The COMMITTEE of ANNUITY INSURERS

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Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue NW, Room N–5655
Washington, DC 20210

Re: Committee of Annuity Insurers' Comments on Proposed Regulation Titled "Fiduciary Duties in Selecting Designated Investment Alternatives" (RIN 1210–AC38)

To whom it may concern:

We are writing on behalf of the Committee of Annuity Insurers (the "Committee") to comment on the proposed regulation referenced above (the "Proposal"). The Committee is a coalition of 33 life insurance companies representing approximately 80% of the annuity business in the United States.[1] The Committee was formed in 1981 to participate in the development of federal policy with respect to ERISA, tax, securities, and other regulatory issues affecting annuities. We appreciate this opportunity to comment.

Overall, we think DOL and EBSA did a terrific job on a difficult assignment. We completely agree with the Proposal's three main themes: (1) ERISA is a law grounded in process, (2) ERISA gives maximum discretion and flexibility to plan fiduciaries in selecting designated investment alternatives, and (3) when fiduciary decision-making follows a prudent process, arbiters of disputes should defer to fiduciaries under a presumption of prudence. The Proposal's focus on these themes and EBSA's recent emphasis of the same themes in litigation are important steps in stemming the tide of unwarranted lawsuits against plan sponsors, who voluntarily provide critical retirement benefits to millions of hardworking Americans.

We also appreciate how the Proposal responds to President Trump's directive to address lifetime income options in defined contribution ("DC") plans. Annuities are valuable tools for providing lifetime income and protecting individuals from other financial risks that can endanger their retirement security. We would not characterize annuities as "alternative assets," as they have been instrumental in providing retirement benefits for longer than ERISA has existed. They are, of course, a type of insurance, and as such they can differ from nonguaranteed investments in ways that may give some fiduciaries pause in offering them. The Proposal does a great job of reinforcing the correct view that a fiduciary who follows a prudent decision-making process can find that an annuity contract's differences from nonguaranteed investments are important virtues that add value for plan participants.

[1] A list of the Committee's member companies is attached as Appendix A.

Our comments in this letter are intended to make your proposal even better in achieving its goals. In that regard, we offer the following:

(1) ***The final regulation should clarify that the new safe harbor does not establish a minimum standard.*** We appreciate the Proposal being a "safe harbor." We have some concern, however, that it could be interpreted as establishing minimum standards that, if not satisfied, would invite a presumption of imprudence. This may be particularly problematic for plans that have more straightforward investment lineups, including some smaller plans. To address these concerns:

(a) The final regulation should more explicitly state that the safe harbor, including its examples, does not establish minimum standards and is not the exclusive means by which a fiduciary may satisfy their duties when selecting designated investment alternatives, and

(b) The final regulation should clarify that the scope and depth of the required analysis when selecting a designated investment alternative is always proportionate to the complexity of the investment being selected.

(2) ***The Proposal's examples should be revised to broaden their applicability, and their relevance should be clarified.*** The Proposal includes numerous examples illustrating the safe harbor's six factors, including examples of annuities in the context of the "fees" and "liquidity" factors. We appreciate the inclusion of these examples and support the idea of annuity-specific examples in the final regulation. We have some concern, however, that the examples' limited scope could have an unwarranted chilling effect on other scenarios involving different facts. Accordingly, we request the following:

(a) The examples should be revised to broaden their applicability as much as possible. In Appendix C, we offer suggestions for revising the Proposal's examples of the "fees" and "liquidity" factors in the context of annuities, and we offer a new example of the Proposal's "benchmarking" factor in the context of annuities. We ask DOL and EBSA to make similar changes to the other examples in order to broaden their applicability.

(b) The final regulation should more explicitly state that all examples are merely illustrative and not prescriptive. This is consistent with our request above that the final regulation clarify that the new safe harbor does not establish a minimum standard.

(3) ***The preamble to the final regulation should address "participant profiles or characteristics" broadly in the context of harm and causation analyses.*** The Proposal invites comments on whether "participant profiles or characteristics" should be added as an additional safe harbor factor. We think the answer is no. It would be helpful, however, if the preamble to the final rule could address this topic more broadly in the context of harm and causation analyses, particularly as they relate to class action litigation alleging imprudent investment selection.

(4) ***The final regulation should omit the Proposal's statements about tontines and the preamble should clarify that an annuity form of distribution can be a settlor decision.*** The Proposal states that a designated investment alternative does not include a plan design feature chosen by the plan settlor in a nonfiduciary capacity, *i.e.*, a "settlor decision." It then states that a "longevity risk-sharing pool," such as a tontine, can be a settlor decision. The Proposal mentions only tontines when discussing a settlor decision to include a lifetime income form of distribution in a plan, even though it is clear that under current law an annuity form of distribution also can be a settlor decision. With respect to these aspects of the Proposal, we request the following:

(a) The final regulation should omit the provision describing tontines as a settlor decision. A regulation related to selecting designated investment alternatives does not seem the right place to introduce a new, unrelated concept that most stakeholders have not vetted and do not understand.

(b) The preamble to the final regulation should clarify that an annuity form of distribution can be a settlor decision. Without such a clarification, the Proposal could be viewed as promoting tontines over annuities.

(5) ***The Proposal should not address the duty of ongoing monitoring.*** The Proposal appropriately states that it does not address the duty of ongoing monitoring of designated investment alternatives and that this topic will be covered in future guidance. Somewhat contradictorily, the Proposal then suggests that fiduciaries should follow the Proposal, including its examples, when performing such monitoring. We ask DOL and EBSA to withdraw this suggestion, so that stakeholders can have an adequate opportunity to provide input on this important topic during a subsequent formal rulemaking process.

(6) ***DOL and EBSA should revisit the QDIA regulations to facilitate the inclusion of annuity contracts that impose limited liquidity constraints.*** We ask DOL and EBSA to revisit their current regulation on qualified default investment alternatives (“QDIAs”) to facilitate the inclusion of annuity contracts that impose limited liquidity constraints. We appreciate that this last request is not specifically proposed in the current regulatory project, but it certainly is *apropos* to President Trump’s directive that DOL explore ways to encourage the availability of lifetime income options in DC plans.

Part I below provides more background on the importance of annuities in DC plans. Part II elaborates on the six comments above. Appendix B provides more background on common types of annuity contracts, the benefits they can provide, and the risks that insurers assume when providing them. Appendix C provides revised versions of the Proposal’s two examples involving annuities and a draft of a new example that we propose adding for annuities.

Part I:
<u>Background on the Importance and Types of Annuities in DC Plans</u>

Converting retirement savings into a lifelong stream of income can be a daunting task for any individual to accomplish without the right tools. In addition to uncertainty about future personal expenses, inflation, and asset returns, it is impossible for an individual to predict how long they will live and therefore how long their savings will need to last. With the decline in the number of employers offering defined benefit plans and the continuing strain that an aging population places on Social Security, commercial annuities remain a critical source of protecting DC plan participants against the risk of outliving their retirement savings.

Annuities provide insurance protection against this “longevity risk” by pooling that risk among a large group of individuals. These insurance contracts also pool and protect against other significant risks that can threaten retirement security, including inflation risk, investment risk, interest rate risk, mortality risk, and liquidity risk. For any individual, these risks can persist for 30 years or more after retirement. Annuity insurers take on these substantial and long-duration risks so that individuals do not have to bear them alone.

Annuity insurers also innovate lifetime income solutions in response to the changing needs and demands of a diverse and aging population. A prime example is the guaranteed lifetime withdrawal benefit ("GLWB"), which EBSA described in Advisory Opinion 2025-04A. Despite the substantial benefits of a traditional life annuity, individuals are often hesitant to elect that form of payment. One reason is concern over losing liquidity or "control" of their accumulated savings. Another reason is a behavioral response to the risk-pooling nature of insurance – an individual's fear of financially "losing" if they die too soon and their benefits revert to other insureds in the risk pool, potentially leaving the individual's own heirs without means of support.[2] GLWBs address these concerns by guaranteeing lifetime income while preserving liquidity and the individual's control over their account balance, including the ability to bequeath that balance to heirs.[3] In providing these types of guaranteed withdrawal benefits, annuity insurers assume significant and long-term risk, including investment risk and additional longevity risk.

Because annuity insurers make long-term commitments to their policyholders to shield them from numerous forms of risk, they are subject to stringent regulation by the states. The state regulatory structure is directed squarely at policyholder protection. One of the most important protections are the rigorous reserve requirements that annuity insurers must satisfy with respect to their benefit liabilities to customers. These requirements, together with associated capital requirements and required participation in state guaranty associations, are designed to protect consumers by ensuring each company's solvency and claims-paying ability over the many decades in which an annuity may be in force. While that is both necessary and desirable, the fact is that these reserve and capital requirements affect the scope and cost of the benefits that insurers can provide under annuity contracts.

Appendix B to this letter provides more background on common types of annuity contracts, the types of benefits they can provide, and the types of risks that insurers assume when providing them. The rest of this letter elaborates on our specific comments on the Proposal.

Part II:
<u>Specific Comments on the Proposal</u>

As summarized above, our main comments on the Proposal are that (1) the final regulation should clarify that the new safe harbor does not establish a minimum standard, (2) the Proposal's examples should be revised to broaden their applicability and their relevance should be clarified; (3) the preamble to the final regulation should address "participant profiles or characteristics" broadly in the context of harm and causation analyses, (4) the final regulation should omit the Proposal's statements about tontines and the preamble should clarify that an annuity form of distribution can be a

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[2] *See, e.g.*, Jeffrey R. Brown, *Rational and Behavioral Perspectives on the Role of Annuities in Retirement Planning* (Nat'l Bureau of Econ. Research, Working Paper No. 13537 October 2007), *available at* http://www.nber.org/papers/w13537 (discussing (1) complexity and financial literacy, (2) "mental accounting" and "loss aversion," (3) "regret aversion," and (4) the "illusion of control" as behavioral factors that may contribute to a reluctance to annuitize). See also note 2 in Appendix B.

[3] We note here that the "tontines" the Proposal seems to promote also could implicate both concerns mentioned above, *i.e.*, liquidity and mortality loss. In that regard, the arrangements described in the article that EBSA cited in the preamble generally would require irrevocable commitments to the payout structure without a payment acceleration option (loss of liquidity and control) and would result in a participant's remaining account balance reverting to other participants upon an untimely death (the individual "loses" in the risk pool).

settlor decision, (5) the Proposal should not address the duty of ongoing monitoring, and (6) DOL and EBSA should revisit the QDIA regulations to facilitate the inclusion of annuity contracts that impose limited liquidity constraints. We elaborate below.

(1) The final regulation should clarify that the new safe harbor does not establish a minimum standard.

We appreciate and agree with DOL and EBSA structuring the Proposal as a "safe harbor." We have some concern, however, that the Proposal could be interpreted as establishing minimum standards that, if not satisfied, would invite a presumption of imprudence. This, in turn, could attract unwarranted litigation against plan sponsors and investment fiduciaries. For example, the benchmarking, fee comparison, and performance evaluation requirements in the six-factor framework are quite specific. While that level of specificity may be appropriate for complex investments, it will create significant and cumbersome documentation requirements for plan sponsors and investment fiduciaries selecting more straightforward plan lineups.

In that regard, many smaller employers do not have the resources to hire experts or possibly consider multiple designated investment alternatives. These smaller employers often ask for well-established funds that are common in many plans and thus have been reviewed by many fiduciaries. For many small employers, as a practical matter, that is a very workable and appropriate system, as long as they are aware of the risk profile and asset class of each fund. The Proposal, however, could have the unintended consequence of casting doubt on whether these common industry practices satisfy the more complex analysis that the Proposal contemplates.

To address these concerns, we ask that the final regulation (1) more explicitly state that the safe harbor (including its examples) does not establish minimum standards and is not the exclusive means by which a fiduciary may satisfy their duties when selecting designated investment alternatives, and (2) clarify that the scope and depth of the required analysis when selecting a designated investment alternative is always proportionate to the complexity of the investment being selected.

We note that DOL and EBSA have included similar clarifications in other regulatory safe harbors. For example, the safe harbor for selecting annuity providers clarifies that it provides "optional means for satisfying the fiduciary responsibilities" and "does not establish minimum requirements or the exclusive means for satisfying these responsibilities."[4] Similarly, other regulatory safe harbors clarify that their "standards are not intended to be the exclusive means by which a fiduciary might satisfy his or her responsibilities."[5] These clarifications should be added to the Proposal. Their omission from the Proposal, and their inclusion in other regulatory safe harbors, could suggest that the Proposal is not, in fact, a safe harbor and instead prescribes minimum standards.

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[4] DOL Reg. § 2550.404a-4(a)(2).

[5] *See*, *e.g.*, DOL Reg. §§ 2550.404c-5(a)(2) (investments in QDIAs); 2550.404a-2(a)(2) (automatic rollovers to individual retirement plans); 2550.404a-3(a)(3) (distributions from terminated individual account plans).

(2) The Proposal's examples should be revised to broaden their applicability, and their relevance should be clarified.

We appreciate the Proposal having numerous examples of the six-factor safe harbor process for selecting designated investment alternatives, including two examples involving annuities.[6] We understand that the examples are intended to merely help illustrate the Proposal's broader themes. We are concerned, however, that in the "real world" of a litigious plaintiffs' bar, the examples may become prescriptive, rather than illustrative as intended. If a fiduciary does not exactly follow the details of a particular example, plan sponsors and recordkeepers may find themselves defending their processes and decisions against an inappropriate standard.[7]

To help avoid this outcome, we have two requests. First, we ask that the final regulation more explicitly state that all examples are merely illustrative and not prescriptive. This is consistent with our request above that the final regulation clarify that the new safe harbor does not establish a minimum standard. Second, we ask that the final regulation revise all examples to broaden their applicability as much as possible. In Appendix C, we offer specific language for doing this with respect to (1) the Proposal's existing examples of the "fees" and "liquidity" factors in the context of annuities, and (2) a new example that we propose regarding the "benchmarking" factor in the context of annuities. These specific suggestions are discussed in more detail below.

(a) Annuities and the "fees" factor

The Proposal's example of the "fees" factor involving an annuity contract describes only one type of fee: an annuity purchase rate guarantee.[8] This is a basic fee that is involved in virtually every deferred annuity under which a lump sum can be annuitized. Despite the limited nature of the example's facts, we view it as aiming at a larger point, namely, that as a type of insurance, an annuity can have insurance-related costs, expenses, and similar pricing elements ("fees") that other types of investments do not impose, but this does not preclude a prudent fiduciary from determining that the insurance benefits justify the related fees. We obviously agree with this larger point and believe it is important for the final rule to confirm it. Our concern is that the Proposal makes the point indirectly and in the context of a very simplistic scenario that does not, on its face, contemplate the point's broader applicability to other types of fees under an annuity contract.

As discussed above and in Appendix B, the guarantees that an annuity contract provides often cover multiple risks over long durations, including longevity risk, inflation risk, investment risk, interest rate risk, mortality risk, expense risk, and liquidity risk. In our view, it would be preferable for the final regulation to include an example that can more readily be interpreted as involving any and all of these or other risks that an annuity contract can cover, along with the fees that insurers impose for assuming those risks. This could be accomplished by broadening the example in certain respects, as reflected in Appendix C.

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[6] *See* Prop. DOL Reg. § 2550.404a–6(h)(3) (example involving annuities and the safe harbor's "fees" factor) and Prop. DOL Reg. § 2550.404a–6(i)(2) (example involving annuities and the safe harbor's "liquidity" factor).

[7] For example, the Proposal's example of the "fees" factor in the context of a variable annuity posits that the funds offered under the annuity have the "same" or "identical" expense ratios as other funds already offered through the plan. To the extent that a real case involves *any* differences between these expense ratios – regardless of how small – the plaintiff's bar could seize on such differences and allege that the plan fiduciary failed to reach a prudent decision. In this sense, the example's specificity could effectively create a roadmap for dubious lawsuits.

[8] Prop. DOL Reg. § 2550.404a–6(h)(3).

(b) Annuities and the "liquidity" factor

For the same reasons, we also think the Proposal's example of the "liquidity" factor in the context of annuities should be broadened. That example describes a narrow circumstance in which an annuity issuer may impose liquidity constraints under the contract, namely, in order to facilitate potentially higher annuity payments once they commence.[9] There are numerous other scenarios in which an annuity contract may constrain liquidity in some way. For example, under a GLWB such as the one EBSA addressed in Advisory Opinion 2025-04A, the annuity contract typically limits the amount the participant can withdraw from their account balance each year without reducing or eliminating their future guaranteed withdrawal amounts. Similarly, in response to disintermediation risk (see Appendix B), some deferred annuities that credit amounts based on interest rate assumptions and liquidity characteristics limit the amount that a participant can withdraw from their account each year, in general and/or without a "market value adjustment" or similar reduction to their benefits. It would be preferable for the final regulation to include an example that can more readily be interpreted as involving any and all of these or other liquidity constraints, which could be accomplished by broadening the example as we have suggested in Appendix C.

(c) Annuities and the "benchmarking" factor

We also ask that the final regulation include a new example involving annuities, in the context of the safe harbor's "benchmarking" factor. Our members often hear uncertainty from plan sponsors and advisors regarding how to appropriately benchmark annuity products that provide lifetime income and other benefits (including during the accumulation phase) that may not be available in connection with non-annuity investments. Although the Proposal was written to provide fiduciaries with flexibility when considering how to apply the benchmarking factor in connection with "a new or innovative product design" for which a more traditional "benchmark" is lacking,[10] similar uncertainty can arise when applying this factor to annuity contracts, whether they are new or innovative or simply different than non-annuity investments. Given the practical challenges that our members continue to observe, especially where traditional measures such as risk-adjusted returns net of fees may not fully capture the value of annuities' unique features, adding a clear, illustrative example could provide meaningful additional guidance and help address a common point of confusion. Accordingly, we ask that the final regulation include an example of the benchmarking factor in the context of annuities, as reflected in Appendix C.

(3) The preamble to the final regulation should address "participant profiles or characteristics" broadly in the context of harm and causation analyses.

The Proposal invites comments on whether "participant profiles or characteristics" should be added as an additional safe harbor factor.[11] We think the answer is no. It would be helpful, however, if the preamble to the final rule could address this topic more broadly in the context of harm and

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[9] Prop. DOL Reg. § 2550.404a–6(i)(2).

[10] *See* Prop. DOL. Reg. § 2550.404a–6(k) ("there is no presumption or preference against new or innovative designated investment alternative designs. Instead, when considering a new or innovative product design, a fiduciary should seek to identify the best possible comparators to it while also scrutinizing the potential value proposition presented by the new or innovative design.").

[11] *See* 91 Fed. Reg. at 16096 (March 31, 2026).

causation analyses, particularly as they relate to class action litigation challenging alleged imprudent investment selection.

In that regard, recent case law – particularly *Trauernicht v. Genworth Financial Inc.*[12] – highlights the fundamentally individualized nature of harm determinations in these cases. That decision reinforces the point that alleged injuries arising from investment selection often depend on individualized participant circumstances, such as elections, holding periods, risk tolerance, timing, and utilization of plan features. Incorporating a discussion of this principle into the final rule's preamble, rather than embedding participant profiles as a formal safe harbor requirement, would help reinforce DOL's consistent, process-based approach to fiduciary investment selection obligations. It also would provide helpful context to courts and litigants regarding the difficulty of establishing class-wide harm premised solely on the inclusion of a particular investment option, especially where participants exercise meaningful choice. Such clarification would further support DOL's goal of curbing unwarranted litigation without constraining fiduciaries' ability to thoughtfully design plan menus.

(4) The final regulation should omit the Proposal's statements about tontines and the preamble should clarify that an annuity form of distribution can be a settlor decision.

The Proposal states that a designated investment alternative does not include "plan design features chosen by plan settlors, including features that establish the payment method of benefits under the plan."[13] These are commonly known as settlor decisions. The Proposal goes on to give an example of a settlor decision involving lifetime income. The example describes a "design feature" consisting of an "open-end, actuarially fair, longevity risk-sharing solution with mortality pooling but no insurance contract or additional investment product." The preamble clarifies this means a particular type of "tontine" that is conceptualized in an article the preamble cites.[14]

We appreciate the distinction between settlor decisions and fiduciary decisions involving the selection of designated investment alternatives. Our concern is that the Proposal and its preamble seem to go out of their way to identify tontines, *and only tontines*, as a good example of this distinction. It is quite clear that, when a plan sponsor decides to amend the plan to offer an annuity form of distribution, this is a nonfiduciary settlor decision,[15] and in fact this is one of the most common – and important – plan design decisions that DC plan sponsors face. By mentioning only tontines as an example of a settlor decision involving lifetime income, the Proposal could be viewed as casting doubt on this fact. More troubling, the Proposal could be seen as promoting tontines over commercial

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[12] 169 F.4th 459 (4th Cir. 2026).

[13] Prop. DOL Reg. § 2550.404a–6(m)(3).

[14] 91 Fed. Reg. at 16104 (March 31, 2026).

[15] *See, e.g.*, DOL Prop. Reg. § 2550.404a–6(h)(3) (the Proposal's "fees" example involving annuities, which starts by stating that "[a] plan sponsor makes a *plan design decision* to add a lifetime income benefit to its existing participant-directed individual account plan.") (emphasis added); Prop. DOL Reg. § 2550.404a–6(i)(2) (the Proposal's "liquidity" example involving annuities, which starts by stating that "[t]he *investment policy statement* of a participant-directed individual account plan calls for lifetime income options on the plan investment menu.") (emphasis added).

annuity solutions. As Assistant Secretary Aronowitz testified at a recent congressional hearing, neither EBSA nor the Proposal should endeavor to "pick winners and losers."[16]

In that regard, there are many reasons why a plan sponsor may prefer an insured lifetime income solution over an uninsured arrangement. For example, insured arrangements are subject to oversight by state insurance regulators and protected by state guaranty associations. A prudent fiduciary may conclude that such oversight and protection is preferable to the plan sponsor attempting to determine if an unregulated, uninsured tontine is "actuarially fair" and otherwise in the best interests of the plan participants. In addition, commercial annuities often address consumer demands for more flexible lifetime income options, such as retaining liquidity and control over their retirement savings and protecting their heirs from financial burdens upon an untimely death. Tontines, at least as we understand them based on the one article the Proposal cites, would not address these consumer demands, so a prudent fiduciary may decide that a commercial annuity will better encourage participants to choose lifetime income protections.[17]

For these and other reasons, the Proposal should not address when and whether tontines are designated investment alternatives *versus* settlor decisions. Accordingly, ask DOL and EBSA to omit the discussion of tontines from the final regulation and to clarify in the preamble that, under current law, offering an annuity form of distribution is a settlor decision. In addition to the reasons mentioned above, a regulation related to selecting designated investment alternatives does not seem the right place to introduce a new, unrelated concept that most stakeholders have not vetted and do not understand.

(5) The Proposal should not address ongoing monitoring.

The preamble to the Proposal states that the Proposal does not address the duty of ongoing monitoring of designated investment alternatives and that this topic will be covered in future guidance. Somewhat contradictorily, the preamble then suggests that fiduciaries should follow the Proposal, including its examples, when performing such monitoring.[18] We ask DOL and EBSA to withdraw this suggestion, so that stakeholders can have an adequate opportunity to provide input on this important topic during a subsequent formal rulemaking process. For example, stakeholders may want to consider whether any differences between safe harbor processes for the initial selection and ongoing monitoring of designated investment alternatives are warranted, including examples of ongoing monitoring that differ from those in the Proposal. This is a very important topic that deserves closer review and input.

(6) DOL and EBSA should revisit the QDIA regulations to facilitate the inclusion of annuity contracts that impose limited liquidity constraints.

We appreciate the Proposal's discussion of liquidity as one of the six safe harbor factors. With respect to that factor, we ask DOL and EBSA to revisit their current regulation on QDIAs to facilitate

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[16] The hearing, titled *Examining the Policies and Priorities of the Employee Benefits Security Administration*, was held on April 16, 2026, by the House Committee on Education and Workforce Subcommittee on Health, Employment, Labor, and Pensions.

[17] *See* note 3, *supra*.

[18] *See* 91 Fed. Reg. at 16094 (March 31, 2026) ("The Department generally is of the view that the factors and processes (or substantially similar factors and processes) outlined in the proposed regulation—including the illustrative safe harbor examples—apply to this ongoing duty.").

the inclusion of annuity contracts that impose limited liquidity constraints. Although the QDIA regulations are clear that annuities are not automatically excluded from QDIA treatment, the regulations generally preclude the use of investments as QDIAs if they do not meet certain liquidity requirements.[19] Annuities and other guaranteed lifetime income products that impose liquidity constraints may not meet these requirements, despite their potential to promote superior outcomes for individuals due to those constraints. Thus, the regulations create a barrier to the use of such products as QDIAs or within QDIAs.

A legislative solution to this problem has been proposed as the Lifetime Income for Employees (LIFE) Act,[20] but to date it has not been enacted into law. Such legislation is not strictly necessary, however, as DOL and EBSA could address this problem on their own by changing the QDIA regulation. We urge DOL and EBSA to take the lead on this issue by revising the regulation. We appreciate that this last request is not specifically proposed in the current regulatory project, but it certainly is *apropos* to President Trump's directive that DOL explore ways to facilitate the inclusion of lifetime income options in DC plans.

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We appreciate your consideration of our input on the Proposal. If you have any questions or if we can be of any assistance, please contact either of the undersigned.

Sincerely,

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Attachments: Appendix A (List of member companies)
Appendix B (Background on annuities)
Appendix C (Examples involving annuities)

[19] *See* DOL Reg. § 2550.404c-5(c)(5) (requiring that any assets in a QDIA be available to allocate to another investment "not less frequently than once within any three month period.").

[20] *See* H.R. 3942, introduced by Reps. Don Norcross (D-NJ) and Tim Walberg (R-MI) in the 118th Congress.

The COMMITTEE of ANNUITY INSURERS

<u>Appendix A</u>

List of Committee of Annuity Insurers Member Companies

Allianz Life Insurance Company of North America, Minneapolis, MN
American Equity Investment Life Insurance Company, West Des Moines, IA
Ameriprise Financial, Minneapolis, MN
Athene USA, Des Moines, IA
AuguStar Life Insurance Company, Cincinnati, OH
Brighthouse Financial, Inc., Charlotte, NC
Corebridge Financial, Houston, TX
Equitable, New York, NY
Fidelity Investments Life Insurance Company, Boston, MA
Fortitude Re, Jersey City, NJ
Genworth Financial, Richmond, VA
Global Atlantic Financial Group, Southborough, MA
Guardian Insurance & Annuity Co., Inc., New York, NY
Jackson National Life Insurance Company, Lansing, MI
John Hancock Life Insurance Company, Boston, MA
Lincoln Financial Group, Fort Wayne, IN
Massachusetts Mutual Life Insurance Company, Springfield, MA
Metropolitan Life Insurance Company, New York, NY
Nationwide Life Insurance Companies, Columbus, OH
New York Life Insurance Company, New York, NY
Northwestern Mutual Life Insurance Company, Milwaukee, WI
Pacific Life Insurance Company, Newport Beach, CA
Protective Life Insurance Company, Birmingham, AL
Prudential Insurance Company of America, Newark, NJ
Sammons Financial Group, Chicago, IL
Security Benefit Life Insurance Company, Topeka, KS
Symetra Financial, Bellevue, WA
Talcott Resolution, Windsor, CT
Thrivent, Minneapolis, MN
TIAA, New York, NY
Transamerica, Cedar Rapids, IA
TruStage, Madison, WI
USAA Life Insurance Company, San Antonio, TX

The Committee of Annuity Insurers was formed in 1981 to participate in the development of federal policies with respect to annuities. The member companies of the Committee represent approximately 80% of the annuity business in the United States.

Appendix B

Background on Annuity Products, Benefits, and Risk Protections

This Appendix provides more background on common types of annuity contracts, the types of benefits they can provide, and the types of risks that insurers assume when providing them.

1. Common Types of Annuity Contracts and Annuity Benefits

All annuities share the basic feature of allowing the individual to convert a lump sum into a stream of periodic payments that are guaranteed to continue for one or two lives or another specified duration. Beyond this generalization, annuities come in a wide variety of forms to meet varying consumer needs. Annuity insurers have continued to produce numerous innovations in annuity products to meet the changing needs and demands of a diverse and aging population. These include consumer demands for greater protection against inflation risk, investment risk, and liquidity risk. Below is a list of common types of annuity contracts and annuity benefits, along with a brief description of each.

- Immediate annuities. Provide only a "payout phase" by converting savings that are held outside of the contract, such as in an individual account under a DC plan, into a stream of income that is guaranteed to continue for life, joint lives, or another stated period.

- Deferred annuities. Provide an "accumulation phase" during which retirement savings are credited with interest or earnings, followed by a payout phase in which the accumulated savings are applied to generate annuity payments. The annuity payments typically are determined using "annuity purchase rates" that are guaranteed in the contract or better rates reflecting more recent interest rate or mortality improvements. During the accumulation phase, the manner in which interest or earnings are credited to the account value depends on the type of contract and the options elected thereunder. For example:

    - *Deferred fixed annuities.* Interest is credited at a guaranteed minimum rate but additional interest may be credited based on the current interest rate environment. Because principal and a minimum return are guaranteed, deferred fixed annuities are appropriate for individuals with lower tolerances for market volatility. During the accumulation phase, many deferred fixed annuities incorporate liquidity and risk-minimizing provisions, such as requiring that certain or all withdrawals (1) are paid over a period of years, and/or (2) may be subject to an adjustment based, in part, on changes in the interest rate environment, and/or (3) are subject to limits as to the types of other plan investments to which proceeds from the deferred fixed annuity contract can be transferred (a so-called "equity wash" provision). These protections promote insurer solvency while also allowing the end customer to typically benefit from higher overall returns than they would experience without such provisions.

    - *Deferred variable annuities.* A segregated asset account is invested in mutual funds or other securities and the investment gains and losses are passed through to the account. This provides access to equity-based returns, which present market risk but also the opportunity for higher earnings over the long term. Many deferred variable annuities also offer a fixed account option that functions like a deferred fixed annuity, providing an additional option for the owner as their risk tolerance changes over time.

    - *Deferred fixed-index annuities (FIAs).* Provide an account value in which principal is guaranteed, interest may be credited at a guaranteed minimum rate, and interest is credited based on the positive performance of a market index, such as the S&P 500. This provides assurances against market losses but also access to equity-like returns.

- *Deferred registered index-linked annuities (RILAs).* Provide an account value that reflects the performance of a market index, such as the S&P 500, but where neither the principal nor a minimum interest rate is guaranteed. However, losses are generally buffered or subject to a floor or participation rate, limiting the owner's exposure to market losses while providing access to equity-like returns.

- *Guaranteed minimum accumulation benefits (GMABs).* Some deferred annuities provide a GMAB, which guarantees a minimum rate of return before annuity payments commence, regardless of the performance of the mutual funds or indexes on which the account value otherwise is based.

- *Deferred income annuities (DIAs).* Deferred annuity contracts that do not provide an account value or permit withdrawals prior to annuity payments commencing. Annuity payments typically begin 12 or more months from the date of conversion of the lump sum. The liquidity restriction helps the insurer provide higher payments once they start. One type of DIA is called a "qualifying longevity annuity contract" or "QLAC."[1]

- Traditional annuitizations. Payout options under an immediate or deferred annuity contract pursuant to which a lump sum is converted (sometimes irrevocably) to a stream of periodic payments that the insurer guarantees will continue for life, joint lives, or another stated duration. The periodic payments can be designed to be paid in fixed (level) installments. Alternatively, they can include features to help offset inflation, such as payments that (1) increase annually by a fixed percentage, (2) increase in accordance with a referenced index, (3) increase periodically based on insurer declaration, or (4) fluctuate based on market-based returns, with or without a guaranteed "floor" below which the payments will not fall.

- Guaranteed lifetime withdrawal benefits (GLWBs). A type of lifetime income option that guarantees a certain amount will be available to withdraw from the individual's account for their entire life or for the joint lives of the individual and their spouse. A GLWB's key feature is that, unlike a more traditional life annuity, the GLWB is not "locked in" at inception, thereby preserving liquidity and the individual's control over their account in the plan. If the individual exercises their liquidity rights by withdrawing more than the guaranteed amount in any given year, the guaranteed amount is reduced proportionately for subsequent years. Insurers developed GLWBs to help address many of the perceived behavioral and emotional barriers to electing life-contingent forms of payout, which some individuals may perceive as requiring the relinquishment of too much control over their account.[2] Advisory Opinion 2025-04A involved

[1] *See* Treas. Reg. § 1.401(a)(9)-6(q).

[2] Scholars have speculated that one reason individuals are reluctant to elect more traditional annuitization options could be a behavioral response to the risk-pooling nature of insurance – an individual's fear of financially "losing" if early death prevents the payment of at least a significant amount of cash benefits under the contract. Another potential reason is the perceived loss of "control" over one's savings, because converting a lump sum into a series of life annuity payments often involves a corresponding reduction in liquidity with respect to the annuitized sum. *See, e.g.*, Jeffrey R. Brown, *Rational and Behavioral Perspectives on the Role of Annuities in Retirement Planning* (Nat'l Bureau of Econ. Research, Working Paper No. 13537 October 2007), *available at* http://www.nber.org/papers/w13537 (discussing (1) complexity and financial literacy, (2) "mental accounting" and "loss aversion," (3) "regret aversion," and (4) the "illusion of control" as behavioral factors that may contribute to a reluctance to annuitize).

an arrangement that included a GLWB. The individual account that a GLWB protects can be held under the annuity contract or outside of the annuity contract. The latter type of arrangement is sometimes called a contingent deferred annuity, or CDA.

2. Risks that Annuity Insurers Assume for Plan Participants

As evident from the discussion above, annuities provide a variety of guarantees that can be critical to individuals assuring themselves a secure retirement. The guarantees often cover multiple risks and persist for long durations, such as 30 years or more for any given individual. The specifics of these risks, the guarantees made by insurers with respect to these risks, and fees for these risks can be summarized as follows:

- Longevity and mortality risk. Annuity insurers assume longevity risk, which is based on mortality rates. Insurers project mortality rates using actuarial tables and by making adjustments for the type of product, the demographics of the insurer's customer base, and the market in which the product is sold. If actual mortality rates differ from those the company projects, the company could need to pay out more in benefits than the assets it holds in support of those benefits.

- Adverse selection risk. Long-term experience has shown that individuals who elect annuities live longer than the population at large. As a result, insurance premiums must be set high enough to compensate insurers for the relatively long period during which they will have to make annuity payments.

- Investment risk. Annuity insurers assume investment risk in a variety of ways. They use the premiums they receive to make investments, which must retain sufficient principal and generate sufficient income to offset all of the insurer's costs in issuing and servicing the contracts, paying the promised benefits, and providing an adequate profit or return on the capital the insurer dedicates to its annuity business lines. Managing this investment risk is particularly challenging for benefits such as GLWBs, FIAs, and RILAs, which require sophisticated hedging strategies using complex derivatives and extensive modeling of potential financial market outcomes over time and can generate benefit obligations that increase dramatically with severe market downturns. In addition, the guarantees that insurers provide are based on expectations of future interest rates, which can fluctuate greatly over the long durations that the annuity is in force.

- Disintermediation risk. Annuity insurers assume disintermediation risk, which is the risk that a large number of deferred fixed annuity policyholders will surrender their contracts during a period in which the market values of assets in the insurer's investment portfolio are depressed. Because the surrender values of the contracts could be greater than the market value of the insurer's assets, the insurer would need to pay out more in cash than it obtained in premiums and investment income. For this reason, some contracts impose limits on withdrawals, such as by requiring certain withdrawals to be paid out over time, by imposing "market value adjustments" or "surrender charges," and/or by limiting the types of other plan investments to which the withdrawal proceeds can be transferred (a so-called "equity wash" provision).

- Expense risk. Annuity insurers guarantee that the expenses they will charge under an annuity contract will not exceed a specified maximum level, regardless of the expenses the company actually incurs in administering the product and providing the benefits thereunder.

The COMMITTEE of ANNUITY INSURERS

Appendix C

Revised Annuity Examples Reflecting the Committee's Recommendations

As discussed in the accompanying letter, we request that (1) the Proposal's two examples involving annuities and the "fees" and "liquidity" factors from the safe harbor be broadened in certain respects, and (2) a new example be added regarding annuities in the context of the Proposal's "benchmarking" factor. The specific language we recommend is set out below.

1. Revised example involving annuities and the "fees" factor from the safe harbor

Prop. DOL Reg. § 2550.404a–6(h)(3)

Example. Fees; Lifetime income and other risk mitigation features—

(i) Facts. The sponsor of a participant-directed individual account plan makes a plan design decision, in a nonfiduciary capacity, to add a life annuity form of distribution to the plan in order to protect participants from longevity risk and other financial risks they may face in retirement. The named fiduciary of the plan selects multiple types of deferred annuity contracts, each providing guaranteed lifetime income options. Prior to any life annuity election, the contracts provide an "accumulation" phase during which the participant's account is credited with interest or earnings. For this purpose, participants can select among different mutual fund or interest crediting options. The plan already offers other mutual fund options outside of the annuity contract, which the plan sponsor selected using a prudent process. The existing mutual fund options and those to be offered under the annuity contract are similar in all material respects. The annuity contracts also offer several interest crediting options that are not currently offered under the plan, including options based on referenced equity indexes that also provide protections against negative returns. The annuity contracts impose certain fees that are not imposed under other designated investment alternatives in the plan. Those fees relate to insurance and other risk-mitigation features of the annuity contracts that are not provided under the other investments, including guarantees regarding lifetime income and protection against market risk. The named fiduciary consults with an investment advice fiduciary within the meaning of section 3(21)(A)(ii) of ERISA. The investment advice fiduciary analyzes the annuity market generally, focusing primarily on annuity products that are available to participant-directed individual account plans, which analysis the named fiduciary critically evaluates and adopts in determining, within its discretion, that the designated investment alternative with the lifetime income benefit and other risk-mitigation features provides commensurate value for the fees charged.

(ii) Analysis. The named fiduciary must act prudently when selecting a particular annuity contract to implement the plan sponsor's decision to add a life annuity option to the plan in order to protect participants from longevity risk and other financial risks they may face in retirement. Although the named fiduciary should appropriately consider a reasonable number of similar alternatives, the mutual fund designated investment alternative already on the plan investment menu satisfies this standard with respect to the mutual fund options that will be available under the annuity contract, because they are similar in all material respects, other than the additional benefits the annuity contract provides. With respect to the annuity contract's other benefits, which are not provided under the plan's existing designated investment alternatives, the named fiduciary determined that such other benefits provide commensurate value for the fees that will be charged. These benefits have added value to the plan and therefore justify higher total fees than the designated investment alternative without these features.

(iii) Conclusion. The named fiduciary in this example acted prudently when adding the new designated investment alternative to the plan investment menu. The fact that the designated investment alternative has higher fees than similar designated investment alternatives that omit the additional benefits that the annuity contract will provide does not alter this conclusion. To satisfy the consideration and determination requirements under paragraph (h) of this section, and section 404(a)(1)(B) of ERISA, the named fiduciary considered and determined that the additional fees under the annuity contract are appropriate in relation to the value the contract brings to furthering the purposes of the plan.

2. **Revised example involving annuities and the "liquidity" factor from the safe harbor**

Prop. DOL Reg. § 2550.404a–6(i)(2)

Example. Participant and plan level liquidity; lifetime income and other insurance features—

(i) Facts. The investment policy statement of a participant-directed individual account plan calls for the plan investment menu to include a life annuity form of distribution and other investment features that protect participants against longevity risk and other financial risks. The named fiduciary selects several types of deferred annuity contracts that provide different forms of lifetime income. All of the contracts also provide an accumulation account that is credited with interest or earnings based on different crediting strategies or mutual fund options the participant selects under the contract. The contracts impose certain constraints on the timing or amount of withdrawals the participant takes from the accumulation account before annuity payments commence and/or on the plan if the contract is removed as a designated investment alternative. Such withdrawals may be required to be paid over time or may result in a surrender charge or market value adjustment that reduces the withdrawal proceeds and/or a downward adjustment to the future lifetime income benefits under the contract. These restrictions on liquidity on the plan and/or on the participant are intended to facilitate the contract providing higher crediting rates, annuity payments, or both.

(ii) Analysis. Paragraph (i) of this section clarifies that plan fiduciaries should appropriately consider the potential participant-level and plan-level events that may trigger a plan's need for immediate liquidity, and must determine that the designated investment alternative, at the time of selection, will have sufficient liquidity to meet the anticipated liquidity needs of the plan. When assessing the liquidity needs of the plan at both the plan and participant levels, the plan fiduciary in this example must balance the restrictions on liquidity under the annuity contracts with the value of (i) the guarantees provided under the contracts, (ii) the lifetime income options under the contracts, and (iii) other risk-mitigation features under the contracts, recognizing that such protections and options help plan participants manage investment risk, longevity risk, and other risks they face when saving for and living in retirement. The fact that a designated investment alternative is fully allocated to a product, like an annuity, that imposes certain liquidity constraints does not foreclose its selection, including, for example, where the fiduciary determines within its discretion that such constraints are justified by the possibility of (i) a commensurate increase in return on investment, (ii) a commensurate increase in the amount of lifetime income, and/or (iii) certainty with respect to future payments.

(iii) Conclusion. In this example, the named fiduciary would satisfy the consideration and determination requirements of paragraph (i) of this section, and section 404(a)(1)(B) of ERISA, with respect to the designated investment alternatives in question if the named fiduciary concluded that the potential increase in the dollar amounts of annuity payments and crediting rates justify the restrictions on liquidity.

3. <u>New example involving annuities and the “benchmarking” factor from the safe harbor</u>

To be added to Prop. DOL Reg. § 2550.404a–6(k)

Example. Benchmarking lifetime income and other insurance features—

(i) Facts. The named fiduciary of a participant-directed individual account plan selects a deferred annuity contract as a designated investment alternative to provide participants with guaranteed lifetime income and other protections against financial risks in retirement. The annuity contract includes an accumulation phase during which participant annuity balances grow and a distribution phase providing lifetime income. In evaluating the annuity contract, the named fiduciary applies an outcome-based benchmarking approach that focuses on the contract’s expected contribution to participant retirement income security. The fiduciary reviews models and projections that assess the annuity’s ability to support sustainable income, mitigate longevity risk, and provide stability under adverse market conditions. The fiduciary compares these modeled outcomes to those associated with other available investment alternatives, including traditional investment-only options, and considers material differences in product structure, objectives, and risk mitigation features. The named fiduciary carefully reviews the analysis, which demonstrates the annuity’s ability to improve likelihood of meeting annual income goals, protecting against longevity risk, and providing income stability under varying market conditions. All modeling assumptions, methodology, and results are documented and the fiduciary does not know, or have reason to know, of any information that would call into question the analysis or its conclusions.

(ii) Analysis. Paragraph (k) of this section requires that a named fiduciary prudently evaluate a designated investment alternative using appropriate benchmarking. In this example, the named fiduciary acts prudently by employing an outcome-based benchmarking framework that evaluates the annuity contract based on its ability to achieve plan goals and participant-focused objectives, including generating sustainable lifetime income, improving the probability of meeting retirement income needs, and reducing the impact of adverse market conditions. The use of modeling and projections provides a reasonable and appropriate means of assessing these outcomes across a wide range of potential scenarios. The named fiduciary appropriately recognizes that traditional benchmarking measures, such as comparisons of historical or expected risk-adjusted returns net of fees, may not fully capture the value of insurance features, including lifetime income guarantees and downside protection. Accordingly, the fiduciary determines, within its discretion, that benchmarking the annuity contract based on modeled participant outcomes and risk mitigation characteristics is appropriate given the nature and purpose of the designated investment alternative.

(iii) Conclusion. In this example, the named fiduciary satisfies the consideration and determination requirements of paragraph (k) of this section, and section 404(a)(1)(B) of ERISA. The named fiduciary acted prudently by applying an outcome-based benchmarking approach that differs from traditional performance comparisons, where such approach reasonably evaluates the annuity contract’s lifetime income and other insurance features and supports a determination that the designated investment alternative provides meaningful value in furthering the purposes of the plan.