

November 13, 2006

Sent via Electronic Mail

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

Re: 29 CFR Part 2550: Investment Alternatives Under Participant Directed Individual Account Plans; Proposed Rule

Dear Mr. Campbell,

The Financial Planning Association ("FPA®")¹ is pleased to submit comments to the Department of Labor (the "Department") with respect to the proposed regulations (the "Rule") published on September 27, 2006, that permit automatic enrollment of an employee a company's qualified retirement plan. By way of background, FPA represents approximately 28,500 financial planners with some 5 million clients on regulatory issues affecting the financial planning profession. The majority of FPA members hold the CERTIFIED FINANCIAL PLANNER™ ("CFP®")² designation, and includes other financial planners, specialists and organizations dedicated to advancing the financial planning process.

I. Background

One of the most widely offered specialty services of FPA members is retirement planning. FPA believes that it is critical for employers to encourage workers to save for their retirement since most defined benefit plans, which historically provided an annuity stream or lump sum payment to the worker at retirement, are being eliminated from the retirement market. The shift from the

¹ The Financial Planning Association is the largest organization in the United States representing financial planners and affiliated firms. Most FPA members are affiliated with investment adviser firms registered with the Securities and Exchange Commission, state securities administrators, or both. FPA is incorporated in Washington, D.C., where it maintains an advocacy office, with headquarters in Denver, Colo.

² The CFP Board is a separate, Denver-based, nonprofit organization whose goal is to benefit and protect the public by establishing and enforcing education, examination, experience and ethics requirements for persons authorized to use its certification marks (CFP®, CERTIFIED FINANCIAL PLANNER™ and CFP with flame logo®). The CFP Board is the largest such organization in the U.S. with over 53,000 CFP® Certificants.

traditional pension retirement plans to defined contribution plans has created an urgent need for Americans to take control of their own financial future. With this landmark shift in accountability placed on the worker, we applaud the public policy efforts of Congress to encourage additional savings opportunities for Americans, such as provided in the Pension Protection Act of 2006 (the "Act"), to help them meet their retirement goals.

Studies cited by the Department in the proposing release note the beneficial increase in retirement savings that is likely to result from automated savings programs. As such, from the perspective of professionals who deal with retirement planning on a daily basis, automated enrollment of workers in qualified plans will help younger workers avoid the 'catch up' strategies that financial planners must often utilize in helping their older clients finally prepare for retirement.

II. Discussion

A. Safe Harbor for Employers Should be Rigorously Monitored

FPA strongly supports Section 624 of the Act, which not only encourages increased savings by plan participants, but allows employers to invest their accounts in risk-adjusted investments that take into account the employee's age and expected year of retirement. Section 624 encourages employers to offer these programs by creating a safe harbor for them from investment liability when offering equity-based investment options instead of the more conservative stable value or money market funds. We strongly agree with the Department's position that this automated default savings provision should increase savings by plan participants as well as increase many participants' rates of return and overall accumulation of assets.

In reviewing proposed Sec. 2550.404c-5(c) of the Rule, FPA supports the Department's requirement that the plan fiduciary prudently selects and monitors the qualified default investment alternatives ("QDIAs") in order to satisfy the safe harbor rules that limit fiduciary liability. FPA believes that, at a minimum, the plan sponsor or administrator must not only carefully consider the risk and return characteristics and investment objectives of these investment options, but also carefully monitor the investment fees and expenses of the QDIAs. As so-called life-cycle mutual funds grow in popularity as the preferred QDIA, it is critical that the plan fiduciary prudently monitor these funds on a continuous and ongoing basis to ensure that expense fees are competitive. Expensive QDIA options over time could significantly erode a plan participant's retirement savings during the critical accumulation phase.

Another area with potential problems involves the use of a managed account as a QDIA. Under this alternative, the investment manager is essentially managing individual accounts to meet the same investment objectives of a life-cycle or "target retirement date" funds, but with the greater likelihood of higher fees. FPA suggests that the plan fiduciary be held to a high standard of accountability in monitoring the fee structure for the managed account and comparing investment returns of individual accounts to the returns of similarly situated life cycle funds. The Department should, from time to time, compare the rate of return of established life-cycle funds to the overall rate of return of the investment manager for similar age groups, and compare the

investment expenses of each in determining whether separate managed accounts of plan sponsors are a prudent investment alternative.

B. Improved Notification, Disclosure and Education

FPA supports the requirement in the Rule that employers provide at least a minimum 30-day notice to participants and beneficiaries in advance of the first investment allocation, as well as 30 days in advance of each subsequent plan year. However, subsection (c)(3) does not require a timely or reasonable notice of any material change to the QDIA investment option except for an annual notice of any material modification. We believe this should be changed to a “reasonably contemporaneous” standard for two important reasons. First, the series of mutual fund marketing-timing scandals in 2003 caused many shareholders to withdraw significant assets from certain fund companies, and plan participants should be afforded notice in the event a major enforcement action takes place affecting an employee’s QDIA investment option. Second, we believe the Department should be consistent in its disclosure requirements with respect to plan materials. We would urge the Department to apply the statutory requirement under Section 601 for disclosure of “any material change to the information required to be provided to the recipient [plan participant or beneficiary] of the advice at a time reasonably contemporaneous to the change in information” to plan materials provided to participants and beneficiaries under Section 624.

As proposed, the disclosure delivered to the participant under Section 624 must include a description of the QDIA and its investment objectives, any risk and return characteristics, and fees and expenses, among other things. Again, we call attention to the presentation standards under Section 601, which could be applied as well to Section 624 disclosures. As such, we believe the requirements under Section 624, that disclosures to be “written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant³” would provide helpful guidance under Section 601 as well. Full and meaningful disclosure of the investment selection, in addition to any prospectus, is critical and should be prominent and easily understandable by all plan participants. This plan literature should contain clear, simple, plain English disclosure to allow plan participants the opportunity to make an informed decision. The literature should also provide a clear warning to a plan participant who contemplates leaving the plan during a severe downturn in the market of any adverse consequences that might include realizing a loss in the retirement plan as well as a 10 percent penalty if the plan is cashed out prior to age 59½. Finally, we would also strongly encourage the Department to require notice under Section 624 regarding any programs offering personalized investment advice that the plan sponsor may provide as part of an eligible investment advice arrangement under Sec. 601 of the Act. In summary, plain-English disclosure that is understandable to the average employee encourages a worker to take ownership of saving for his or her retirement security and financial future.

³ See Section 601(a)(8)(A) of the Act.

C. Enrollment and Other Plan Provisions


FPA fully supports the Department's requirement that participants and beneficiaries have the opportunity to transfer investments out of a QDIA at least quarterly without financial penalty. As noted above, if the employer offers an eligible investment advice arrangement under Section 601, the employee may wish to immediately self-direct funds out of the QDIA based on the recommendations of his or her fiduciary adviser or as a result of a computer asset allocation. They should not be penalized for this change.

III. Summary

Overall, automatic enrollment for employees into defined contribution plans will greatly benefit many American workers who have not yet begun to save for their personal retirement, particularly the younger generations who do not typically begin to save at a time when they would most benefit from compounded earnings. Section 624 in particular is one of the most important provisions in the Act and should immeasurably improve Americans' focus on retirement planning, and ultimately generate a positive interest in related financial planning issues.

FPA greatly appreciates the opportunity to comment on this Rule. Please do not hesitate to contact me at 202.449.6344, should you have any questions or comments.

Sincerely,

A handwritten signature in cursive script that reads "Mary M. Bell". The signature is written in black ink and is positioned to the left of a vertical red line.

Mary M. Bell
Assistant Director of Government Relations