

Re: RIN 1210-AB20 Pension Benefit Statements and Estimated Lifetime Income Streams

Ladies and Gentlemen:

J.P. Morgan Retirement Plan Services LLC (“J.P. Morgan”) appreciates the opportunity to comment on the Department of Labor’s Advance Notice of Proposed Rulemaking (“ANPRM”) regarding the inclusion of lifetime projections on periodic pension benefit statements.

J.P. Morgan is one of the nation’s largest providers of recordkeeping and related services to plan sponsors of retirement plans and their participants. As a leading comprehensive retirement solutions provider, J.P. Morgan is dedicated to helping American workers achieve a comfortable retirement. We are focused on educating participants to save and invest in appropriate ways to meet their retirement needs.

EXECUTIVE SUMMARY

J.P. Morgan shares the Department’s view that expressing a participant’s current and projected account balances as lifetime income streams would allow participants to make better informed retirement planning decisions. In fact, J.P. Morgan’s proprietary research on income replacement has correlated participants’ receipt of a projected annual retirement income with a material, positive difference in retirement readiness when compared with those participants who do not receive an estimate of their projected retirement income. However, we believe the proposals outlined in the ANPRM could limit the use of current income replacement calculators and stifle industry innovation. We particularly urge the Department to exercise caution in identifying a safe harbor for calculating lifetime income projections. We believe the most effective approach would be to encourage plan sponsors to provide these projections rather than mandate their inclusion on participant statements. This could be accomplished by clarifying that lifetime income projections, based on prudent methodologies and appropriate disclosure of assumptions, are educational tools and do not result in additional fiduciary liability for the plan sponsor.

THE DEPARTMENT SHOULD NOT MANDATE THAT BENEFIT STATEMENTS INCLUDE LIFETIME INCOME PROJECTIONS

The Department is considering rules that would require a participant’s accrued account balance to be expressed on his/her periodic pension benefit statement as an estimated lifetime income stream. J.P. Morgan would caution the Department that imposing a mandate that participant statements include a lifetime income projection could have the unintended consequence of limiting the use and effectiveness of many of the industry tools currently available. In the ANPRM, the Department noted that in developing rules it was important that “any regulatory framework does not

disturb current projection and illustration best practices or stifle industry innovation.” We believe imposing a mandate could produce these unintended consequences.

Therefore, J.P. Morgan suggests that the Department take steps to encourage rather than require illustrations on pension benefit statements. As the industry’s experience with automatic enrollment has demonstrated, plan sponsors tend to gravitate toward safe harbors. After the Department approved a 3% initial default rate for plans with automatic enrollment, a 3% rate became the industry standard. J.P. Morgan believes that a mandate and a safe harbor with respect to lifetime income projections could drive plan sponsors away from tools representing current best practices and cause plan sponsors to gravitate toward a safe harbor that may not be as effective in helping participants make informed decisions.

If projections are mandated, then by necessity the Department would need to provide a safe harbor calculation for plan sponsors and service providers who are not currently providing projections. While the safe harbor would be designed to provide a means to meet the mandate requirements without incurring the expense of developing more robust projections, there is a risk that the safe harbor would be viewed as the Department’s sanctioned method of calculation. This could give plan sponsors the impression that moving beyond the safe harbor would expose them to greater fiduciary liability, which we do not believe is the Department’s intent. In addition, service providers would be required to provide the safe harbor methodology and the industry’s current best practice methodology to remain competitive and meet industry demands, which would entail significant costs to service providers.

We believe that plan sponsors could be encouraged to provide these projections by alleviating concerns they may have that doing so increases their fiduciary liability. In Interpretive Bulletin 96-1, the Department provided valuable guidance to plan sponsors and service providers on the distinction between investment education and investment advice. This guidance has resulted in the development of communication tools that help participants make better informed decisions without increasing the plan sponsor’s fiduciary liability. Lifetime income projections offer an opportunity that could be best served by a similar approach. As the Department clearly recognized, these projections are just that; projections, and should be accompanied by disclosures that make it clear to the participant that projected amounts are not guarantees. As the Department also noted, lifetime income projections help “change the perception of retirement savings from simply a savings account to a vehicle for income replacement during retirement.” We also agree with the Department’s statement that “showing a participant the monthly retirement income he or she will receive from his or her retirement plan may help change that perception” and motivate workers to increase their savings. All of these points underscore why addressing this as a voluntary educational program will encourage the development of better tools. Clarifying that these projections are educational and do not rise to the level of fiduciary advice will reassure plan sponsors who are concerned with potential fiduciary risks, and encourage them to seek out the best tools available. As an alternative to mandating the inclusion of projections on statements, the Department could require those plan sponsors not currently offering projections to include language on the statement directing participants to the interactive online calculator that the Department designed to meet the assumptions under the proposed safe harbor and currently makes available on its website. This

alternative creates an environment in which participants will receive lifetime income stream projections to make better informed retirement planning decisions while continuing to support industry best practices and innovation.

THE LIFETIME INCOME PROJECTION MUST BE SUPPORTED BY PARTICIPANT EXPERIENCE AND DISCLOSED ASSUMPTIONS

The Department proposed that the lifetime income projection should include the following information:

- The current accrued account balance would be converted to an estimated lifetime income stream at the plan's normal retirement date.
- For participants who have not reached the normal retirement date, the statement would show a projected account balance at the retirement date as well as an estimated income stream.
- Both current and projected income streams would be estimated as monthly payments based on expected mortality of the participant or beneficiary.
- If the participant is married, the income streams would be presented based on the joint lives of the participant and spouse.
- Statements would contain a clear explanation of the assumptions behind the projections and estimated income streams, and a statement that they are estimates, not guarantees.

J.P. Morgan believes that participants will be better served by using a uniform, accessible and externally referenced retirement date, such as Social Security's normal retirement age, rather than an individual plan's retirement date. That judgment is informed by our following observations of participant experience and behavior:

Without research, participants do not typically know their retirement plan's designated retirement age, but participants are familiar with their Social Security retirement age.

- Participants commonly change jobs over the course of a career, increasing the likelihood that a participant has more than one retirement plan in which he/she has retirement assets, each with a potentially different retirement date.
- Participants generally consider retirement income to be comprised of their own savings plus their Social Security benefits. As a result, Social Security's normal retirement age is often a focus of a participant's decision-making related to retirement.

We also do not believe that the Department should require the presentation of income streams based on marital status. Service providers are not consistently provided participant marital status and changes to such status may not be readily available. Therefore, we believe a default marital status of single should be used and this assumption would be disclosed. J.P. Morgan believes that with the appropriate disclosures, participants who receive a projection will be able to utilize the information and make informed retirement planning decisions regardless of the underlying methodology's treatment with respect to marital status.

With respect to disclosure of the assumptions used in calculating the lifetime income projection, J.P. Morgan agrees with the Department's position that the assumptions underlying the projections should be clearly disclosed to participants. To make better informed retirement plan decisions, participants must have access to the assumptions behind the projections and be able to understand the information provided. J.P. Morgan agrees with the Department that the disclosure must contain cautionary language to ensure that the participant is aware that the projections are only estimates, dependent on a variety of factors and not a guarantee of future income. However, we caution the Department that providing overly complex and lengthy disclosures on statements will increase the cost of producing participant statements. J.P. Morgan estimates that the addition of detailed assumptions on pension benefit statements will on average increase statement production costs by 15% or more. In addition, service providers would be required to make enhancements to their content management systems in order to present the necessary detailed assumptions across the participant experience. We anticipate that this would be a costly investment and not all service providers will have the resources to effectively support it.

As an alternative, statements could include language that informs participants that the projections are only estimates and not a guarantee, and directs participants to a website where detailed assumptions would be available. For example, the following language could be provided on statements: "It is important to understand that the projections shown are an estimate and not a guarantee of future benefits. The projections are based on a variety of assumptions and your projection may be higher or lower than your actual income in retirement. For details about how your forecast was calculated, please refer to {insert website}." The website would provide robust disclosure regarding the calculation assumptions in clear, concise language that could be easily understood by participants. J.P. Morgan believes that a condensed disclosure on participant statements would highlight the key points we would expect participants to understand-- that the forecast is not a guarantee, and that it is based on hypothetical economic scenarios. In addition, the condensed disclosure would advise participants on how they could access more detailed information to better understand how the calculation was made. The Department asks whether disclosures should include statements explaining that purchasing annuities outside of a plan may result in the use of gender-based mortality tables and, as a result, different monthly payments for men versus women. Given the inherent complexities of annuities, J.P. Morgan believes that detailed assumption information should provide references to contacting a financial planner or insurance professional to access more details about an annuity purchase. In addition, we believe disclosures should include:

- * Statements about the impact of assuming an annuity purchase as part of the projection
- * References to the common variables regarding the availability of annuities
- * Statements that annuities are not right for every individual
- * Statements that gender can impact annuity payments

We believe it is important that participants understand that they cannot guarantee the estimated projection through the purchase of an annuity and that they may not in fact be able to purchase an insurance product.

THE DEPARTMENT SHOULD EXERCISE CAUTION IN IDENTIFYING A SAFE HARBOR

As noted earlier, J.P. Morgan is concerned that mandating lifetime income projections could have the unintended consequence of driving plan sponsors away from tools that reflect current best practices and encouraging them instead to choose a safe harbor.

There is no question that a participant who can consider his/her projected account balances as a lifetime income stream is a better informed participant. But being informed is not enough. The best lifetime income projection tools are those that encourage participants to modify their behavior and take the steps necessary to improve their retirement outcomes. Examples include:

- Consideration of additional retirement sources: In discussing interactive investment materials in Interpretive Bulletin 96-1, the Department correctly noted that participants should consider other assets in addition to their interests in the plan. Effective tools allow participants to consolidate all retirement sources, including spousal retirement savings, so that they may have a complete picture of their retirement outlook.
- Tying projections of account balances at retirement to the participant's actual asset allocation: The risk of using a single investment return assumption for all participants is that it does not reflect the reality of how asset allocation impacts retirement readiness. A single return assumption simplifies the calculation, but at the expense of a better-informed participant. Projected balances may be understated or, worse, overstated, giving participants a false sense of security.
- Allowing participants to model changes in their behavior and assess how these changes would alter their retirement outlook: Informing a participant of a potential retirement income shortfall is useful only if it is accompanied by steps the participant could take to improve his or her position. Effective tools allow participants to consider the impact of delaying retirement, increasing contribution rates or changing asset allocation.

All these examples, as well as others not cited here, are beyond the scope of a simple safe harbor. Should the Department decide to mandate lifetime income projections and provide safe harbor assumptions for calculation projection, J.P. Morgan urges the Department to make clear that this is the minimum that must be provided. The Department should encourage sponsors to go beyond a simple safe harbor without fear of exposure to increased fiduciary liability.¹

¹ The Department requested comment on to what extent they should coordinate guidance with the Financial Industry Regulatory Authority (FINRA). In particular, the Department referenced National Association of Securities Dealers (NASD) Rule 2210 (d)(1)(D). J.P. Morgan encourages the Department to coordinate with FINRA staff before providing final guidance to ensure the provision of lifetime income projections is not viewed by FINRA as an investment analysis tool. For service providers with an affiliated broker/dealer, FINRA may view the projections as such a tool due to the fact that the projections necessitate simulation and analysis tied to potential investment outcomes. We believe the Department and FINRA should provide guidance for this issue, similar to the guidance issued for the participant-level fee disclosure regulations under ERISA, as suggested by the Department.

In addressing litigation risks associated with providing income projections, the ANPRM noted: “the Department is considering establishing a regulatory safe harbor under section 105 of ERISA for plan administrators to rely on when developing lifetime income illustrations for pension benefit statements. By specifying the precise standards and assumptions a plan administrator would use to make a lifetime income illustration on a pension benefit statement, a regulatory safe harbor would substantially reduce the likelihood of lawsuits against that administrator based on an imprudent or improper calculation of lifetime income.” J.P. Morgan finds this language problematic as it implies that adherence to a safe harbor calculation methodology is the best path to avoiding potential lawsuits based on unrealized participant expectations. This implication contradicts the Department’s earlier stated goal of ensuring that “any regulatory framework does not disturb current projection and illustration best practices or stifle industry innovation.”

As previously discussed, service providers that currently provide robust lifetime income calculators would be forced to also develop a calculator that meets the requirements of the safe harbor assumptions. They would be required to do this to accommodate those plan sponsors concerned about any offering that went beyond the terms of the safe harbor. This would impose an additional cost on providers to not only develop the safe harbor calculator but to maintain it as well.

Ultimately, plan sponsors provide lifetime income projections to inform participants and encourage them to modify their behavior to secure a better retirement. Sponsors should not only be permitted to use the best tools available, but encouraged to do so.

Regarding the assumptions the Department is considering for the safe harbor projection of the value of a participant’s current accrued account to the retirement date, we understand the assumptions would include:

- The dollar amount of current contributions increase by 3% per year.
- Investment returns of 7% per year (4% real return, 3% future inflation).
- Discount factor of 3% for converting projections to today’s dollars.

J.P. Morgan believes the discount rate of 3% is too high given current Treasury yields. In addition, the limit on the amount of elective deferrals a participant may exclude from taxable income each year, as governed by Section 402(g) of the Internal Revenue Code, would have to be checked at regular intervals to ensure the projection does not contemplate a contribution amount that exceeds the limit.

In the ANPRM, the Department proposes that the general rule for projecting account balance to normal retirement age be based on reasonable assumptions that take into account generally accepted investment theories. Similarly, for the purposes of converting account balances into lifetime income streams, the Department proposes that interest and mortality assumptions will be deemed reasonable if they take into account generally accepted actuarial principles. Further, in the Supplementary Information, the Department explains in footnote #8 that; “The general rule is intended to provide plan administrators with flexibility to preserve current best practices regarding benefit statements and not stifle the development and innovation of technological

tools in this area. For example, the general rule would permit plans that have online tools that employ stochastic modeling, such as retirement calculators and similar planning devices, to use the same technology to project account balances on pension benefit statements, provided that the projection methodology meets the reasonableness requirement in the general rule.”

J.P. Morgan applauds the Department for taking this approach. Should the Department decide to mandate the inclusion of lifetime income projections we would urge that this language be prominently noted in any guidance and perhaps cited as an example in the regulations.

We would also encourage the Department to expand safe harbor coverage to all projection methods that take into account generally accepted investment theories and generally accepted actuarial principles. This approach would be consistent with the Department’s guidance in Interpretive Bulletin 96-1; Participant Investment Education and would support industry innovation by the Department clarifying that innovative, prudent illustrations, accompanied by disclosed assumptions, are covered by the regulatory safe harbor.

CONCLUSION

J.P. Morgan appreciates the opportunity to comment on the ANPRM. We applaud the Department’s efforts to provide participants with information to enable them to make informed retirement planning decisions.

Please do not hesitate to contact me if you have any questions about the issues raised in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Holcomb". The signature is fluid and cursive, with a long horizontal stroke at the end.

Robert Holcomb
Executive Director of Legislative and Regulatory Affairs