

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

CHANTEL SHEAKS
EXECUTIVE DIRECTOR
EMPLOYMENT POLICY DIVISION

1615 H STREET, N.W.
WASHINGTON, D.C. 20062
202/463-5458

VIA ELECTRONIC DELIVERY

November 13, 2020

Office of Regulations and Interpretations,
Employee Benefit Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20201

Re: Pension Benefit Statements – Lifetime Income Illustrations – RIN: 1210–AB20

To Whom It May Concern:

On behalf of the U.S. Chamber of Commerce (Chamber), this letter responds to the Department of Labor’s (DOL) request for comments on the Interim Final Regulation (IFR) regarding the assumptions to use and the model language for the lifetime income stream illustrations in a pension benefits statement as required by the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act). We appreciate the DOL’s work in this area and the opportunity to comment.

Background

Section 203 of the SECURE Act amended Section 105 of the Employee Retirement Income Security Act of 1974 (ERISA) to require a pension benefit statement to include a lifetime income disclosure that describes “the lifetime income stream equivalent of the total benefits accrued with respect to the participant or beneficiary.”¹ The lifetime income stream equivalent is defined as the amount of monthly payments the participant or beneficiary would receive if the participant’s or beneficiary’s total accrued benefit were used to provide lifetime income streams.² The lifetime income streams are a qualified joint and survivor annuity and a single life annuity.³ The Secretary is directed to “prescribe assumptions which administrators of individual account plans may use in converting total accrued benefits into lifetime income stream equivalents....”⁴

Although plan sponsors appreciate the importance of a participant understanding the lifetime income stream equivalent of the participant’s account balance in a defined contribution plan, many sponsors were concerned that providing such information could expose them to additional liability were a participant to claim reliance on the illustration in making a financial or other life decision. To alleviate such concerns, Section 203 of the SECURE Act provides that “[n]o plan fiduciary, plan sponsor or other person shall have any liability under this subchapter solely by reason of the provision of lifetime income stream equivalents which are derived in accordance with the assumptions and rules ...[prescribed by the

¹ 29 U.S.C. § 1025 (a)(2)(D)(i)(I); ERISA § 105(a)(2)(D)(i)(I)

² 29 U.S.C. § 1025 (a)(2)(D)(i)(II); ERISA § 105(a)(2)(D)(i)(II)

³ 29 U.S.C. § 1025 (a)(2)(D)(i)(III); ERISA § 105(a)(2)(D)(i)(III)

⁴ 29 U.S.C. § 1025 (a)(2)(D)(iii); ERISA § 105(a)(2)(D)(iii)

Secretary] and which include the explanations contained in the model lifetime income disclosure.”⁵ This section also limits liability for providing lifetime income stream equivalents “without regard to whether the provision of such lifetime income stream equivalent is required by subparagraph (B)(iii),” which is the new requirement as added by the SECURE Act.⁶

Comments

The Chamber generally supports the IFR, which is a balance between providing participants and beneficiaries with the information required under the SECURE Act while limiting administrative burdens. We also believe the DOL has the authority to provide relief to plan administrators that wish to provide more robust education and tools to help participants and beneficiaries understand not only how their current accrued benefit can be translated into future lifetime income streams but also projections into the future and how other income sources would interact with plan benefits. Our specific comments follow.

Commencement age (clause 2520.105-3(c)(1)(ii))

The IFR mandates that the illustration be based on one commencement age, namely age 67. In the preamble to the IFR, the DOL asks whether the final rule should require illustrations based on multiple ages for the annuity rather than a single age. The Chamber believes that the current IFR that uses one age, 67, balances both the participants’ need for information and administrative simplicity. Furthermore, given that age 67 (or older) is the Social Security Normal Retirement Age for individuals born in 1960 and beyond, use of age 67 will align more closely with information from the Social Security Administration.

Mortality table (clause 2520.105-3(c)(1)(ii))

The IFR mandates that plan administrators use the unisex mortality table under Internal Revenue Code Section 417(e)(3)(B). In the preamble to the IFR, the DOL requests comments on the use of this table. Similar to the above comments, the Chamber believes that the use of this table provides participants with sufficient information while providing administrative simplicity. However, to clarify what the difference could be females we suggest adding the underlined language to the model language.

The estimated monthly payments in this statement are the same whether you are male or female. This is required for annuities payable from an employer plan. However, the same amount paid for an annuity available outside of an employer’s plan may provide a larger monthly payment for males than for females since females are expected to live longer. For example, depending on the interest rate, a female’s benefit could be 5% per month less than a male’s or \$5 dollars for every \$100. This means a monthly \$1000 benefit for a male would be \$950 for a female.

Inflation adjusted income stream

In the preamble to the IFR, the DOL requests comments on whether the final rule should require an illustration of monthly payments that increase with inflation. The need for and type of inflation-adjusted annuity is individualized and dependent on numerous factors, such as an individual’s age, health and other financial resources. Given the individualized nature of such products, the administrative complexity likely would outweigh the value of providing any inflation-adjusted illustration. However, as noted below, the DOL could encourage plan sponsors to provide more information on such products by

⁵ 29 U.S.C. § 1025(a)(2)(D)(iv); ERISA § 105(a)(2)(D)(iv)

⁶ Id.

expanding the current guidance with respect to education versus investment advice.

Terms certain and other features

In the preamble, the DOL asks whether the final regulation should incorporate “a term certain or other features, such as guaranteed lifetime withdrawal benefits, term certain and other optional riders that may accompany annuities.” Although some plans contain such options, given their unique nature, the added administrative complexity for plan administrators to provide additional features in the illustrations outweighs the value to participants’ and beneficiaries’ understanding of how their account balance would translate into lifetime income streams, especially if such products are not available within the plan.

Plan loans (paragraph 2520.105-3(c)(4))

This paragraph provides that any outstanding loan should be included in determining the lifetime income streams, unless the loan is in default. If the loan is included in the accrued benefit, participants may not understand the implications of not repaying a loan, especially those nearing retirement. We suggest the DOL add the underlined (or similar) language to the model language.

The estimated monthly payment in this statement assume that your account balance is 100% vested and that, if you have taken a loan from the plan and you are not in default, the loan has been fully repaid. If you do not repay your loan, this amount could be significantly lower.

Plans with participants that purchase deferred annuities

If a participant purchased an in-plan deferred annuity, the participant would have received a statement of the monthly amount of the benefits. As such, there is no need for the plan administrator to provide this statement again, and it is within the DOL’s authority to allow plans to refer to the documentation the participant or beneficiaries received from the annuity provider.⁷

De minimis amounts

Illustrations based on small account balances may not be useful to participants, and they could be counterproductive, especially for younger workers who may be discouraged from saving when seeing that, for example, \$10,000 would only produce a \$43 monthly benefit.⁸ Currently, the Thrift Savings Plan provides lifetime income illustrations only for account balances with more than \$20,000. For accounts less than \$20,000, the statement refers participants to an online calculator for an estimate, with projections, of their possible benefits at retirement age. The DOL may want to consider a de minimis amount for providing statements and alternatives for balances below such amounts, under its authority to provide regulations in general and to provide for alternative methods of compliance.⁹

⁷ In determining the assumptions to be used to calculate the lifetime income streams, 29 U.S.C. Section 1025(a)(2)(D)(iii) allows the Secretary to “to use the amounts payable under such lifetime income stream as a lifetime income stream equivalent.” This provides the DOL authority to allow plan administrators to reference the documentation previously provided to a participant who purchased an annuity rather than provide the information again.

⁸ This amount was determined based on the TIAA calculator for a monthly 100% joint and survivor benefit starting at age 67. [See https://www.tiaa.org/public/retire/financial-calculators_verB](https://www.tiaa.org/public/retire/financial-calculators_verB).

⁹ [See](#) 29 U.S.C §1135 (ERISA § 505); 29 U.S.C. § 1030 (ERISA § 110).

Providing the model benefit statement

The IFR provides that the model language explaining the assumptions and illustrations must be included in the statement. The model language in the IFR is over a page long, which would add substantially to the length and understandability of the benefit statement in general. The final regulation should allow plan administrators the flexibility of either providing the model language with the benefit statement or by reference to it, especially through a link where participants may access it directly.

Education versus fiduciary advice

Employers are becoming increasingly concerned over their employees' retirement readiness. According to a 2020 Bank of America survey, over 62 percent of employers feel extremely responsible for their employees' financial wellness, up from 13 percent in 2013, and 78 percent of employers feel very/extremely responsible for helping employees sustain assets through retirement, up from 33 percent in 2012.¹⁰ To address this, throughout the years employers, recordkeepers and other service providers have developed and provided increasingly sophisticated models and tools to help participants and beneficiaries to determine not only how much to save but also how much their savings will provide in retirement. Most of these tools are much more sophisticated than what is called for under ERISA Section 105 and the IFR, and they give participants a more holistic view of both accumulation and decumulation.¹¹

However, employers also are worried that this help may result in increased litigation exposure with claims that the information is not education but rather investment advice.¹² Accordingly, instead of providing more robust tools and education, some employers only may provide the information the SECURE Act requires so that they are protected under the SECURE Act's limitation on liability. This also could include limiting any tools or models available through their service providers. To prevent this, the Chamber requests that the final regulation include a provision that limits employers' liability when providing not only the required disclosure under ERISA section 105, but also any lifetime income stream equivalent, whether through a tool, model or as an actual statement.¹³ The Chamber suggests the DOL add the following language to paragraph (g):

No plan fiduciary, plan sponsor, or other person will have any liability under Title I of the Employee Retirement Income Security Act of 1974 solely by providing lifetime income stream equivalents in addition to those described in paragraphs (b)(3) and (4). This applies to any tools, models or other education provided to participants and beneficiaries that can be used to determine the lifetime income stream equivalents.

¹⁰ "FINANCIAL LIFE BENEFITS™ 2020 Workplace Benefits Report" available at <https://benefitplans.baml.com/publish/content/application/pdf/GWMOL/2020-Workplace-Benefits-Report.pdf>.

¹¹ See "Getting Income Projections Right," John Manganaro (discussing various recordkeeper's lifetime income projection tools that go beyond what is required under the SECURE Act and the IFR) available at <https://www.planadviser.com/exclusives/getting-income-projections-right/>.

¹² See "2020 on Track for Fivefold Increase in 401k Lawsuits," Brian Anderson available at <https://401kspecialistmag.com/2020-on-track-for-fivefold-increase-in-401k-lawsuits/#:~:text=According%20to%20a%20new%20analysis,filed%20in%20all%20of%202019.>

¹³ 29 U.S.C. §1025 (a)(2)(D)(iv) specifically limits liability for providing lifetime income stream equivalents, regardless of whether required by ERISA. In addition, given its authority under 29 U.S. Code § 1135 (ERISA § 505) and 29 U.S.C. §1030 (ERISA § 110), the DOL could provide that ERISA Section 105(a)(2)(D) is met if a plan administrator provides a link in the pension benefit statement to a retirement calculator that provides a substantially similar illustration as required under ERISA Section 105(a)(2)(D).

We also suggest that the DOL update its current guidance on what constitutes education versus investment advice to make clear that providing lifetime income illustrations, income calculators or other tools or models to assist in retirement planning does not constitute investment advice under 29 U.S.C. Section 1104 (ERISA Section 404) and applicable regulations and guidance (such as Interpretive Bulletin 96-1).

Conclusion

We thank you for your consideration of these comments, and we look forward to working with the DOL on this issue.

Sincerely,

Chantel L Sheaks

Chantel L. Sheaks
Executive Director, Retirement Policy