Congress of the United States
Washington, DC 20515

December 19, 2006

The Honorable Secretary Elaine L. Chao
Secretary of Labor
Department of Labor
Frances Perkins Building
Third Street and Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Chao:

We are writing to you with respect to the proposed regulations on Default Investment Alternatives that the Department of Labor (DOL) issued on September 27, 2006. These regulations are very important to the retirement security of millions of Americans, especially as the Census Bureau has reported a decline in the level of employees participating in employer sponsored retirement plans over recent years. As such, we hope you will consider ways to expand the options for default investments prior to finalizing these regulations.

As you know, the Pension Protection Act (PPA) provided critical incentives for businesses to adopt automatic enrollment arrangements. Under these arrangements, employees would become enrolled in their employer's 401(k) plan, unless they elect out of participating in the plan. Studies have shown that automatic enrollment arrangements significantly increase the level of employee participation in 401(k) plans, particularly among low and middle-income employees.

One of the key incentives in the PPA was a directive to the Department of Labor to issue "default investment" regulations. Under current automatic enrollment arrangements, employees who are automatically enrolled in the plan have generally not made an election as to how they want their contributions invested. Accordingly, employers that adopt automatic enrollment arrangements would make the initial investment decision for the employees. There is some concern that this action might subject the employer to fiduciary liability. This uncertainty about potential exposure has slowed the growth of automatic enrollment arrangements. Thus, the PPA directed the Department to extend relief under Section 404(c) by providing safe harbor types of "default investments" that would not subject employers to certain fiduciary liability. The goal should be to have the broadest array of appropriate default options. This would enable employers to select without undue concern about liability the default investment best suited to their plans and workforce.

While we appreciate the Department's quick action and thoughtful consideration of the issues, we do have some concerns regarding the effect of these regulations if implemented as currently written. The regulation would implement the fiduciary relief under Employee Retirement Income Security Act (ERISA) Section 404(c)(5) for plan assets invested in "qualified default investment alternatives" (QDIA). The regulation creates three safe harbor designs for QDIAs (life cycle funds, balanced funds, and managed accounts) while clearly stating that other designs may be prudent defaults.

It is critical that there be a broad range of safe harbor default investments available. If the list is too restrictive, some employers will decide that nothing on the list is suitable for their employees. That will mean, in turn, that such employers might be less likely to adopt automatic enrollment arrangements. And more importantly, many employees will not be placed in the default investment best suited to their circumstances. These are not the results that Congress wanted.

Accordingly, we urge you to include a broad array of safe harbor default investments in addition to the narrower line-up of balanced fund, life cycle fund, and managed account safe harbors that you recently proposed. For example, some employers may well believe that the best default option for their employees is a capital preservation option, such as a stable value product, so that employees who are automatically enrolled do not lose principal. Other employers have developed innovative and efficient approaches to managed accounts that do not require the use of an investment manager. Still other employers may want to design a multi-part default option that offers participants guaranteed lifetime income through a combination of a managed account and an annuity contract with liquidity features. If these types of options that are carefully selected to suit a company's workforce are not treated as safe harbor default investments, our goal of expanding pension coverage through automatic enrollment arrangements will not be met.

Another of the key incentives for automatic enrollment in the Pension Protection Act was the clarification that State withholding laws - - a number of which could prohibit automatic enrollment - - are preempted by ERISA. That preemption provision only applies, however, to plans that comply with the Department's default investment regulations. For this purpose, it is critical that the regulations be sufficiently broad. Automatic enrollment arrangements using reasonable default investment options should be entitled to preemption. Otherwise, we will have taken a giant step backwards by reopening the question of whether State law prohibits many automatic enrollment arrangements.

Finally, we need to ensure that the successful expansion of pension coverage achieved by those companies that previously adopted automatic enrollment arrangements is not disrupted. It is critical that the preemption apply regardless of the type of default investment and further that reasonable, prudent default investment options already chosen by these companies for existing participants be accorded safe harbor protection. Otherwise, we will have penalized those who have been in the forefront of a trend Congress wanted to encourage.

We hope you will consider these recommendations as you prepare the final regulations to implement these provisions. We believe that it is critical that the final regulations reflect the intent of Congress to expand enrollment in retirement plans by enacting the PPA. We look forward to working with you on these and other important retirement security issues.

Sincerely,

EARL POMEROY
Member of Congress

PATRICK J. TIBERI
Member of Congress

Member of Congress	Member of Congress
Member of Congress	Member of Congress
Member of Congress	Member of Congress
Member of Congress	Member of Congress
Member of Congress	Member of Congress
Member of Congress	Member of Congress
Member of Congress	Member of Congress

Kevin Brady

Member of Congress

Member of Congress