The ERISA Industry Committee

DOL Pre-Rule on Lifetime Income Benefit Statement Illustrations

June 11, 2013

Overview

- U.S. Department of Labor (DOL) issued advanced notice of proposed rulemaking (ANPRM) in May 2013
  - Had previously issued a Request for Information (RFI) with IRS in 2010
  - Precursor to proposed regulations

Response to RFI

- ERIC responded to the RFI on May 3, 2010
- The comment letter included ERIC's:
  - Opposition to any requirement that plans offer lifetime income arrangements as distribution options.
  - Recommendations that the agencies:
    - educate employers and DC plan participants
    - Minimize fiduciary liability
    - Provide a genuine safe harbor for the selection of an annuity provider

Overview

- Considering requiring benefit statements for defined contribution plans to include:
  - Participant's current account balance;
  - Participant's projected account balance;
  - A lifetime income illustration based on the current account balance; and
  - A lifetime income illustration based on the projected account balance

Projected Account Balance

- The participant's projected account balance would take into account future contributions and investment returns
- DOL proposed a safe harbor for the projected account balance:
  - Contributions are increased every year to normal retirement age by 3% per year
  - Investment returns are 7%
  - A discount rate of 3% per year applies

Lifetime Income

- The lifetime income stream must be expressed as a level payment for the life of the participant
- If the participant is married, it must also be expressed with a 50% survivor’s benefit
- Interest and mortality assumptions must be reasonable

Lifetime Income

- The DOL proposed a safe harbor for the interest and mortality assumptions in the lifetime income illustration:
  - Interest rate equal to the 10-year constant maturity Treasury securities rate
  - Mortality based on 417(e)(3)(B) table
- May also be able to use annuity offered by plan

Potential Issues

- Existing Methods
  - Are members currently providing lifetime income information to participants?
  - Would the DOL's inclusion of a safe harbor cause you to change your approach?

Potential Issues

- Clarity / Utility
  - Would participants be confused by the information provided?
  - Would they find it confusing that the numbers would change every year?

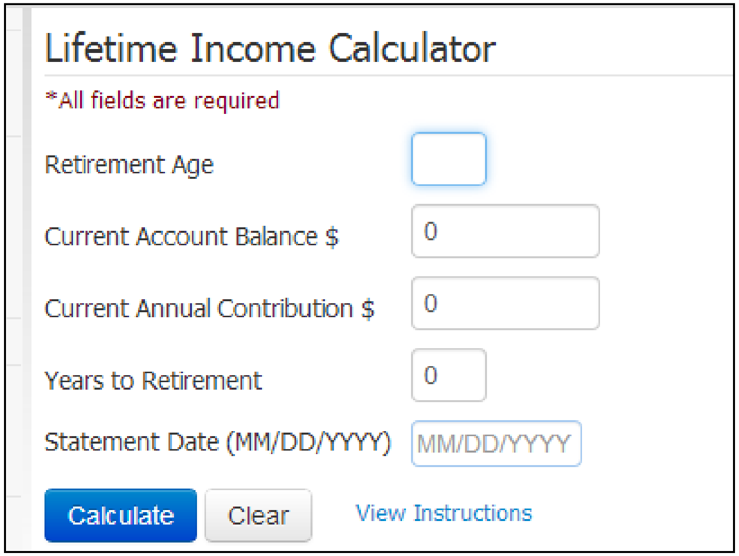
Account balance on last day of statement period (12/31/12)	Single life form (monthly payment for P's life with no survivor benefit)	Joint and 50% survivor form	
		Monthly payment during P's life	Monthly payment after P's death to surviving spouse
Current—$125,000	$625	$564	$282
Projected—$557,534	2,788	2,514	1,257

Potential Issues

- Risks
  - Are there concerns about lawsuits or other risks about providing potentially misleading information?
  - Are there concerns about your company's reputation with employees?

Potential Issues

- DOL Calculator
  - Would participants receive more value from the DOL's calculator as a modeling tool?
    - Participants could model things like changes in compensation, breaks in contributions, etc.?



http://www.dol.gov/ebsa/regs/lifetimeincomecalculator.html

Potential Issues

- Disclaimers
  - Do you think participants would be overwhelmed by the amount of explanation and disclaimers that would be required?

Lifetime Income Calculator

Overview

Workers participating in defined contribution plans, like 401(k) plans or similar savings plans, are responsible for managing their retirement savings while employed and during their retirement years.

Showing participants their retirement plan account balance as level monthly payments for their lifetime will help them assess their retirement readiness and plan for their retirement. As described in an advance notice of proposed rulemaking (ANPRM), the Department of Labor is considering proposing a rule that pension benefit statements include the participant's account balance as a single sum as well as an estimated lifetime income stream of level payments using both the participant's current account balance and the projected account balance at retirement. For married participants, the statement also must include joint and survivor lifetime income payments.

Using assumptions described in the ANPRM (noted below), this calculator illustrates an annuitization approach to estimate the monthly lifetime income streams based on both the participant's current account balance and on the projected value of the account balance at retirement. For both balances, the calculator develops two level lifetime payments: one for the life of the participant (with no benefits to any survivors) and the second for the joint lives of the participant and the spouse with a fifty percent survivor's benefit for the spouse's lifetime.

This calculator uses a simplified computation (e.g., annual contributions, mid-year retirement). Depending on the comments received in response to the ANPRM, the next version of the calculator may provide a more precise computation (e.g., monthly contributions, retirement in a specified month).

How the Calculator Works

The calculator uses the safe harbor assumptions described in the ANPRM for estimating future contributions, investment earnings, and inflation:

- Contributions continue to Retirement Age at the Current Annual Contribution amount increased by 3 percent per year.
- Investment returns are 7 percent per year (nominal).
- An inflation rate of 3 percent per year is used for discounting the projected account balance to today's dollars.

In converting the account balances into lifetime income streams, the calculator uses the safe harbor annuity conversion assumptions described in the ANPRM:

- A rate of interest equal to the 10-year constant maturity Treasury securities rate for the first business day of the last month of the period to which the statement relates (equal to 1.63% as of December 3, 2012 for statement periods ending December 31, 2012).
- The applicable mortality table under section 417(e)(3)(B) of the Internal Revenue Code in effect on the first day of the last month of the period to which the statement relates. This is a unisex table (i.e., the annuity values are the same for males and females).
- No insurance company load for expenses, profit, reserves, etc.

Instructions

All fields are required. To begin the calculation:

1. Enter the participant's Retirement Age. Under the ANPRM this is the normal retirement age under the plan, which is most likely age 65 but could be another age. If the participant is older than the normal retirement age, use their actual age.
2. Next, enter the participant's Current Account Balance. This is the participant's account balance on the last day of the statement period on the most recent account statement provided by the plan.
3. Enter the participant's Current Annual Contribution. This is the amount contributed to the participant's account in the last year (the 12-month period ending on the statement date), including both the participant's and the employer's contributions. Do not include investment earnings (or losses) for the year.
4. For the participant's Years to Retirement, enter the number of full years until the participant will retire. This will generally equal the Retirement Age entered above minus the participant's age next birthday. If the participant has already reached Retirement Age, enter zero. The calculator will add a half year to the full years entered to approximate an assumed mid-year retirement (on average).
5. Enter the Statement Date. This is the last day of the statement period on the most recent account statement provided by the plan.
6. Finally, after entering all of the information above, click Calculate to see a chart of results.

For example, to match the results in the example in the ANPRM, you would enter: (1) Retirement Age of 65; (2) Current Account Balance of $125,000; (3) Current Annual Contribution of $9,709; (4) Years to Retirement of 19; and (5) Statement Date of 12/31/2012.

The Calculation Results

The first row of results in the chart shows the Current Account Balance and the estimated monthly lifetime income payment the participant would receive today based on only the Current Account Balance (i.e., assuming no future contributions). This amount is calculated as if the participant has already reached the Retirement Age entered, even if the participant is currently much younger. For example, if the Retirement Age entered is 65, the results will show what monthly income (with no survivor benefits) a 65-year old would receive today based on the Current Account Balance. It also shows the amount the participant and the surviving spouse would receive under a joint and survivor benefit (with 50% of the participant's monthly amount paid to the surviving spouse), assuming the participant and the spouse are the same age.

The second row of results illustrates the participant's projected account balance looking ahead to the present value of what the participant will have saved by the time the participant reaches the Retirement Age. The projected account balance includes the Current Account Balance, assumed contributions from both the participant and employer between now and Retirement Age, and investment earnings on those amounts. These amounts are then discounted into today's

Comment Letter

- ERIC proposes to make the following points in the comment letter:
  - Disclosure of lifetime income information should not be mandatory
  - The DOL should provide a safe method for plans that want to provide this information
  - Plans can direct participants to the DOL's website where they can explore options under on various circumstances
    - Many plans have resources to help participants
    - Focus should be on future retirees who have access to computers

Comment Letter

- Making projections can be confusing and misleading
- The accrued benefit cannot be more than the participant has earned to date
- ERISA section 105 only requires the disclosure of the total benefits accrued based on the latest information
- The DOL's approach to present value creates a whipsaw
- If the DOL requires plans to disclose this information, they should be able to identify it as information from the DOL, not the plan

Seth Safra
Partner
Covington & Burling LLP
ssafra@cov.com

Debra Davis
Vice President, Benefits
The ERISA Industry Committee
ddavis@eric.org

Kathryn Ricard
Senior Vice President, Retirement
The ERISA Industry Committee
kricard@eric.org