From: Kant, Doug [mailto:Doug.Kant@FMR.COM]
Sent: Wednesday, May 30, 2007 10:42 AM
To: Sweeney, Erin - EBSA
Cc: Compagna, Lou - EBSA; Doyle, Robert - EBSA
Subject: Default Fund Guidance

Ms. Sweeney,

With the understanding that the default fund guidance is still under discussion, I wanted to provide some additional comments on two issues of particular concern.

(1) We understand that the stable value industry continues to argue that stable value funds should be added as a qualified default fund category. A basic point seems to be the possibility of loss in the short-term. The procedural rules included in PPA and the proposed guidance are designed to insure that a participant who foresees a need for money in the near future may elect an investment alternative appropriate to that time frame. Assuming that a defaulted account balance is not moved within a short time frame, however, which our experience suggests is generally the case, basic investment principles would point to the need for a diversified approach to investing.

The ACLI has apparently asked OMB to intervene with respect to the Department's proposed regulation on qualified default investment alternatives in order to have stable value funds included as a qualified option. Although Fidelity is one of the largest providers of stable value funds, we believe that the Department was correct in its exclusion of stable value funds as a qualified default fund category in the proposed rule. Industry data presented to the Department demonstrates the need for diversification in default investments to provide sufficient growth potential for retirement. We believe that the relevant statutory language enacted as part of the Pension Protection Act of 2006 supports the approach taken in the proposed regulation, based on the Department's supporting analysis published in the notice of proposed regulation. Please let us know if there is any additional information that you may need with respect to this issue. Please also let us know if it would be helpful for us to convey our views directly to OMB.

(2) Some time ago you discussed the Department's proposed default fund guidance at a session of the ICI Pension Committee. At the meeting, you stated that the guidance is intended to apply broadly in situations where the plan sponsor is removing the plan investment option in which the participant is currently invested. That is, the plan participant's earlier direction would understandably be treated as void because the option designated in the direction is no longer available under the plan. This conclusion would apply even in case of a wholesale change in the investment menu due, for example, to a change in the plan record keeper.

However, at the meeting I asked whether a plan sponsor could “reconfirm” plan participant decisions to invest in a designated investment option by informing the participants that their investment would be liquidated and the proceeds reinvested in the default fund unless they direct the trustee to retain the existing investment. You responded that this situation would not be covered by the default guidance even if the procedural notice conditions are satisfied. You concluded that the employer is undoing the affirmative direction of the participant AND (to distinguish it from the prior situation) the existing option is still available under the plan. Although our discussion related to an employer stock fund, it was my understanding that the same principle would to other investment options. We expressed our concerns with this result in a comment letter dated November 13, 2006

We continue to be troubled by the obstacles that this position may present to plan sponsors that are trying to provide the best outcome for their participants. In the employer stock example cited above, the plan sponsor has in effect voided the prior participant investment directions in order to insure that the participants take a "fresh look" at their investment in employer stock. In the case of broad (but not total) changes in the plan investment menu, the plan sponsor may feel that the changes are substantial enough to again warrant the implementation of a "fresh look" process. To the extent that a participant's account was at least in part invested in options retained in the investment menu, the account would not covered under the proposed default guidance even though the participant takes no action during the fresh look process.

The plan sponsor would confront the same problem if it wants to replace an existing default fund with another default fund, unless the existing fund is removed from the plan investment menu altogether. This result would occur regardless of whether the existing default fund falls into one of the "qualified" categories. This result would occur even if the plan sponsor wants to retain the existing fund for participants who do provide investment directions. In addition, record keeping systems may not disclose whether an existing investment in the designated default fund was the result of a participant direction or the result of a participant's lack of direction (a default). Absent favorable guidance on the "fresh look" issue, the plan sponsor may leave existing participants in the current fund and only default new participants into the new default fund.

Finally, stable value funds have often been used as a plan's default investment fund. As several commentators have mentioned, deleting a stable value fund is not always a practical or quick process (the stable value documentation may impose withdrawal restrictions or financial penalties). The plan sponsor may therefore feel compelled to retain the existing option even for new participants because of concerns with the "fresh look" issue. We ask that the final default fund guidance support plan sponsor flexibility in these situations.

We would be pleased to provide any additional information that would be deemed helpful to you on either issue.

Thanks,

Doug Kant

Douglas O. Kant, Senior Vice President
and Deputy General Counsel
82 Devonshire Street, F7A
Boston, MA 02109
TEL: (617) 563-6645
FAX: (617) 476-7217
email: doug.kant@fmr.com

<<Kant, Doug.vcf>>