November 13, 2006

FILED ELECTRONICALLY AND VIA REGULAR MAIL

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5669
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210
Attn: Default Investment Regulation

RE: Proposed Regulation on Default Investment Alternatives Under Participant Directed Individual Account Plans

Dear Sir or Madam:

Genworth Financial, Inc. and its affiliated insurance companies ("Genworth"), which issue insurance products providing lifestyle protection, retirement income, investment and mortgage insurance needs for more than 15 million customers, is pleased to comment on the regulation proposed by the Department of Labor (the "Department" or "DOL") regarding default investment alternatives under participant directed individual account plans. We share the Department's view that default investment options should be designed to "generate adequate retirement savings for most participants or beneficiaries" and, if properly structured, believe that the final regulation could also improve the retirement security of working Americans.

We believe as matter of public policy that the final regulation should be modified so that plan investment options that also provide beneficial retirement income features can constitute qualified defaults. To that end, we suggest that the final regulation:

- Explicitly state that annuity contracts may be used to provide qualified default investment alternatives ("QDIAs") and confirm that a variable annuity that wraps a separate account may be a QDIA, if it otherwise meets the applicable requirements;
- Reflect that an investment fund[1] may include an annuity guarantee (e.g., a minimum guaranteed distribution amount) without adversely affecting the status of the investment as a QDIA;
- Clarify that fees should be considered in the context of the benefit features provided by the QDIA; and
- Clarify that a participant does not incur a financial penalty for electing to transfer out of a default investment if that participant receives his full account balance without restriction or reduction in market value.

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[1] This letter uses the term "fund" for convenience of presentation. Such terms should also be understood to refer more broadly to portfolios and "fund of fund" arrangements.

These refinements to the proposed default investment regulation would provide certainty that QDIAs include investment vehicles that provide participants with a mechanism to secure their anticipated retirement benefits through the purchase of annuities with current plan contributions.

The Value of Annuities and Insured Benefits

Group annuity contracts play a vital role in the delivery of employer provided retirement benefits. In fact, a large portion of plan sponsors select group annuities as the sole investment vehicle for their plans. Although the proposed regulation refers to "investment fund products" in a manner that is intended to include a broad range of investment products, we believe the final regulation can be improved by explicitly stating in the preamble or the final regulation that QDIAs encompass annuity products including deferred annuities and annuities that provide for guaranteed minimum income payments or guaranteed minimum death benefits.

Whether through products guaranteeing future retirement income at the point when 401(k) contributions are initially made or the more traditional lifetime payout vehicles that provide purchase rights at retirement, annuities provide guaranteed payout features that are critical to successful retirement planning. Recent studies showing the declining prevalence of traditional defined benefit pension plans, coupled with negative personal savings rates, underscore the importance of promoting policies to help American workers not only save, but also better manage their finances throughout retirement. By pooling longevity and investment risks across a large number of participants, annuities provide income payments for the life of the payee through an economically efficient structure. Moreover, such payments are guaranteed by insurance contracts backed by the claims-paying ability of the issuing insurance company.

Insurance Company Separate Accounts

We believe that a variable annuity contract issued by an insurance company with a separate account, whereby the separate account invests in a portfolio that would otherwise qualify as a QDIA (a "QDIA portfolio"), should satisfy the Department's regulation. When a separate account is utilized, the participant has assurance that the assets are segregated from the issuer's general account assets and the performance of the underlying portfolio is passed along to the participant. Accordingly, the logic that a particular portfolio, as described in the proposed regulation, is an appropriate default investment alternative should be extended to such portfolio provided via an insurance company separate account.

Guaranteed Benefit Features Should Be Permissible Aspects of Default Investments

It is clear from the proposed regulation that equity-based investments alone do not provide adequate diversification. For this reason, the proposed regulation limits the list of QDIAs to diversified investment options, i.e., investment options that are fundamentally comprised of a mix of equity and fixed income investments. At Genworth, we appreciate the value of a diversified portfolio. However, we believe that insurance company guarantees have an important role to play in default investments. If QDIAs are ultimately limited to those listed in

the current proposed regulation, the opportunity for future financial security of a large portion of the American workforce will be subject to unpredictable fluctuations in the equity markets.

As noted in Section 2(a) of the Employee Retirement Income Security Act ("ERISA"), Congress was concerned with the fact that workers were unable to realize their anticipated benefits and acted accordingly to cure that condition. That same concern remains valid today and is arguably more acute given the shift to plan designs where workers are obligated to assume financial responsibility for addressing their retirement needs. Therefore, public policy should favor vehicles that allow participants to build retirement income. We believe these requests are consistent with the statutory guidelines of the Pension Protection Act of 2006 (P.L. 109-280), which includes a directive for the Department to issue guidance "on the appropriateness of designating default investments that include a mix of asset classes consistent with capital preservation or long-term appreciation or a blend of both."

Accordingly, the final regulation should acknowledge the validity of default investments that incorporate guaranteed benefit features and additional growth opportunities. For example, there are investments available to 401(k) plans that provide the following features:

1. Guarantee of a stated amount of lifetime income based on each contribution;
2. Guarantee of a lifetime payment upon retirement;
3. Investment in an underlying QDIA portfolio of stocks and bonds;
4. The ability for participants to freely transfer in and out;
5. The ability for participants to receive up-side market performance;
6. Protection against negative investment performance due to the ability to receive guaranteed minimum income payments at retirement regardless of market performance.

An investment option combining all of these attributes has the benefit of using guarantees to mitigate longevity risk while maintaining the positive features of asset allocation models and liquidity. This allows a participant to stay more fully invested in the market over longer periods (including both the accumulation and distribution phases), while simultaneously accruing incremental levels of guaranteed minimum income payments at retirement. Thus, when an insurance guarantee feature is wrapped around a separate account that invests in a QDIA portfolio, the investment strategy can be viewed as more appropriate to a broader range of investors than an uninsured portfolio. The Department should recognize that investments combining growth opportunity and risk mitigation via guaranteed benefit features can be quite valuable to plan participants.

Fees Should be Considered in Relation to Benefits or Other Investment Features that are Being Purchased

As a general premise, ERISA requires a plan fiduciary to discharge his duties solely in the interest of plan participants and for the exclusive purpose of providing *benefits* to participants and defraying *reasonable expenses* of administering the plan (emphasis added). Accordingly, in considering appropriate QDIAs for a particular plan, a plan fiduciary should evaluate both the benefits attributable to a certain QDIA and the cost associated with such benefits. Depending on the profile of participants (or a subset of participants) in a

particular plan, the plan fiduciary could easily determine that the unique guarantees provided by annuities and participants' need for lifetime income planning make such products particularly suitable as a default investment alternative under the plan. However, the Department's overview of the proposal states:

> "[l]ike other investment alternatives made available under a plan, a plan fiduciary would be required to carefully consider investment fees and expenses in choosing a qualified default investment alternative for purposes of the proposed regulation. To the extent that a plan offers more than one investment alternative that could constitute a qualified default investment alternative, the Department anticipates that fees and expenses would be an important consideration in selecting among alternatives."

Given the additional fees and expenses attributable to the guarantees associated with annuity products and the absence of these features in other investment options, the Department's guidance should be clear that when considering whether an investment option satisfies the requirements of ERISA section 404(c)(5), a plan fiduciary should balance the value of the benefits provided by a particular investment alternative against the fees associated with that alternative consistent with section 404(a)(1) of ERISA.

Liquidity of QDIAs

The proposed regulation requires that a QDIA have a high degree of liquidity and that a participant should not incur a financial penalty for electing to transfer out of a default investment. Separate account products generally have the same liquidity features that are otherwise required by the proposed regulation. For example, if a participant who has been defaulted into a contract with a deferred annuity feature elects to invest instead in a different plan investment option, the participant will receive the amount contributed to the underlying separate account adjusted for expenses and investment return. Given the fact that each of the default investment alternatives contemplated by the Department in the proposed regulation has unique features and benefits that will be forfeited if a participant elects to invest in other investment options available under the plan, the loss of annuitization (and guaranteed payments thereunder) that would occur if an individual transferred from a default deferred annuity option to a non-annuity option (such as a mutual fund) should not be considered a financial penalty. The annuitization right is a characteristic of the investment and a participant's election to forego that right cannot be reasonably characterized as a "penalty." A penalty is something that is assessed to discourage transfers and exchanges and is of an entirely different character. For these reasons, the final regulation should clarify that a participant does not incur a financial penalty for electing to transfer out of a default investment if that participant receives his full account balance (adjusted for expenses, including the cost of the insurance guarantee) without restriction or reduction in market value.

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In conclusion, retirement is dramatically changing for millions of Americans. Demographic and economic factors are converging to weaken existing governmental and employer-provided financial safety nets. Individuals must take more responsibility for ensuring their

retirement security. Ultimately, there is no "silver bullet" solution, but annuities provide a guaranteed source of minimum income for life with the potential for increases based on equity market performance and are an important tool for participants.

We appreciate the opportunity to comment and your consideration of these matters. We are available to answer any questions or provide additional information.

Sincerely,

Geoffrey S. Stiff
Senior Vice President
Retirement Income & Investments

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