October 10, 2020

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

Attention: Pension Benefit Statements – Lifetime Income Illustrations, RIN 1210–AB20

Dear Sir or Madam:

Introduction

On behalf of the Institutional Retirement Income Council (IRIC), we are writing to provide comments to the Department on the interim final rule (IFR) regarding the information that must be provided on pension benefit statements pursuant to section 105 of the Employee Retirement Income Security Act of 1974, as amended (ERISA). This letter is responding to the Department's request for comments to the Interim Final Rule (IFR) issued on August 18, 2020 in response to the requirements in the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE).

The mission of IRIC is to facilitate the culture shift of defined contribution plans from supplemental savings programs to programs that provide retirement security through institutional lifetime income products and solutions. By providing a forum for insightful, solutions-oriented thought leadership on institutional retirement income, IRIC is promoting the need for retirement income adequacy for defined contribution plan participants. IRIC members believe in and promote the concept that 401(k) and similar plans need to become income distribution vehicles and not merely savings vehicles.

Given our mission, our members strongly support the concept of many of the provisions in the IFR that will facilitate the adoption, use and proliferation of guaranteed retirement income directly from defined contribution plans. Our comments below focus on those provisions of the rule where the Department requested comments and IRIC can provide expert insights and comments regarding the rule. IRIC is also providing a few comments not directly sought by the Department but we believe will nonetheless provide important insights and support for the Department's objectives.

Assumptions for Lifetime Income Stream Illustrations

The regulations under § 2520.105-3 Lifetime Income Disclosure for Individual Account Plans under paragraph (c) list a number of assumptions for converting an account balance into lifetime income streams. In the preamble section of the regulations, the Department requests comments regarding all the assumptions the Department mandates to guide plan sponsors and providers in preparing the illustrations and disclosures. IRIC supports all such assumptions and agrees with the Department's approach in providing guidance that will enable the industry to move forward with executing the required disclosures. We specifically support the uniformity of the disclosure and by listing straight-forward, reasonable assumptions, the industry's service providers will be able to move forward with a common mandate. In addition, participants will receive a consistent message on lifetime income regardless of their employer or their recordkeeper. This consistency is especially valuable when participants change companies / careers and when plans decide to change recordkeepers.

With regard to the specific assumptions, we agree that:

- Age 67 is a good assumption and that illustrations using multiple ages / scenarios will only serve to confuse some participants. The Department's view that 'less is more' is correct.
- Assuming the commencement date is the last day of the statement period is a reasonable way to proceed.
- Since most Americans in the workforce are, were, or will be married at one point, we agree that providing both a single life annuity and a joint life (with 100% survivorship) annuity disclosure makes the most sense and is consistent with the provisions in the SECURE act. We also agree with the Department that using 100% survivorship assumption is logical and that other survivorship percentages (*e.g.,* 50% and 75%) could create unnecessary confusion.

- The 10-year CMT rate best represents the interest rates that are reflected in the actual pricing of commercial annuities. In addition, the 10-year CMT rate is published daily for the public and is widely recognized by industry providers.
- The mortality table in Code section 417(e)(3)(B) provides a unisex mortality table, and its use will make compliance administratively simpler, since recordkeepers will not need to adjust the illustration based on gender. As the Department notes, retirement plans are required to use unisex mortality assumptions, and recordkeepers do not systematically maintain gender on their database recordkeeping systems, thereby making gender specific illustrations nearly impossible.
- The Department's conclusion that the insurance expense load implicit in use of the 10-year CMT rate renders unnecessary any additional or different mandatory insurance load assumption in paragraph (c) of the IFR. IRIC would also be supportive if the Department were to require (or permit) a statement indicating that the amount of guaranteed annuity income that could be purchased through an annuity product available under the participant's plan would likely be higher than the amount of guaranteed annuity income that could be purchased outside of the plan for a similar annuity due to the institutional buying power of the plan and the ability to avoid additional commission or intermediary expenses. We provide additional comments along with sample language in the next section of this letter.
- An inflation factor is not necessary as an illustration and can be adequately addressed as part of the Department's eleven approved safe harbor statements. As the Department is aware, inflation has been relatively tame for several decades. Additionally, very few DC plan recordkeepers offer fixed income annuities with an inflation rider as a distribution option. Also, should inflation increase, and inflation adjusted annuities become more prevalent, the Department could modify this requirement at some future date. In the meantime, providers will be able to offer education and other illustrations that inform participants on the deterioration of buying power that high inflation causes should we return to a higher inflation environment and we see an increase in the prevalence of inflation riders on annuities within DC plans.

Explanation of lifetime income streams

IRIC supports the safe harbor language the Department provided in section (d) of the regulation. IRIC believes that the language and illustrations are written in a manner calculated to be understood by the average plan participant. As a result, we do not have any substantive comments to modify the existing language that the Department formulated for plan sponsors.

IRIC would like to suggest an additional statement that sponsors can use, especially if the sponsor offers a fixed income annuity at retirement as part of the DC plan distribution options. Accordingly, below is page 2 of Appendix I with the suggested language added in bold *italics*.

The estimated monthly payments in this statement assume that your account balance is 100% vested and, if you have taken a loan from the plan and you are not in default, the loan has been fully repaid.

• The estimated monthly payments in this statement assume that payments begin [*insert the last day of statement period*] and that you are [*insert 67 or current age if older*] on this date. Monthly payments beginning at a younger age would be lower than shown since payments would be made over more years. Monthly payments beginning at an older age would be higher than shown since they would be made over fewer years.

• The estimated monthly payments for a qualified joint and 100% survivor annuity in this statement assume that you are married with a spouse who is the same age as you (even if you do not currently have a spouse, or if you have a spouse who is a different age). If your spouse is younger, monthly payments would be lower than shown since they would be expected to be paid over more years. If your spouse is older, monthly payments would be higher than shown since they would be expected to be paid over fewer years.

• The estimated monthly payments in this statement are based on an interest rate of [*insert rate*], which is the 10-year constant maturity U.S. Treasury securities yield rate as of [*insert date*], as required by federal regulations. This rate fluctuates based on market conditions. The lower the interest rate, the smaller your monthly payment will be, and the higher the interest rate, the larger your monthly payment will be.

The estimated monthly payments you receive from an annuity will already factor in: insurance costs, risk mitigation expenses, sales commission, insurance company profits and other expenses. If your plan offers an annuity payout option, the income you receive should generally be higher than what you can achieve on your own due to ERISA's fiduciary standards that govern your employer's offerings, the institutional bargaining power the plan has and the more efficient delivery of such products that reduce or eliminate commission costs.

• The estimated monthly payments in this statement are based on how long you and a spouse, who is assumed to be your age, are expected to live. For this purpose, federal regulations require that your life expectancy be estimated using gender neutral mortality assumptions established by the Internal Revenue Service.

• The estimated monthly payments in this statement are the same whether you are male or female. This is required for annuities payable from an employer's plan. However, the same amount paid for an annuity available outside of an employer's plan may provide a larger monthly payment for males than for females since females are expected to live longer.

<u>Limitation on liability</u>

IRIC concurs with the Department that the production of these illustrations will greatly help plan participants prepare for retirement (at least for participants nearing age 67,,, additional information on this statement is contained in the paragraphs below); and we agree that if plan sponsors follow the prescribed safe harbor, they should not have any liability under Title I of the Act solely by reason of providing the lifetime income stream equivalents described in paragraphs (b)(3) and (4) of the IFR.

The Department requires that benefit statements include language substantially similar in all material respects to the model language in paragraphs (d)(1)(ii) through (d)(11)(ii) of the IFR. The Department provides several examples on phrases and words that could be substituted that would keep sponsors inside the rule and rely on the safe harbor for liability protection.

The IFR requires that plan administrators provide **two lifetime income illustrations** (single life and 100% joint and survivor) of the value of a participant's current account balance, at least annually, on the participant's pension benefit statement. The IFR also requires that plan administrators prepare these lifetime income illustrations using the annuitization methodology set forth in the IFR, which will express a participant's account balance as a lifetime monthly payment to the participant. The Department states that this is "**similar in form to a pension payment made from a traditional defined benefit plan"** (emphasis added). While we agree that this is true to a degree, we also note that traditional DB / pension statements always <u>project</u> the stream of income and the <u>projected</u> accrued benefit, which is not required in the income illustrations under the IFR.

IRIC requests additional clarity on the latitude the Department is providing with respect to adherence to the specific language outlined in the IFR. IRIC suggests that the Department consider providing additional latitude to sponsors that wish to provide participants with an illustration based on a projected account balance. We suggest that it do so by citing specific examples in the final rule that enables this approach while staying within the safe harbor afforded to sponsors. In this regard, IRIC believes that without a projected accrued benefit illustration, the income illustrations may be meaningless for younger participants early in their careers and thus early in their savings and planning for retirement.

The Department recognizes this concern in the regulation with the following excerpt from the IFR:

> *"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)." [Emphasis added]*

Based on the language above, the Department recognizes the need for younger participants to project their account balance and thus their retirement income. However, we submit that most participants do not have the skill needed to make this projection and would generally simply ignore the static projection provided to them. Even in the examples below, the first statement does not provide a very useful understanding of the retirement income they will receive. For example, many participants will calculate (incorrectly) that if they accumulated $125,000 during their first 20 or so years in the work force, they may assume that they would only accumulate a similar amount, or slightly more, during the next 20 years. In all likelihood, someone with $125,000 at age 47 could easily have a balance at or near $1 million dollars at age 67.[1] Only the last of the three statements below provide a participant a realistic picture of his or her retirement security.

In the IFR, the Department provided the following chart as part of a sample statement. Although no age was provided for this first example, let's assume this participant is 47 (20 years from receiving guaranteed income):

Account Balance as of [*DATE*]	**Monthly Payment at 67 (Single Life Annuity)**	**Monthly Payment at 67 (Qualified Joint and 100% Survivor Annuity)**
$125,000	**$645**/month for life of participant.	**$533**/month for life of participant. **$533**/month for life of participant's surviving spouse.

The chart below might be typical for a 25 year old participant:

Account Balance as of [*DATE*]	**Monthly Payment at 67 (Single Life Annuity)**	**Monthly Payment at 67 (Qualified Joint and 100% Survivor Annuity)**
$900	**$4.64** /month for life of participant.	**$3.84**/month for life of participant. **$3.84**/month for life of participant's surviving spouse.

Finally, the chart below might be typical for a 67 year-old retiree ready to begin his / her decumulation phase of retirement:

Account Balance as of [*DATE*]	**Monthly Payment at 67 (Single Life Annuity)**	**Monthly Payment at 67 (Qualified Joint and 100% Survivor Annuity)**
$450,000	**$2,322**/month for life of participant.	**$1,919**/month for life of participant. **$1,919**/month for life of participant's surviving spouse.

Again, only the last statement provides a meaningful conversion of a participant's balance to a stream of guaranteed income.

In its summary of the regulations, the Department stated the following belief:

> *"EBSA believes that illustrating a participant's account balance as a stream of estimated lifetime payments, in accordance with the IFR, will help workers in defined contribution plans to better understand how their account balance translates into monthly income in retirement and therefore to better prepare for retirement."*

IRIC contends that the Department will not meet the objective stated above except for those participants that are at or near age 67. The stream of estimated income becomes less and less meaningful for participants that are in their early 60s, 50s, 40s etc.

In order to rectify this shortcoming, we urge the Department to do one of three things:

1. Interpret the language in the SECURE act stating that the Secretary may use a "range of assumptions" in providing guidance to sponsors to mean that the Department has the authority to permit, within the safe harbor, the projection of a participant's account balance in providing the retirement income illustration.

[1] Assuming initial salary of $85,000, savings rate of 8%, growth rate of 6%, matching contributions equal to ½ of employee savings and no premature withdrawals.

2. Determine that a projection of the current account balance falls within its "substantially similar" language in paragraph (f) and the preamble since the illustrations will still comply with all aspects of the IFR, except the current accrued balance will be projected to the participant's projected accrued benefit at age 67 (using reasonable assumptions on growth and contributions to the account). By classifying this modification as substantially similar to the directives in the regulation, sponsors will feel comfortable with providing this more meaningful income statement while still limiting their liability in providing such a statement as outlined in section (f) of the regulation.
3. In 2013, the Department in its ANPRM required that periodic pension benefit statements provided to participants in defined contribution retirement plans contain lifetime income illustrations and contemplated in those regulations a projected account balance annuity benefit. Thus, the Department as part of this IFR or as a separate regulatory initiative could stipulate, on its own, the importance of using a projected balance when creating these illustrations.

By projecting the participant's balance, we submit that the Department will be providing more meaningful help to participants, will encourage appropriate savings levels as participants seek to increase their retirement readiness, will provide realistic projections to younger, less sophisticated participants, and will re-institute what the Department deemed to be important when it first considered requiring this disclosure back in 2013.

Alternative ways to project balances

IRIC recognizes that the Department may want to conservatively interpret the SECURE Act by concluding the legislative language directs the Department to use only the current accrued balance. Although IRIC (and we presume the Department) understand the benefit of projecting balances to age 67, IRIC believes that many plan sponsors will be reluctant to project balances for younger participants since they want to remain within the safe harbor due to the liability protection afforded to them by the safe harbor. Understanding this sentiment by plan sponsors, we suggest that the Department make it clear that projecting balances to age 67 using reasonable assumptions is education as defined by I.B. 96-1 and would not be considered fiduciary advice under Section 3(21) of ERISA. Such an approach would not include projected balance illustrations as part of the IFR safe harbor but would clearly define for sponsors how to project balances while doing so without rendering investment advice.

By formally recognizing that the reasonable projections of future contributions, future compensation and investment growth can be used as part of the IFR illustrations, and such illustrations are education (and not the rendering of advice), plan sponsors and service providers would be more comfortable and more likely to make such projections as part of the income illustrations outline in the IFR. We submit that this would be much more helpful to younger participants than an income illustration on their current balance, which as noted in the examples above, might discourage plan participation or might discourage appropriate saving levels. Formal recognition by the Department that furnishing projected income illustrations constitutes participant education is, we submit, consistent with the tenets of I.B. 96-1. In that Bulletin, the Department specifically provided that furnishing information and materials that inform a participant about estimating future income needs,

> *"would not constitute rendering advice or making a recommendation to a participant or beneficiary within the meaning of 29 CFR 2510.3-21(c)(1)(i). Accordingly, the furnishing of such information would not constitute the rendering of investment advice of section 3(21)(A)(ii) of ERISA."*

If the Department does not formally recognize that reasonable projected income illustrations are education, we submit that it would render the illustrations, as currently contemplated, meaningless for the majority of younger participants. As noted above, the Department's objective is for participant's to *better understand how their account balance translates into monthly income in retirement and therefore to better prepare for retirement*. By including in the final regulation guidance on investment education as it relates to projected balances, the Department will be well within its purview to issue regulations regarding investment education with the parameters of I.B. 96-1. Thus, the Department with this approach, would not be broadly interpreting the language in the SECURE act or stretching the safe harbor language the Department issued in the IFR.

GMWBs

In the IFR, the Department requests comments as to whether, and how, to incorporate such features (i.e. GMWBs) into the IFR's framework. IRIC notes that GMWBs currently are one of the most prevalent in-plan annuity options within the DC space, where such products are offered by a number of insurers, asset managers and recordkeepers. As the Department recognizes, the guidance offered in the IFR does not necessarily fit GMWBs when it notes: "a number of annuity features and products exist, the treatment of which currently is not reflected in the IFR, for example guaranteed lifetime withdrawal benefits (GLWBs), also referred to as guaranteed minimum withdrawal benefits (GMWBs)…"

GMWBs are difficult to compare to fixed income annuities because the former offer participants many additional benefits while the latter has most of its value in the stream of fixed income it produces for the individual. For example:

- GMWBs offer protection from a market correction or market crash, thereby eliminating sequence of return risk.
- GMWBs change the risk tolerance for participants. The downside protection enables conservative participants to invest a greater percentage of their savings in equities. This is a significant benefit considering how the long-term equity markets have fared over the long run when compared to fixed income and other asset classes. In short, participants that are able to have continued equity exposure generally achieve a higher final account balance and thus a higher level of retirement security.
- By selecting the GMWB rider, participants are able to leave a bequest of any remaining market value of their retirement savings, a feature that is often not available in a traditional annuity.
- GMWBs enable participants to access the market value of their retirement accounts during retirement should a need arise for additional cash.
- Participants receive guaranteed lifetime income on their Income Base (which is often higher than the market value of the participant's retirement savings)
- In very low interest rate environments, fixed annuities do not provide an attractive guaranteed payment. If our economy remains in a very low (or negative) interest rate environment, the IFR as currently presented will focus on a product (fixed income annuities) that may not be as viable as other products in the marketplace. The Department would be ignoring consumer preferences and products that can provide additional security if GMWBs are not addressed.
- GMWBs in the DC marketplace are often incorporated into target date funds or target date model allocations. Within the DC industry, GMWBs (as well as other annuity types) offer a program whereby participants can purchase annuity tranches over time as part of the target date fund's glidepath. Thus, GMWBs have a dollar cost averaging component (usually during the last 10 years before retirement) that a fixed income annuity purchased at age 67 would not provide. In short, the current focus of a fixed income annuity purchased at age 67 has a 'point in time risk' where the most prevalent design currently in the DC industry does not have that point in time risk due to the dollar cost averaging component of the design and how the Income Base is reset with market value increases in a GMWB.[2]
- In favorable markets, the income offered by the GMWB rider can increase year over year.
- Some GMWBs allow a degree of investment control both before and after income begins

As stated, GMWBs have a market value that participants can access (assuming a distributable event) at any time. Thus, the Department could take the position that sponsors and providers should simply use the market value of the fund with the GMWB protection and add that market value to the market value of the other investments that have retirement savings for the participant and include the total market value when complying with the IFR requirements. This approach would be the simplest approach for the Department, sponsors and providers that will produce the illustrations and disclosures. Alternatively, the Department could require that the participant's calculated income amount for assets held within the in-plan annuity (i.e. the GMWB) be added to the calculated income according to the IFR with regards to the other remaining market value of the participant that is not in the in-plan annuity (i.e. the GMWB). This is similar to the approach taken by the Department for deferred fixed annuities. However, it differs from deferred fixed annuities in that the current calculated income may change for GMWBs based on market performance and additional contributions where deferred fixed annuities have a promised income amount for contributions already made and invested in the annuity. Lastly, the Department could require that sponsors and providers assume the entire market value of the participant is

[2] Although DCA can be achieved in the retail space, it is not the prevalent design while in the DC space, DCA of annuities integrated into a target date fund's glidepath is the predominant design.

invested in a fund with the GMWB rider and calculate the income provided by the GMWB contract using the current market value for purposes of the illustration.

IRIC supports the first option. It is the simplest approach, whereas any hybrid or other approach could be confusing for participants.

As noted earlier, projections of account balances are essential to providing meaningful disclosures to participants. In a similar manner, the value of GMWBs are best explained by using different market conditions and projecting the market value and Income Base through various market cycles up to a participant's retirement date. The various value statements of GMWBs as noted above cannot be effectively communicated by simply showing the income amount as calculated based on the current market value. To the extent there is value in the static (not projected) income illustration and disclosures for participants, using the market value of the GMWB fund would not detract from the lifetime income statement or the statement's value. Likewise, if the department is persuaded to enable projections of balances and issue lifetime income illustrations on those projected balances, the market value of the GMWB at the time of projection would allow for a seamless inclusion of the GMWB market value into the projected balances as well.

Concluding comments

IRIC would appreciate the opportunity to continue to work with the Department to ensure that the illustrations and disclosure provide the best education and highest level of retirement security to all Americans – both younger participants that need a projection of their income and older participants approaching age 67. We look forward to the opportunity, at your request, to share some of our own work in this area as we continue to create thought leadership and advisor / sponsor acceptance of institutional income products and services.

The members of the IRIC Regulatory Committee, Bruce Ashton, William Charyk, Douglas McIntosh, Jr. Ahmet Kamil and Robert Melia, participated in the preparation of this letter.

Please contact either William Charyk or Robert Melia with any questions or thoughts you would like to share.

Sincerely,

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