



Invested in America

August 1, 2013

U.S. Department of Labor
Employee Benefit Security Administration
Office of Regulations and Interpretations
200 Constitution Ave., NW
Washington, DC 20210

Attn: RIN 1210-AB20

Ladies and Gentlemen:

SIFMA¹ appreciates the opportunity to respond to the Department of Labor's advance notice of proposed rulemaking with regard to enhancing the information included in pension benefit statements for defined contribution plans. SIFMA believes that the Department's approach of proceeding through an Advanced Notice of Proposed Rulemaking (ANPRM) is constructive and collaborative. We particularly appreciate the Department's sharing its thinking, seeking public input, and soliciting comments on different ways of achieving our shared goal of increasing retirement savings.

We believe that regulatory efforts to encourage additional education should promote a range of approaches to help participants understand the lifetime income that is generated from their defined contribution account balance. While individualized benefit statement illustrations are one method, they are not the only way to engage participants at different points in their careers. Relying on one method may lead to a decline in the breadth and quality of educational tools now available to participants, such as interactive calculators. Many SIFMA members already have calculators on their websites, and these calculators differ materially from one provider to another. Some allow participants to select an interest rate assumption and model different scenarios with different assumptions; others take a different approach and allow participants to see the effect of differing contribution rates and earnings assumptions. Others permit participants to see the effect of different forms of benefit. Over the last five years, our members have increasingly innovated in this area, and spent substantial resources on systems and methodologies that will more actively engage participants.

¹ SIFMA brings together the shared interests of securities firms, banks, and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services, and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

We support efforts to provide participants with educational tools and the Department should play a role in focusing on retirement income. We strongly encourage the Department to consider providing these tools on its own website, and we would be pleased to assist the Department in this effort.

We are concerned, however, that a one-size-fits-all approach may have unintended consequences. We urge the Department to consider other approaches to providing retirement income information to participants. For example, the Department’s online educational calculator could be utilized by plan administrators via participant benefit statements and/or benefit Intranet websites. Participants would be provided with a statement recommending that participants take advantage of the calculator, as well as other educational information made available by the employer. This approach would be inexpensive and much less likely to disrupt innovative approaches already available to participants.

If the Department ultimately believes that benefit statements need to provide supplemental material, we recommend that the participant benefit statement regulation be amended to permit the use of a standard table which uses a range of account balance benchmarks and the amount of retirement income generated at various ages. We have provided an example of the table below, which is similar to that provided in the defined benefit plan context.

Age	Current Account Balance	Monthly Income at 65	Monthly Income at 65
30	\$100,000	No further contributions	Same contributions
40			
50			
60			
Assumptions:			

We Should Encourage Innovation

While we appreciate the Department's goal of engaging more individuals to realize the importance of retirement income, we are concerned that the contemplated requirements will dampen employer and provider interest in devising innovative new means of engaging participants. With smartphone and tablet applications, more participants have access to interactive solutions which continue to evolve. This information is user-friendly and does not appear to provide a promise to a participant, on an official benefit statement, that their monthly benefit will be \$x, when that is speculative, and the product on which the assumptions are based, is not available to the participant in most cases. We urge the Department not to institutionalize static expectations. We recognize the challenges of engaging plan participants and applaud the many efforts that the Department, plan sponsors, and their service providers, have undertaken to engage participants further. We are concerned that a requirement that dictates what that form of engagement must entail might dampen additional innovation and mislead participants. To combat misunderstanding, plan sponsors will feel compelled to add to the benefit statement, warnings and cautionary material that will make it less straightforward, harder to read, and more frustrating for participants.

Conflicting FINRA Rules

We applaud the Department for noting that the potential regulatory amendment may conflict with existing guidance. As you know, existing FINRA Rule 2210 (d)(1)(F)² provides, in part, that "communications with the public may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast." We are pleased that the Department will be working with FINRA to harmonize any new requirements under ERISA with the pre-existing FINRA rules. We strongly believe that these rules must not be in conflict. If the Department implemented its own retirement calculator website, there would not be a conflict with existing Rule 2210(d)(1)(F).³

We also hope that the Department will consider the policy background for FINRA's long held view that projections, opinion and forecasts are dangerous and misleading before the Department decides that these fears are unfounded in the retirement space. The Department has always maintained that retirement savers need more protection than nonretirement savers. While we respectfully disagree with this view – because they are the very same people – we are concerned that the Department might be unintentionally trampling over very fulsome research and findings that led FINRA to feel so strongly against forecasts.

Regardless of the approach taken by the Department we encourage the Department to work with FINRA to create a safe harbor for any projection that the Department may ultimately require. We were very appreciative that the Department took the initiative to obtain analogous guidance in 2011 from FINRA and the SEC to address a conflict in disclosing information under ERISA Regulation 404a-5.⁴ We look forward to discussing these potential conflicts further and hope you will call on us if we can assist the Department in obtaining clarity for plans in this area.

² Formerly NASD Rule 2210(d)(1)(D)

³ National Association of Securities Dealers (NASD) Rule 2210(d)(1)(F), provides as follows:

(F) Communications may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast; provided, however, that this paragraph (d)(1)(F) does not prohibit:

- (i) A hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of an investment or investment strategy;
- (ii) An investment analysis tool, or a written report produced by an investment analysis tool, that meets the requirements of Rule 2214; and
- (iii) A price target contained in a research report on debt or equity securities, provided that the price target has a reasonable basis, the report discloses the valuation methods used to determine the price target, and the price target is accompanied by disclosure concerning the risks that may impede achievement of the price target.

⁴ See FINRA Regulatory Notice 12-02 (January 2012)(providing guidance on application of communications rules to disclosure required by 29 CFR 2550.404a-5). See also Department of Labor, SEC No-Action Letter (Oc. 26, 2011) (agreeing to treat information provided by a plan administrator to participants pursuant to DOL Rule 404a-5 as if it were a communication that satisfies Rule 482 under the Securities Act).

Significant Majority of Providers Currently Offer an Income Calculator

In order to provide a more substantive and helpful set of comments for the Department in connection with this ANPRM, SIFMA informally surveyed 15 plan sponsors and service providers to try to better understand real life practices in this area. We found that 10 firms offer an income calculator or similar financial planning tool on their website to plan participants. We are happy to make some of these websites available to Department staff so that they can see the range of choices and approaches available. We also found that 70 percent of those firms that offer such a tool present the retirement income in the form of a systematic withdrawal projection, rather than as an annuitized payment. Some firms indicated they offer a suite of calculators that measure a range of retirement readiness indicators. Others allow participants to customize the settings for their personal needs and set specific goals for their retirement. As discussed earlier in this comment, we think the range of approaches is impressive and helpful, and it would be disappointing, expensive, and unhelpful in the long term if this type of innovation is stifled.

Many firms provide participants with access to tools that allow them to customize the assumptions based on a series of personal questions. These tailored reports take into account many related factors and create a more encompassing report for the participant. This is yet another approach that the Department may wish to consider in the context of providing resources on its site rather than a one-size-fits-all disclosure that has the potential to mislead participants.

Participant Education

SIFMA believes that the Department's efforts to expand participant education have been very constructive. The fee disclosure, Form 5500 schedule C, and section 408(b)(2) disclosures have all played a role in efforts to advance plan sponsor and participant understanding of critical issues in retirement savings. We agree with the Department that getting participants to understand how much they need in retirement, and how to translate what they have now into monthly retirement payments will be an important "wake-up" call that will hopefully jump start increased savings at an earlier age. We cannot afford, as a nation, to do anything that will have the effect of discouraging savings. Misleading projections of any sort may result in participants getting the wrong idea about what they have or what they need for retirement. We think the best way for participants to realistically assess their retirement income needs, and therefore more fully comprehend the importance of their retirement savings, is to provide, on the Department's website, a variety of different calculation tools that a participant can use to help them make these assessments. Again, we and our members would be pleased to help the Department develop such a site.

Cost

Lastly, we feel it necessary to remind the Department that they must consider the cost as it compares to the benefit. This includes both the costs that will be incurred by small business owners who may have to hire additional assistance for preparing these statements, as well as the added costs to providers for changing their systems to provide a new form of calculation. Since these costs will be borne by the plan sponsors or the plan participants, we must be sure that

providing this information in a standard format will be significantly beneficial to the participants to merit such inclusion.

Thank you for this opportunity to comment on this important regulatory initiative. Please do not hesitate to contact the undersigned if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Lisa J. Bleier".

Lisa J. Bleier
Managing Director, Public Policy and Advocacy
Securities Industry and Financial Markets Association