

November 17, 2020

Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave, NW, Room N-5655
Washington DC 20210
via Federal eRulemaking Portal at www.regulations.gov

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

Dear Department of Labor:

The American Retirement Association (ARA) is pleased to provide our comments on the Department of Labor's (DOL's) Interim Final Rule Regarding Pension Benefit Statements—Lifetime Income Illustrations¹ (IFR) and to respond to questions asked by the DOL in the related Notice of Proposed Rulemaking. To summarize,

- The ARA strongly supports enhancing participants' understanding of their retirement plan benefits.
- The ARA believes that the IFR strikes a good balance with focused requirements that will provide participants and beneficiaries with practical information while limiting associated costs and burdens of plan administration.
- Because the IFR requires that lifetime income illustrations be produced using a uniform set of assumptions, the illustrations will not be fully individualized, but the ARA believes that they will nonetheless provide participants with an informative look at potential future retirement income.

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The ARA is the coordinating entity for its five underlying affiliate organizations representing the full spectrum of America's private retirement system: the American Society of Pension Professionals and Actuaries (ASPPA), the National Association of Plan Advisors (NAPA), the National Tax-Deferred Savings Association (NTSA), the American Society of Enrolled Actuaries (ASEA), and the Plan Sponsor Council of America (PSCA). ARA's members include organizations of all sizes and industries across the nation who sponsor and/or support retirement saving plans and are dedicated to expanding on the success of employer-sponsored retirement plans. In addition, ARA has more than 30,000 individual members who provide consulting and administrative services to sponsors of retirement plans. ARA and its underlying affiliate organizations are diverse but united in their common dedication to the success of America's private retirement system.

The ARA appreciates the DOL's commitment to ensuring that America's workers understand the value of their workplace retirement benefits as a means of promoting retirement preparedness. The ARA shares this

¹ 85 Fed. Reg. 59132, 59134 (Sept. 18, 2020).

goal and looks forward to working with the DOL to make Lifetime Income Illustrations (LII) a useful and practical means to help participants and beneficiaries understand the lifetime income value of their retirement plan benefits.

Summary of Recommendations

The ARA commends efforts to provide participants with greater means for understanding of the value of their retirement benefits and the role of lifetime income in retirement planning. The ARA has long been supportive of efforts to increase participants' understanding of their plan benefits as a means of improving retirement readiness. We believe this process necessarily involves calling attention to lifetime income concepts. Among other positive results, providing participants and beneficiaries with information regarding the value of their defined contribution plan accounts could encourage greater savings.

Section 203 of the SECURE Act amended Section 105 of the Employee Retirement Income Security Act of 1974 (ERISA) to require a pension benefit statements to include a lifetime income disclosure that includes "the lifetime income stream equivalent of the total benefits accrued with respect to the participant or beneficiary."² Explaining the rationale for this amendment Congress said,

[M]any plan participants do not understand how to correlate their account balance in a defined contribution plan with an annuity or other lifetime income form. The Committee wishes to require information on equivalent lifetime income to be included in benefit statements with respect to defined contribution plan accounts, in a manner that is both useful to participants and practicable for plan administrators.³

Development of the assumptions for converting participants' accrued benefits and other details of the required LIIs were delegated to the DOL under the SECURE Act. The ARA believes that the IFR strikes the right balance with focused requirements that will provide participants and beneficiaries with the useful information while limiting the costs and burdens of plan administration. Because the LIIs will be produced using the IFR's uniform set of assumptions, they will be less individualized than what some service providers may offer, but we believe that they will provide participants with an informative look at potential future monthly retirement income.

While there are shortcomings to the IFR's simplified approach, LIIs may—for many participants, for the first time—provide an answer to the critical question: How much retirement income will my retirement plan likely provide me in retirement? This seemingly simple question is unfortunately difficult to answer because it is affected by many variables. However, without specific guidelines, plans tasked with calculating lifetime income illustrations must choose assumptions that could result in dramatically different outcome projections, potentially confusing or misleading participants with regard to their retirement preparations.

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

³ U.S. House. Committee on Ways and Means, *Setting Every Community Up for Retirement Enhancement Act of 2019* (to accompany H.R.1994.)116 H. Rpt. 65, 1st Sess.

The ARA recognizes that many service providers and plan sponsors will have to create or modify systems to comply with the new requirements. In addition, service providers and plan sponsors also have concerns about potential liability for providing information to plan participants who may place too much reliance on an illustration projection based on assumptions that may not, and are not intended to, indicate guaranteed future earnings or benefits. In this regard, clarity of the conditions for the fiduciary relief as provided under the SECURE Act is especially important.

Specific Comments

The ARA strongly supports the DOL's efforts to help participants understand their retirement plans and benefits. American workers who are relatively unsophisticated with respect to financial matters, including those attendant to retirement plans, need information that will assist them in making decisions. Presenting a participant with an illustration of projected monthly retirement income based on their current account balance also may help shift the focus of a retirement savings balance to that of its ultimate purpose: providing income during retirement. For this reason and in recognition of the importance of improving participants' retirement preparedness, a growing number of employer-sponsored retirement plans currently provide a lifetime income illustration and even provide participants with access to other lifetime income planning tools or retirement calculators. The ARA commends plan sponsors that have been providing these resources and believes that doing so furthers the policy goal of enhanced retirement security, by educating participants about financial health and retirement savings. We support efforts to help participants understand the true value of their retirement accounts. Our specific comments on the details of IFR follow.

Assumptions

The IFR requires two illustrations of the value of the account balance at least annually on the pension benefit statement, using the annuitization methodology specified in the IFR. The methodology expresses the balance as a lifetime monthly payment, and uses four specified factors. The ARA supports the use of "standard assumptions" and uniformity generally in this context. We believe that relying on a set of core assumptions and techniques, disclosed on the pension benefit statement which are uniform for all plans, will be administratively practicable while enabling meaningful comparisons as participants change employers, which in turn facilitates retirement readiness. In the following, we discuss the IFR's required assumptions for LIIs.

1. Commencement Date/Age

The IFR requires that LIIs be determined based on an assumed commencement age of 67 on the annuity starting date in all cases other than when the participant is older than age 67 (in which case the actual age must be used). The DOL asks whether the final rule should instead require illustrations based on multiple ages rather than a single age.

The ARA believes that using a single uniform age balances the participants' need for information with efficient administrability of providing the required illustrations. Indeed, we recommend that the rules require using age 67 regardless of the participant's actual age. The simplicity of this approach correlates with the practicability that Congress had in mind. Moreover, service providers generating LIIs may not have records of actual birth dates; requiring actual ages for participants would add considerable cost and complexity. Further, age 67 is in line with many Americans' expectations for retirement and will roughly

approximate the Social Security Retirement Age of many participants, and the LII may thus correlate with information provided by the Social Security Administration. Besides, we believe that providing multiple projections based on what might be a variety of inapplicable assumptions might well undermine the objective, and confuse, rather than inform participants. The ARA recognizes that illustrations of varying annuity payout amounts for different retirement dates may be of interest to some participants. However, the simplicity of basing the LII on a single age best illustrates potential lifetime income as required by the statute.

2. Marital Status and Amount of Survivor's Benefit

The SECURE Act requires that LIIs express monthly payments reflecting a single life annuity and a qualified joint and survivor annuity (QJSA) regardless of a participant's marital status. For purposes of converting a participant's account balance into an annuity stream, the IFR requires an assumption that the participant is married and that the participant's spouse is the same age as the participant, even if the participant is not married. In addition, it requires that the QJSA must be with a 100 percent survivor annuity. Participants (whether married or not) can better understand how a survivor benefit, if they are married at retirement and choose an annuity, could impact the amount of the participant's (and spouse's) monthly lifetime payment. For purposes of illustrating a QJSA form of benefit, DOL chose an assumption with a survivor benefit of 100 percent, rather than a reduced percentage. Explaining this choice, the preamble states,

By incorporating the most generous benefit for a surviving spouse, a participant's benefit statement will illustrate the largest difference between the monthly payment that would result from a single life annuity and that which would result from a QJSA. The Department believes there is a benefit to showing the participant these extremes because all other annuity options fall somewhere in between.⁴

While the ARA appreciates the illustrative value of showing the high and low ends of the range for possible monthly payments, we also recognize that the prescribed assumptions could significantly skew the LIIs. As we have noted, the ARA supports steps that keep potential administrative costs of providing LIIs to a reasonable level and supports the standardization of assumptions in this context but we also consider realistic depictions of lifetime income streams to be more valuable for educational purposes than extreme ones. For this reason, we suggest that the DOL consider permitting plans to assume a 50 percent survivor annuity percentage instead of 100 percent.

3. Interest Rate and Mortality

Under the IFR, the required interest rate assumption for preparing illustrations is the 10-year constant maturity Treasury (CMT) securities yield rate on the first business day of the last month of the period to which the benefit statement relates. The DOL explains that the CMT rate may best reflect interest rates for actual pricing of commercial annuities. Using a well-known market rate that approximates the cost of purchasing a lifetime income stream on the open market may be helpful to participants, according to the DOL. In this regard, LIIs based on the 10-year CMT rate would be especially beneficial for participants and

⁴ 85 Fed. Reg. at 59134.

beneficiaries who are close to retirement. The ARA believes that using a well-known market rate makes sense, especially one that approximates the cost of buying a lifetime income stream on the open market.

For conversion of participants' account balances, the IFR requires use of the unisex mortality table under Section 417(e)(3)(B) of the Internal Revenue Code, as in effect for the last month of the period to which the statement relates. The ARA believes that using a single table for producing illustrations will yield sufficient information for participants while preserving administrative simplicity. As noted in the preamble, plan administrators, plan recordkeepers and third-party administrators do not always have records of participants' gender. Unisex mortality tables reduce the administrative burden for plan administrators who lack gender data while still using reasonable assumptions. Unisex mortality assumptions also align with the requirement that, when lifetime annuities are offered by ERISA plans, they must be priced on a gender-neutral basis. That is, requiring the use of these tables means that the lifetime income stream illustrations will be consistent with annuity options offered by plans. These tables are periodically updated by the Treasury Department and are publicly available and familiar to retirement plan service providers. For plans without access through other means, we suggest that the DOL consider periodically releasing a table of conversion factors that could be used to perform the calculation. This will increase the likelihood of consistent results from plan to plan.

4. Loans

The IFR requires that the determination of a participant's account balance include the outstanding balance of any participant loans, unless the participant is in default of repayment on such loan. The ARA requests clarification of this element. For example, are only loans that have been offset to be disregarded from the account balance? Alternatively, does a default of repayment include instances where a loan is treated as a deemed distribution or when payments were not made by the end of the cure period under the plan?

Inflation Adjustment

The IFR does not require that LIIs reflect adjustments for inflation. Rather, the LIIs reflect a fixed nominal annuitized income stream. The DOL solicits feedback on whether the IFR should require illustrations that factor in inflation. The ARA believes that the maximum benefits of the IFR's approach – of not adjusting for inflation – lie in its conceptual and administrative simplicity, which correlate with utility and practicability. Thus, we urge against requiring complex calculations such as adjustments for inflation for what optimally should be a concise and practicable illustration.

Nonetheless, we believe that the LIIs should explain that fixed nominal annuitized income streams they present will have declining purchasing power over time. That is, it should be made clear to the average plan participant that the LIIs are predicting the actual anticipated stream of payments. We suggest prominent placement of the IFR section 2420.105-3(d)(9)(i)-(ii) explanation that the monthly payment amounts in the LIIs “are fixed amounts that would not increase with inflation” and that “as prices increase over time, the fixed monthly payments will buy fewer goods and services.”

Explanations for Lifetime Income Stream Illustrations and Model Language

The IFR requires inclusion of brief, understandable explanations of the assumptions underlying the LIIs. The DOL solicits comments on the substance of this requirement as well as of model language provided in the IFR. While the IFR permits limited modification of the model language, it must remain “substantially similar in all material respect” to the model language in order for liability relief to be available.

Congress envisioned a “useful” illustration of the lifetime income equivalent to an account balance in a defined contribution plan. The ARA recognizes the challenges of preserving utility in the context of explaining a complex subject matter to participants. We believe that the LIIs will be best understood where they hew to the principles of basic information and general explanations, including explanations intended to be understood by the average plan participant. For example, an explanation of interest rate assumptions should describe the rationale for using the CMT rate rather than merely identifying the rate. We recommend that the DOL consider such an addition.

At the same time the ARA notes that model language in the IFR already approaches two pages in length. As an addendum to the pension benefit statement, this is not an insignificant addition. We suggest that the final rule for LIIs allow plan administrators the flexibility of either providing the model language accompanying the benefit statement or by reference to it, for example, through an online link.

Limitations on Fiduciary Liability

Relief from ERISA fiduciary liability in connection with providing LIIs is conditioned on use of the IFR’s model language or language that is “substantially similar in all material respects.” Though flexibility in incorporating the model language is limited, minor, “substantively immaterial modifications” are acceptable according to the IFR. The ARA has previously recommended the promulgation of “safe harbor” language in this context. We believe that this is likely to facilitate a cost-effective process while meeting the needs of participants for basic information. We also believe this would go a long way toward mitigating historical fiduciary concerns regarding providing this type information in that plans would not be exposed to litigation due to participants’ unmet expectations or viewing them as promises or guarantees of a specific income stream. That said, we have concerns that by creating a safe harbor for these DOL-prescribed disclosures, there may be a perception that other disclosures (for example, those made in connection with website planning tools) may result in fiduciary liability simply because they have not been accorded a comparable safe harbor status.

Timing of First Required Lifetime Income Illustration

Finally, ERISA requires that individual account plans provide a LII in one pension benefit statement during any one 12-month period.⁵ The IFR is effective on September 18, 2021, and applies to pension benefit statements furnished after such date.” We are requesting clarification of the timing of the first pension benefit statement that is required to include a LII. That is, we would like to clarify that for participant-directed plans, because the LII must only be included in one pension benefit statement during any one 12-

⁵ ERISA sec. 105(a)(2).

month period, the first benefit statement that must include a LII is the pension benefit statement for the 2nd quarter of 2022.

Conclusion

The ARA very much appreciates the DOL's commitment to assisting America's workers with understanding their workplace retirement savings benefits. The ARA shares this goal and would welcome the opportunity to discuss these issues further with you. Please feel free to contact Allison Wielobob, General Counsel, at AWielobob@USARetirement.org. Thank you for your time and consideration.

Sincerely,

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