AMERICAN BANKERS ASSOCIATION ®

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January 30, 2007

Office of Exemption Determinations
Employee Benefits Security Administration
Room N-5700
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: IRA Investment Advice RFI

Dear Mr. Ivan Strasfeld,

The American Bankers Association appreciates this opportunity to provide comments regarding the feasibility of applying computer model investment advice programs for individual retirement accounts (IRAs) and similar types of plans. We understand the Department of Labor (DOL) will use the information gathered to prepare a report to Congress as mandated under section 601 of the Pension Protection Act of 2006, Public Law 109-280. We appreciate the open forum to provide comments before the Department issues a formal proposal.

The ABA is the largest banking trade association in the country, bringing together all elements of the banking community, including community, regional, money center banks and holding companies, as well as savings associations, trust companies and savings banks. Many of these institutions provide trust or custody services to institutional clients, including employee benefit plans covered by the Employee Retirement Income Security Act (ERISA), as well as services to individuals owning IRAs. As of year-end 2005, banks and thrifts held more than $18 trillion in fiduciary assets for both retail and institutional customers in 15 million accounts. Of those assets, $7.3 trillion are held by banks, savings association and non-deposit trust companies in defined benefit and defined contribution accounts.

Specifically, Section 601 of the Pension Protection Act (PPA) amended section 408 of ERISA to add an exemption from certain prohibited transactions for the provision of investment advice to participant and beneficiaries of covered employee benefit plans, and certain related transactions, if the investment advice is provided under an "eligible investment advice arrangement." The exemption conditions relief upon satisfaction of a number of requirements. One of the options includes a requirement that a computer model be used, which itself meets certain requirements. If the Secretary determines there is no appropriate computer model investment advice program, then the Secretary is tasked with issuing a Prohibited Transaction Exemption (PTE) for the provision of investment advice to IRA customers.

In question number one, the DOL asks if there are computer models which meet the following requirements, namely that they -

(a) Apply generally accepted investment theories that take into account the historic returns of different asset classes over defined periods of time;
(b) Utilize relevant information about the beneficiary, which may include age, life expectancy, retirement age, risk tolerance, other assets or sources of income and preferences as to certain types of investments;
(c) Operate in a manner that is not biased in favor of investments offered by the fiduciary adviser or a person with a material affiliation or contractual relationship with the fiduciary adviser;
(d) Take into account the full range of investments, including equities and bonds, in determining the options for the investment portfolios of the beneficiary; and
(e) Allow the beneficiary, in directing the investment, sufficient flexibility in obtaining advice to evaluate and select investment options.

We are not aware of any computer model investment advice programs that can provide investment advice to IRA holders that meet all of these requirements. Certain institutions do have models that meet several of these requirements but are unable to meet all of the above requirements.

Generally, existing models gather relevant information, apply generally accepted investment theories to that information and provide an output suggesting certain asset classes. These computer based asset allocation models are currently used by some financial institutions. However, these programs are unable to take into account the "full range of investments" because of certain system limitations. A mandate to encompass a full range of investments would be very difficult because of the special nuances of certain investments, such as private placements.

In question number two, the Department asks which of the above criteria are presently not considered by such computer models and whether it would be possible to develop such a model. We believe such a model could not be created in a cost effective manner. While it may be possible to create such a model hypothetically, it would be very difficult for a model to account for the full range of investments in a manner that makes the provision of investment advice through such a model possible at a reasonable cost.

Overall, we would respectfully suggest that the Department focus on some means to address potential conflicts of interest and to ensure full disclosure of those conflicts, as well as fee disclosure to allow for a proper review of the fees charged. Ideally, the solution would accommodate changes in an ever-evolving financial services environment and enable IRA beneficiaries to reap the benefit of professional investment advice and management services.

Conclusion

Thank you again for this opportunity to provide comments. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

Lisa J Bleier

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American Bankers Association