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

Buck Consultants, LLC, an ACS Company, a leading global employee benefits and human resources consulting firm, appreciates the opportunity to submit these comments on the Department of Labor's proposed regulations on default investments.

Our comments relate basically to the types of investments that constitute qualified default investment alternatives (QDIAs), although we would also like to request some relief with regard to the notice required in connection with default alternatives.

We applaud the Department's efforts to provide additional comfort to fiduciaries who deem it prudent to use default investment funds that balance the potential for increased return with the increased risks necessary to generate such returns. However, we disagree in several respects with the QDIAs set forth in the proposed regulations for the reasons cited below.

1. **Narrow Nature of Alternatives.** While we have specific concerns with each of the three proposed QDIAs, we believe the general approach taken to be far too narrow. One unusual aspect of the proposal is the fact that the Department has singled out very specific investment "products," as opposed to a statement of general principles. The innovation and creativity that has exemplified the evolution of defined contribution plans portends the availability of many more product offerings with increased frequency in the years to come. By confining itself to the products currently in vogue, the Department will curtail fiduciaries from deploying new, and potentially better, products as they become available in the marketplace. In our experience with plan sponsors, the evaluation of whether an investment option alternative is appropriate for participants involves a comprehensive review of factors. Inclusion in the regulations of a set of criteria as general principles for evaluation by a plan sponsor would create the format for

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a prudent review. Those factors have to be broader than just age-related criteria to capture the differences in the best interests of the participant populations. The criteria should include the risk of the investment, the fees, the complexity of the investment structure or allocation model, the average age and turnover demographics of the participants, or some age/risk segregation of the population. The comparison of this general checklist to new investment opportunities would bring standard financial planning characteristics to the selection of options.

2. **Stable Value / Money Market Funds**. Many plan sponsors and fiduciaries have used funds that eliminate the risk of loss as their default funds, partially based an good-faith reliance on prior guidance from the Department. More importantly, many plan sponsors continue to believe that such funds are the best choice for their employees. The proposed regulations explicitly recognize this fact, but also explicitly refuse to provide the fiduciary protection available with QDIAs. We are sure the Department will receive extensive commentary on this point, and we will not belabor it here other than to say that failure to include such funds explicitly as a QDIA is a significant omission in our view.

   In any event, many employers currently use money market or stable value funds as their default investment funds and if the regulations as proposed are adopted, will need guidance on whether they may continue to use these funds as a default. Plan sponsors need to know whether amounts currently invested in such funds have to be transferred to a QDIA or whether the relief in the regulations applies to future contributions only. If old amounts must be transferred, some recordkeepers may have difficulty identifying which investments in such funds were affirmatively elected versus which were defaulted. At the very least, a significant transition period and other relief with respect to these investments should be included in the final regulations.

3. **General Comments About QDIAs**. The proposed regulation clearly references the need to assess fees of QDIAs and also stress that QDIAs are to limit the risk of large losses. On both fronts, the regulations contain some apparent inconsistencies. Lifestyle/target-age/managed accounts are often significantly more expensive in terms of overall fees and expense than balanced funds with similar asset allocation approaches. Especially for younger employees, who will often be predominant in the defaulting population, target-age/lifestyle funds have a very high (often 80%+) equity composition appropriate for the very long duration assumed for the investment. However, the turnover rate for younger employees is often quite high, and in general, termination of employment will be before the assumed target date. This significantly increases the possibility of loss in the short-term.

We are by no means suggesting that target-age/lifestyle funds or managed accounts are inappropriate QDIA choices, and for many plans, they may be viewed as the best choice. However, we believe that the fiduciaries need to examine each situation separately. We reiterate our main point that an approach that sets forth guiding principles rather than specific investments would be preferable. Specifically with regard to target-age or managed account QDIAs, we would like to see the same requirement that the Department has proposed for the PTE for eligible investment advice, that is, that the model used must meet the five criteria and must be certified. Target-year funds and advice programs offer a wide spectrum of allocations, often based on the providers' equity preferences or fund offerings rather than an historic allocation model. Plan sponsors are effectively deciding on the asset allocation of the participants' accounts when they select these target-year funds as the QDIA. The regulations should be consistent in the types of information to be reviewed by plan sponsors for similar types of investment decisions. All vendors should be held to the same standards.

4. **Balanced Fund QDIA Alternative**. In our experience, this is the approach most often preferred by fiduciaries as a means to provide the potential for higher equity returns, coupled with a much contained risk of loss. In addition, constructing a balanced fund using the plan's existing fund options (e.g., an index fund plus a stable value fund) is often the lowest cost approach by far. While the regulations accept this general approach as a QDIA, we are puzzled by the further requirements imposed. Specifically, the requirement that the asset allocation be determined based on the characteristics of the overall plan population (including the potential need to change the allocation if the demographic profile of the plan changes) is very problematic for a number of reasons: it imposes constraints not applicable to the other QDIA choices and makes this option arbitrarily more difficult to adopt; it doesn't recognize that those employees covered by a default will generally be younger and have shorter service than the overall population; and it does not make allowances for other retirement programs available from the employer (e.g., a defined benefit plan).

   The major impediment in the past to fiduciaries in the selection of a default fund was concern over the possibility of a loss. The regulations have removed this fear but have done so with an apparent bias that a high equity exposure is deemed prudent in all cases on the premise that the specific plan is the dominant retirement savings vehicle for each employee. Our experience is that such a high exposure, especially if in conjunction with an increased fee level, is not what many fiduciaries think appropriate. A simple approach designed to minimize fees, contain risk, and facilitate education is available through a balanced fund approach. We do not understand the Department's rationale for making such an approach more difficult.

5. **Notice Requirement.** Participants must be advised that if they do not direct the investment of their accounts, their accounts will be invested in the QDIA. Initially, such notice must be provided at least 30 days before the participants' accounts are automatically invested in the QDIA. Plans that automatically enroll participants immediately or as of any date that is sooner than 30 days after employment would not be able to provide notice of the default investment provisions in time to comply with this requirement. We hope that the Department will provide an exception or special rule to address such situations in the final regulations.

Conclusion

Again, Buck appreciates the efforts on the part of the Department and the opportunity to give input based on our experience. If you have any questions on our comments please feel free to email me at richard.koski@buckconsultants.com or call me at (201) 902-2860.

Sincerely,

Richard Koski
Managing Director

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