AAUW

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Office of Regulations and Interpretations
Employee Benefits Security Administration
ATTN: 2010 Investment Advice Proposed Rule
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

RE: 29 CFR 2550
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Document ID: EBSA-2008-0011-0053
Document Title: "Investment Advice – Participants and Beneficiaries; Proposed Rule"
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Electronic comments submitted through the Federal eRulemaking Portal http://www.regulations.gov.

On behalf of the more than 100,000 bipartisan members and donors of the American Association of University Women (AAUW), I write to share AAUW's comments in response to the following Employee Benefits Security Administration (EBSA) proposed rule: "Investment Advice – Participants and Beneficiaries."

AAUW urges EBSA to adopt the proposed rule, which would implement provisions of the Pension Protection Act of 2006 that are designed to expand the availability of investment advice to American workers who participate in pensions plans such as 401(k)'s or Individual Retirement Accounts (IRAs). Over the past several decades, defined-benefit retirement plan structures have increasingly given way to defined-contribution plans,[1] which place increased responsibility on the part of the individual worker to plan for his or her retirement. The proposed rule would take a number of steps to ensure that workers are provided with increased accessibility to sound, impartial investment advice. Implementation of the proposed rule is a necessary component in the overall effort to achieve retirement security for the American workforce.

AAUW's Position on Women and Retirement Security

Since its founding in 1881, the American Association of University Women has been committed to promoting equity for all women. As part of this effort, AAUW's 2009-2011 Public Policy Program advocates "strengthening retirement benefits and programs, including pension improvements and protecting Social Security from privatization."[2]

In modern times, our nation's workers have come to rely on a three-legged stool model for retirement: Social Security, pensions, and savings. The Social Security system, of course, is more than just a retirement program; across the lifespan, it is one of the most successful anti-poverty programs in our nation's history, providing benefits to many children, disabled workers, surviving spouses, and retirees. Older women especially benefit greatly from this program, since many depend on Social Security as their primary source of retirement income. More than half of older women would fall into poverty without Social Security benefits.[3]

Unfortunately, this traditional model is insufficient for women because pensions and private savings options are often unavailable or inadequate for women and their work/life patterns. Women are more likely to suffer financial insecurity in their later years for many reasons. They earn less than men when working in the same position and also continue to work in job fields that pay less. Also, women do not spend as much time in the work force as men do, and women live longer than men on average and need more resources to support a longer lifespan.

Women who work full time earn on average about 77 cents for every dollar men earn.[4] In addition, they only earn about 75 percent of men's earnings from the time they are 45 to the time they are 64.[5] The bottom line is that women can't save money they haven't earned. In sum, over the past 40 years, the real median earnings of women have fallen short by an estimated $700,000 to $2 million. Continuing pay inequity results in women having fewer savings and lower (if any) pension benefits, leaving them on an unequal footing in retirement.

Although more women work now than ever before and in a multitude of different industries and occupations, they are still concentrated in certain fields. Women working in traditionally female industries actually make 20 to 30 percent less than those in nontraditional fields which also are more likely to offer retirement benefits.[6] In fact, 60 percent of women still work in low-wage positions that often do not offer pension plans – including clerical, sales, and service jobs.[7] Even Social Security, the bedrock of our social safety net, is not without flaws. Women still bear a disproportionate burden of caregiving responsibilities for families, which takes them out of the paid workforce throughout their lifespan to care for children and for aging parents.[8]

Pension plan reform is a critical element in improving retirement security for women. Among workers offered a 401(k) plan in 2004, the overall participation rate was 41 percent for women and almost 45 percent for men.[9] According to the Employee Benefit Research Institute, women's lower participation rate has to do with the difference in earnings between men and women.[10] For example, while fewer than 20 percent of workers earning less than $15,000 per year participate in a 401(k) plan when offered, almost 70 percent of workers earning $50,000 or more do so.[11] Because men, on average, earn more than women, their overall participation rates in 401(k) plans are higher. However, when wages are held constant, the participation rate for women is generally equal to or greater than that of men.[12] But, many women are in industries or occupations that do not even include the option of a 401(k) or other defined contribution plan. For example, women are more than twice as likely to work on a part-time basis as men.[13] This part-time status is a major factor in the lower overall pension coverage rate for women (36 percent) when compared to men (48 percent).[14] In 2004, only 28 percent of women age 65 and older received pension benefits, versus 45 percent of men.[15] Finally, even when women do participate, the median amount women's pension income is about half that of men.[16]

In short, in addition to recognizing the need to take additional steps to strengthen Social Security, AAUW supports measures that will increase women's ability and willingness to participate in alternate forms of retirement programs such as 401(k)'s and IRAs.

Investment Advice for Participants and Beneficiaries

As of 2007, defined contribution retirement plans covered 60 million active participants $3 trillion in total holdings.[17] Given the ever-increasing importance of such plans, the ability of participants to seek out and receive sound investment advice is critical for both workers and their families.

Under the proposed rule, any advisers' fees must be disclosed to plan participants and such fees would remain fixed, irrespective of the plan to which a participant ultimately selects to contribute.[18] Furthermore, such fees would no longer include commissions based on plan recommendations made by an adviser.[19] Taken in tandem, the rules would remove the appearance of bias with respect to investment advice and allow plan participants to make a selection more firmly on the merits. In the words of Deputy Secretary of Labor Seth Harris, this rule would "strengthen America's private retirement system by ensuring workers get good, objective information."[20]

The presentation of objective information to plan participants could also be accomplished by use of a computer model certified as unbiased.[21] A plan fiduciary – defined as someone independent of the investment adviser or its affiliates – would be required to select this computer model, which would first undergo an independent certification process to confirm its unbiased nature.[22] This layered approach would be further enhanced by a new requirement establishing an annual independent auditing process of all investment advice arrangements.

The Department of Labor estimates that adoption of the proposed rule would cover more than 83,000 defined contribution pension plans with approximately two million participants and an additional 13 million plan beneficiaries.[23] Also affected would be 16,000 investment advisory firms. In sum, the Department anticipates a net annual benefit of $6 billion following implementation.[24]

As described earlier, women are more likely to suffer financial insecurity in their later years for many reasons. AAUW thus believes that the proposed rules' emphasis on greater transparency, unbiased investment advice, and additional plan safeguards will take important steps towards providing all American workers – particularly women – with a more solid footing in retirement.

Conclusion

The staggering economic impact of the so-called ‘Great Recession’ starkly reminded all Americans about the urgent need to save money and plan prudently for their retirement from the moment they enter the workforce. AAUW believes that the proposed rules provide a pivotal assist in that effort, and as such strongly urge their implementation.

If you have any questions, please feel free to contact me at 202-785-7720, or Adam Zimmerman, regulatory affairs manager, at 202-728-7617. Thank you for the opportunity to submit comments on these important regulations.

Sincerely,

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Director, Public Policy and Government Relations

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[1] U.S. Bureau of Labor Statistics (March 2009). *Perspectives on Retirement Benefits*. Retrieved April 29, 2010, from http://www.bls.gov/opub/perspectives/issue3.pdf.

[2] American Association of University Women. (June 2009). *2009-11 AAUW Public Policy Program.* Retrieved July 9, 2009, from http://www.aauw.org/advocacy/issue_advocacy/principles_priorities.cfm.

[3] AARP (October 2007). *Women and a Secure Retirement: Two Steps Forward, One Step Back.* Retrieved August 12, 2009 from http://bulletin.aarp.org/yourmoney/retirement/articles/money_for_life_sb1.html

[4] U.S. Census Bureau and the Bureau of Labor Statistics. (September 2009). Annual Demographic Survey. Retrieved September 18, 2009, from http://www.census.gov/hhes/www/poverty/poverty08.html. AAUW favors using the Census data because they report median *annual* earnings in addition to *weekly* earnings. Annual earnings of full-time wage and salary workers is a standard measure of pay differentials. Economists also calculate the wage gap using median “usual weekly earnings” of full-time wage and salary workers. Weekly figures do not include bonuses and overtime pay. Because men are more likely than women to receive bonuses and work overtime, the gender wage gap in annual earnings is slightly wider than when measured using usual weekly earnings. Differences can also be measured on an hourly basis. Among workers paid on an hourly basis, women age 16 and older typically earn, on average, about 84 percent of men’s earnings. Because only part of the work force is paid on an hourly basis, it is not usually considered a good representation of the full work force.

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[6] Wider Opportunities for Women (2009). *Women and Non-Traditional Employment.* Retrieved August 14, 2009 from http://www.wowonline.org/pdf/womennontradsheet2005.pdf

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[11] Employment Benefit Research Institute. (October 2005). *Issue Brief No. 286, Employment-Based Retirement Plan Participation: Geographic Differences and Trends.* Retrieved January 3, 2008, from http://www.ebri.org/pdf/briefspdf/EBRI_IB_10-20051.pdf.

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[13] U.S. Department of Labor, Bureau of Labor Statistics. (July 2009). *Highlights of Women's Earnings in 2008*. Retrieved August 12, 2009 from http://www.bls.gov/cps/cpswom2008.pdf

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[15] Employment Benefit Research Institute. (March 2006). Retirement Annuity and Employment-Based Pension Income Among Individuals Ages 50 and Over. *Notes*, 27(3). Retrieved January 3, 2008, from http://www.ebri.org/pdf/notespdf/EBRI_Notes_03-20063.pdf.

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[17] United States Department of Labor (February 26, 2010). *Fact Sheet: Proposed Regulation to Increase Workers' Access to High Quality Investment Advice*. Retrieved April 29, 2010, from http://www.dol.gov/ebsa/newsroom/fsinvestmentadvice.html.

[18] Jennifer Saranow Schultz (Feb. 26, 2010). New Rules Aimed at Increasing Retirement Savings. Retrieved April 30, 2010, from http://bucks.blogs.nytimes.com/2010/02/26/new-rules-aimed-at-increasing-retirement-savings/.

[19] Investment Advice – Plans and Beneficiaries, 75 Fed. Reg., 9360-9370. (March 2, 2010); http://bucks.blogs.nytimes.com/2010/02/26/new-rules-aimed-at-increasing-retirement-savings/

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[24] Investment Advice – Plans and Beneficiaries, 75 Fed. Reg., 9360-9370. (March 2, 2010).