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November 17, 2020

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Re: Pension Benefit Statements—Lifetime Income Illustrations, RIN 1210-AB20

To whom it may concern:

We appreciate the opportunity to provide our comments on the interim final regulation published by the U.S. Department of Labor (DOL) on September 18, 2020 requiring plan administrators of individual account plans to include lifetime income illustrations on participants' pension benefit statements in accordance with the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) amendments to section 105 of the Employee Retirement Income Security Act (ERISA). The undersigned have prepared these comments with input from others in the company.

Background

In December 2019, Congress passed the SECURE Act, which amended section 105 of ERISA to require plan administrators to include on defined contribution plan benefit statements, at least annually, illustrations of a participant's "total accrued benefits" converted to a lifetime income stream equivalent in both single life annuity (SLA) and qualified joint and survivor annuity (QJSA) form. The SECURE Act directed the DOL to prescribe the actuarial and other assumptions or "ranges of permissible assumptions" necessary for plan administrators to convert the "total accrued benefits" into lifetime income stream equivalents and to issue model disclosures and an interim final rule. The SECURE Act also includes a limitation on liability for fiduciaries and sponsors that provide lifetime income stream equivalents "which are derived in accordance with the assumptions and rules" provided by the DOL and "which include the explanations contained in the model lifetime income disclosure" provided by the DOL.

In September 2020, the DOL published an interim final regulation that provides plan administrators with a set of assumptions to use in preparing the lifetime income illustrations, as well as model language that may be used for benefit statements by plan administrators who wish to obtain relief from liability for the illustrations. The interim final regulation also requests comments from interested parties on the requirements and methodologies of the regulation.

Comments

1. ***Lifetime income illustrations that reflect the time value of money should be provided to participants (in addition to the "immediate benchmark" illustrations required by the interim final rule) and liability protection should be extended to cover both.***

Under the interim final rule, plan administrators are required to provide lifetime income illustrations using a participant's current account balance (i.e., the balance as of the end of the statement period) and must assume the participant is age 67 on that date (or the employee's actual age if older). The effect of this rule is that lifetime income illustrations are determined assuming the account balance will generate no investment return. For younger participants, starting the calculation with a static account balance will produce a far smaller estimate of the participant's lifetime income than is realistic. For example, for a 25-year old, it is assumed that there will be no investment returns for 42 years, from age 25 to age 67. In contrast, if even a conservative rate of return were assumed, the 25-year old's account balance might be four or five times larger at age 67.

We believe the unrealistically small lifetime income illustration will be misleading to many younger participants and, if presented on a benefit statement as the only data point, may be counterproductive to the DOL's stated goals of helping participants better understand how prepared they are for retirement and encouraging those currently contributing too little to increase their plan contributions. We also believe it may create confusion for participants who use on-line tools provided by plan sponsors and recordkeepers that reflect the time value of money.

We believe that providing an additional set of lifetime income illustrations for participants younger than 67 that take into account the time value of money would address these concerns and collectively provide more useful information that would allow participants to make more informed retirement planning decisions. The simplest way to do this is to reflect the deferred income annuity that a participant could purchase in the insurance marketplace using the current account balance and commencing at age 67. We believe this comparison would provide an incentive to save more.

In the preamble to the interim final rule, the DOL recognized the issue and suggested that participants could develop their own lifetime income illustration of a projected account balance:

> Thus, for a participant aged 40, for example, the illustrations under the IFR effectively assume a static account balance for the period between ages 40 and 67. This type of illustration serves as an immediate benchmark for participants, because it shows the size of monthly payments to expect if there were no further savings, gains or losses between the statement date and retirement. Also, a participant could create his or her own projection of a different account balance, by dividing the projected estimated account balance by the current account balance, and then multiply the result by the monthly payment amount on the statement. The result would be the estimated monthly amount of an annuity that could be purchased with the projected estimated account balance (assuming annuity market conditions at retirement are the same as the current market).

However, we expect that most participants will not have the expertise and/or will not take the initiative to perform these types of calculations.

Accordingly, we suggest that the DOL modify the rule to include lifetime income illustrations that reflect the time value of money (using assumptions derived from what insurers use to calculate deferred income annuities) along with the illustrations that are based on current, static account balances.

We understand the DOL may feel somewhat constrained by the statutory language. In the preamble, the DOL explained the rationale for the current account balance approach in part as follows: "…because of the growth feature during the deferral period, the deferred annuity approach does not align as well with the SECURE Act's "current account balance" directive as does the immediate annuity approach." We do not agree that there is a current account balance directive. The DOL has express authority under the SECURE Act to prescribe "ranges of permissible assumptions" for converting total accrued benefits into lifetime income stream equivalents. Also, more generally, the DOL has broad authority under section 505 of ERISA to prescribe any regulations necessary or appropriate to carry out the provisions of title I of ERISA. In fact, the DOL relied on this authority in its May 2013 advance notice of proposed rulemaking (ANPRM), which would have required lifetime income stream illustrations based on a current as well as projected account balance. In any event, the approach we are proposing would allow the DOL to stay true to what it views as a current account balance directive.

We also recognize that the interim final rule does not preclude a plan administrator from providing other lifetime income illustrations, including illustrations based on projected account balances or illustrations based on deferred income annuity assumptions. However, under the interim final rule, those additional illustrations would not receive the liability protection that is available for the DOL-mandated calculations and explanations. Without such protections, many plan sponsors will be reluctant to provide an additional disclosure that is based on a projected account balance or deferred income annuity assumptions.

2. ***The DOL should confirm that making online retirement planning tools available to participants constitutes "investment education" under ERISA.***

Since before the enactment of the SECURE Act, many plan sponsors have provided lifetime income illustrations to participants, including through the use of highly sophisticated online retirement readiness planning tools. These tools provide personalized lifetime income illustrations, taking into account the specific plan design, the participant's assumptions about future contributions and investment returns, and other relevant factors such as the participant's expected retirement age.

Sponsors and service providers have generally understood that when making these tools available, they are providing non-fiduciary "investment education" to assist participants and beneficiaries in making informed retirement planning decisions.

Now, the SECURE Act requires plan administrators to provide lifetime income illustrations and offers fiduciary liability protection for such disclosures. In relevant part it states:

> No plan fiduciary, plan sponsor, or other person shall have any liability under this title solely by reason of the provision of lifetime income stream equivalents which are derived in accordance with the assumptions and rules [prescribed by the Secretary] and which include the explanations contained in the model lifetime income disclosure [prescribed by the Secretary].

An inference might be drawn from the existence of this limitation on liability that the provision of lifetime income illustrations that are outside the "safe harbor" developed by the DOL may expose plan sponsors and others to potential fiduciary liability.

The DOL has indicated that it "does not want to undermine these best practices or inhibit innovation in this area." To avoid this possibility, the DOL should provide guidance confirming that making online retirement planning tools available to participants constitutes the provision of non-fiduciary investment education.

Conclusion

We appreciate the DOL considering these comments. Please contact any of the undersigned if you have any questions or would like to discuss our comments in more detail.

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