



March 6, 2009

Filed Electronically

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

RE: Investment Advice Final Rule

Ladies and Gentlemen:

If 2008 taught us anything, it is that participants in defined contribution plans need help planning for retirement. While market losses impacted everyone, too many participants experienced far greater losses due to bad investment choices. Policy makers at this point in time are *the key* to ensuring that participants get the independent investment advice they need.

There is no shortage of investment advice options in the defined contribution market. Independent advice providers and 401(k) plan providers following SunAmerica work with 48.6%* of plan sponsors to provide advice to American workers. (*Profit Sharing Council of America's 51st Annual Survey)

Fifty-percent of sponsors, however, continue to hesitate in providing investment advice to participants because of fiduciary concern and the lack of legal clarity. The debate over the years that led to the *Investment Advice – Participant and Beneficiaries* regulation has confused sponsors. Furthermore, recent calls by prominent Congressional leaders for rescinding the *Investment Advice* regulation have stopped many sponsors from moving forward on the provision of any type of advice. Exacerbating the situation is counsel from prominent consultants in the industry recommending their clients take a “wait-and-see approach.”

We fully understand and support the Administration's need to review and approve new regulation. While the fate of the *Investment Advice – Participants and Beneficiaries* regulation is determined, however, the Department of Labor can take steps to address plan sponsor concerns. The Department of Labor can:

1. Affirm to sponsors that there are multiple avenues for providing investment advice to plan sponsors that do not require a prohibited transaction exemption

2. Reiterate that independent investment advice and SunAmerica continue to be viable approaches for providing advice
3. Make it clear that the certification and audit requirements for Eligible Investment Advice providers as defined in the *Investment Advice – Participants and Beneficiaries* regulation do not apply to independent advice providers or those who follow SunAmerica.

The Department of Labor has worked hard to ensure the provision of investment advice that is in the best interest of plan participants. Unfortunately, there is still confusion among plan sponsors. To get participants the investment help they need, we encourage the Department of Labor to clarify the legal issues that are holding sponsors back.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Anne Tuttle", written in a cursive style.

Anne Tuttle
Executive Vice President & General Counsel

Enclosure: Comment Letter on Proposed Regulation on Investment Advice – Participant and Beneficiaries, 29 CFR Part 2550 - Filed on 10/3/08