A MILLIMAN GLOBAL FIRM
Milliman
Consultants and Actuaries

via electronic submission to: e-ORI@dol.gov

Date: November 13, 2006

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5669
U.S. Department of Labor
200 Constitution Ave., N.W.
Washington, DC 20210

Attn: Default Investment Regulation
Ladies and Gentlemen:

Milliman, Inc. respectfully submits these comments on the Department of Labor's (DOL) proposed regulations to implement amendments to title I of the Employee Retirement Income Security Act (ERISA) that were enacted as part of the Pension Protection Act of 2006 (P.L.109-280). The proposed regulations, which were published in the September 27, 2006, *Federal Register* (71 FR 56806), describe the types of investments that would qualify as "qualified default investment alternatives" for purposes of section 404(c) of ERISA and also set forth a number of conditions to be satisfied.

Milliman's Statement of Interest

Milliman, Inc. is a global consulting firm that has provided services to clients for almost 60 years. In addition to actuarial consulting, Milliman offers defined benefit and defined contribution plan administration services, as well as a variety of investment consulting services including the formation and review of investment policy statements, asset allocation modeling, selection of investment options, and assistance in monitoring investment results.

Milliman appreciates the opportunity to comment on the proposed regulations. There are two particular issues that we are focusing on in this submission. The first relates to the management of "qualified default investment alternatives" or QDIA. The second issue relates to the requirement that the QDIA 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 [QDIA] to any other investment alternative available under the plan."

Re: Restriction on Management of QDIAs

Section 2550.404c-5(e)(3) of the proposed regulations requires that a QDIA be managed either by "an investment manager" as defined in section 3(38) of ERISA or "an investment company registered under the Investment Company Act of 1940." Although the statutory provision --

specifically, section 404(c)(5) of ERISA -- does not place such a restriction on the management of default investments, the proposed regulations do.

The DOL explains its justification for such a restriction by stating in the proposed regulations' preamble that, "when plan fiduciaries are relieved of liability for underlying investment management/asset allocation decisions, those responsible for the investment management/asset allocation decisions must be investment professionals who acknowledge their fiduciary responsibilities and liability under ERISA."

We believe this condition is too restrictive. For example, plan sponsors frequently use a "fund of funds" model portfolio that is not managed by either an "investment manager" or a registered investment company under the 1940 Act. We respectfully contend that they need not be. Rather, a "fund of funds" model portfolio is an asset allocation model consisting of mutual funds already available to participants in the plan, each of which has been prudently selected and ***is managed*** by investment managers under section 3(38) of ERISA or by a registered investment company under the 1940 Act. The plan sponsor will construct its "fund of funds" model portfolio by choosing among those managed funds. This choice may be made with the assistance of an investment advisor who may, or may not, be otherwise qualified as an investment manager. We believe that as long as the underlying funds are managed by qualified investment managers, there should not be a concern on the part of DOL. Accordingly, we believe that such "fund of funds" model portfolios should expressly be included in the definition of a QDIA.

We emphasize that the proposed regulations do not grant relief from the general fiduciary rules that apply to the ***prudent*** selection and monitoring of a default investment alternative (i.e., see proposed regulation section 2550.404c-5(b)(2)). Thus, permitting the creation of a "fund of funds" model portfolio that is not managed by an "investment manager" as defined in section 3(38) of ERISA or by a "registered investment company under the 1940 Act" (but where the underlying funds are so managed) will still afford adequate protection to plan participants.

Re: Imposition of Financial Penalties upon Transfer of Funds

Section 2550.404c-5(e)(2) of the proposed regulations provides that an investment alternative that imposes financial penalties or otherwise restricts the ability of a participant or beneficiary to transfer his or her investment from the default investment to any other investment available under the plan will not be considered a QDIA.

We request further clarification on the types of financial penalties that are included in this prohibition.

For example, many mutual funds assess short-term redemption fees ***imposed only*** if the fund is held for a limited period of time (typically 90 to 120 days). Redemption fees are implemented by mutual funds to discourage "rapid trading," manipulation of short-term pricing, or "timing" of bond/equity prices. Such behavior is harmful to long-duration fund shareholders: it causes the fund to incur trading expenses that affect the fund's value. Because these investment funds are

created with long-term investment objectives in mind and therefore are consistent with the DOL's goals as set forth in the preamble to the proposed regulations, a short-term redemption fee imposed to reimburse the fund sponsor for additional expenses it is incurring because the fund is being liquidated in a very short period of time should not be prohibited.

Accordingly, we believe that such short-term redemption fees should not be included in the definition of "financial penalties" for the purpose of this proposed regulation and that the DOL should expressly state this position in the final regulations. To include such short-term redemption fees in the prohibition may well eliminate the ability of plans to use the very funds that the DOL is trying to encourage.

Conclusion

We thank the DOL for permitting Milliman to present our views on these important issues. Please contact me by telephone (at (202) 292-1196) or by e-mail (at rhonda.migdail@milliman.com) if we can provide additional background materials, information, or insights as you proceed.

Sincerely,

Rhonda Migdail
Director,
Employee Benefits Research Group
Milliman, Inc.