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Filed Electronically

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5669
US Department of Labor
200 Constitution Ave, NW
Washington DC, 20210
ATTN: Default Investment Regulation

Re: Proposed Default Investment Regulation

Ladies and Gentlemen:

Fidelity Investments (“Fidelity”)¹ appreciates the opportunity to comment on the proposed regulation relating to default investments in participant-directed individual account plans and applauds the Department’s timely action in providing this important guidance. As directed trustee, custodian, and recordkeeper for thousands of such plans, Fidelity understands the impact that the choice of default investment vehicle can have on the level of participants’ retirement savings in plans and their overall retirement income security. The guidance provided in the proposed regulation can be expected to improve the nation’s retirement security by assuring that participant accounts are appropriately invested in vehicles designed for longer term investment. The guidance will also boost retirement savings by facilitating automatic enrollment of participants into plans.

Fidelity’s comments are set forth below:

(1) Notice Requirement and Initial Plan Enrollments

The proposed regulation requires that participants receive a default investment notice at least thirty (30) days in advance of the initial investment of their account balances in a qualified default investment alternative (“QDIA”). Many automatic enrollment plans, however, provide for salary deferrals to be deducted from an individual’s compensation starting with the first pay period following his or her date of hire. Moreover, many plans which do not have automatic enrollment features permit new hires to enroll in the salary deferral feature of the plan

¹ Fidelity is a group of affiliated companies several members of which provide trustee, recordkeeping, and other administrative services to retirement plans subject to the Employee Retirement Income Security Act of 1974, as amended (“ERISA”).



Office of Regulations and Interpretations
Employee Benefits Security Administration
ATTN: Default Investment Regulation
Page 2
November 13, 2006

immediately upon employment and, if such participants do not provide affirmative investment instructions, their accounts are invested in the plan's default investment option. As a result, in both kinds of plans, the initial investment in a QDIA likely will occur less than thirty (30) days after a participant's date of hire. It is generally not practical for plan fiduciaries to provide a default notice in advance of an employee's date of hire. Consequently, compliance with a thirty day advance notice requirement will require these plans to delay enrollment to the detriment of participants' retirement savings. In automatic enrollment plans, this delay may highlight for participants the difference in net pay that participating in the plan entails, with the result that participants may be more motivated to opt out of participation, a consequence that is inconsistent with the policy choice underlying automatic enrollment.

To avoid this delay, Fidelity suggests that it be sufficient if the default notice is provided to a participant no later than five (5) business days after his or her date of hire.

(2) Pass Through of QDIA Information

The proposed regulation provides that any material received by the plan relating to a participant's or beneficiary's investment in a QDIA (such as account statements, prospectuses, and proxy voting material) must be passed through to participants or beneficiaries who have been defaulted to the QDIA. This disclosure requirement exceeds the disclosure required under the Department's Section 404(c) regulation with respect to the other investment options available to participants. For example, the Section 404(c) regulation generally does not require the pass through of proxy materials with respect to an investment option unless the participant or beneficiary has the right to vote proxies under the terms of the plan.

Fidelity believes that the Section 404(c) regulation establishes an appropriate level of disclosure concerning the investment options available under a plan and that a greater level of disclosure to participants in the case of a QDIA is not warranted and could be confusing for participants. For example, participants who do not have the right under the plan to vote proxies understandably are likely to be confused by receipt of proxy materials. Fidelity therefore requests that the proposed regulation be modified to require the pass through to participants and beneficiaries of only those materials relating to the QDIA that would otherwise be required to be provided to participants and beneficiaries pursuant to the Section 404(c) regulation.



Office of Regulations and Interpretations
Employee Benefits Security Administration
ATTN: Default Investment Regulation
Page 3
November 13, 2006

Fidelity further requests that the Department clarify that plan documents do not have to be amended to reflect the proposed regulation's disclosure requirement by deleting the phrase "under the terms of the plan" from paragraph 4 of subsection (c) of the proposed regulation. The final regulation should also state whether materials must be passed through to all participants invested in a default option or only those who have been defaulted to the option, if identifiable. If the materials need only be provided to participants who have defaulted to the option, guidance should be provided as to when a participant will no longer be considered as having defaulted to the option (*e.g.*, if the participant provides affirmative investment instructions as to future contributions or transfers a portion of his or her assets out of the QDIA).

(3) Relief for Changing Default Investment Options Under a Plan

The final regulation should clearly provide fiduciary relief when a plan transfers participants from existing investment options to a QDIA (assuming the notice requirement and other conditions of the regulation are satisfied) whether or not the participant provided affirmative instructions with respect to the original investment. Fidelity believes that relief should be available in any case where assets are defaulted to a QDIA if, after appropriate notice and disclosure, a participant has had the opportunity to provide affirmative alternative investment instructions and has failed to do so, whether or not the participant may have previously provided affirmative investment instructions with respect to the current investment. Such a rule would provide flexibility to fiduciaries in plan design and adequately protect participant investment choices by giving them an opportunity to opt out of the default.

If relief is not generally available in this situation, the final regulation should nonetheless provide transition relief that would permit a plan fiduciary to transfer participants from an existing default investment option to a QDIA for the one year period following the effective date of the final regulation. Generally, plan recordkeepers (including Fidelity) do not systematically track which participants have been defaulted into an investment option and which may have affirmatively elected that investment. It would be costly and burdensome –and perhaps impossible-- for plan fiduciaries to have to make this determination in order to transfer assets to a QDIA from a non-qualifying default option. In the absence of a rule providing fiduciary relief in connection with such a transfer, plan fiduciaries will be unlikely to transfer these assets to a QDIA that may be a more appropriate investment vehicle for participants' retirement savings.



Office of Regulations and Interpretations
Employee Benefits Security Administration
ATTN: Default Investment Regulation
Page 4
November 13, 2006

(4) Redemption Fees

The proposed regulation requires that participants be able to transfer their assets out of a QDIA without financial penalty. Fidelity generally agrees that a participant should be able to easily make investment changes without financial penalty. However, Fidelity notes that some of the investment options that are available under a plan are likely to charge redemption and/or short term trading fees. While these investment options (typically, international and domestic equity funds) are not likely to qualify as QDIAs, an investment manager may utilize these options to create a managed account portfolio that is a QDIA under the plan. The final rule should clarify that these fees will not be considered financial penalties in this context.

(5) Annual Notice Requirement

The final regulation should clarify whether the annual notice must be provided to all participants invested in a QDIA or may be provided only to those who have been defaulted to this option, if identifiable. If the latter, guidance should be provided concerning when a participant will no longer be considered as having been defaulted to the QDIA (*e.g.*, if the participant provides affirmative investment instructions as to future contributions or transfers a portion of his or her assets out of the QDIA).

(6) SIMPLE IRAs

The proposed regulation applies to default investment alternatives in participant directed individual account plans, as defined under ERISA. Fidelity believes that, to the extent a SIMPLE IRA plan may be construed as an individual account plan under ERISA 3(34), that the proposed regulation should apply equally to these plans. Plan sponsors of SIMPLE IRA plans encounter similar issues with respect to plan participants who fail to provide investment instructions. The final regulation should clarify that SIMPLE IRA plan sponsors may also avail themselves of the relief afforded by the regulation.

(7) Multiple QDIAs

For a variety of reasons, plan fiduciaries may wish to use different QDIAs for different participant populations. Fidelity suggests that the regulation be revised to expressly permit plans to have multiple QDIAs.



Office of Regulations and Interpretations
Employee Benefits Security Administration
ATTN: Default Investment Regulation
Page 5
November 13, 2006

Thank you for your consideration of these comments. If Fidelity can be of assistance in resolving any of the issues discussed in this letter, please do not hesitate to contact the undersigned at (617) 563-2450 or by email at: donna.hanlon@fmr.com

Very truly yours,

A handwritten signature in cursive script that reads "Donna Stoehr Hanlon".

Donna Stoehr Hanlon
Vice President & Associate General Counsel

DSH/jam