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Response to Request for Comments on Proposed Amendments to the Qualified Default Investment Alternative and the Participant-Level Disclosure Regulations

January 14, 2011

Employee Benefits Security Administration
Department of Labor

29 CFR Part 2510
RIN 1210-AB38

The American Society of Pension Professionals and Actuaries (ASPPA) and the National Association of Independent Retirement Plan Advisors (NAIRPA) appreciate the opportunity to comment on proposed amendments to the qualified default investment alternative and the participant-level disclosure regulations (the "Proposed Regulations").[1]

ASPPA is a national organization of more than 7,500 retirement plan professionals who provide consulting and administrative services for qualified retirement plans covering millions of American workers. ASPPA members are retirement professionals of all disciplines including consultants, administrators, actuaries, accountants, and attorneys. ASPPA is particularly focused on the issues faced by small- to medium-sized employers. ASPPA membership is diverse and united by a common dedication to the private retirement plan system.

NAIRPA is a national organization of firms which provide independent investment advice to retirement plans and participants. NAIRPA's members are registered investment advisors whose fees for investment advisory services do not vary with the investment options selected by the plan or participants. In addition, NAIRPA members commit to disclosing expected fees in advance of an engagement, reporting fees annually thereafter, and agreeing to serve as a plan fiduciary with respect to all plans for which a member serves as a retirement plan advisor.

ASPPA and NAIRPA applaud the Department of Labor ("Department") for its efforts in the Proposed Regulations. Many of the requirements proposed by the Department were suggested by NAIRPA in its comment letter to the Securities and Exchange Commission ("SEC") on September 1, 2010.[2] For example, NAIRPA had suggested that disclosures be provided about target date funds' glidepath ranges, when the glidepath becomes most conservative, the

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[1] 75 Fed. Reg. 73987 (Nov. 30, 2010).
[2] A copy of NAIRPA's letter to the SEC is available at http://prod-pres.asppa.org/document-vault/pdfs/nairpa/tdfcomments.aspx.

assumed participant retirement age that is being used, and whether the fund is using a “to” versus a “through” approach.

However, ASPPA and NAIRPA request that the Department clarify the requirement in the Proposed Regulations that a chart, table or other graphical representation not “obscure or impede” a participant’s or beneficiary’s understanding of information required to be explained.[3] Given the ambiguity in the language in the Proposed Regulation, plan fiduciaries will have difficulty determining whether they have satisfied this requirement. As a result, ASPPA and NAIRPA suggest that the Department adopt the standard for target date fund disclosures that is used in the context of summary plan descriptions, i.e., where information must be provided “in a manner calculated to be understood by the average plan participant”.[4]

Additionally, ASPPA and NAIRPA encourage the Department to provide additional disclosures to participants to help them select the appropriate target date fund. We suggest that the disclosures for participants include:

- The impact on 401(k) participants who take a lump sum cash distribution at retirement. In our experience, most participants take their distributions in cash lump sums at retirement. Even if they roll their distributions over to an IRA, they may not reinvest (or be able to reinvest) in the same target date funds. Thus, any fund in which the landing point is 20 years after retirement may be wholly inappropriate for that participant. Our point is not to engage in a debate of the “to” versus “through” glidepaths, but to emphasize that disclosure of asset allocation at the target date and/or the landing point, while helpful, may not be sufficient.

- A statement as to the potential impact of disparate ages between spouses. A target date fund for a participant who intends to retire at age 70 (with a life expectancy of 16 years) and a spouse that is age 68 (with a life expectancy of 22 years) may not be appropriate for a 70 year-old with a 55 year-old spouse (whose life expectancy may be 35 years).

These comments were primarily authored by Debra A. Davis, APM. We welcome the opportunity to discuss these issues with you. If you have any questions regarding the matters discussed herein, please contact Brian Graff at (703) 516-9300.

Thank you for your time and consideration.

Sincerely,

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[3] DOL Prop. Reg. §§ 2550.404a-5(i)(4)(i); 2550.404c-5(d)(3)(vi)(A) (stating “An explanation of the asset allocation, how the asset allocation will change over time, and the point in time when the qualified default investment alternative will reach its most conservative asset allocation; including a chart, table, or other graphical representation that illustrates such change in asset allocation over time and that does not obscure or impede a participant’s or beneficiary’s understanding of the information explained pursuant to this paragraph (d)(3)(vi)(A)…”). 75 Fed. Reg. at 73994 - 95.
[4] ERISA § 102(a).

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