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

Attn: Default Investment Regulation

Ladies and Gentlemen:

I am writing on behalf of the Money Management Institute ("MMI") to comment on the role of separately managed accounts under the proposed regulation on default investment alternatives under participant-directed individual account plans, published at 71 Fed. Reg. 56,806 (Sept. 27, 2006).

MMI is the national organization for the managed account solutions industry, representing portfolio manager firms and sponsors of investment consulting programs. It was organized in 1997 to serve as a forum for the industry's leaders to address common concerns, discuss industry issues and work together to better serve investors. MMI is the leading advocate for these industries on regulatory and legislative issues. It also has issued its "Separately Managed Accounts Operations Communications and Data Standards," which describe, diagram and define a standard set of operating and communications process flows and message specifications for separately managed accounts ("SMAs").

The proposed regulation implements section 624 of the Pension Protection Act of 2006, Pub. L. No. 109-280 (the "PPA"), which amended section 404(c) of ERISA, effective for plan years beginning after December 31, 2006, to add a new section 404(c)(5). The new subsection provides that, if certain notice requirements are met, a participant, even though not having made an affirmative investment election, is to be treated as exercising control over assets that are placed in a designated default investment.

The proposed regulation describes the rules under which a plan participant will be deemed to have exercised control over his or her account where, in the absence of directions from the participant, the account is invested in a "qualified default investment alternative," or "QDIA," as defined in the regulation. If the rules are met, then plan fiduciaries are protected from liability for the results of such investments.

To constitute a QDIA under the regulation, an investment option must meet a series of requirements, including that it be diversified so as to minimize the risk of large losses and that it fall into one of three categories. The third category covers:

> An investment management service with respect to which an investment manager allocates the assets of a participant's individual account to achieve varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures, offered through investment alternatives available under the plan, based on the participant's age, target retirement date (such as normal retirement age under the plan) or life expectancy. Such portfolios change their asset allocations and associated risk levels for an individual account over time with the objective of becoming more conservative (i.e., decreasing risk of losses) with increasing age. For purposes of this paragraph (e)(5)(iii), asset allocation decisions are not required to take into account risk tolerances, investments or other preferences of an individual participant. An example of such a service may be a "managed account."

71 Fed. Reg. at 56,823-24 (subsection (e)(5)(iii) of the proposed regulation).

MMI appreciates the Department's decision to include managed accounts as a form of default investment under the proposed regulation. Managed accounts can perform the valuable role of providing a more customized investment approach tailored to an investor's specific financial objectives.

In the normal course, an SMA manager would develop a portfolio based on input regarding the investor's particular circumstances, including not just age and target retirement date but also risk tolerance and assets outside the 401(k) plan, among other things. Where an investment is made by default, the manager would have only age to work with, as the cited language acknowledges. While the manager could guess as to target retirement date and life expectancy, those would be functions of age. Consequently, the managed account approach would have to work differently in this context.

We believe that managers in these circumstances would likely choose to allocate assets based on the age of the participants to a range of pre-mixed asset allocation model portfolios. These portfolios would, in effect, be like balanced funds with investment strategies ranging from very aggressive, to be used for younger employees, to very conservative, to be used for employees closer to retirement. The manager would move an employee from a more aggressive portfolio to a more conservative portfolio as the employee reaches certain age levels determined by the manager.

We appreciate that the proposed language does not necessarily preclude such an approach. Nevertheless, it suggests that the manger's approach would be more customized to the individual participant than may in fact be the case. Therefore, we request that the Department clarify that the approach we describe would be an acceptable way to meet this condition of the regulation. This could be done by explaining as follows in the preamble to the final regulation:

> A manager may fulfill the requirements of the third category under the QDIA definition by establishing a range of pre-mixed asset allocation model portfolios, ranging from more aggressive to more conservative, and then investing the participant's account assets in accordance with different portfolios as the participant attains different age levels.

Please let us know if you have any questions of if we could provide additional information to you on the operation of managed accounts.

Thank you for your consideration.

Christopher Davis
President