American Federation of Labor and Congress of Industrial Organizations

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Submitted by e-mail to e-ORI@dol.gov

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

Attention: Pension Benefit Statements Project

Re: Advanced Notice of Proposed Rulemaking on Pension Benefit Statements
Docket ID: EBSA-2013-0007
RIN 1210-AB20

Ladies and Gentlemen:

These comments on the Advanced Notice of Proposed Rulemaking on Pension Benefit Statements ("ANPRM"), issued by the Department of Labor,[1] are submitted on behalf of the American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO") and its 57 affiliated unions. The AFL-CIO, together with its community affiliate, Working America, represents more than 12.2 million workers across the country in all sectors of our economy,

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1 The ANPRM was published in the Federal Register on May 8, 2013 (78 Fed. Reg. 26727) and is available at http://www.gpo.gov/fdsys/pkg/FR-2013-05-08/pdf/2013-10636.pdf . The comment period was extended from July 8, 2013 to August 8, 2013 by Notice published on July 15, 2013 (78 Fed. Reg. 42027), available at http://www.gpo.gov/fdsys/pkg/FR-2013-07-15/pdf/2013-16739.pdf.

including those working in manufacturing, construction, transportation, health care, education, hospitality, entertainment and state and local governments. Our affiliated unions negotiate retirement benefits for millions of workers and retirees in the private sector. These benefits are provided through single employer and multiemployer plans and through both defined benefit and defined contribution plans, all of which are subject to the requirements of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

For more than seven decades, the American labor movement has championed the provision of real retirement security to working families across all sectors of our economy. Today, we face a retirement security crisis as the erosion of secure defined benefit pension plans continues and the growth of cheaper, less secure defined contribution plans persists. Over half of American households are at risk of being unable to maintain their standard of living in retirement, up from fewer than one-in-three in 1983.[2] Two-thirds of Social Security beneficiaries who are 65 and older rely on modest benefits for half or more of their income.[3] The number of workers fortunate enough to have a traditional pension continues to drop as only 14 percent of private-sector workers are covered by defined benefit pension plans, compared to 38 percent in 1979.[4] In light of these grim facts, it should be no surprise that only 13 percent of workers are very confident about having sufficient money for a comfortable retirement, less than half the number who felt very confident in 2007, before the 2008 financial crisis.[5]

Ensuring that working families have sufficient retirement assets and savings to support a comfortable retirement is an important national policy objective, not just a goal of the labor movement. What should be clear after our 30-year national experiment with 401(k) savings plans is that these plans do not and cannot deliver real retirement security to working families. According to the most recent Survey of Consumer Finances,[6] just three-in-five of those closest

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2 Alicia Munnell, et al, *The National Retirement Risk Index: An Update* (Center for Retirement Research at Boston College, October 2012) available at http://crr.bc.edu/wp-content/uploads/2012/11/IB_12-20-508.pdf.

3 Social Security Administration, *Fast Facts & Figures About Social Security, 2013* (August 2013) available at http://www.ssa.gov/policy/docs/chartbooks/fast_facts/2013/fast_facts13.pdf.

4 Employee Benefit Research Institute, FAQs About Benefits—Retirement Issues, available at http://www.ebri.org/publications/benfaq/index.cfm?fa=retfaq14.

5 Ruth Helman, Nevin Adams, et al., *The 2013 Retirement Confidence Survey: Perceived Savings Needs Outpace Reality for Many* (Employee Benefit Research Institute, March 2013) available at http://www.ebri.org/pdf/briefspdf/EBRI_IB_03-13.No384.RCS2.pdf.

6 Jesse Bricker, et al, *Changes in U.S. Family Finances from 2007 to 2010: Evidence from the Survey of Consumer Finances*, Federal Reserve Bulletin (June 2012) available at http://www.federalreserve.gov/pubs/bulletin/2012/pdf/scf12.pdf..

to, or just into, retirement have saved anything at all, and their median account balance of $100,000 provides slightly more than $330 in monthly retirement income.

We continue to believe that defined benefit pension plans remain the soundest and most cost-effective vehicles for building and safeguarding retirement security for workers across the country. The AFL-CIO and its affiliates are fully committed to strengthening and improving existing defined benefit plans and 401(k) savings plans through legislative and regulatory action. In our view, the ANPRM addresses an important issue that could lead to enhancing participant understanding about the purpose of 401(k) savings plans and the contribution these plans can make to their ultimate retirement income. We commend the Department and the Employee Benefit Security Administration for issuing the ANPRM and soliciting responses regarding a rule requiring benefit statements for individual account plans to include an estimated lifetime stream of payments in addition to the account balance.

The AFL-CIO strongly supports displaying a lifetime income stream derived from the participant's account balance on the benefit statement provided by an individual account plan. The vast majority of plan participants with individual accounts will need to rely on the assets they accumulate in them for part of their income in retirement. Therefore, it is critically important for participants to better understand the relationship between the assets they have accumulated and the income stream this balance could provide at retirement. Including an illustration of this on individual benefit statements would go a long way toward improving participants' expectations and ultimately their preparedness for retirement. Given the importance of this, we believe the Department should require this information in the benefit statement. Though the alternative, just encouraging plan sponsors to provide an illustration, has some appeal, if sponsors were going to do so voluntarily, they would be doing so already, and we are not aware of any such widespread practice.[7]

The ANPRM proposes to display two lifetime income streams, one based on the current account balance and the other on the projected account balance at normal retirement age (including possible future contributions). *See* Proposed Section 2520.105-1(c)(2)(v)-(viii). The AFL-CIO urges the Department to limit the display to a single lifetime income stream illustration using only the current accrued balance, projected to normal retirement age for those participants who are younger. Basing the illustration on a participant's accrued benefit is consistent with the

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[7] We note that comments from some benefit consultants and service providers describe the availability of lifetime income calculators and other online tools and argue that requiring a static statement would interfere with the flexibility to offer other methods of showing lifetime retirement income and dampen future innovation. Those arguing that provider and plan sponsor promotion of online information is a sufficient alternative to requiring provision in individual benefit statements face a high hurdle in establishing the effectiveness of their current efforts at engaging participants with these kinds of online resources. Further, requiring inclusion of income illustrations on benefit statements does not preclude other innovative efforts to communicate with participants.

basic purpose of individual benefit statements—to communicate the value of the benefits earned by that individual.

Benefit illustrations based on future accruals that might or might not occur are unrelated to the purpose of the benefit statement and speculative given the high degree of uncertainty about future contributions. Will the participant's employment with the plan sponsor continue? Will the participant be able to work until normal retirement age? Depending upon the industry, employment may be cyclical and projecting contributions without taking into account work patterns offers a potentially misleading illustration. While we understand any projection is just that—an estimate based on assumptions—the likelihood of providing unrealistic illustrations increases as more assumptions are made. Using only the accrued balance minimizes the likelihood of participants mistaking the illustration for a promise or guarantee of a particular outcome.[8] Illustrations based on projected future contributions are appropriate only for educational materials and tools provided outside of a mandated statement of the accrued benefits earned by an individual worker.

We agree that the assumptions used for any projections and conversions of the participant's account balance should be disclosed on the benefit statement. The descriptions must be in plain language, and a clear explanation of each assumption should be required without using overly technical language. In addition, explanations of the projection and conversion methods and what they demonstrate should be included, otherwise participants may not understand what is being shown.

With respect to the safe harbor assumptions,[9] we generally support the proposal as we believe it simplifies what plan sponsors must do and limits the likelihood that unreasonable or inappropriate assumptions will be used. We would recommend, however, that the nominal investment return of seven percent be lowered as it is likely to be overly optimistic. The Department should consider using an assumed investment return that is lower by one or one and a half points for the entire projection period, providing a cushion or reserve to minimize participants experiencing account balance shortfalls as they approach retirement. Another alternative is to lower the investment return assumption for the period beginning when participants approach retirement age and investments should be more conservative.

We are also concerned that, in combination, the safe harbor assumptions for projecting account balances may be inappropriate. Although we recommend the Department only require

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8 To be sure, we believe the concerns of plan sponsors and service providers about the potential for lawsuits are somewhat overstated and we support the Department's suggestions for addressing those concerns.

9 The safe harbor assumptions are outlined in Proposed Section 2520.105-1(d)(2) (projecting the account balance to normal retirement age) and Section 2520.105-1(e)(2) (converting the account balances into lifetime income streams).

income illustrations based on a participant's current account balance, if the Department were to provide for illustrations based on projected future contributions, it should correct an important problem with respect to the spread between the assumption for wage growth and the nominal rate of return. In particular, the difference between the three percent annual increase in the contribution amount, which assumes essentially no real growth in wages, and the nominal investment return of seven percent may lead to illustrations showing high income replacement rates. We suggest the Department reconsider these assumptions, taking into account other retirement savings adequacy studies and models.

We also support the requirement that lifetime income for married participants be presented as a 50 percent joint and survivor benefit as well as a single life annuity. Since monthly retirement income is lower if survivor benefits are provided, married participants and their spouses would find the joint and survivor estimate useful to their retirement planning.

The AFL-CIO appreciates the opportunity to submit comments on the ANPRM and we look forward to working with the Department and EBSA on issuance of proposed rule on benefit statements in the near future. Should you have any questions about our comments or need any additional information, please do not hesitate to contact me.

Sincerely,

Karin S. Feldman
Benefits and Social Insurance Policy Specialist