Padams-Lavigne, Allison - EBSA

From: mkelly@prudential.com
Sent: Friday, February 23, 2007 1:33 PM
To: Padams-Lavigne, Allison - EBSA
Subject: Re: Comments to DOL's RFI - IRAs

Alison, I am not in the office today and so will respond via email rather than resend a modified letter. First, thank you for alerting Prudential to the Department's intention to include our comments in the public record and allow us the opportunity to discuss dissemination of the information with our internal clients. We have considered the content of our response and have no objection to the release of the information. If you desire, feel free to redact the "confidential" language. If you require a new letter, I can provide one next week. Thank you again for your courtesy.

Prudential _ Financial

Mary A. Kelly
VP, Corporate Counsel, Law Department/ERISA Division

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RECEIVED OFFICE OF EXEMPTION DETERMINATIONS PM 3: 34

February 8, 2007

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

<u>CONFIDENTIAL</u>

Attention: IRA Investment Advice RFI
cc: Ivan L. Strasfeld

Ladies and Gentlemen:

We are pleased that you have identified us as among the top fifty providers of individual retirement arrangements and similar plans (collectively, "IRAs") and take this opportunity to respond to your request for information, published in the Federal Register on December 4, 2006, relating to the feasibility of the application of computer model investment advice programs for IRAs.

Prudential Financial, Inc. (NYSE: PRU), a financial services leader with approximately $586 billion of assets under management as of September 30, 2006, has operations in the United States, Asia, Europe, and Latin America. Prudential participates in many aspects of the U.S. retirement market, including retirement plan and IRA administration, asset management, annuities, mutual funds, and other retirement related services. Our Prudential Retirement business has nearly $143 billion in retirement account values. Our commitment to the U.S. retirement market is strong, and has grown significantly in recent years. This commitment is highly consistent with powerful trends shaping the retirement marketplace, including the fact that the nation's 76 million baby boomers are beginning to reach retirement age, and the increasing shift by employers from traditional defined benefit pension plans to defined contribution plans. These trends mean that more and more people are faced with greater responsibility for their own retirement security, and for managing the risks that go along with that.

With regard to your request, section 601 of the Pension Protection Act of 2006 ("PPA") amended the Employee Retirement Security Act of 1974 ("ERISA") to add an exemption from certain of ERISA's prohibited transactions for the provision of investment advice to participants of pension plans and IRAs. In particular, with respect to IRAs the PPA directed the Secretary of Labor to solicit information on the feasibility of providing investment advice to IRA beneficiaries through the use of computer models. The Secretary is to determine whether there is any computer model investment advice program that: 1) utilizes 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; 2) takes into account the full range of investments, including equities and bonds, in determining the options for the investment portfolio of the beneficiary; and 3) allows the beneficiary, in directing the investment, sufficient flexibility in obtaining advice to evaluate and select investment options.

Prudential currently uses investment related computer models in a variety of contexts. However, none of the models takes into account the full range of investments, including equities and bonds, in determining the options for the investment portfolio of the participant, assuming that the "full range of investments" refers to all of the potential investments available under an IRA, including individual stocks and bonds.

As an example, Prudential provides investment education to individual retirement account beneficiaries through a computer program that is designed to conform to the requirements described in the Department of Labor's Interpretive Bulletin 96-1 relating to participant investment education. This computer program helps participants assess their risk profile and suggests appropriate asset allocations using generally accepted investment theories that take into account the participant's age and historic returns of different asset classes available under the IRA investment offerings. The asset allocation model can accommodate a wide variety of diversified mutual fund and insurance company separate account investments representing a broad range of asset classes but does not take into account the full range of investments, including equities and bonds, in determining the options for the investment portfolio of the participant. Moreover, this asset allocation model is not intended for those IRA beneficiaries who desire more than investment education.

We urge the Department of Labor to clarify that a computer model investment advisory program may satisfy the requirements of the exemption even if the available investment options are limited by design as long as the options subject to the program constitute a broad range of investment options and are adequately disclosed to the IRA beneficiary. Any exemption should also recognize that IRA providers may periodically alter the investment options that are available under the IRA to take into account fund mergers, changes in investment philosophy and other business factors and that such alterations, if conducted pursuant to criteria disclosed in prospectuses or other business documentation, will not adversely effect the availability of the exemption.

We are not aware of any currently available computer-driven models that take into account the full range of investments, including individual equities and bonds, in determining the options for the investment portfolios of the beneficiary. For that reason, and because IRA beneficiaries would benefit from a more flexible, dynamic approach to advice that is not limited by the constraints of a computer model but meets the objectives described in the PPA, we also request the Department of Labor to issue a prohibited transaction class exemption that does not rely upon a computer model and under which advisers would be required to provide detailed disclosures to IRA beneficiaries about fee arrangements and investment relationships.

Attached to this letter is an Appendix that specifically responds to each item in the request for information published in the Federal Register on December 4, 2006. We thank you for this opportunity to provide information relating to investment advice programs and IRAs.

Because of the proprietary nature of our responses and the potential harm to Prudential that could result from the public dissemination of this information in a competitive market place, we request that the Department maintain the confidentiality of this letter and Appendix. In the event the Department desires to share this submission publicly we request the opportunity to discuss the need for confidentiality prior to any such disclosure.

Sincerely,

Mary A. Kelly
Vice President and rporate Counsel

cc: Sharon C. Taylor

APPENDIX

1. Are there computer model investment advice programs for the current year and preceding year that are, or may be, utilized to provide investment advice to beneficiaries of IRAs which:

- Apply generally accepted investment theories that take into account the historic returns of different asset classes over defined periods of time;
- 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;
- Operate in a manner that is not biased in favor of the investments offered by the IRA provider;
- Take into account the full range of investments, including equities and bonds, in determining the options for the investment portfolios of the beneficiary; and
- Allow the beneficiary, in directing the investment, sufficient flexibility in obtaining advice to evaluate and select investment options.

Answer: **Prudential does not have investment advice programs that satisfy all of the criteria described above.**

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?

Answer: **As mentioned in the attached letter, Prudential offers programs that apply generally accepted investment theories and utilize relevant information about the participant but they do not take into account the full range of investments available to an individual investor. Instead they are limited to the investments that are available in connection with the particular plan, annuity or IRA custodial account. Based on its sheer complexity and the constantly evolving array of retirement investments, we are skeptical about the possibility of developing a program that meets all the above criteria, assuming that the "full range" is interpreted to include virtually any available IRA investment.**

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.

Answer: **We are not aware of any programs described in Question 3.**

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?

Answer: **We are not aware of any programs described in Question 3.**

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 preference? Are such computer model investment advice programs available to the beneficiaries of IRAs that are not maintained by the persons offering such programs?

Answer: **As mentioned in the attached letter, Prudential offers programs that apply to a set of investment options available under our IRA annuities and custodial accounts. Prudential chooses the broad range of investment funds available for these IRAs and the customer, by selecting the IRA, chooses this range of investment choices. The customer has no ability to modify the computer program but is free to accept or reject part or all of the recommended asset allocations. In some cases, the programs are used by other entities who are unrelated to Prudential and made available to the beneficiaries of IRAs maintained by the other entities.**

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?

Answer: **The programs described above include proprietary and nonproprietary investment options.**

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?

Answer: **The programs generally consider mutual fund and insurance company separate accounts. Information about the investment options is generally publicly available through prospectuses and other documents.**

8. How should the Department or a third party evaluate a 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?

Answer: **Because Prudential is not aware of any investment advice programs that satisfy the criteria described in Question 1, we have no opinion on this 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?

<u>Answer:</u> **Because Prudential does not offer programs that meet the criteria in Question 1, we have no opinion on this question. With regard to the programs that we do use, participants are generally able to accept or reject part or all of the recommendations.**