



November 8, 2006

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

Attention: Default Investment Regulation

Dear Sir or Madam:

Re: Request for Clarification on Proposed  
Regulation Regarding Default  
Investment Alternatives

We thank you for the opportunity to comment on the proposed regulation regarding default investment alternatives under participant directed individual account plans. Reinhart Boerner Van Deuren s.c. is a law firm based in Milwaukee, Wisconsin with a substantial employee benefits practice representing single employer and multiemployer clients in more than 40 states. We are seeking clarification on the application of the Department of Labor's proposed regulation on default investment alternatives with respect to potential limitations on transfers out of qualified default investment alternatives ("QDIAs"). Specifically, we are seeking guidance concerning an apparent inconsistency between the preamble to the proposed regulations and the provisions appearing in the proposed regulations.

The proposed regulation addresses the timing of transfers from a QDIA in two separate provisions. First, as a condition for obtaining safe harbor protection, paragraph (c)(5) of the proposed regulation requires 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), transfer, in whole or in part, such assets to any other investment alternative available under the plan without financial penalty."

The second reference to the timing of transfers appears in the QDIA definition. The proposed regulation provides in paragraph (e)(2) that a QDIA, "[e]xcept as otherwise provided in paragraph (c)(5) of this section, does not impose financial penalties or otherwise restrict the ability of a participant or beneficiary to transfer, in whole or in part, his or her investment from the qualified default investment alternative to any other investment alternative available under the plan."

Many of our clients maintain quarterly valued default options that permit quarterly transfers, without imposing a penalty, into daily valued mutual funds. Based on the terms of paragraphs (c)(5) and (e)(2) of the proposed regulations, the ability to elect quarterly transfers out of the default fund without penalty into daily valued investment options would be permissible. However, the Department states in the preamble, "[I]f a plan permits daily investment direction, participants and beneficiaries with investments in a qualified default investment alternative must be permitted to direct their investments on a daily basis." This requirement was not explicitly reflected in the proposed regulation.

We request guidance on the application of the proposed regulation to a plan that permits quarterly (or monthly) transfers to and from its default investment, while permitting daily transfers to and from other investment alternatives. Many of these default funds are unable to permit daily transfers because they utilize investment portfolios that are not valued daily, which is often the case where assets are invested in a separate account by an investment manager (in contrast to a mutual fund) or where there is an underlying investment in an asset class that is not susceptible to daily valuations (*e.g.*, real estate).

For the reasons noted above, we request that the Department clarify whether it is possible for default funds that permit transfers quarterly into daily valued options to qualify as a QDIA.

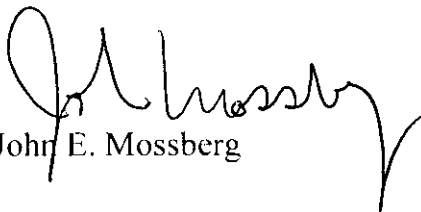
Office of Regulations and Interpretations  
November 8, 2006  
Page 3

We welcome your guidance on the timing of transfers from a QDIA and we thank you for the opportunity to request clarification on this issue.

Sincerely,

REINHART BOERNER VAN DEUREN s.c.

BY



John E. Mossberg

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cc Mr. Loyal O'Leary  
Mr. Greg Breaker  
Mr. Billy Harrelson