August 6, 2013

Filed Electronically
Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210
Attn: Pension Benefits Statements Project

Re: Comments on Advance Notice of Proposed Rulemaking – Pension Benefits Statements, 29 CFR Part 2520, RIN 1210-AB20

Ladies and Gentlemen:

Financial Engines respectfully submits the following comments in response to the Department of Labor's advance notice of proposed rulemaking entitled *Pension Benefit Statements,* published in the May 8, 2013 Federal Register. We are especially appreciative of the additional time provided for comment.

Financial Engines Advisors L.L.C., a wholly owned subsidiary of Financial Engines, Inc., is a registered investment adviser that provides personalized investment advice and management services to plan participants in 401(k) and similar plans. Financial Engines is the leading provider of independent advisory services to large plan sponsors, working with many of the nation's largest employers and retirement service providers.[1] We have been providing personalized retirement income forecasts for more than 15 years. In 2012, we made available personalized retirement income forecasts to over 8.5 million participants through printed communications and our online experience.

We appreciate the opportunity to comment on the proposed rulemaking and on the additional questions posed in the advance notice. We agree that the task of managing finances to provide income for life is tremendously difficult for most retirees, but it is hugely important. In particular, is extremely difficult for participants to form a realistic view of the lifetime income that can be generated from their savings. We support the objective of seeking to ease the burden of this task.

[1] Financial Engines currently offers investment advice and management services, including the provision of retirement income forecasts, to over 8.7 million plan participants through leading employers and financial institutions.

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Executive Summary

- We believe that an approach short of rulemaking can promote the availability of retirement income forecasts. Guidance, in the form of an Interpretive Bulletin such as 96-1, could address the concerns that are causing some plan sponsors to refrain from offering retirement income forecasts. As a potential middle ground, such guidance could be combined with a requirement that benefits statements include information on how to obtain a lifetime income estimate. Sponsors could satisfy the requirement either by referring participants to the Department's web site, or to a service provider's web site. In any event, sponsors should have the flexibility of providing retirement income forecasts through mechanisms other than within pension benefits statements.

- Retirement income forecasts are widely available today, and many use robust methodology that accommodates a participant's unique circumstances. Importantly, these forecasts provide participants with a realistic range of possible outcomes rather than focusing on a single point-estimate.

- The Department should encourage flexibility, such as permitting estimates that are based on personalized drawdown strategies (this is a third method for converting an account balance to a stream of income in retirement, in addition to the "draw down"/ "systemic withdrawal" and annuitization approaches referenced in the Overview section of the advance notice).

- Guidance offered by the Department relating to the provision of retirement income forecasts should permit a high degree of personalization to each participant's circumstances and clarify that no single approach need be used for all participants in the plan.

- Guidance offered by the Department relating to the provision of retirement income forecasts should be equally applicable to plan sponsors, plan recordkeepers, and other plan service providers.

We will expand on these general points, and the Department's questions, in the following sections.

The Department can achieve the desired objectives through means other than rulemaking, such as issuing guidance that broadly covers all reasonable approaches to providing retirement income forecasts, while clarifying that such forecasts are education and not advice.

Many plans already provide retirement income projections. 94% of participants receive or have access to a retirement income forecast, according to the PLANSPONSOR 2013 Defined Contribution Recordkeeping Survey.[2]

Based on our experience with hundreds of plan sponsors, some may be reluctant to provide actual estimates to their participants out of concern for potential fiduciary liability, concern for potential class-action lawsuits if participants do not obtain the projected amounts once they retire, and concern about the diligence required to review the methodology used. These concerns could be addressed with guidance, such as the guidance issued under Interpretive Bulletin 96-1 that relates to participant investment education. The guidance should clarify that the provision of a retirement income projection that is based on generally accepted investment theories to project investment returns, uses reasonable assumptions, is expressed in current dollars; and that takes into account future contributions (for active participants only) constitutes the provision of investment education. The guidance should clarify that no single approach need be used for all participants in the plan[3]. Any income projection should describe the assumptions on which it is based, state that the projection is an estimate, and state that actual payments may vary from the illustration. The guidance should be clear that the provision of a retirement income projection does not result in a fiduciary act that creates fiduciary liability under ERISA or create a basis for a claim or right under the plan.

We are especially concerned that the Department's consideration of a regulatory safe harbor for plan administrators does not adequately address the important role of other service providers. The described safe harbor would specify the "precise standards and assumptions a plan administrator would use." As such, the safe harbor would not provide any protection for providers of retirement income forecasts who are not plan administrators, and would not protect the use of the kinds of more robust and personalized approaches in the market today, or encourage further innovation or development. We urge the Department to provide the equivalent safe harbor, or clarity in the type of "IB 96-1" guidance proposed above, for other service providers. Without such clarity, such service providers would have little incentive to develop and introduce improvements to existing retirement income forecasts and the tools and statements used to convey those forecasts.

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[2] PLANSPONSOR 2013 Defined Contribution Recordkeeping Survey© 2013 Asset International, Inc. Survey included 70 Defined Contribution recordkeepers, 69 of whom responded to the questions about providing a monthly retirement income forecast. 50 of the 69 plans provide a print and/or online retirement income forecast. The 69 recordkeepers provide services to plans with over 84 million participants. Of these, 79 million participants, or 94%, are with plans recordkept by one of the 50 recordkeepers that provide retirement income forecasts.

[3] A recent RAND working paper (the "Rand Working Paper"), "Designing Better Pension Benefits Statements: Current Status, Best Practices and Insights from the Field of Judgment and Decisionmaking", by Lauren A. Fleishman-Mayer, Angela Hung, Joanne Yoong, Jack Clift and Caroline Tassot, discusses a 2005 Government Accountability Office report reviewing public pension statements and recommending that statements could be customized by the age of the worker or other relevant status.

As a possible middle ground, guidance could be combined with a requirement that benefits statements include information on how to obtain a lifetime income estimate. Sponsors could satisfy the requirement either by referring participants to retirement income calculators available either on the Department's web site or on a service provider's web site, rather than requiring that benefits statements include projections. This approach can also allow participants to see both the income estimates for their current account balance, and the income estimates assuming continued contributions and investment returns. Rather than presenting all of the alternatives to participants in a statement, which is likely to be confusing, this approach lets participants focus on the information they would find most relevant to their own circumstances (for example, a participant who expected to leave the workforce for an extended period for caregiving might not want an income estimate based on continued contributions)[4].

Existing personalized retirement income forecasts provide more meaningful and individualized information

It is therefore imperative that existing retirement income forecast methods, which are used to provide forecasts to millions of plan participants, remain available.

The Department has raised the question, in Footnote 8, of whether the current rule goes far enough in facilitating the use of stochastic projections. We are strongly in favor of stochastic projections, as providing the range of probable outcomes will be far more useful to participants, and will help participants understand that the projections are not a certain, guaranteed outcome[5]. If an Interpretive Bulletin, rather than a rule, is issued as proposed above, such guidance should clarify that stochastic projections are acceptable. Consistent with the view that provision of the projections should not be treated as a fiduciary act, the guidance should explain, by way of illustration only, that projections could be expressed as the median of projection outcomes, with additional downside and/or upside projections, without mandating that any particular approach is preferred over any other approach.

Retirement income projections being used today will often differ from the results obtained by using the simple proposed safe harbor methodology. A 7% rate of return (gross of inflation) may be possible in many 401(k) plans, but the assumed equity exposure may be inconsistent with risk tolerance preferences of many participants, particularly for those close to retirement. For example, the chart below shows the range of expected growth rates for various investment options commonly held in 401(k) plans, and the difference between the median growth rate and a downside projection (estimated as the outcome that might occur in 1 out of every 20 scenarios, or 5% of projected scenarios). We often see participant portfolios invested entirely in a single fund such as a

[4]The Rand Working Paper cited the benefit of making detailed information and tools available in accompanying materials or on a website.
[5] The Rand Working Paper also comments on the usefulness of providing ranges of probabilities under different scenarios.

money market fund. These projections are based on our economic models, and assume 20-year forecasts, adding 3% annual inflation. The individual stocks example illustrates the range of outcomes from 5 sample stocks that are constituents of the S&P 500 index; the range of projected growth rates across all stocks would be larger.

Projected Growth Rates for Sample Portfolios

	Proposed DOL Safe Harbor Assumption	Money Market Fund	Stable Value Fund	S&P 500 Index Fund	Individual Large Cap Stocks (Range of 5 Examples)
Annualized Growth Rate: Median Scenario	7.0%	4.3%	5.2%	8.6%	4% to 7%
Annualized Growth Rate: Downside Scenario	7.0%	3.2%	3.5%	1.8%	-4% to -12%

A more personalized approach can allow each participant to see a projection that is based on a strategy they are comfortable implementing (the "personalized draw down" method). These strategies provide the participant with (a) a predominantly fixed income portfolio allocation to support steady monthly payouts regardless of market fluctuations, and (b) flexibility to purchase an out-of-plan annuity with a small portion of their account balance to protect against the risk of outliving their assets. These strategies are thus designed to provide financial support for the entirety of the participant's retired life. Projections based on generic, unpersonalized assumptions may be unrealistic and lead to poor decisions.

Retirement income projections being used today often include projected Social Security and pension benefits, as well as other retirement savings accounts. It is confusing for participants to compare their budget needs to only the amounts that can be generated from a single defined contribution account. For many participants, Social Security will provide a significant percentage of income replacement. Further, many participants have more than one retirement savings account, such as a 401(k) with a former employer or an IRA. Guidance such as that provided in IB 96-1 could support, but not mandate, providing forecasts that are based on all available information.

If included, any safe harbor should be structured based on principles which are broad enough to provide flexibility to sponsors and to encourage further innovation

Any safe harbor should:

- Provide for additional flexibility, and eliminate unnecessary costs, to minimize changes plan sponsors must make to existing practices and to encourage further innovation, including the following:

- Plan sponsors should be able to deliver the forecast outside of the Pension Benefit Statement

- Plan sponsors should be able to use electronic delivery, and integrate and reference on-line forecasts

- Plan sponsors should be allowed to deliver the required explanation of the assumptions behind the lifetime income stream illustrations by directing participants to an online resource, with print copies available upon request. These disclosures may be much longer than the Department anticipates. For example, a robust disclosure might inform participants that the anticipated future contributions include a continued company match, if applicable, and that the participant is assumed to continue to work on the same full-time or part-time basis as in the baseline year for their contribution amount. As further discussed below, disclosing whether the forecast is before taxes or after taxes is extremely important, especially if the participant has a mix of Roth and pre-tax contributions.

- Require delivery of the statements no more frequently than annually

- Allow for personalization; and permit (without mandating) inclusion of actual information from a participant such as marital status or retirement age.

- Should not assume continuing contributions for inactive participants. Those participants may no longer be working, or may be working elsewhere, and making contributions at their new employer. If they assume they can add the projected retirement income from multiple employers, they will be grossly overestimating their retirement income.

- Plan sponsors should be expressly permitted to use different methods for different populations, to best meet the needs of those different populations, such as an annuitization conversion approach for younger participants and a drawdown with partial annuitization (personalized drawdown) approach for near-retirees.

- Be more supportive of robust forecast methodologies in use today (described in the following section), as compared to generic assumptions, to provide the most useful information to participants.

If a safe harbor is included, it should reference generally accepted approaches rather than sanctioning, and thus encouraging, a specific methodology which is less robust than what is commonly available in the market today.

Unlike the proposed safe harbor, forecasts available today:

- Reflect actual participant investment allocations. This provides a more realistic forecast in many situations. For example, participants invested in stable value typically see a lower (average market) forecast than those invested in equities. Participants invested in company stock typically see a lower (average market) forecast than those invested in diversified equities. Participants invested in target date funds see forecasts where returns reflect the systematic decline in risk with age. Forecasts reflect specific characteristics of the actual investments in the plan, including fund expenses, past manager performance, exposures to fixed income and equity markets, and non-market volatility (or "tracking error"). For example, it is typical for recommended portfolio allocations to range from 90% equity allocations for long horizons to 50% equity for those near retirement. The projected growth rate examples earlier in this letter illustrate how different portfolio holdings lead to quite disparate projected growth rates.

- Reflect investment uncertainty. Participants should not make retirement planning decisions based solely on what might happen if markets perform according to historical averages. The downturn of 2008 should not be forgotten as an example of why investment risk matters, particularly for those close to retirement with little time to make up for below-average returns. It was common to see deterministic forecasts 15-20 years ago, but today it is standard to use Monte Carlo or historical resampling methods.

- Recognize the difference between pre-tax and Roth contributions. Forecasts are most useful if they are denominated on a consistent tax basis (either before taxes or after taxes, but not a mixture). A participant with a $100,000 pre-tax balance has effectively saved less than a participant with a $100,000 Roth balance. With tax rates of 30 percent or more, the differences in effective retirement income could be 30 percent or more.

- Include projected Social Security and pension benefits (if applicable), as well as income that could be generated from other retirement accounts in the household. Holistic projections are more helpful for retirement decision-making and are embraced by participants.

- Reflect growth of participant salaries, which each participant can personalize to be higher or lower than the rate of inflation. Participants early in their working careers may expect salaries to rise faster than inflation, to reflect likely promotions, while those late in their careers might wish to assume no growth. As a result, participants who save a percentage of income may see their dollar contributions rise faster or slower than the rate of inflation.

- Reflect automatic savings escalation decisions. Many plans have adopted automatic increases to savings, unless a participant chooses to opt out. If a participant is participating in an automatic savings escalation program, it is much

more useful to the participant to presume that their savings rate will reach the maximum rate under the program.

- Reflect joint-and-survivor annuitization for married couples, in order to reflect the likelihood that income from assets will be shared across two lifetimes. This provides a comparable approach to Social Security and defined benefit formulas.

- Display the retirement income projection in comparison to either an assumed income goal, or a goal which has been selected by the participant, perhaps after use of a budgeting tool. Inclusion of the desired income for retirement provides additional useful context for the participant.

- Take into account plan and IRS contribution limits and actual company match provisions. Participants contributing at the maximum contribution limits will not receive forecasts assuming that they can contribute more than they actually can contribute. Existing methodology that includes actual regulatory and plan limits can be adjusted if current legislative proposals to limit contributions or impose different tax treatment become law.

- May provide access to online or phone-based support, to help the participant understand how to use online tools or interpret a printed statement, help the participants to understand the meaning of technical assumptions, help the participant personalize assumptions to fit individual circumstances, and help the participant understand changes he or she can make to improve the forecast.

Account balance conversion using an annuitization approach

We believe it is important to tailor our services to address different participant needs, which may vary during the participant's lifetime. In the course of more than 15 years of offering retirement income forecasts, we have found that assuming annuitization is not always right or always wrong.

In some cases, an annuitization assumption is an effective way to estimate the spending power of a projected retirement balance, to combine with other income sources such as Social Security and pensions, which are life annuities, especially for participants who are further away from retirement. This process allows participants to compare their potential total retirement income with their goals[6].

However, if an annuity conversion is used, the following approaches should be considered:

[6] Note that the Rand Working Paper discusses the difficulty of combining different income sources. The annuitization method is one way to address this difficulty.

- Typical expenses of annuities should be reflected, rather than referencing a hypothetical zero-cost annuity.

- Annuity calculations should model the term structure of real (net of inflation) interest rates, rather than a single 10-year Treasury rate (which is nominal, or gross of inflation). Nominal interest rates yield a non-inflation adjusted annuity payout, which would decline in purchasing power in retirement. Participants would find it very hard to use this number. Moreover, the safe harbor nominal annuity estimate would show much higher initial payouts than an inflation-protected annuity, and many or most participants would be deterred by the high apparent cost of inflation protection (while lacking the sophistication to appropriately calculate the benefits of inflation protection).

- Given the overwhelming empirical evidence that retirees prefer death benefits[7], the annuity used should assume death benefits, rather than using a life-only annuity calculation. Even for those retirees who will not annuitize, an annuity conversion assuming a death benefit is closer to the income that could be generated from income strategies that might be used by participants--strategies that combine some preservation of liquidity with some insurance against longevity risk. Using a life-only annuity conversion, representing full insurance against longevity risk, will generally overstate the income that retirees could attain compared to commonly used spending strategies that accommodate the typical desire for liquidity with some protection against longevity risk.

It is extremely important to recognize that most retirees do not annuitize any portion of their retirement balances. It is also important to note that annuitization is not the only means of providing for a steady stream of income in retirement, with protection against the longevity risk of outliving savings. Hence, other account-balance conversion methods can be equally useful for participants. Examples include Financial Engines' Income+ offering, and many GMWB annuity products. Most spending strategies involve some preservation of liquidity, which is often preferred by participants but means there is a degree of "self-insurance" against some longevity risk. Income+ provides a tangible plan for converting retirement accounts into income, based on a combination of an in-retirement investment strategy focused mostly on fixed income, and an optional out-of-plan annuity purchase later in retirement (by age 85). Retirement income estimates that reflect personalized drawdown strategies give participants who are close to retirement relevant and useful information. Retirement income estimates based on personalized drawdown strategies are in use today. In contrast, the proposed safe harbor methodology could set up most participants for being disappointed once they actually try to enact a retirement income plan.

[7] See LIIMRA International 1998, "Immediate Annuities" Product Design Series, LIMRA International.

To further illustrate the range of different outcomes different participants might experience, for a 45 year old male, with an initial balance of $125,000, annual saving starting at $10,000, and a 19.5 year retirement horizon, as in the Appendix A example in the Notice, but holding a concentrated portfolio, we would project the retirement income shown below. All amounts are stated in today's dollars and assume a single-life annuity with inflation adjustment and 20-year period certain benefit. If the participant were invested solely in company stock, there is a 5% chance that his projected monthly retirement income could be only $295, rather than the $2788 estimate obtained assuming 7% returns. Surely this participant would be better off receiving a forecast that showed him the risk he was taking with a portfolio concentrated in company stock.

Impact of Different Portfolios on Appendix A Example

	Proposed DOL Safe Harbor Assumption	Money Market Fund	Stable Value Fund	S&P 500 Index Fund	Individual Large Cap Stocks (Range of 5 Examples)
Projected Balance (Median)	557,534	368,000	252,000	671,000	393,000 to 593,000
Projected Monthly Income (Median)	2,788	1,670	1,140	3,050	1,780 to 2,690
Projected Balance (Downside)	557,534	316,000	206,000	262,000	65,000 to 143,000
Projected Monthly Income (Downside)	2,788	1,440	933	1,190	295 to 648

Use of technology underlying online tools to generate statement forecasts

Using the same technology that underlies a retirement calculator to project account balances for use in a statement is far more difficult than the Department may realize. A calculator is designed to accept one set of inputs and produce the output. Integrating the data for thousands or hundreds of thousands of plan participants into a calculator, and then integrating the outputs from that calculation into an existing benefit statement requires considerable technical integration and coordination of data sources (participant age, date plan participation commenced (to accommodate the proposed retirement age definition as being at least five years after plan participation commenced), account balance, contributions). Different plan providers, for example, might express contributions as either a percentage of salary, or as a dollar amount.

Questions raised by the Department

1. *Retirement Age definition*
   We agree with the Department's proposal to define retirement age with reference to the plan's normal retirement age. We believe it is unnecessarily complicated to require that the "later of age 65 or 5 years after plan participation commences" be

used if a plan chooses not to use the plan's normal retirement age. We suggest that the Department revise the definition to also include any age specified by the participant, such that normal retirement age is defined as "(A) the earlier of (i) the time a plan participant attains normal retirement age under the plan, or (ii) the time a plan participant attains age 65, or (B) such other retirement age as specified by a plan participant".

2. *Use of annuity contract's actual mortality and interest rate provisions*
If an in-plan annuity is available, the plan should not be required to use the annuity's actual terms for purposes of converting balances to estimated income. In-plan annuity products (e.g., GMWBs with high-water marks or "ratchets") may be sufficiently complex that a mandate creates an uneven playing field, where the annuity provider benefits from an unintended advantage in providing forecasts. In addition, annuity providers do not typically forecast future conversion factors for participants (unless there are guaranteed conversion factors built into the product offering).

3. *Table of conversion factors*
It would be useful to provide and update a table of conversion factors, noting that sufficient time should be allowed before a new set of assumptions become effective.

4. *Annuity calculations which use gender-specific mortality assumptions.*
For a given retirement balance, longer-lived women should expect to be able to generate less income per year than men. Unisex mortality assumptions would generate projections that are too optimistic for women and too pessimistic for men. If unisex assumptions were used, participants should be given an explanation that an annuity purchased outside the plan would likely be based on gender-specific mortality assumptions. The additional disclosure is likely to be confusing to participants. Hence, it would be preferable to use gender-specific mortality assumptions.

5. *Forecasts based on converting current account balances into lifetime income.*
For most participants not on the verge of retirement, these income amounts are small and may unnecessarily discourage the participants. Given limited participant attention, such estimates are unnecessary and may be counter-productive to the purpose of encouraging participants to make better decisions about their retirement strategies.

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6. *FINRA Rule 2210.*
   Having been closely involved in the development of an original exemption to Financial Industry Regulatory Authority ("FINRA") Rule 2210[8], which guidance allowed the use of forecasts, we agree that harmonizing any requirements to deliver retirement income forecasts with FINRA and the Securities and Exchange Commission would be very useful. For example, even though (new) Rule 2214 allows FINRA members to use reports showing results generated by an investment analysis tool, with certain specified disclosures, it is not clear whether materials referring to the *availability* of a forecast are considered "referring to an investment analysis tool in more detail .... " which must be accompanied by specified disclosure. To allow for the possibility that the interpretation of Rule 2214 may continue to evolve, it would be most useful to confirm that compliance with Rule 2214 would satisfy Department disclosure requirements related to the delivery of retirement income forecasts.

Conclusion

Financial Engines appreciates the opportunity to comment on the proposed rulemaking. We welcome the opportunity to work with the Department and to provide any further assistance that may be required. Please contact us should you have any questions.

Very truly yours,

Christopher Jones
Executive Vice President and
Chief Investment Officer

Anne Tuttle Cappel
Executive Vice President and
General Counsel

cc: The Honorable Phyllis C. Borzi Assistant Secretary, Employee Benefits Security Administration
Mr. Louis Campagna, Division of Fiduciary Regulations and Interpretations, Employee Benefits Security Administration
Mr. Joe Canary, Director, Office of Regulations and Interpretations, US Department of Labor
Mr. Fred Wong, Office of Regulations and Interpretations, Employee Benefits Security Administration

[8] NASD Interpretative Material (IM) to Rule 2210, designated as IM-2210-6, approved by the Securities and Exchange Commission on September 28, 2004.