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November 13, 2006

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: Default Investment Regulation

RE: Proposed Regulations on Default Investment Alternatives Under Participant Directed Individual Account Plans

Dear Sir or Madam:

The Employee Benefits Security Administration of the Department of Labor has issued proposed regulations to implement provisions of the Pension Protection Act of 2006 concerning default investments for participant directed pension plans.

This letter of comment on the proposed regulations is respectfully submitted by the National Association for Variable Annuities ("NAVA"). NAVA is a not-for-profit organization dedicated to the growth and understanding of annuity and variable life insurance products. NAVA represents all segments of the annuity and variable life industry with over 350 member organizations, including insurance companies, banks, investment management firms, distribution firms, and industry service providers. Our members issue and distribute variable and fixed annuities, within pensions and other tax-qualified plans as well as on an after-tax or nonqualified basis.

NAVA appreciates EBSA's efforts to provide guidance for the use of default investment alternatives in participant directed individual account pension plans. The removal of potential impediments to the use of automatic enrollment plans should help increase their availability and result in significant improvements in pension plan participation and retirement savings.

Qualified Default Investment Alternatives

I. Variable Annuity Contract Separate Accounts

The proposed regulations would relieve plan sponsors of fiduciary liability if the participants accounts are invested in a qualified default investment alternative. The proposed regulations set

forth five requirements for a qualified default investment alternative, including the use of “an investment fund product.” It is our belief that a variable annuity contract separate account should be considered an “investment fund product” and thus be available as a qualified default investment alternative.

The use of variable annuity contracts to fund employer-sponsored pension plans is both long-standing and widespread. In fact, the first variable annuity was developed specifically for use in college and university retirement plans. They have been recognized by Congress in numerous provisions of the Internal Revenue Code to be legitimate investments to fund tax-qualified retirement plans. Moreover, variable annuities offer important insurance benefits that can make them particularly valuable in retirement plans, including a guaranteed minimum death benefit and the ability to annuitize and obtain a lifetime stream of income which are not offered with other investments. Given increasing life expectancies, the decline in the availability of defined benefit pensions and concerns over the future of Social Security, the right to elect annuity payments that are guaranteed to last for life can make variable annuities a vital part of many Americans’ retirement plans.

Now more than ever, with 77 million baby boomers about to retire, public policy should encourage the use of annuities and annuitization to provide a lifetime source of retirement income. As the only retirement investment vehicle that can provide a guaranteed stream of income for life, the use of lifetime annuities as a supplement to Social Security can help retirees maintain their standard of living for the duration of their retirement.

The failure of the proposed regulations to make any mention of annuity contracts as a qualified default investment alternative could lead to confusion and uncertainty as to whether they can be used in this manner. In addition, the proposed regulations fail to adequately address the structure of variable annuity contracts which typically are issued through a two-tier investment company structure. The first or top tier consists of a separate account of the life insurance company that, absent an exemption, is required to be registered as an investment company under the Investment Company Act of 1940. The separate account is a segregated investment account established under state insurance law to hold variable annuity assets and liabilities separate and apart from the insurer’s general account liabilities and assets.

The separate account is divided into subaccounts, each of which invest solely in the shares of an affiliated or unaffiliated underlying fund organized as an open-end management investment company. This is the second or bottom tier of the two-tier structure. Typically, variable annuity contract owners can allocate their purchase payments and transfer contract value among the various subaccounts. A subaccount that qualifies as a balanced or life-cycle fund as defined by the proposed regulations should be available for use as a qualified default investment alternative.

Accordingly, we request that the regulations confirm that a variable annuity contract separate account may be a qualified default investment alternative provided it meets the other conditions set forth in the regulations.

II. Fixed Income Investments

We are also concerned that the proposed regulations do not include insurance company fixed income investments such as fixed annuity contracts and fixed accounts within variable annuities in the list of products eligible to be considered qualified default investment alternatives. As the proposing release notes, many plans with automatic enrollments currently utilize a fixed income or stable value fund as the default investment, based, presumably, on a determination by the plan sponsors that these were appropriate choices and consistent with their fiduciary obligations. We do not believe that such judgments should be precluded by the final regulations, particularly in circumstances where capital preservation may be of paramount importance, such as plans with a large number of older participants. Moreover, the use of fixed annuity contracts and fixed accounts within variable annuity contracts would also help further the important public policy of encouraging annuitization discussed above.

III. Annuity Purchase Rights

As discussed in section I above, variable annuity contracts typically combine both subaccount investment options and a contractual right to convert the accumulated investments into an income stream. Some contracts offer enhanced annuity purchase rights if the contract is owned to a stated date or age. Such contracts guarantee a minimum level of annuity income payments if the participant remains invested in the contract for the specified duration. The annuity income payments can be higher if the subaccount(s) selected by the participant perform well. These contracts can be especially useful in the pension setting since they give participants the confidence to stay invested in the equity market where potentially higher returns may be had by providing protection against downside market risk. Accordingly, we urge the Department to specify in the final regulations that the inclusion of an investment guarantee, including a guarantee that is contingent upon the investment being held for a stated period or to a stated age as part of a variable annuity separate account, does not preclude the separate account from qualifying as a qualified default investment alternative.

In addition to the points discussed above, NAVA agrees with and endorses the comments raised by the Committee of Annuity Insurers and the ACLI.

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We appreciate the opportunity to comment on the proposed regulations. If we can answer any questions or be of further assistance, please contact me at (703) 707-8830, extension 15.

Sincerely,



Mark Mackey
President and CEO