included the use of default or automatic arrangements (similar to automatic enrollment in 401(k) plans) and a focus on other ways in which choices are structured or presented to participants, including efforts to mitigate “all or nothing” choices by offering lifetime income partial, gradual, or trial basis and exploring different ways to explain its advantages and disadvantages. To what extent are these or other behavioral strategies being used or viewed as promising mean of encouraging more lifetime income? Can or should the 401(k) rules, other plan qualification rules, or ERISA rules be modified, or their application clarified, to facilitate the use of behavioral strategies in this context?

Great-West’s GLWB target date funds are available to plan sponsors as a QDIA and we believe that use of defaults in connection with lifetime income products is essential to creating retirement income adequacy in the United States. We know from research on behavioral science applied in the context of retirement plan investing that a significant percentage of participants will never take the time to educate themselves about lifetime income products or, if they do, will never act on the education they receive.⁴ Many experts who have studied the problem of retirement income adequacy have recommended that some or all of participants’ accounts in defined contribution plans be defaulted in to a distribution option that provides guaranteed lifetime income payments.⁵ This research supports the view that if we take a “wait and see” approach to see if encouraging voluntary action will be enough to close the income gap, we are unlikely to be satisfied with the result and will have lost valuable time needed to close the gap.

While Great-West strongly supports the use of lifetime income options as a default, we also believe it’s critical that defaulted participants have the opportunity to opt out of the default without penalty, both before the default action occurs as well as for some administratively reasonable period of time after it occurs. There will always be a segment of participants who want to actively manage their account during retirement or who have other reasons why a lifetime income solution is not the right solution for them and we believe it is critical to support this category of participants, as well as those who are less active investors.

One of the key barriers in using defaults to cause participants to invest in lifetime income products and or to take distribution in the form of lifetime income vehicles has been the irrevocability of the investment decision. Lack of control over account balances and the “all or nothing” choice inherent in many annuity products are core reasons why plans don’t offer in-plan lifetime income products and participants don’t select them when taking a distribution from the plan. More recent products, such as GLWBS, address this problem by allowing participants control over how much of their account to invest in a lifetime income option, allowing them to invest gradually over time and make changes to their investment elections,

⁴ Mitchell, Olivia and Stephen Utkus, “Lessons from Behavioral Science for Retirement Plan Design”, published by the Wharton School of the University of Pennsylvania’s “Pension Research Council”, 2003; Brown, *supra* note 2.

⁵ GAO-09-642, “Alternative Approaches Could Address Retirement Risks Faced by Workers but Pose Trade-offs”, July, 2009; TIAA-CREFF Institute, “Perspectives on Retirement System Reform for the 21st Century”, December, 2009; ERISA Advisory Council “Approaches to Retirement Security in the United States”, 2009

and allowing access to and control over their account in the lifetime income investment during both the accumulation and withdrawal phases.

Creating a regulatory structure that would allow plans to default participants in to lifetime income investments and distribution options is essential for addressing the risk that participants will outlive their retirement savings. However, participants must have sufficient flexibility after the default has occurred to align the retirement income investment with their individual retirement income needs. Please see our response to Q 13 for more detail on this topic.

12. How should participants determine what portion (if any) of their account balance to annuitize? Should that portion be based on basic or necessary expenses in retirement?

Participants need to have flexibility in determining how much of their retirement account to annuitize or convert to guaranteed payments based on their individual circumstances such as the existence of other retirement accounts, the likelihood of inheritance, or health concerns. It is critical that participants do the analysis to understand how much income they will need in retirement and where that income will come from.

Great-West believes that the best way for participants to determine the portion of their account balance to annuitize is to take advantage of the financial advisory services that are made available to them as plan participants. This typically includes on-line modeling tools, but may also include generic and/or individualized investment help. As more participants are nearing retirement age, retirement plan advisors have been building better communication tools to assist with the decumulation phase of retirement and we believe they are the best resource for participants to use for individual retirement planning.

13. Should some form of lifetime income distribution option be required for defined contribution plans (in addition to money purchase pension plans)? If so, should that option be the default distribution option, and should it apply to the entire account balance? To what extent would such a requirement encourage or discourage plan sponsorship?

Yes. Requiring defined contribution plans to offer a lifetime income distribution option, and further requiring that this option be the default distribution option, will further the goal of improving retirement income security.

Participants would be given access to low-cost, institutionally priced lifetime income options selected in accordance with fiduciary due diligence requirements. There is significant product innovation currently occurring with respect to lifetime income products and the Agencies should fashion rules that encourage future development by defining “lifetime income distribution option” in broad terms.

According to a 2009 Hewitt study⁶, 84% of 401(k) plan participants take distribution in the form of a lump sum payment and only 1% elect an annuity. With this wide a gap, relying on voluntary choices by plan sponsors and plan participants will not be sufficiently effective in promoting retirement income adequacy. Using a lifetime income option as the default distribution option

⁶ Hewitt Associates LLC, “Trends and Experience in 401(k) Plans, 2009

is necessary to address the risk that a substantial number of participants will outlive their retirement income. Protections similar to those offered in the context of automatic enrollment, such as notice requirements and the opportunity to opt out without penalty, are essential to effective use of a default strategy. The products used as a default must be flexible enough to accommodate the necessary flexibility and must be attractive enough to defined contribution plan participants to promote a high “stick rate” similar to what we’ve experienced using automatic enrollment.

We believe the entire account balance should default to these products. If participants must proactively elect the portion of their account to which the default applies, it defeats the purpose of setting it as the default because you lose the benefit of inertia.

We believe that if lifetime income options are required as the default distribution option with appropriate protections for plan sponsors (including protections similar to those offered under the QDIA rules), it will encourage plan sponsorship because it will make the plan more valuable to employees and will reduce the risk of claims brought by participants based on insufficient retirement income.

14. What are the impediments to plan sponsors’ including lifetime income options in their plans, e.g., 401(k) or other qualification rules, other federal or state laws, cost, potential liability, concern about counterparty risk, complexity of products, lack of participant demand?

Key impediments to plan sponsors are lack of products that are compatible with defined contribution plans, unfamiliarity with the products that do exist, concerns with compliance risk under plan qualification rules, concerns with fiduciary risk in selecting and monitoring these products as well as with educating participants about them, and concerns with lack of product portability. The Agencies can address some of these concerns by providing guidance on the following issues:

- Clarifying safe harbor standards for plan fiduciaries to follow when selecting and monitoring lifetime income products.
- Expanding the guidance on what constitutes education versus fiduciary advice so that plan sponsors are comfortable educating participants about these products.
- Amending the joint and survivor annuity rules such that lifetime income products meeting certain criteria are not “life annuities” triggering application of the spousal annuity rules. Please see our response to Qs 26 and 27 for more detail on this issue.
- To the extent necessary, harmonizing the required minimum distribution rules with product features in lifetime income products.
- Addressing portability concerns by 1) clarifying the standards a plan fiduciary should follow when evaluating portability at the time of purchase, as well as when evaluating the impact on individual participants of a change in vendors that results in the loss of investment benefits, and 2) allowing participants to rollover the portion of their account invested in a lifetime income product in circumstances where benefits or rights of the product will otherwise be lost due to a vendor change.

15. What are the advantages and disadvantages of approaches that combine annuities with other products (reverse mortgages, long term care insurance), and how prevalent are these combined products in the marketplace?

In our experience reverse mortgages and long term care insurance are not investment choices utilized in the defined contribution plan market.

16. Are there differences across demographic groups (for example men vs. women) that should be considered and reflected in any retirement security program? Can adjustments for any differences be made within existing statutory authority?

Great-West has conducted research on its customer base indicating that there are differences in how defined contribution plans are utilized by different demographic groups and we would be pleased to provide this analysis if so requested by the Agencies. Our focus in conducting the research was to assist plan advisors in designing effective participant communication and education programs.

Participant Education

The Department of Labor issued Interpretive Bulletin 96-1 (29 CFR 2509.96-1) to clarify that the provision of investment education, as described in the Bulletin, will not be considered the provision of “investment advice” which would give rise to fiduciary status and potential liability under ERISA for plan participants’ and beneficiaries’ investment decisions.

17. What information (e.g., fees, risks ,etc.) do plan participants need to make informed decisions regarding whether to select lifetime income or other arrangements designed to provide a stream of income after retirement? When and how (i.e., in what form) should it be provided? What information currently is provided to participants, who typically provides it, and when and how is it provided to them?

Behavioral research suggests that when communicating to participants about lifetime income options the manner in which the conversation is framed and the language used to describe the investment will significantly impact the type of reaction participants have to the information. For example, in a study published by TIAA-CREF Institute⁷, participants were presented with the choice of preferring an annuity or a lump sum payment. Half of the participants had the choices described to them in an investment or accumulation framework talking about savings. The other half heard them described in a consumption framework talking about having enough money to live on during retirement. Only 20% of the participants who listened to the “savings” discussion preferred an annuity, while 70% of those who listened to the “consumption” discussion preferred it. This research highlights how critical it is to change how participants think about their 401(k) plan benefit and how important effective communication is when talking about lifetime income solutions.

⁷ Brown, Jeffrey, King, Jeffery and Wiens, Garth, “Framing, Reference Points and Preferences for Life Annuities”, TIAA-CREF Research Dialogue, November, 2008

With respect to in-plan options, participants are typically offered only one lifetime income investment product selected by a plan fiduciary so the information they need is limited to information that is relevant to the decision of whether, and to what extent, they should invest in the product. With respect to out-of-plan options, participants need the same information as they do for in-plan options, but also need to understand information relevant to the selection of the product itself. Our response is limited to information relevant to in-plan options.

In order to make informed investment decisions, participants need the following basic information:

- A general explanation of how lifetime income products work
- General guidance on how to calculate lifetime income needs
- How lifetime income payments are calculated in the product
- Events that impact the amount of lifetime income payments
- The extent to which investors remain exposed to market volatility – up or down
- The availability of withdrawals from the account at various stages
- The degree of control participants have over the account at various stages
- Information about the underlying investments
- Full disclosure of any fees they will pay related to the investment
- Any restrictions or limitations on the investment
- Distribution methods available

We believe that all of the information described above is important for participants to receive when making decisions about investing in a lifetime income product. Participants should receive this type of information at the time they are making their initial investment decision. Participants should also receive information at all “decision points” relative to the particular product. For example, if they are electing to take a withdrawal from a lifetime income product that will result in a reduced amount of guaranteed income payments, they should receive notice to that effect. Similarly, if there is a guarantee or other fee that will be triggered by a date or action, participants should be notified of the application of the fee near the time it is scheduled to commence. Finally, as participants near the date they will be eligible to receive guaranteed payments, they should receive information regarding how the timing of beginning withdrawals will impact the amount of lifetime income payments.

There should be flexibility in terms of the manner in which information is provided to meet the needs of the relevant employee population, but electronic modeling tools are essential for planning with these products and should be available to all participants. We believe it’s also essential to promote simplicity of communication to the extent possible to get core concepts across to participants, such as by using charts, illustrations and examples. We also encourage the Agencies to enhance the availability of electronic communication by simplifying the electronic delivery rules that apply to required notices and disclosures.

In the Great West product participants are given the following information:

- An explanation is provided of how the GLWB product works and core product features. This includes a description of how the actions of the participant such as investing contributions in the product, transferring funds in to the product,

taking non-guaranteed withdrawals, or selecting a particular retirement age or form of lifetime payment (single or joint) impact the amount of guaranteed lifetime income payments. It also describes the level of control participants have over their account during both the accumulation and withdrawal phases.

- An explanation is provided of the underlying investment choices available, including a “fund fact sheet” providing detailed information on risk and return, fees (both investment management fees associated with the underlying funds as well as the cost of the guarantee), objectives, portfolio detail, and how the guarantee associated with the investment works.
- Graphs and case studies are provided illustrating key features of the product, such as the ability to “ratchet” or benefit from positive market experience while being protected against negative market experience. These graphs and case studies also explain the difference between the participant’s fund value and the benefit base used to calculate the amount of lifetime income payments they will receive.
- Participants are given information about Great-West as the insurer of the product, including ratings information.
- Participants are provided with general information about the risk of outliving their retirement income.

In addition to this information, participants are given access to online tools to help them model individual retirement income scenarios.

18. Is there a need for guidance, regulatory or otherwise, regarding the extent to which plan assets can be used to pay for providing information to help participants make informed decisions regarding whether to select lifetime income or other arrangements designed to provide a stream of income after retirement, either via an in-plan or out-of plan option?

Yes, there is need for clearer guidance that plan assets can be used to pay for expenses related to helping participants make informed decisions about lifetime income options. Plan fees have received an enormous amount of attention in recent years and are an area of great concern to plan fiduciaries. Lifetime income products, particularly the hybrid products currently being offered, present new communication and education challenges as they incorporate concepts and language that many participants are unfamiliar with. While the rules regarding when plan assets can be used to pay for education are fairly clear, plan sponsors, may be more likely to offer these options if it were clearer that the cost of education can be paid from plan assets. The guidance should address the types of help that can be offered in the context of education and should be flexible in accommodating various methods for providing the education and the people or entities providing it.

19. What specific legal concerns do plan sponsors have about educating participants as to the advantages and disadvantages of lifetime income or other arrangements designed to provide a stream of income after retirement? What actions, regulatory or otherwise, could the Agencies take to address such concerns?

Plan sponsors, particularly in the small employer market, are concerned that if they provide education about a specific product they will be held to a fiduciary standard. In order to address this concern it would be helpful to expand Interpretive Bulletin 96-1, or to provide separate guidance relative to educating participants about lifetime income products. The guidance should allow plan sponsors or service providers to provide general information such as life expectancies, historic investment returns, and the impact of an investment loss at or near retirement on retirement income, simulated withdrawal rates, etc. It should also allow for information about general features of annuities, GLWBs, or other lifetime income products. Finally, since there is typically only one lifetime income investment option available in a plan, the guidance should allow for a discussion of specific product features as discussed more fully in response to Q 17.

We believe it is critical for the Agencies to provide this guidance and protection. These products are unfamiliar to many small plan sponsors and require a level of long term commitment by participant investors that is not present in the investment products available in most 401(k) plans today. Plan sponsors may be reluctant to add these products if they do not believe they can help participants make well informed decisions without taking on additional fiduciary risk.

20. To what extent should plans be encouraged to provide or promote education about the advantages and disadvantages of lifetime annuities or similar lifetime income products, and what guidance would be helpful to accomplish this?

We believe plans should be strongly encouraged to provide or promote education about the advantages and disadvantages of lifetime annuities or similar lifetime income products.

For most plan participants their retirement plan benefit and their Social Security payments will be their sole sources of retirement income. In the current environment, participants do not calculate what they need for retirement and compare it to what they will receive from Social Security, but nonetheless tend to think of their retirement account as a source for lump sum withdrawals rather than as a source for lifetime income payments. It is critical that we start now to change this way of thinking and get participants to plan more realistically for retirement and confront the possibility that they may outlive their assets. Providing education about lifetime income products and how the future might look different with or without such a product is an essential part of making this change and should be strongly encouraged. Guidance that would help facilitate this is described in more detail in Q 19.

Disclosing the Income Stream that can be provided from an Account Balance

ERISA section 105 required defined contribution plans to furnish each participant an individual benefit statement, at least annually, that includes the participant's "accrued benefits," i.e., the individual's account balance.

(Bingaman Bill concept)

21. Should an individual benefit statement present the participant's accrued benefits as a lifetime income stream of payments in addition to presenting the benefits as an account balance?

Yes, we believe that requiring individual benefit statements to present the participant's benefit in the form of a lifetime income stream as well as an account balance will further the goal of improving retirement income security. Throughout the history of 401(k) and other deferred compensation plans participants have become accustomed to thinking about their retirement plan like a savings account with a lump sum of cash available for immediate withdrawal upon retirement. We currently reinforce that perception by routinely showing participants their benefit only in that format. The research referenced in response to Q. 17 highlights how critical it is to change how participants think about their 401(k) plan benefit if we want them to treat it as a source for retirement income rather than as a savings account.

Showing participants their benefit in the form of lifetime income may improve the savings rates of plan participants and help them plan more effectively for retirement. For example, showing a participant who makes \$40,000 a year an account balance of \$250,000 may seem like a lot of money and give them a false sense of security, but if you also show that \$250,000 may generate annual lifetime income payments of \$12,500 or less you help them to see the relationship between their current income needs and the amount of money their retirement account will provide. In addition to encouraging additional savings and planning on the part of plan participants, showing benefits as a lifetime income stream may encourage plan sponsors to improve plan design, such as by adding automatic enrollment or increasing their matching contributions and earnings.

22. If the answer to 21 is yes, how should a lifetime stream of income payments be expressed on the benefit statement? For example, should payments be expressed as if they are to begin immediately or at specified retirement ages? Should benefit amounts be projected to a future retirement age based on the assumption of continued contributions? Should lifetime income payments be expressed in the form of monthly or annual payments? Should lifetime income payments of a married participant be expressed as a single-life annuity payable to the participant or a joint and survivor-type annuity, or both?

There should be a standardized format for showing lifetime income payments so that participants can readily compare statements from multiple accounts or from different vendors in the event their plan moves to a new service provider. The DOL should create a safe harbor "core" standard, but should also provide fiduciary protection for providing projections in addition to the core standard.

The core standards should be simple and readily understood by participants. For example, they should show benefits commencing at the participant's social security retirement age in the form of both a single and a joint and survivor annuity payable monthly.

In order to avoid incurring the same overconfidence problem we face today, the core standard should require showing future lifetime income based on the current account balance without making any assumptions about future contributions, but the fiduciary protection for showing projections in addition to the core standard should allow for projections assuming future contributions and earnings.

Plans should be encouraged to offer participants access to online calculators enabling them to model various lifetime income scenarios based on their individual circumstances.

23. If the answer to question 21 is yes, what actuarial or other assumptions (e.g., mortality, interest, etc.) would be needed in order to state accrued benefits as a lifetime stream of payments? If benefit payments are to commence at some date in the future, what interest rates (e.g., deferred insurance annuity rates) and other assumptions should be applied? Should an expense load be reflected? Are there any authoritative tools or sources (online or otherwise) that plans should or could use for conversion purposes, or would the plan need to hire an actuary? Should caveats be required so that participants understand that lifetime income payments are merely estimates for illustrative purposes? Should the assumptions underlying the presentation of accrued benefits as a lifetime income stream of payments be disclosed to participants? Should the assumptions used to convert accounts into a lifetime stream of income payments be dictated by regulation, or should the Department issue assumptions that plan sponsors could rely on as safe harbors?

In order to project lifetime income payments actuarial assumptions will need to be made. Great-West does not offer a specific set of recommended assumptions, but cautions that the assumptions used in the core disclosure will be most useful in terms of promoting future savings if they do not project future contributions, or include an inflation factor that participants may not recognize as such. The most effective core projection may be what their current account balance could buy in lifetime income payments expressed in current dollars assuming retirement at their Social Security retirement age. Additional projects could be included and should be protected in the safe harbor, but participants should always understand what their current savings will buy them.

Participants should be given information about the material assumptions used and any potential weaknesses related to the assumptions. They should understand that the projection is an estimate and not a guarantee of income. We believe that the Department should create a safe harbor protecting plan fiduciaries that provide this information. We do not believe that the assumptions should be dictated by regulation.

In addition to providing fiduciary protection for the core disclosure, the safe-harbor should also extend to other illustrations as long as reasonable assumptions are used. Plan fiduciaries should be able to show illustrations based on particular products in a plan, features unique to a particular employee population or plan design, or other variables as long as the assumptions are reasonable, consistently applied, and disclosed to participants.

Our recommendations for the safe harbor are as follows:

- It should protect all plan fiduciaries from claims brought by plan participants, beneficiaries, or others arising from reliance on any information contained in a lifetime income projection (in paper, electronic, or other format) that meets the conditions of the safe harbor.
- One of the conditions of the safe harbor should be that participants receive information on their benefit in the form of an account balance and a lifetime income stream using reasonable assumptions and methodologies as defined in the safe harbor.

- The safe harbor should also provide protection for including additional illustrations and projections that may be more relevant to a particular population of participants (for example, participants who also are covered by a defined benefit plan, or who have access to a guaranteed lifetime income investment product inside the plan) as long as reasonable assumptions are used. The determination of “reasonableness” should be broad enough to encompass future product innovations and should be determined at the time the assumptions were selected.
 - Participants should be provided with information about the assumptions used and should also be given general information to assist with understanding the projections (such as an abbreviated mortality table and definitions of key terms – like “guarantee”.) The DOL should provide a safe harbor notice.
24. Should an individual benefit statement include an income replacement ratio (e.g., the percentage of working income an individual would need to maintain his or her pre-retirement standard of living)? If so, what methodology should be used to establish such a ratio, such as pre-retirement and post-retirement inflation assumptions, and what are the impediments for plans to present the ratio in a meaningful way to participants on an individualized basis?

We believe this type of disclosure should be encouraged through a fiduciary safe harbor but should not be required. In order to be meaningful, income replacement calculations require incorporating information that is unique to each participant and that is not maintained on retirement plan record keeping systems. For example, any such illustration should incorporate the availability other income or assets (such as spousal income or assets), opportunity for inheritance, health, and other factors. Further, the concept of a replacement ratio based on current income levels is not relevant to all age groups. For example, a 22 year old may expect to be earning 2-3 times their current rate of pay in their peak earning years so an income replacement ratio based on their current rate of pay would not be meaningful. Many plan sponsors today do provide general information about income replacement ratios and/or participant specific ratios generated through individualized communication about the participant’s unique financial circumstances. We believe that this practice should be encouraged by 1) clarifying that providing this information is education and is not fiduciary advice, and 2) including in the safe harbor referenced in response to Q 22 protection for fiduciaries that use reasonable methods and assumptions when illustrating income replacement ratios.

401(K) and Other Plan Qualification Rules

Income Tax Regulations that apply specifically to lifetime annuities include: 26 CFR 1.401(a)-11, 26 CFR 1.401(a)-20, 26 CFR 1.401(a) (9)-1 through 26 CFR 1.401(a) (9)-9, 26 CFR 1.417(a) (3)-1, and CFR 1.417(e)-1.

25. How do the 401(k) or other plan qualification rules affect defined contribution plan sponsors' and participants' interest in offering and use of lifetime income? Are there changes to those rules that could or should be made to encourage lifetime income without prejudice to other important policy objectives?

As described more fully in our response to Q 26, the current rules on qualified joint and survivor annuities pose a barrier to adopting GLWBs and other types of lifetime income products that are not pure annuities and changes to those rules would encourage utilization of lifetime products without jeopardizing spousal protections. Also, as more fully described in our response to Q 14, allowing participants to rollover lifetime income investments when the benefits of the investment would otherwise be lost due to a change in service providers would encourage the use of these products.

26. Could or should any changes be made to the rules relating to qualified joint and survivor annuities and spousal consents to encourage the use of lifetime income without compromising spousal protections?

The qualified joint and survivor annuity rules present administrative burdens and complexities when applied in the context of certain lifetime income products and changes to those rules would encourage the use of lifetime income products without compromising spousal protections.

The vast majority of 401(k) plans today take advantage of the option under IRC § 401(a)(11)(B)(iii) and Treas. Reg. § 1.401(a)-20, Q&A 3(a) to provide for a 100% spousal death benefit (unless waived) in lieu of offering QJSA or QPSA benefits. The reason most 401(k) plans are designed this way is that most participants and beneficiaries waive the QJSA and QPSA benefits even when they're available, and implementing the survivor annuity rules creates significant costs and administrative burdens due to the notice, waiver, revocation and spousal consent requirements.

Under current IRS rules if a plan offers payment in the form of a life annuity the exception to the survivor annuity rules is no longer available and plans must comply with the QJSA and QPSA rules. It is not clear under the code and regulations, or under recently issued Private Letter ruling 200951039, whether lifetime income products like GLWBs that do not involve annuitization of participant accounts trigger application of the survivor annuity rules and this confusion can be a barrier to adoption of these lifetime income products.

We recommend that the Agencies clarify that lifetime income products in which participants maintain and control an account balance supporting the lifetime income guarantee and where the participant's account balance is never irrevocably converted to an annuity are not life annuities for purposes of the survivor annuity rules. The result should not vary due to the possibility that at some point during the payout phase (after the supporting account balance is depleted) the lifetime income payments will be paid by the guarantor. The result should also not vary based on the fact that a single election by the participant triggers payment from their account balance until depleted and from the insurer after depletion.

Clarifying that certain lifetime income products are not life annuities triggering compliance with the QJSA and QPSA rules will not diminish spousal protections enjoyed under the current structure. The vast majority of 401(k) plan distributions today are made to participants in the form of a lump sum distribution upon separation from service with no spousal protections. Lifetime income and annuity products are almost universally offered in the form of either a single or joint and survivor payout structure and, with respect to guaranteed minimum withdrawal type products, any account balance remaining at the time of a participant's death is paid to their beneficiary, which is typically the spouse. Therefore, even without the QJSA and QPSA rules applying, spouses may receive a larger portion of 401(k) plan distribution amounts if a lifetime income product is selected than they do when benefits are paid in the form of a lump sum distribution upon separation from service.

27. Should further guidance clarify the application of the qualified joint and survivor annuity rules or other plan qualification rules to arrangements in which deferred in-plan insurance annuities accumulate over time with increasing plan contributions and earnings?

Yes, further guidance on application of the qualified joint and survivor rules to in-plan annuities is necessary. Please see our response to Q 26 for more detail on this issue.

28. How do the required minimum distribution rules affect defined contribution plan sponsors' and participants' interest in the offering and use of lifetime income? Are there changes to those rules that could or should be made to encourage lifetime income without prejudice to other important policy objectives? In particular, how are deferred annuities that begin at an advanced age (sometimes referred to as longevity insurance) affected by these rules? Are there changes to the rules that could or should be considered to encourage such arrangements?

In our experience the required minimum distribution rules do not pose a barrier to using GLWBs as these products can be designed to accommodate the minimum distribution rules. We have no comment regarding whether the utilization of other types of lifetime income products may be impeded by these rules.

29. Are employers that sponsor both defined benefit and defined contribution plans allowing participants to use their defined contribution plan lump sum payouts to "purchase" lifetime income from the defined benefit plan? Could or should any actions be taken to facilitate such arrangements? Should plans be encouraged to permit retirees who previously took lump sums to be given the option of rolling it back to their former employer's plan in order to receive annuity or other lifetime benefits?

We do not believe that facilitating rollovers from defined contribution plans in to defined benefit plans is an effective strategy for promoting use of guaranteed lifetime income distribution elections. Many employers do not sponsor defined benefit plans, many of the newer "DC friendly" lifetime income products would not work well in DB plans, and participants have demonstrated a lack of enthusiasm for the type of irrevocable/inflexible annuity payments offered by DB plans. We believe that amending the defined contribution plan rules to better facilitate the use of lifetime income options in DC plans will be more effective than DB rollovers in promoting the use of lifetime income options.

Selection of Annuity Providers

The Department of Labor's regulation 29 CFR 2550.404a-4 contains a fiduciary safe harbor for the selection of annuity providers for the purpose of benefit distributions from defined contribution plans.

30. To what extent do fiduciaries currently use the safe harbor under 29 CFR 2550.404a-4 when selecting annuity providers for the purpose of making benefit distributions?

In our experience 401(k) plans, particularly those in the small to mid market, do not offer traditional annuities as a benefit distribution option and therefore do not use the current safe harbor for selecting annuities. The administrative costs of complying with the QJSA and QPSA rules and the lack of clarity in the current safe harbor are some of the reasons why annuity options are not typically offered.

31. To what extent could or should the Department of Labor make changes to the safe harbor under 29 CFR 2550.404a-4 to increase usage without compromising important participant protections? What are those changes and why should they be made?

It is not clear whether the current regulatory safe harbor for annuities applies to GLWB type products or, if it does, how to apply it in the context of these products. It would be helpful to create a new fiduciary safe harbor providing guidance on the selection and monitoring of GLWBs or other lifetime income products that do not work like traditional annuities.

Fiduciaries will be most comfortable relying on the safe harbor if it is very clear on the steps they must take and the variables they should consider when selecting lifetime income products. Small employers may be reluctant to utilize the safe harbor if they cannot conduct an appropriate level of due diligence without the help of a paid expert. The guidance should be flexible enough to accommodate a broad array of lifetime income products to both facilitate the current product array, and encourage product innovation. Following are areas of core concern to fiduciaries that should be addressed by the safe harbor.

- Selecting the Insurer of Lifetime Income Payments: Plan fiduciaries are concerned about their potential liability in selecting a guarantor and in particular the risk they take if the insurer is not able to make promised payments in the future. The safe harbor should identify the specific type of information that should be reviewed when selecting an insurer (ratings information, performance history, etc.). Fiduciaries should be able to rely on publicly available information unless they have actual knowledge of non-public information. Strong deference should be given to state insurance law protections, since state regulators are in a much better position to evaluate insurance company solvency than plan sponsors and plan by plan evaluation of providers is likely to involve significant cost. The safe harbor should clarify that if the decision to select a particular insurer was prudent at the time made, plan fiduciaries will not be held liable if at some point in the future the financial circumstances of the guarantor change. Participants in this situation will receive the benefits offered by state insurance laws, as discussed more fully in response to Q 1.

- Monitoring the Guarantor of Lifetime Income Payments: Lifetime income products pose a unique challenge to fiduciaries in fulfilling their obligation to monitor plan investments and to respond appropriately if an investment is found to no longer be suitable for the plan. If a plan decides to eliminate a lifetime income investment altogether, participants already invested in the product may pay substantial early withdrawal penalties, or may lose the benefit of guarantees they've already paid for. The safe harbor should clarify that if the selection of the insurer was prudent at the time made, and if upon determining that current investment in the product is no longer prudent the plan fiduciary disallows access to new investors, fiduciaries will not be liable for any losses suffered by pre-existing investors.
- Evaluation of Product Features: The safe harbor should identify key product features that plan fiduciaries should evaluate when selecting an appropriate product for their plan. The list should be presented as representative and not all inclusive in order to take in to account future product development. The representative list should include features such as:
 - The level of guaranteed payments offered
 - Any conditions or restrictions on receiving the guaranteed payments
 - The level of access participants have to their account balance during both the accumulation and distribution phases
 - The effect, if any, on market experience on the level of guaranteed payments and, if there is such an effect, the quality of the underlying investments
- Product Portability: Many lifetime income products are not readily transferable in the event of a change in service providers. Plan sponsors are concerned with balancing their fiduciary role in selecting and monitoring service providers with their fiduciary responsibility to plan participants in not causing them to lose benefits or incur unreasonable expenses. This problem could be resolved by allowing participants in this situation to roll their lifetime income investment in to an IRA, as discussed more fully in response to Q 14. Absent this change to plan distribution rules, plan sponsors should be given guidance on how to evaluate portability. For example, they should be protected from liability if there are a reasonable number of other providers who will either record keep the guaranteed product, or who will cooperate with the current product provider to maintain the product in the plan.
- Fees: Lifetime income products charge fees in a variety of ways and plan fiduciaries should be given guidance about how to compare cost in relation to specific product features, as well as in comparison to other similar products.

32. To what extent could or should the safe harbor under 29 CFR 2550.404a-4 be extended beyond distribution annuities to cover other lifetime annuities or similar lifetime income products? To which products should or could the safe harbor be extended?

See response to Q 31.

ERISA Section 404(c)

ERISA section 404(c) and 29 CFR 2550.404(c)-1 provide defined contribution plan fiduciaries with limited relief from the fiduciary responsibility provisions of ERISA where a participant or beneficiary exercises control over the assets in his or her account.

33. To what extent are fixed deferred lifetime annuities (i.e., incremental or accumulating annuity arrangements) or similar lifetime income products currently used as investment alternatives under ERISA 404(c) plans? Are they typically used as core investment alternatives (alternatives intended to satisfy the broad range of investment requirement in 29 CFR 2550.404c-1) or non-core investment alternatives? What are the advantages and disadvantages of such products to participants? What information typically is disclosed to the participant, in what form, and when? To what extent could or should ERISA 404(c) regulation be amended to encourage use of these products?

In GLWB products the portion of the participant's account attributable to the lifetime income investment is typically invested in asset allocation funds, such as a balanced fund or a target date fund. These products are available in ERISA 404(c) plans. Since 401(k) plans today typically offer 15 or more funds for participants to select from, most or all of which are internally diversified, the distinction of "core" versus "non-core" funds is not a distinction that plan sponsors focus on.

The advantages and disadvantages of these investment products are discussed in response to Q 1. The information typically provided to participants is discussed in response to Q 17.

In our experience, plan sponsors are very interested in the relief offered by 404(c) and are reluctant to include any investment choices in their plans that do not qualify for 404(c) protection. They would be more likely to incorporate lifetime income products in their plans if it were spelled out more clearly by regulation that these types of investments are appropriate in a 404(c) plan and how the rules on disclosure of investment related information apply in the context of guaranteed income products. Specific concerns that it would be helpful to address area:

- If a plan offers only one lifetime income option along with a broad range of mutual fund options, 404(c) protection extends to the lifetime income option and plan sponsors will not be viewed as unduly influencing the participant's election by virtue of the fact that there is only one lifetime income choice.
- Fees for lifetime income products can vary within a range over time. It would be helpful to clarify that fee disclosure is adequate for 404(c) purposes of the potential range of fees is disclosed.
- The rules under 404(c) regarding disclosure of any restrictions on transfers in and out of the investment should be expanded to encompass lifetime income products.

- The general disclosure requirements under 404(c) should be amended to incorporate information that is relevant to lifetime income products.

34. To what extent do ERISA 404(c) plans currently provide lifetime income through variable annuity contracts or similar lifetime income products? What are the advantages and disadvantages of such products to participants? What information about the annuity feature typically is disclosed to the participant, in what form, and when? To what extent could or should the ERISA 404(c) regulation be amended to encourage the use of these products?

See response to Q 33.

Qualified Default Investment Alternatives

ERISA section 404(c) (5) provides that, for purposes of ERISA section 404(c) (1), a participant in a defined contribution plan will be treated as exercising control over the assets in his or her account with respect to the amount of contributions and earnings if, in the absence of an investment election by the participant, such assets are invested by the plan in accordance with regulations of the Department of Labor. The Departments Regulation 29 CFR 2550.404c-5 describes the types of investment products that are qualified default investment alternatives under ERISA section 404(c) (5).

35. To what extent are plans using default investment alternatives that include guarantees or similar lifetime income features ancillary to the investment fund, product or model portfolio, such as target maturity fund product that that contains a guarantee of minimum lifetime income? What are the most common features currently in use? Are there actions, regulatory or otherwise, the Agencies could or should take to encourage use of these lifetime income features in connection with qualified default investment alternatives?

Few plans are using default investment alternatives that include guarantees or similar lifetime income features. For the most part these products are new and many plan sponsors and advisors are waiting for more guidance before including these products in their plans as QDIAs. The Great-West GLWB product offered through target-date funds is newly available as a default investment alternative. The default contributions are invested in an age appropriate target date fund consisting of five index funds with varying risk and return characteristics. Participants can invest in this fund at any time, but the lifetime income guarantee, and the fee for providing that guarantee, do not commence until the participant attains age 55. The value of the participant's investment in the fund at that time establishes a benefit base upon which future guaranteed income payments are calculated. On an annual basis the participant's account balance is compared to the value of their plan account. If the value of the account is higher due to market experience, the benefit base is ratcheted up to the higher value, resulting in higher guaranteed lifetime income payments. If the account value is lower than the benefit base due to market experience, the benefit base remains the same – it is never reduced as a result of market experience. Participants have access to and control over their account balance at all times, although any distributions made in excess of the guaranteed withdrawal amount will reduce the amount of future guaranteed payments.

We believe the Agencies can and should take action to encourage the use of lifetime income products as qualified default investment alternatives. The QDIA regulation should be amended to clarify that if the underlying funds in a lifetime income product qualify as a QDIA, then the addition of a guarantee feature will not change that result. This could be accomplished by clarifying that the addition of a guarantee is considered an ancillary feature of the investment fund under the terms of the existing QDIA rules, or by amending the regulation to specifically permit the addition of guarantees to a QDIA fund.

The Agencies should clarify how disclosure and opt out standards for QDIAs apply in the context of lifetime income products. For example, the disclosure should contain information explaining key features of the product and how guaranteed future income is calculated. Participants should also be given a period of time in which they can opt out (perhaps 30 days) without paying a fee for the guarantee. With these participant protections in place, the DOL should clarify that plans can use a re-enrollment process to default participants in to lifetime income products as a QDIA.

Comments Regarding Economic Analysis, Regulatory Flexibility Act and Paperwork Reduction Act

Executive Order 12866 (EO 12866) requires an assessment of the anticipated costs and benefits of a significant rulemaking action and the alternatives considered, using the guidance provided by the Office of Management and Budget. In addition, the Regulatory Flexibility Act (RFA) may require the preparation of an analysis of the economic impact on small entities of proposed rules and regulatory alternatives. For this purpose, the Agencies consider a small entity to be an employee benefit plan with fewer than 100 participants. The Paperwork Reduction Act (PRA) requires an estimate of how many “respondents” will be required to comply with any “collection of information” requirements contained in regulations and how much time and cost will be incurred as a result. The agencies in this section of the RFI are requesting comments that may contribute to any analyses that may eventually need to be performed under EO 12866, RFA and PRA, both generally and with respect to areas identified in questions 36 through 39.

36. What are the costs and benefits to a plan sponsor of offering lifetime annuities or similar lifetime income products as an in-plan option? Please quantify if possible.

Please see our responses to Qs 7 and 9.

37. Are there unique costs to small plans that impede their ability to offer lifetime annuities or similar lifetime products as an in-plan option to their participants? What special consideration, if any, is needed for these small entities?

Small plans are always faced with the problem of how to spread plan costs. Therefore, many of the recommendations regarding how to reduce fiduciary risk, simplify decision making and plan administration, and provide standardized educational materials will benefit small employers. Small employers will typically not have the negotiating power to cause a new vendor to perform the system changes necessary to record keep a guaranteed product from a prior record keeper on their system so adding a distributable event as described more fully in Q. 2 would be particularly valuable to small employers.

The industry initiative that Great-West is participating in through the Society of Pension Administrators and Record Keepers (SPARK) to facilitate portability by creating standardized data fields and formats should be of particular benefit to small employers who are not in a position to negotiate system changes impacting only their plan.

38. Would making a lifetime annuity or other lifetime income product the default form of benefit payment have an impact on employee contribution rates? If so, in which direction and why?

Plan participants do not generally pay attention to their plan's distribution options until they are approaching a distribution event. Therefore, simply making a lifetime income product the default distribution option would not appear to have any impact on employee contribution rates. However, if the default strategy was used in conjunction with routinely showing participant's their account expressed as a lifetime income stream, routine education framed in a "consumption" model, and individualized income gap analyses, participants would have a more realistic picture of the future which would encourage additional savings among those participants who are not saving enough today. Participants who are concerned with market volatility may be particularly encouraged to increase their savings rate if their contributions were investment in a lifetime income product.

39. For plans that offer lifetime annuities or similar lifetime income products, what percentage of eligible workers elect to annuitize at least some of their retirement assets and what percentage elect to annuitize all of their assets?

As noted earlier from the Hewitt survey⁸, only 1% of 401(k) plan participants today elect to take their benefit in the form of an annuity (although note only 7% of plans surveyed in this study offered an annuity option). In our own research on pension leakage from defined contribution plan accounts we found that in all types of defined contribution plans there appears to be a significant problem with leakage affecting 47% to 53% of participant accounts depending on the type of plan.⁹ While most of these plans did not offer an annuity option, this research demonstrates that pension leakage is a significant problem and policies which promote the use of guaranteed lifetime income options are essential to ensuring retirement income adequacy.

⁸ Hewitt, *supra* note 5

⁹ BenefitsCorp, "Pension leakage: Will it be affected by Portman Cardin? A Comprehensive Evaluation of Lump Sum Distributions from 401(k), 401(a), 403(b), & 457 Defined Contribution Plans", 2000