SIFMA
Securities Industry and
Financial Markets Association

November 13, 2006

Mr. Robert J. Doyle
Director, Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5669
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Attn: Proposed Qualified Default Investment Alternative Regulation

Dear Mr. Doyle,

On behalf of the Securities Industry and Financial Markets Association ("SIFMA")[1], I am writing in strong support of the proposed guidance on default investments in a participant directed individual account plan. The Department of Labor's guidance will provide plan sponsors with needed clarification on their responsibilities in selecting appropriate default investments. At the same time, the guidance recognizes that defined contribution plan participants need to have access to default investments that will result in long-term capital appreciation.

SIFMA applauds the Department for expanding the scope of the default investment guidance outside of automatic enrollment arrangements. There are many plan sponsors who may not utilize automatic enrollment arrangements who will benefit from the proposed guidance. Plan sponsors routinely must use a default for participants who fail to select an investment option, even though they affirmatively enroll in the plan.

The Department has also addressed potential concerns that the guidance not discourage future market innovation. Ten years ago, very few industry observers would have predicted the impact of life-cycle or targeted-retirement date funds or portfolios in the defined contribution plan market. The guidance appropriately balances the options available today with an ability to facilitate market developments that may come in the future.

[1] The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

MAPPING

As the Department knows, many plan sponsors have been using automatic enrollment for some time to encourage plan participation and employee savings for nonhighly compensated employees. In the wake of the Department's proposed regulations, many questions have arisen on how to map current default investments to the new safe harbor investments, once plan sponsors have selected their new default choices in compliance with the regulation. We strongly urge the Department to include in the final regulation a safe harbor for that mapping so that plan sponsors, in an attempt to comply with the regulation, will not inadvertently violate section 404(c).

CLARIFICATION OF 29 CFR 2550.404C-5(E)(5)(I)

Some question has been raised by our members regarding the "life-style" option and whether it is limited to mutual funds. While we think the Department's intention was to permit such an option to be maintained by a bank (regardless of whether such bank is the plan trustee or collective fund trustee), insurance company or registered investment advisor, SIFMA encourages the Department to explicitly provide for those choices.

ADDITIONAL FLEXIBILITY FOR BALANCED FUNDS

Proposed 29 CFR 2550.404c-5(e)(5)(ii) provides that a plan fiduciary may select, as its QDIA, a balanced fund which is appropriate for the plan as a whole. While we appreciate the fact that it need not be designed to target the investment characteristics of an individual participant, the requirement that it must be appropriate for the plan as a whole suggests at the least an annual monitoring to ensure that the balanced fund continues to be appropriate as the average age of all the plan participants change. In our view, this additional process is not justified and we urge the Department to delete this requirement.

If the requirement to be met is that the balanced fund be appropriate for the plan as a whole, by definition it may not be the optimal fund for any particular plan participant. Additionally, given the investment horizon of even participants nearing retirement, it is reasonable to believe that a balanced fund, designed to be appropriate as the sole investment of an investor, is appropriate for all plan participants. We also are not sure that the information necessary to make the determination called for by the additional requirement is available in the marketplace for any particular balanced fund in view of the discretion given to the funds' managers to change asset allocations as their view of the appropriate capital market assumptions change.

Finally, if a plan fiduciary must periodically monitor the demographics of its plan, the purpose of a balanced fund option – providing a low-cost, easy to explain investment option – is defeated. The practical effect of the Department's monitoring requirement is that sponsors will revert to life cycle funds, which may be the most expensive option under the regulations.

CLARIFICATION OF 29CFR2550.404C-5(E)(3)

There is substantial confusion and concern regarding the requirement that any QDIA be either a registered mutual fund or a fund managed by a section 3(38) manager. In addition to the clarification regarding banks who may be acting as trustee, SIFMA respectfully urges the Department to clarify that a QDIA consisting of several alternatives that are either mutual funds or plan asset vehicles managed by a section 3(38) manager are acceptable as a QDIA, even though the decision to select that mix of funds was made by a plan sponsor, acting as a fiduciary, or another fiduciary hired for the purpose, even though that fiduciary may not qualify as a 3(38) manager (such as an "independent financial expert" under Advisory Opinion 2001-09A). The additional requirement that the model be managed by a section 3(38) manager is not necessary because the sponsor or other hired fiduciary remains responsible for the maintenance of the QDIA in the same manner as for the selection and maintenance of any other plan investment. In other words, the 404(c) relief offered by the QDIA is protection against fiduciary liability for the performance of the QDIA relative to the performance of other available plan investments and not protection from liability for the imprudent structuring of the QDIA vehicle.

CLARIFICATION REGARDING THE SCOPE OF FIDUCIARY DUTIES

Some of our members are concerned that where a consultant, broker or other investment professional provides investment analytics and product suggestions that help a plan fiduciary research various options to consider for the QDIA, those functions do not automatically make such a professional a fiduciary. We do not expect the Department to alter its view on when an individual becomes a fiduciary by virtue of its conduct; we simply seek clarification that assisting a plan sponsor in identifying alternatives does not per se make an individual a fiduciary.

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We appreciate the opportunity to comment on this important initiative. If you have any questions or would like additional information regarding this matter, please contact Liz Varley at (202) 216-2000.

Sincerely,

Liz Varley, Vice President and Director, Retirement Policy