November 13, 2006

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

Attn: Default Investment Regulation

Comments Re: 29 CFR Part 2550, Default Investment Alternatives Under Participant Directed Individual Account Plan; Proposed Rule

Pension Consultants Inc. assists retirement plan sponsors with the selection and monitoring of plan investments. We are pleased to review the proposed regulations for default investment alternatives and feel they will provide much-needed guidance on appropriate default investment options. However, we would like to address several areas we feel may need clarification.

Our first area of concern is the fifth condition stated under §2550.404c-5(c)(5), which allows for the transfer of assets by the participant from the default investment without penalty. The condition states that "any participant or beneficiary on whose behalf assets are invested in a qualified default investment alternative may, consistent with the terms of the plan (but in no event less frequently than once within any three month period), to transfer, in whole or in part, such assets to any other investment alternative available under the plan without financial penalty."

This provision may conflict with the fees that are allowed under SEC Rule 22c-2, which is scheduled to go into effect April 16, 2007. It is not clear whether Rule 22c-2 was considered with regards to the fifth condition to allow transfer to an alternative investment from the default investment without financial penalty. Review of Rule 22c-2 shows that the DOL conferred with the SEC regarding the development of the rule, and it was determined that "reasonable redemption fees and reasonable plan or investment fund limits on the number of times a participant can move in and out of a particular investment within a particular period . . . provided that any such restrictions are allowed under the terms of the plan and clearly disclosed to the plan's participants and beneficiaries." We are concerned that the allowable default investment alternatives may have some type of fee consistent with Rule 22c-2 in place that would interfere with the participant's ability to transfer assets without penalty.

The second area of concern is the availability of fiduciary protection for funds currently invested by default in a money market, stable value, or other similar investment. It is our belief that, prior to the guidance provided by the proposed regulations, plan sponsors attempted to meet their ERISA fiduciary obligation to protect a participant's account from investment losses by investing default contributions in money market, stable value, or other similar investments. The proposed regulations address future contributions, but do not mention the proper treatment of these prior contributions. We would like the final regulations to specifically state the fiduciary protection available for prior and future contributions. There are two satisfactory outcomes that we have identified:

- All future contributions to be invested according to the proposed regulations in the chosen default investment alternative, and prior contributions remaining in the former default investment (typically a money market or stable

300 South Campbell Ave ▪ Springfield, MO 65806 ▪ 1.800.234.9584
417.889.4918 ▪ Fax: 417.889.9962 ▪ www.Pension-Consultants.com

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value fund) with safe harbor protection available. Plan sponsors need to be assured that all default contributions, before and after the final regulations are issued, will be protected under 404(c).

- Liquidation of prior default contributions from the former default investment, with subsequent reinvestment in the chosen default investment alternative. The actual transfer of funds to the new investment alternative will be a protected transaction under 404(c).

We believe these actions could potentially affect the language required in the participant notifications as well as the ability to ensure compliance with the ERISA 404(c) safe harbor regulations. The proposed regulations should be specific as to the protection provided to fiduciaries regarding the handling of funds invested by default prior to the proposed regulations.

The third area of concern in the proposed regulations is the requirement under investment management services that the account be managed by an investment manager. It is common industry practice to use asset allocation models (based on DOL guidelines under Interpretive Bulletin 96-1) for participant education that are professionally designed, although they are not professionally managed. These models are an effective, cost-efficient tool that allow participants to easily allocate assets based on age and risk tolerance. The models are comprised of investments that are available within the plan (which are prudently selected and monitored by the plan fiduciary) and would meet the goal of ensuring that qualified default investments have a greater return potential than default investments used prior to the proposed regulations.

It is our view that the description of investment alternatives in the proposed regulations endorses the use of asset allocation models, but the strict definition of "managed" may prevent their use. A specific model that is chosen by a plan fiduciary based on the "demographics of the participant population as a whole" will accomplish the same objective as a balanced fund, possibly at a lower cost. In addition, each component investment of the model is monitored individually, and an underperforming investment can be replaced, resulting in greater transparency and accountability to the participant.

Although we understand the necessity to ensure fiduciary accountability where plan sponsors are afforded relief under the proposed regulations, we feel this can be accomplished by requiring that models subscribe to certain principals during development and subsequent review. For example:

- The models are developed by a Registered Investment Advisor
- The models are comprised of investments that are prudently selected and monitored by the plan sponsor.
- The models are developed based on widely accepted investment principals.
- The models are reviewed on a scheduled basis (such as every three years) to ensure that allocation percentages are appropriate based on the risk/return characteristics of the underlying investments.

The use of asset allocation models could be used to comply with the second defined investment alternative and would "provide long-term appreciation and capital preservation through a mix of equity and fixed income exposures consistent with a target level of risk appropriate for participants of the plan as a whole." Although balanced funds are appropriate investments to meet this alternative, we feel that an asset allocation model comprised of funds that the plan sponsor has selected based on superior risk, return and expense characteristics can result in a well-diversified, less expensive default investment alternative. In many cases, registered balanced funds or managed accounts charge an additional layer of fees that may negatively affect long-term performance. Not allowing low-cost, professionally designed asset allocation models as a default investment option may have the unintended consequences of preventing default investments from achieving the greatest return potential from the available plan investment options.

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Our final concern is the requirement that copies of all materials received from the default investment fund must be automatically furnished to participants, rather than made available as under the 404(c) fiduciary safe harbor. We are proposing that this requirement may place a significant burden on some plans, and that the requirements should be modified to allow the plan sponsor to notify the participants that those materials are available.

We hope that the comments we have provided are useful and would be happy to provide any clarification if necessary. Please feel free to contact us at 417-889-4918.

Sincerely,

Brian Allen, CFP, QPA
President
Pension Consultants, Inc.

Beth Loving, CFA
Research Analyst
Investment Services
Pension Consultants, Inc.

Mark Zielinski
Research Analyst
ERISA Services
Pension Consultants, Inc.

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