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November 17, 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 our members, the Insured Retirement Institute ("IRI")[1] appreciates the opportunity to provide these comments to the Department of Labor (the "Department") in response to its interim final rule on Pension Benefit Statements-Lifetime Income Illustrations (the "IFR")[2]. The IFR sets forth the requirements for lifetime income illustrations on pension benefit statements under section 105 of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended by the Setting Every Community Up for Retirement Enhancement Act of 2019 (the "SECURE Act").[3]

The IFR implements section 203 of the SECURE Act by requiring a retirement plan participant's accrued benefits to be included on his or her pension benefit statement as a current account balance and as an estimated lifetime stream of payments. The IFR's prescribed benefit statements in defined contribution plans must provide two illustrations showing how the participant's account balance at retirement could be converted into lifetime streams of payment or annuities. One illustration must reflect how the account balance would convert to a single life annuity and the other how it would convert to a qualified joint and survivor annuity.

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[1] 1IRI is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, and distributors such as broker-dealers, banks and marketing organizations. IRI members account for more than 95 percent of annuity assets in the U.S., the top 10 distributors of annuities ranked by assets under management and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, and the advancement of digital solutions within a collaborative industry community

[2] 85 FR 59132.

[3] 29 U.S.C. § 1025 (a)(2)(D)(i)(I).

To qualify for liability relief under the IFR, plan administrators must use the set of assumptions set forth by the Department in the IFR when formulating the lifetime income illustrations, as well as the IFR's proposed model language or language deemed "substantially similar." As the Department requests comments from interested parties on the IFR's requirements and methodologies, we offer the following remarks and considerations.

We are very supportive of the Department's development of the IFR and fully endorse providing more robust lifetime income illustrations for plan participants. However, we respectfully request that the Department provide further liability relief through a safe harbor for plan sponsors and service providers who provide additional illustrations/projections and educational tools, beyond those required by the IFR, to help plan participants and beneficiaries better understand their current account balances and whether they are on track to achieve their retirement goals. Thus, we ask the Department to explicitly acknowledge and affirm that such supplemental illustrations and educational tools would be treated as investment education and not financial advice. Specific comments on the IFR and IRI's request are presented in greater detail below.

Rationale for Protecting Additional Illustrations and Educational Tools for Retirement Education:

Our members have long supported provision of lifetime income illustrations to their plan participants. We are concerned, however, that delivery of a single illustration of current account balances or lifetime income projections, as currently set forth in the IFR, could induce uncertainty for a plan participant or beneficiary's evaluation or management of their retirement plan. For example, lifetime income illustrations based on small account balances, especially for younger workers or participants recently entering a retirement plan, may provide a discouraging picture of what their future lifetime income stream would be if they continued to save throughout their working life. Such an effect would run counter to the intent of section 203 of the SECURE Act, which aims to utilize lifetime income illustrations to educate investors and to encourage savings and contributions to retirement accounts. The provision of supplemental illustrations, educational materials, and online resources could help plan participants or beneficiaries better understand account balances and projections, ensure continued plan participation, and even encourage additional plan contributions.

In September 2015, IRI issued a commissioned survey of 401(k) plan participants to determine their preferences for the inclusion of lifetime income estimates on their 401(k) plan statements (the "IRI Survey")[4]. The IRI Survey clearly showed that "[r]etirement income estimates motivate people to take an active role in planning for retirement." The report noted as a key result that "[o]ver 90% of the [IRI Survey] respondents, regardless of age, income level, or 401(k) plan balance[,] want their 401(k) statements to include estimates of lifetime retirement income."[5]

Further, the IRI Survey revealed that "[p]eople vary as to how they want their retirement income estimates calculated." Respondents showed "no overwhelming preference for one type of retirement

[4] The Consumer Preferences for Lifetime Income Estimates on 401(k) Statements study was conducted by IRI and Woelfel Research in September 2014. Interviews were conducted with 1,500 respondents. The interviews were completed via internet between September 18 and September 23, 2014. Respondents were screened to include only those between the ages of 21 and 65 with a current balance in a 401(k). Sample margin of error ± 2.5%.

[5] *See* Insured Retirement Institute, *Consumer Preferences for Lifetime Income Estimates on 401(k) Statements*, (Jan. 2015).

income estimate, and some correlation of preferences were seen with age, income, and plan balance levels. For example, younger respondents were more likely to prefer estimates based on current balance or both current and projected. This finding indicates that plan sponsors should have flexibility in the calculation methodologies employed, provided all methodologies are based on sound financial and actuarial principles."[6]

The IRI Survey also found that "[o]ver 90% of survey respondents…want their employers to provide them with online retirement income calculators so they can use their own assumptions to calculate estimates of lifetime retirement income."[7] These empirical and quantitative findings support our request that the Department provide liability relief for plan sponsors and service providers who provide additional illustrations and online retirement tools to their plan participants.

Our request is further supported by an academic paper based on a field experiment conducted by the University of Minnesota[8]. This paper's research examined the influence of distribution of lifetime income illustrations on the savings decisions of plan participants. The research subjects consisted of nearly 17,000 employees of the University of Minnesota, and was devised to measure three main effects of retirement income projections used in the survey design: (1) whether, and by how much, workers changed their saving; (2) whether the retirement income projections increased workers knowledge and confidence; and (3) whether workers' personal characteristics affected their response to the retirement income projections in terms of saving decisions. Key findings of the research included the following: "Individuals who received income projections and general retirement plan materials increased their level of saving, and they were also significantly more likely to engage in retirement planning. It also enabled them to have greater retirement income certainty and report greater satisfaction with their financial situations."[9]

These academic studies and professional surveys clearly support our recommendation that the Department should provide liability relief to encourage plan sponsors and service providers to make additional educational resources available to help plan participants better understand both the current status and lifetime income potential of their retirement accounts. By taking this additional step beyond the required illustrations, the Department would equip participants with valuable supplemental financial resources that can enhance their savings awareness and help them realize their retirement goals.

Classification as Educational Materials versus Fiduciary or Investment Advice:

For plan administrators to provide additional illustrations or other educational tools, it is essential that the Department expressly classify such additional information, calculations, or guidance to plan participants or beneficiaries as purely educational and not investment advice. Characterization of

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[6] Id.

[7] Id.

[8] Flaherty, Colleen, Goda, Gopi Shah and Sojourner, Aaron, Do Income Projections Affect Retirement Savings? (April 2013). Available at http://crr.bc.edu/wp-content/uploads/2013/04/IB_13-4-508.pdf. It should be noted that, compared to the national population, the workers included in the experiment are more highly educated and they have more retirement savings because they are covered by Social Security and one of two employer plans. They can also contribute to a tax-deferred Voluntary Retirement Plan (VRP). The experiment tested the effect of providing employees with age-specific projections of the additional retirement income they could get if they were to make additional contributions to a VRP.

[9] Id.

additional illustrations or online tools as investment advice could expose plan administrators to fiduciary liability and could have a chilling effect on such education to plan participants which could ultimately affect retirement account balances.

In support of this request, we reference the legislative basis for the IFR, the SECURE Act's amendment of the provisions of section 105 of ERISA. The underlying statutory authority substantiates and in no way limits the Department's ability to define the development and furnishing of other lifetime income illustrations as an educational, rather than fiduciary, activity. From a practical perspective, the Department has long recognized that a safe harbor, properly framed, can be a valuable tool for plan administrators. A specific safe harbor incorporated into the IFR, enumerating specific conditions could limit or eliminate such liability concerns for additional lifetime income disclosures by plan administrators.

Based on the foregoing, we strongly implore the Department to expressly clarify, as part of the IFR or separately, the extent to which the offering or furnishing of illustrations or other tools not covered by the IFR would constitute investment education rather than fiduciary investment advice.

<u>Request for Department's Specific Clarifications within the IFR</u>:

IRI and our members respectfully offer the following additional comments on the IFR:

<u>Clarification on Outstanding Loan Balances</u>:

Our members request clarification regarding the treatment of outstanding loan balances under the IFR. Specifically, we are concerned that including outstanding loan amounts in the accrued benefit – and thus in lifetime income illustrations as prescribed by the IFR – could cause confusion. Plan participants, especially those nearing retirement, may not recognize or understand the implications of loan repayment. Therefore, we ask the Department to clarify how outstanding loan balances that are neither in default nor 100% paid-in-full at the time of retirement will be treated under the assumptions set forth in the IFR.

<u>Clarify the Meaning of Deferred Income Annuities</u>:

As summarized in the Department's IFR Fact Sheet, the IFR provides separate disclosure requirements for plans that allow plan participants to purchase deferred income annuities ("<u>DIAs</u>"), which will pay a specified dollar amount to plan participants at retirement. Our members understand and appreciate that The SPARK Institute, Inc. ("<u>SPARK</u>") and the Committee of Annuity Insurers ("<u>CAI</u>") are submitting written comments that will include recommendations that the Department provide a more clear and precise definition of DIAs to avoid inadvertently covering a broader universe of annuity products. We have reviewed and agree with SPARK's and CAI's comments and recommendations on this point, and respectfully urge the Department to revise the IFR accordingly.

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In closing, IRI strongly supports the IFR and respectfully urges the Department to enhance and clarify the IFR as outlined above. IRI and our members stand ready to work with and support the Department as it refines, finalizes, and implements this important provision in the SECURE Act, thereby enhancing the retirement security of American workers.

November 17, 2020

Thank you again for the opportunity to provide these comments. If you have questions about our views on the questions posed in the IFR, or if we can be of any further assistance in connection with this important regulatory effort, please feel free to contact the undersigned at jberkowitz@irionline.org or emicale@irionline.org.

Sincerely,

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