



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

Dear Sir or Madam:

Mutual of Omaha Insurance Company respectfully submits the following comments for consideration regarding the proposed rule on Default Investment Alternatives for Participant Directed Individual Account Plans. Mutual of Omaha has been a trusted provider of retirement plan investment solutions to small and mid-sized companies since 1962.

Mutual of Omaha commends the Department's efforts to provide limited fiduciary relief similar to that provided under section 404(c)(1) for plan sponsors using a Qualified Default Investment Alternative (QDIA). With that being said, the purpose of this relief is to encourage plan sponsors to provide default investments that are comprised of mixed asset classes consistent with long-term capital appreciation or long-term capital preservation, not to limit or deny prudent investment choices of a plan sponsor. We believe the proposed rule should not overly restrict and/or limit a plan sponsor's selection of prudent default investment alternatives. Plan sponsors should have the ability to determine the role an investment is to play within the plan's portfolio, based on the unique facts and circumstances of their plan.

The Proposed Regulation unfairly limits plan sponsors and their investment choices
Plan sponsors have for many years used group annuity contracts provided by insurance companies as a cost-effective way of meeting the diverse investment needs of their participants. The common arrangement is for the insurance company to make available a menu of prudent investments which, when applied at a plan level, are sufficient to meet the requirements of Internal Revenue Code Sections 401(a) and 404(c). Under this arrangement, the insurer takes responsibility (at a

product level) for delivering a diverse menu of appropriate guaranteed and separate account investment options (sometimes referred to as “core funds”). The plan fiduciary maintains responsibility at the plan level for investment selection and monitoring because they are ultimately responsible for the decision to purchase and retain the group annuity contract and which core funds to offer to participants. Under the proposed rule, plan sponsors may question the permissibility of offering investments under a group annuity contract as default investment alternatives. The regulation limits a QDIA to an investment managed by either an investment manager defined in ERISA section 3(38) or an investment company registered under the Investment Company Act of 1940. We believe this requirement is overly restrictive and limits the plan sponsors ability to select prudent investment alternatives for the plan.

Group annuity contracts that offer guaranteed investments and/or separate accounts, have been among the foremost investment products offered to pension plans subject to regulation under ERISA. Under the proposed regulation, it is not clear that the separate accounts that have underlying funds that meet the provisions of a QDIA would have the QDIA designation extended to such separate account. Therefore, we ask for clarification in the final regulation that an insurance company separate account (or sub-account within such separate account) would qualify as a QDIA provided the conditions of the regulation are met. In other words, if the underlying fund within the separate account or sub-account would qualify as a QDIA on its own, the QDIA designation applies to the separate account fund offered under the group annuity contract.

In some cases, such as with the investment options that Mutual of Omaha provides, the insurer also provides professional asset allocation in the form of life style or target risk funds. These funds have been used successfully to provide participants with prudent, diversified investments consistent with their specific needs. Mutual of Omaha believes that these “asset allocation” funds are ideally suited to be qualified default investments. However under the current proposal they would not qualify because they are not listed as one of the three accepted investment alternatives. This approach whereby the plan accesses appropriate “core” funds and asset allocation products through a group annuity contract, offers many advantages for plan sponsors and participants:

- (1) *Access to the significant investment expertise of the insurer without needing to duplicate all the investment selection and monitoring and asset allocation processes.* In Mutual of Omaha’s case, we do not manage any of the investment options under the group annuity separate accounts, therefore we are able to provide professional and independent investment selection and monitoring and asset allocation services.

- (2) *Leverage the economies of scale of all of the insurer's customers.* The insurer is able to spread costs across many plans and negotiate investment management fees based on the collective assets of all the plans utilizing the product.
- (3) *Avoid the higher and unnecessary costs created by multiple parties taking responsibility for the same duties.* Plan sponsors using the product simply need to oversee the performance of the insurer, not replicate the same processes.
- (4) *Avoid the higher costs associated with the mutual fund structure.* Generally mutual funds have higher costs because they are serving the needs of many different types of investors, not just participants in DC plans.
- (6) *Access to "best-of-the-best" investment management for the various asset classes, rather than having funds all from the same complex.* In the Mutual of Omaha product, we do not manage any of the core investments, core investment managers are selected and monitored using prudent processes.

Please keep in mind that historically the Department has taken the position not to create a "legal list" of prudent investments for plan sponsors to follow (see 44 Fed. Reg. 37255). Yet the proposed regulation conditions relief on the exclusive use of one of three listed investments. Going one step further, the Department requires such investment to be either managed by an investment manager, as defined in ERISA §3(38) of the Act, or by an investment company registered under the Investment Company Act of 1940. Therefore, we request the Department reconsider the restrictive approach used to define QDIAs and instead define the default options using general criteria that a plan sponsor can reference in making prudent investment selections for the plan.

Conclusion

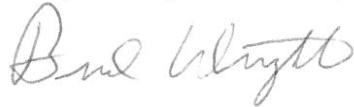
We propose that the Department create an environment that allows for additional cost-competitive and high quality QDIAs, rather than limiting QDIAs to investments either managed by an ERISA investment manager or by an investment company registered under the Investment Company Act of 1940. We propose that the definition of QDIA be broadened to include investments offered through group annuity contracts issued by insurance companies. In this way, well-diversified core funds and target-date and target-risk funds could be made available as QDIAs for a broader range of participants in DC plans. We also request the Department clarify in the final regulation that QDIAs managed by an investment manager or an investment company accessed through a group annuity separate account retain their QDIA status.

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We wish to endorse and lend our support to other comments that we understand will be filed with the Department. In particular, we understand that comments will be filed by the American Council of Life Insurers asking the Department to extend QDIA treatment to Guaranteed Insurance Products, and the Committee of Annuity Insurers asking the Department to clarify QDIA treatment to a separate account investment in a group annuity contract and other principal protected products. We urge the Department to carefully consider the concerns raised in these comments.

We commend the Department's efforts with respect to the development of the QDIA guidelines and appreciate the opportunity to provide comments on this vital matter. Please feel free to contact us if you have any questions regarding this submission.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Bud Wright".

Bud Wright
Senior Vice President, Retirement Plans Division

BW/tw