TIAA CREF
FINANCIAL SERVICES FOR THE GREATER GOOD™

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Office of Exemption Determinations
Employee benefits Security Administration
Room N-5700
US Department of Labor
200 Constitution Avenue, NW
Washington, DC. 20210
e-OED@dol.gov

Attention: IRA Investment Advice RFI

Pursuant to the Employee Benefits Security Administration, Department of Labor solicitation of information as to the feasibility of the application of computer model investment programs for IRAs, Teachers Insurance & Annuity Association and College Retirement Equities Fund (collectively TIAA-CREF) are pleased to submit the following comments to the list of issues.

Request for Information

Question 1

Are there computer model investment advice programs for the current year and preceding year that are, or may be, utilized to provide in investment advice to beneficiaries of plans described in section 4975(e)(1)(B)-(F) [and so much of subparagraph (G) as relates to such subparagraphs] {hereinafter "IRA"} of the Code which:
(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 or 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.

If (d) means the full range of the investment products available in an Individual Retirement Annuity or the investment products selected by an individual in a Retirement Account, then computer models are available.

If (d) means every possible option available in the financial markets, then we are unaware of any computer model investment advice product that can do (d).

Question 2

If currently available computer models do not satisfy all of the criteria described above, which criteria are presently not considered by such computer models? Would it be possible to develop a model that satisfies all of the specified criteria? Which criteria would pose difficulties to developers and why?

As indicated above, the definition of (d) is critical. All other elements are capable of being satisfied.

Question 3

If there are any currently available computer model investment advice programs meeting the criteria described in Question 1 that may be utilized for providing investment advice to IRA beneficiaries, please provide a complete description of such programs and the extent to which they are available to IRA beneficiaries.

The issue is the definition of (d). Computer model investment advice programs that are objective and give advice on the subset of investments available in an Individual Retirement Annuity or selected by an IRA beneficiary in a Retirement Account are available to IRA beneficiaries. These programs are provided by independent third parties.

Question 4

With respect to any programs described in response to Question 3, do any of such programs permit the IRA beneficiary to invest IRA assets in virtually any investment? If not, what are the difficulties, if any, in creating such a model?

The programs limit the advice to the investment options available under the Individual Retirement Annuity or under the Retirement Account selected by the IRA beneficiary.

Question 5

If computer model investment advice programs are not currently available to IRA beneficiaries that permit the investment of IRA assets in virtually any investment, are there computer model investment advice programs currently available to IRA beneficiaries that, by design or operation, limit the investments modeled by the computer program to a subset of the investment universe? If so, who is responsible for the development of such investment limitations and how are the limitations developed? Is there any flexibility on the part of an IRA beneficiary to modify the computer model to take into account his or her preferences? Are such computer model investment advice programs available to the beneficiaries of IRAs that are not maintained by the persons offering such programs?

The computer model investment advice programs limit the investments modeled to the investments available under the IRA funding vehicle which is chosen by the IRA beneficiary. It is possible for the IRA beneficiary to further limit the investments modeled to take into account his or her preferences. The computer models are generally maintained by independent third parties.

Question 6

If you offer a computer model investment advice program based on nonproprietary investment products, do you make the program available to investment accounts maintained by you on behalf of IRA beneficiaries?

Yes.

Question 7

What are the investment options considered by computer investment advice programs? What information on such options is needed? How is the information obtained and made part of the programs? Is the information publicly available or available to IRA beneficiaries?

The investment options considered by the computer investment advice program are the investment option available under the funding vehicle for the IRA.

Question 8

How should the Department or a third party evaluate the computer model investment advice program to determine whether a program satisfies the criteria described in Question 1 or any other similar criteria established to evaluate such programs?

An appropriately credentialed evaluator should be able to review the program using the above criteria.

Question 9

How do computer model investment advice programs present advice to IRA beneficiaries? How do such programs allow beneficiaries to refine, amend or override provided advice?

Advice is presented as either discretionary or non-discretionary. Discretionary advice allows the IRA beneficiary to ignore, modify and/or accept the advice. Non-discretionary programs allow IRA beneficiaries to opt out of the program at anytime.

Sincerely,

Jeremiah Hanrahan

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemption for Provision of Investment Advice to Individual Retirement and Similar Plans

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Request for information.

SUMMARY: Section 601 of the Pension Protection Act of 2006 (the PPA) (Pub. L. 109–280) amended section 408 of the Employee Retirement Security Act of 1974 (ERISA) and section 4975 of the Internal Revenue Code of 1986 (the Code) to add an exemption from certain prohibited transactions restrictions of ERISA and from certain taxes imposed by the Code for the provision of "investment advice" to participants 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 more fully described in the statutory provisions. In particular, to be covered, the investment advice must be provided under an eligible investment advice arrangement that uses a computer model, which meets the requirements of the exemption. The purpose of this document is to solicit information from the public concerning the feasibility of the application of computer model investment advice programs for Individual Retirement Accounts and similar types of plans (hereinafter, IRAs).[1] The PPA directs the Secretary of Labor, in consultation with the Secretary of the Treasury, to determine, based on the information received from the solicitation, whether there is any computer model investment advice program which may be utilized to provide investment advice to IRA beneficiaries.[2]

DATES: Written or electronic responses should be submitted to the Department of Labor on or before January 30, 2007.

Responses: To facilitate the receipt and processing of responses, EBSA encourages interested persons to submit their responses electronically by e-mail to *e-OED@dol.gov*, or by using the Federal eRulemaking portal at *www.regulations.gov* (follow instructions for submission of comments). Persons submitting responses electronically are encouraged not to submit paper copies. Persons interested in submitting written responses on paper should send or deliver their responses (preferably, at least three copies) to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: IRA Investment Advice RFI. All written responses will be available to the public, without charge, online at *www.regulations.gov* and *www.dol.gov/ebsa*, and at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Christopher Motta or Brian Buyniski, Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5700, U.S. Department of Labor, Washington, DC 20210, telephone (202) 693–8540. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

As a general matter, the provision of investment advice by a plan fiduciary as defined under section 3(21)(A) of ERISA to the plan would give rise to prohibited self-dealing under section 406(b)(1) of ERISA and section 4975(c)(1)(E) of the Internal Revenue Code of 1986 (the Code) if the fiduciary has an interest in the outcome of the advice which may affect its best judgment as a fiduciary (e.g., the fiduciary or its affiliate receives additional fees from investment options with respect to which advice is given).[3] Section 601(a) of the Pension Protection Act of 2006 (PPA) amended ERISA by adding new sections 408(b)(14) and 408(g). Section 408(b)(14) of ERISA provides conditional exemptive relief from the prohibitions of ERISA section 406 for certain transactions in connection with the provision of investment advice (as described by ERISA section 3(21)(A)(ii)) to a participant or beneficiary of an individual account plan, if the requirements of new section 408(g) are met.[4]

Section 601(b) of the PPA similarly amended the Code by adding new Code sections 4975(d)(17) and 4975(f)(8). Section 4975(d)(17) of the Code provides conditional exemptive relief from the prohibitions described in section 4975(c) for certain transactions in connection with the provision of investment advice (as described in Code

[1] See PPA section 601(b)(3)(A)(i). These plans are: (A) An individual retirement account described in section 408(a) of the Code; (B) an individual retirement annuity described in section 408(b) of the Code; (C) an Archer MSA described in section 220(d)of the Code; (D) a health savings account described in section 223(d) of the Code; (E) a Coverdell education savings account described in Code section 530; or (F) a trust, plan, account, or annuity which, at any time, has been determined by the Secretary of Treasury to be described in any preceding subparagraph of this paragraph (*i.e.*, (A) through (E) above).

[2] Under Presidential Reorganization Plan No. 4 of 1978, effective December 31, 1978 [5 U.S.C. App. at 214 2000 ed.)], the authority of the Secretary of the Treasury to issue interpretations regarding section 4975 of the Code has been transferred, with certain exceptions not here relevant, to the Secretary of Labor and the Secretary of the Treasury is bound by the interpretations of the Secretary of Labor pursuant to such authority.

[3] See ERISA section 406(b)(1) and Code section 4975(c)(1)(E).

[4] ERISA Section 3(21)(A)(ii) defines a "fiduciary" as including a person who renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of the plan.