Introduction

Good morning, I am Robert J. Doyle, Director of Regulations and Interpretations for the Employee Benefits Security Administration. Accompanying me this morning is Jeffrey J. Turner, Chief of the Division of Regulations in the Office of Regulations and Interpretations.

On behalf of the Employee Benefits Security Administration, I would like to thank Chair Rouse, Vice Chair Kennedy and the members of the Working Group and Advisory Council for undertaking a review of the issues attendant to furnishing participants and beneficiaries with pension benefit statements in accordance with the provisions of the Pension Protection Act of 2006 (the PPA). Pursuant to the PPA, the Department is to issue both implementing regulations and model benefit statements to facilitate compliance by pension plans in discharging their benefit statement responsibilities.

The Working Group’s review of these issues will play an important role in providing the Department with a foundation, informed by public input, on which proposed rules governing benefit statements can be developed. The new benefit statement requirements will impact an estimated 50,000 defined benefit plans and 640,000 defined contribution plans, covering 110 million participants and beneficiaries. It is important, therefore, that the new rules governing benefit statements provide a framework that ensures plan participants and beneficiaries have the information they need about their retirement benefits and their plan, while at the same time minimizing, to the extent consistent with the statute, implementation and compliance costs for plans. Implementation and compliance costs are issues of particular significance for individual account plans because such costs can be charged against participant accounts and thereby reduce retirement savings.

Prior to enactment of the PPA, pension plan administrators generally were required to furnish pension benefit statements only upon receipt of a written request from a participant or beneficiary and that statement was required to contain only limited information about the participant’s status in the plan –
namely, the participant’s total accrued benefits, the vested benefits, if any, which have accrued, or the earliest date on which benefits would become vested. With the enactment of the PPA, and effective for plan years beginning in 2007, the requirements applicable to benefit statements have changed significantly in a number of respects. Most notably, statements are now required to be furnished automatically to plan participants, rather than only upon request, and the information required to be contained in statements has been expanded, particularly for individual account plans.

Given the significance of these changes and the January 1 effective date for many plans, the Department issued Field Assistance Bulletin 2006-03 in December of last year, providing interim guidance on compliance with the new requirements. The Bulletin generally provides standards for good faith compliance with the benefit statement requirements on which plans may rely pending the issuance of further guidance, in particular regulations and model statements, by the Department. The Bulletin was intended to avoid plans having to make potentially significant and costly systems and other changes to their disclosure practices in anticipation of regulatory requirements that had not yet been developed or adopted.

However, it is important to note, that, while the Bulletin presents a number of issues that need to be addressed by regulation, the guidance in the Bulletin is merely interim guidance and, therefore, does not purport to represent approaches to the benefit statement requirements that will be reflected in the regulations ultimately adopted by the Department.

Issues

In the course of our deliberations about the benefit statement requirements and in discussions with various members of the employee benefits community, a number of issues have been raised for consideration in developing regulatory guidance. Because the Department, ultimately, will have to consider a wide range of issues and compliance alternatives and options, taking into account the benefits, costs and burdens attendant to each, we would like to take this opportunity to share with the Working Group some of the issues raised with and under consideration by the Department, as well as identifying information that would be helpful to the Department as it develops a proposed regulation.

In brief, the issues for review include: The form in which benefit statements should be required to be provided; the manner in which benefit statements should be furnished; the time frames within which benefit statements should be required to be furnished; and the required content of benefit statements. We will also mention information that would be helpful to the Department in preparing
various cost/benefit and regulatory impact analyses required as part of the regulatory process.

**Form of Furnishing Benefit Statements**

Section 105, the benefit statement provisions, appears generally to refer to a single "pension benefit statement," although section 105(a)(2)(C) specifically addresses alternative means by which vested accrued benefit information might be furnished. The language of section 105 has raised an issue as to whether the information required to be disclosed in benefit statements must be disclosed in the form of a single statement with aggregated information or whether the benefit statement requirements might be satisfied using multiple documents or sources. It has been represented that, in the case of individual account plans that provide for participant direction of investments, the information required to be included in pension benefit statements will, in many instances, involve multiple service providers, each of whom is a source for some, but not all, of the required information. For example, vesting information might be available only from the plan administrator, whereas investment information is provided by one or more vendors of investment products and/or a broker (in the case of investments made through an open brokerage window), and information relating to the value of investments in employer securities may come from an entirely different source.

While the Department permitted the use of multiple documents and sources in Field Assistance Bulletin 2006-03, subject to certain conditions, consideration needs to be given to whether, and under what circumstances, multiple documents and sources should be permitted in the regulation.

In reviewing this issue and compliance options, the following information would be of assistance to the Department:

1. The type and percentage of plans that provided single consolidated statements prior to the new pension benefit statement provisions.

2. Technological, business, or other impediments, if any, which would limit a plan’s ability to provide single consolidated benefit statements.

3. The extent to which single consolidated benefit statements would improve the disclosure of benefit statement information to participants and beneficiaries. Estimates concerning the point at which the cost of preparing and furnishing a single consolidated statement would exceed the benefits of such a statement to participants and beneficiaries.
4. Identification of the costs associated with the provision of single consolidated benefit statements and the person (employer versus individual accounts) that typically bears such cost.

5. Estimated delays, if any, in furnishing single consolidated benefit statements to plan participants and beneficiaries.

6. In the case of plans that provide pension benefit statement information through multiple sources or documents, identification of the sources or documents on which plans typically rely.

**Manner of Furnishing Statements**

Section 105(a)(2)(A)(iv) provides that pension benefit statement information “may be delivered in written, electronic, or other appropriate form to the extent such form is reasonably accessible to the participant or beneficiary.”

In reviewing the electronic furnishing of documents generally, it has been suggested by members of the employee benefits community that the safe harbor under Title I of ERISA, at 29 CFR § 2520.104b-1(c), is not working as well as it could to foster electronic communications between plans and the plan participants and beneficiaries given the need for affirmative consent by participants and beneficiaries for distributions outside the workplace. Since the publication of the Department’s safe harbor regulation, the Department of the Treasury and the Internal Revenue Service have adopted regulations, at 26 CFR § 1.401(a)-21, that provide plans more flexibility in their electronic communications. In Field Assistance Bulletin 2006-03, the Department indicated that, pending further guidance, plans could rely on either the Department’s safe harbor regulation or the regulation issued by Treasury/IRS for purposes of furnishing benefit statement information under section 105 of ERISA.

Since the issuance of the Bulletin, the Department has started a review of its safe harbor for the electronic disclosure of information under Title I of ERISA. In conducting this review, the Department would benefit from additional information from plans and service providers concerning their compliance experiences with the Department’s safe harbor and the Treasury/IRS regulation.

The Department also would benefit from information concerning whether, and to what extent, regulations should permit benefit statement information to be provided on a continuous basis through a secure plan web site, in lieu of being furnished in statement form. We note such an approach was provided as an example by the staff of the Joint Committee on Taxation as a possible means by which the benefit statement regulations could permit the furnishing of benefit
statement information electronically. In considering the inclusion of such a method of disclosure, the Department would benefit from information concerning the costs attendant to establishing and maintaining such a website; the need for security standards; how frequently web site information should be updated; and how and what information should be communicated to participants and beneficiaries about the web site.

Timing of Benefit Statements

Section 105(a) generally defines when benefit statements must automatically be furnished to plan participants. Individual account plans that provide for participant direction must furnish benefit statements at least once each calendar quarter. Individual account plans that do not provide for participant direction must furnish benefit statements at least once each calendar year. Defined benefit plans generally are required to furnish benefit statements at least once every three years, except that under an alternative notice provision, such plans are permitted to provide an annual notice of availability of pension benefit statement information and the process to obtain such information.

If benefit statements are to contain the latest available information as of the end of the relevant period (e.g., quarter, year), questions have been raised regarding what time frame following the end of such period statements should be required to be furnished. In Field Assistance Bulletin 2006-03, the Department generally took the position that benefit statement information that is furnished not later than 45 days following the end of the period would constitute good faith compliance with the requirement to furnish timely statements. Subsequent to the issuance of the Bulletin, the Department has been requested to reconsider the timing requirement applicable to individual account plans that do not provide for participant direction on the basis that such plans often will not have the information necessary for a meaningful disclosure to participants and beneficiaries within a 45-day period following the end of the year and will not likely have the required information until the date on which the plan's annual report (Form 5500) is filed. The Department currently is considering the need for further guidance on this issue.

In general, the Department believes that the regulations need to establish specific time frames within which benefit statement information will be furnished or otherwise made available to participants (and beneficiaries upon request). The Department would benefit from additional information concerning the timing of disclosures of benefit statements by all types of pension plans, including but not limited to: the need of participants for useful and timely information; the availability of updated information to plans; the effect of having to prepare consolidated statements, if required; the costs attendant to compliance with a 45-
day rule; the period(s) within which statements should be required to be provided following the end of a period (quarter, plan year); and the administrative costs and burdens attendant to compliance with various timing options.

Content Requirements

The benefit statement provisions added by the PPA contain a variety of new content requirements. We would like to bring to the Working Group’s attention some of the issues relating to benefit statement content that have been raised with the Department for consideration and, therefore, might benefit from guidance in the form of regulations.

Summary plan description

Section 105(a)(2) sets forth the general content requirements for all pension benefit statements. Several individuals have suggested, for a variety reasons, that certain content requirements (e.g., vesting, permitted disparity, floor offsets, etc.) should be considered satisfied if, in lieu of a complete description or explanation in the benefit statement itself, the benefit statement includes mention of the topic and a reference to the plan’s summary plan description for a complete description or explanation. The Department is interested in knowing the specific circumstances under which such an approach would be justified, including to which of the content requirements in section 105(a)(2) this approach would apply, the benefits that would be derived by participants and beneficiaries from such an approach, and whether this approach would have to be limited to the summary plan description (rather than, e.g., summary annual report, annual funding notice, or plan document).

Permitted disparity

Section 105(a)(2)(A) provides that a pension benefit statement “shall include an explanation of any permitted disparity under section 401(l) of the Internal Revenue Code . . . .” The Department has received a number of inquiries concerning the circumstances under which “permitted disparity” information would have to be addressed in a benefit statement. In considering this issue, the Department would benefit from the following information: the kinds of plans that typically provide for permitted disparity under section 401(l) of the Internal Revenue Code; the extent to which “permitted disparity” information should be included in a benefit statement; the level of detail required for such an explanation (including whether such level of detail would differ depending on whether the plan is defined benefit plan versus a defined contribution plan). Information on whether, and how, the concept of permitted disparity can be
explained in a manner calculated to be understood by the average plan participant would also be welcome.

Latest available information

Section 105(a)(2)(A) provides that information in a pension benefit statement must be based on the “latest available information.” A number of individuals have requested clarification on whether this “latest available information” standard requires all information in a benefit statement to be updated as of the last day of the period covered by the statement. We will need to consider whether, and to what extent, the concept of “latest available information” needs to be defined by regulation.

Account allocations

Section 105(a)(2)(B)(i) provides that, in the case of an individual account plan, a pension benefit statement shall include “the value of each investment to which assets in the individual account have been allocated . . . .” Plan service providers have requested clarification on the scope of this requirement, particularly in the context of plans with pooled investments and collective trusts. Specifically, clarification has been requested regarding whether this provision requires only that an individual’s benefit statement reflect the value of an investment in a pooled investment or collective trust (i.e., number and value of units owned by the individual), or whether the statement must reflect the value of each investment underlying the pooled investment or collective trust. The Department is interested in knowing whether participants and beneficiaries would benefit from information on the value of the underlying investments in this context. In addition, would such disclosure tend to be voluminous, and what costs, if any, would be attendant to such level of disclosure?

Diversification and risk statement

Section 105(a)(2)(B)(ii)(II) provides that, in the case of an individual account plan that permits participant direction, each pension benefit statement must include “an explanation of the importance, for the long-term retirement security of participants and beneficiaries, of a well-balanced and diversified investment portfolio, including a statement of the risk that holding more than 20 percent of a portfolio in the securities of one entity (such as employer securities) may not be adequately diversified . . . .” In Field Assistance Bulletin 2006-03, the Department provided model language that, in the absence of guidance to the contrary, would be considered by the Department to constitute good faith compliance with the statutory requirements. The Department would be interested in determining what, if any, changes should be made to the provided language.
Vesting

Section 105(a)(2)(C) provides for an alternative notice under which the general vesting content requirements of section 105(a)(2)(A)(i)(II) are considered met if, at least annually, the plan "provides in a separate statement such information as is necessary to enable a participant or beneficiary to determine their nonforfeitable vested benefits." Questions have been raised whether it is sufficient, for purposes of the alternative, for a benefit statement to simply refer participants or beneficiaries to the summary plan description for a description of the plan's vesting schedule?

Mixed plans

In the case of individual account plans, the timing and content requirements under section 105 differ depending on whether the plan provides for participant direction of investments, with participant-directed plans having to furnish more frequent (quarterly statements rather than annual statements) and more detailed statements. A number of service providers have requested guidance on the appropriate treatment of plans that have both participant-directed and non-participant-directed features, such as plans that provide for participant direction of elective deferrals but not for other contributions (e.g., employer matches). The Department is interested in obtaining any information describing the nature and scope of the problems presented by plans of this type, as well as any data indicating the order of magnitude of the problem.

Miscellaneous

As part of the rulemaking process, the Department is required to consider the economic impact of rules and to undertake a cost/benefit analysis with respect to options considered as part of the rulemaking. In connection with these requirements, the Department would be interested in the following information or data:

1. What was the average frequency of statements (if any) for each of participant-direct plans, other defined contribution plans, and defined benefit plans prior to the PPA?

2. For individual account plans that have already provided or will soon provide statements under the new requirements, what new costs did they incur? Did some service providers contracted by plans to provide the statement have an explicit charge for this service?
3. If plans are required to provide single consolidated benefit statements, as opposed to multiple sources or multiple documents, would plan administrators (or other entity consolidating the data) find it necessary to perform calculations or adjust the information in order to consolidate participant investment information?

4. What percent of participants call their plan administrator with questions in the week following receipt of a statement? What percent of participants in individual account plans change their contribution or investment allocation in the week before and in the week following receipt of a statement?

5. Will providing and receiving benefit statements under the new requirements prompt changes in the conduct of plan administrators (and their service providers) and plan participants? If so, what will be the impact of these changes?

In concluding, we again would like to thank the Working Group and the Advisory Council for their consideration of these important issues. We look forward to receiving your report and recommendations.

At this time, we would be happy to answer any questions the members of the Working Group may have on benefit statement provisions and the Department’s responsibilities thereunder.