THE PROFIT SHARING AND 401(k) ADVOCATE ◆ SHARING THE COMMITMENT SINCE 1947
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The Profit Sharing / 401k Council of America (PSCA) is pleased to submit comments on the Proposed Rule for Diversification Requirements for Certain Defined Contribution Plans. PSCA, established in 1947, is a national non-profit association of 1,200 companies and their 6 million employees that advocates increased retirement security through profit sharing, 401(k), and related defined contribution programs to federal policymakers and provides practical assistance on profit sharing and 401(k) plan design, administration, investment, compliance, and communication to its members. PSCA's services are tailored to meet the needs of both large and small companies, with members ranging in size from Fortune 100 firms to small entrepreneurial businesses.

We would like to commend the Service and the Department of the Treasury for addressing in the proposed rule several issues that PSCA raised in its January 22, 2007, letter regarding Notice 2006-107 that provided transitional relief under section 401(a)(35). We view the proposed rule favorably and make the following recommendations for the final rule:

Cutback Relief – The diversification requirements of Section 401(a)(28), applicable to employee stock ownership plans ("ESOPs"), can be satisfied either by offering diversification-eligible employees an option to take a distribution or to make an in-plan transfer out of employer stock. The Pension Protection Act of 2006 amended Section 401(a)(28) so that it does not apply to an applicable defined contribution plan as defined in Section 401(a)(35).

However, an ESOP that offers the distribution option must continue this practice as to already accrued amounts if Section 411(d)(6) cutback relief is not provided. Under Treas. Reg. section 1.411(d)-4, Q&A-2(b), the authority to provide cutback relief is expressly authorized. This authority should be exercised to keep monies in the retirement savings system.

Dividend Reinvestment – Subsection 1.401(a)(35)-1 of the proposed rule states that a plan may prohibit any further investment in employer securities in a "frozen fund." A frozen fund is not defined in the proposed regulation. The preamble states, "In addition, an applicable defined contribution plan does not violate a prohibition against reinvestment in employer securities if the plan has terminated any further investment in employer securities." We understand from informal discussions that a frozen fund would

exist when the plan does not permit any additional contributions in employer securities from either employee or employer contributions.

The final rule should clarify that a plan investment in employer securities that reinvests employer security dividends in additional employer securities in the plan, but otherwise does not permit any further investment in employer securities, is a frozen fund.

Thank you for considering our comments. Please contact me at 202-863-7272 or ferrigno@401k.org if you have any questions or if I may be of further assistance.

Sincerely,

Edward Ferrigno