Spurgeon, Melissa - EBSA

From:	Mary Bell [mary.bell@fpanet.org]
Sent:	Wednesday, January 17, 2007 6:38 PM
To:	EBSA, E-ORI - EBSA
Cc:	Campbell, Bradford - EBSA; Chao, Elaine
Subject:	29 CFR Part 2550: Investment Alternatives Under Participant Directed Individual Account Plans; Proposed Rule
Attachments:	image005.png

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January 17, 2007

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

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

To whom it may concern:

As a follow-up to our first comment letter regarding the suitability of certain investment products within an automatically enrolled qualified retirement plan, the Financial Planning Association ("FPA®")[1] would like to add additional comments in light of other comment letters that have suggested expanding the list of Qualified Default Investment Alternatives ("QDIAs").[2]

I. Questionable Investment Options for QDIAs

Financial planners are greatly concerned about proposals[3] to include so-called capital preservation funds such as stable value funds, money market funds and guaranteed interest contracts (GICs) on the list of permitted investments as a QDIA. There are a number of reasons the original list should remain unchanged.

First and foremost, we believe including capital preservation funds as QDIAs is inconsistent with congressional intent. The Pension Protection Act of 2006 ("PPA" or "Act") was designed to allow plan sponsors to place employees in investment options with exposure to the broader equities market to help them accumulate retirement assets at a higher rate and, in a broader context, help address the national savings crisis. The U.S. Department of Commerce estimates that the personal savings rate remained negative for all of 2005 and for the three released quarters of 2006.[4] Further, as noted in the background information of the Department of Labor's ("DoL") proposing release, capital preservation funds are already used as default options in plans where employees enroll voluntarily but do not direct the funds. As the DoL itself stated, when these funds are used as the sole method of investment, it is "unlikely that the rate of return generated by those funds over time will be sufficient to generate adequate retirement savings."[5]

FPA concurs with the DoL's conclusion that capital preservation funds are generally inappropriate as an investment option during the accumulation phase of retirement planning, especially for younger workers. As a rule of thumb, financial planners typically advise their

clients to invest in some type of capital growth instrument during the accumulation years – generally when they are younger or in the middle years of their career. To permit a default capital preservation option to be selected during the accumulation phase of retirement seems counterintuitive to the intent of the new law.

In the debate over which QDIA alternatives are most appropriate, some advocates of capital preservation funds will point out the potential investment losses to workers approaching retirement in a severe market downturn, even with a managed account or balanced fund. Plan sponsors or their investment committees obviously need to choose the plan's default strategy carefully, particularly if the workforce demographics and risk profile require special attention. Such instances, however, suggest a need for renewed emphasis on financial education in the workplace rather than undermining the public policy intent of encouraging capital accumulation over a long investment time horizon.

FPA also disagrees with the proposed addition of one other type of investment option to the list of QDIAs: annuities. As workers approach retirement, planners will often recommend a more conservative shift in the client's asset allocation – similar to a life-cycle fund. In addition, they may recommend the purchase of an annuity during the distribution phase of retirement, especially for those who are at risk of outliving their retirement assets or who do not have the appropriate risk tolerance level. Planners may also occasionally recommend annuities during the accumulation phase in order to accumulate assets on a tax-deferred basis. However, because of the added costs of mortality and contract expenses, annuities are rarely if ever used inside of a vehicle that is already tax-deferred such as the very accounts covered by the Act. They most assuredly should not be permitted as a QDIA.

To reiterate our principal point: FPA is not opposed to the availability of annuities and capital preservation instruments within a retirement plan. Depending upon the worker's age and risk profile, such investment options are indeed appropriate, but only outside of the approved list of QDIAs. Enabling American workers to achieve financial independence at the point they retire is a critical public policy purpose embedded in the new law. Retaining the current QDIAs unchanged is the best way to help achieve that goal.

II. Full Disclosure and Low Costs Required

As stated previously, FPA believes it imperative that the DoL require plan sponsors to provide to plan participants full and complete disclosure of the risks and fees associated with each investment choice in an ERISA plan. As stated in our previous letter, [6] plan and individual account fees and expenses should be kept to a minimum, with no penalties, redemption fees, or other unnecessary costs. According to a recent GAO report [7] on retirement plan fees, lower fees within retirement plans can significantly reduce a plan participant's rate of return. FPA recommends that there should be no penalty or redemption fee to exit the default fund within the first 90 days if the plan participant chooses to opt out of the automatic default option. Further, FPA believes that redemption fee should never be permitted in QDIAs.

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

Sincerely,

Mary M. Bell
Assistant Director of Government Relations

CC: Elaine L. Chao, U.S. Labor Secretary
Bradford P. Campbell, Acting Assistant Secretary of EBSA

[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, CO.

[2] *See* November 13, 2006 letter from FPA to the Department of Labor with respect to proposed regulations published Sept. 27, 2006, 29 CFR Part 2550.

[3] See comment letters from Prudential Financial, John Hancock Financial Services, Genworth Financial, MassMutual Financial Group, ACLI, Diversified Investment Advisors, Inc. and the Committee of Annuity Insurers. http://www.dol.gov/ebsa/regs/cmt-defaultinvalt.html

[4] See the Department of Commerce, Bureau of Economic Analysis study titled: Gross Domestic Product: Third Quarter 2006 (FINAL) and Corporate Profits: Third Quarter 2006 (FINAL) http://bea.gov/bea/newsrel/gdpnewsrelease.htm

[5] See the DOL's Proposed Regulations to automatic enrollment within qualified retirement plans and Watson Wyatt's Survey on Default

Investments

http://www.watsonwyatt.com/us/pubs/Insider/showarticle.asp?ArticleID=16812

[6] *See* November 13, 2006 letter of FPA to the Department of Labor: "[T]he 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...disclosures [are] to be "written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant"...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."

[7] See GAO report, November 30, 2006

[1]

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[3]

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[4]

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[5]

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[7]

See GAO report, November 30, 2006