ERIC | THE ERISA INDUSTRY COMMITTEE
Shaping benefit policies before they shape you.

ALIYA ROBINSON
Senior Vice President, Retirement and Compensation Policy

November 17, 2020

The Honorable Jeanne Klinefelter Wilson
Acting Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

RE: RIN 1210-AB20 – Pension Benefit Statements—Lifetime Income Illustrations

Dear Assistant Secretary Wilson:

The ERISA Industry Committee (ERIC) is pleased to respond to the request of the U.S. Department of Labor (the Department) for feedback on the Interim Final Rule on Pension Benefits Statements—Lifetime Income Illustrations (the Interim Rule), which was published in the Federal Register on September 18, 2020.[1] This Interim Rule stems from the amendment of ERISA section 105 as amended by the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act)[2] and reflects comments made in response to the advance notice of rulemaking (ANPRM) on pension benefit statements under ERISA section 105 issued by the Department in 2013.[3]

The primary public policy rationales behind the lifetime income disclosures are to increase plan participants' understanding of the importance of saving for the duration of their retirement and to create uniform illustration methods for considering potential lifetime income streams. ERIC supports Congress and the Department in encouraging Americans to focus on adequately preparing for retirement, and we commend your support for the ongoing efforts of plans and plan sponsors in this regard.

However, ERIC's member companies already spend considerable amounts of time, money, and effort to educate their workers about retirement adequacy, including for the development of sophisticated on-line calculators that offer participants the ability to calculate lifetime income using a variety of assumptions tailored to the individual participant. Consequently, we are concerned that some aspects of the Interim Rule will discourage the individualized education that plan sponsors currently provide.

ERIC is a national advocacy organization that exclusively represents large employers that provide health, retirement, paid leave, and other benefits to their nationwide workforces. Our member companies are leaders in every sector of the economy, with stores, warehouses, factories, and operations in every state. ERIC is the voice of large employer plan sponsors on

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[1] 85 FR 59132 (September 18, 2020).
[2] Public Law 116-94 (Dec. 20, 2019).
[3] 78 FR 26727 (May 8, 2013).

public policies impacting their ability to sponsor benefit plans for active and retired workers, as well as families. Our member companies tailor retirement, health, and compensation benefits to meet the unique needs of their workforces. We have a strong interest in policies that impact the ability of large employers to provide effective and cost-efficient retirement and health care programs to millions of workers, retirees, and their families. As such, ERIC has a vested interest in the Interim Rule and is well-positioned to provide helpful information from the perspective of large plan sponsors, those most affected by the Interim Rule.

Introduction

A one-size-fits-all approach does not work for employers and their participants, and accordingly, flexibility is in the best interest of participants, employers, and the retirement industry. Since the introduction of the Lifetime Income Disclosure Act in 2009, ERIC and the plan sponsor community have voiced serious concerns about the specific lifetime income disclosure imposed on communications between the employer and plan participants.[4] The greatest concern is that an inflexible disclosure requirement will confuse and mislead plan participants without advancing retirement security or lifetime income planning. Moreover, we are concerned that the mandated disclosures will stifle the use of innovative financial tools and increase litigation risks, all without improving retirement adequacy. While we understand there are studies that show an increase in retirement savings if an annuitized amount is listed on a statement, we respectfully submit that an on-line tool that allows participants to vary the assumptions based on their individual circumstances will provide a much more useful disclosure and a better educational experience. Therefore, we offer the following recommendations to create a final rule that will provide meaningful information to plan participants and flexibility for plan sponsors to continue to provide innovative and individualized retirement education to their plan participants.

Comments

Participants and Employers Need Greater Flexibility to Make Lifetime Income Disclosures Meaningful. Large employers design and implement retirement plans to meet the specific needs of their workers. While we appreciate the efforts of Congress and the Department to provide useful information to participants, we strongly believe that the Interim Rule will have the

[4] Opposition to the Lifetime Income Disclosure Act to Senate (November 29, 2016) https://www.eric.org/eric-sends-letter-to-congress-opposing-the-lifetime-income-disclosure-act/;
Lifetime Income Disclosure Act re-introduction letter to cosponsors (April 7, 2017) https://www.eric.org/eric-raises-concerns-about-lifetime-income-disclosure-act/;
Retirement Enhancement & Savings Act letter to Congress (March 14, 2018) https://www.eric.org/erics-letter-to-u-s-senate-on-lifetime-income-disclosure-act/;
Modification of the Lifetime Income Disclosure Act Letter to House Ways and Means Chairman (March 28, 2019) https://www.eric.org/uploads/doc/retirement/The%20ERISA%20Industry%20Committee%20(ERIC)%20letter%20to%20Chairman%20Neal%20on%20LIDA%20Mandate%203-28-19.pdf

opposite effect of what is intended. Using static assumptions that are not individualized and illustrating lifetime income options that are not available under the plan or in the marketplace will create confusion for participants and could be misleading. Instead, a final rule should provide flexible disclosure options that provide useful and meaningful information to plan participants.

- **Non-Individualized, Static Assumptions Will Not Help Plan Participants**. As workforces change and retirement-savings vehicles evolve, participants need the flexibility to plan for their particular situation. Accordingly, assumptions for lifetime income stream illustrations should reflect the diversity of experience large employers see within their participant populations and allow for participant input. For the reasons described below, the assumptions in the Interim Rule will not be helpful to plan participants and beneficiaries.
    - Commencement Date and Age. The Interim Rule requires that the disclosure assumes that the participant is age 67 and that the annuity starts immediately. Obviously, plan participants range in age. Giving a twenty-something participant an immediate annuity calculation based on the current account balance – without any inclusion of future contributions or earnings – is essentially meaningless. Even without future earnings or contributions, the annuity amount will be vastly different due to the delay in paying it out. The caveat in the model statement points out this problem but does not explain it. Participants would get information that is far more meaningful from a calculator linked to their specific retirement plan where they can input their own information and change assumptions to understand the effect of different contribution amounts and retirement dates.
    - Marital Status and Amount of Survivor's Benefit. Unmarried participants may be confused by receiving a calculation for a married participant. Even for married participants, the survivor benefit is not easily explained in a model notice. Instead, plan participants would gain a greater understanding of joint and survivor annuities if given access to a calculator where they could input their own marital status and the amount of the survivor benefit to truly understand the impact of joint and survivor annuities. Allowing participants to change assumptions in a calculator would provide important information for the participant to best understand the impact of the different types of annuities.
    - Interest Rate. Interest rates vary not only among annuity providers but also depending on the type of annuity, the age of the participant, and when the annuity will begin. Again, this information is not easy to convey in a model notice. Participants would be better served by being able to see how different interest rates will affect their lifetime income.
    - Unisex Mortality Table. The model disclosures note that using a gender-neutral mortality table does not reflect the commercial market. As a matter of fact, only annuities distributed through ERISA plans use gender-neutral mortality tables. Since less than fifteen percent of defined contribution plans offer in-plan

annuities, the use of gender-neutral mortality tables will be meaningless for over 85% of participants receiving this information.[5]

- Annuity Disclosure. Requiring an annuity disclosure will be confusing and misleading, especially in plans that do not offer annuity distribution options. The Interim Rule requires a specific monthly dollar figure to be included annually on retirement plan statements using the stated set of assumptions. As noted above, static, non-individualized assumptions do not provide participants with meaningful information. Moreover, displaying the monthly dollar figure next to the overall account balance could lead some participants to believe that the annuity is a distribution option under the plan—which, as noted above, does not apply to over 85% of participants in defined contribution plans.

- **Plan Participants Need Education Materials that are Easy to Understand.** As written, the Interim Rule will create greater confusion and require Human Resources departments to explain the disclosure to confused participants. Human Resources professionals are not investment advisors and will need to be trained to answer questions from plan participants that these new disclosures will raise. Appendix A to this letter illustrates some of the complex questions we anticipate Human Resources personnel will face.

- **The Current Disclosure Proposal Will Stifle Innovation in Participant Education**. Before the passage of the SECURE Act, employers and service providers have been actively developing tools to educate their workers on the importance of saving and retirement readiness.[6] By imposing a prescriptive disclosure mandate, the Department will stifle innovation with respect to participant disclosures in this area. The result will be that most companies and service providers will focus on satisfying the safe harbor provided by the Department, instead of experimenting with new ways to educate and engage their workers regarding retirement savings.

  A one-size-fits-all approach does not work because different employers have a variety of benefit structures and distinct populations of workers – all with different needs. For those plan sponsors who are already providing more meaningful information and tools, the Department's safe harbor will undermine the illustrations that they carefully crafted and implemented and that were tailored to the needs of their individualized workforce. Encouraging — even indirectly — plan sponsors to abandon successful disclosures and replace them with a government-issued, single safe-harbor approach will stifle creativity and innovation. It will be counterproductive to the Department's and plan sponsors' goal of supporting workers' ability to adequately prepare for and manage their assets in retirement.

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[5] Callan Institute 2019 Defined Contribution Trends, p. 39 at https://www.callan.com/wp-content/uploads/2019/04/Callan-DC-Trends-Survey-2019.pdf.
[6] The Department even noted in the preamble to the ANPRM that many companies are already using innovative and creative methods to provide their workers with information to help them save for retirement. 78 Fed. Reg. at 26727.

For all the reasons above, ERIC urges the Department to provide plans with the flexibility they need to continue to offer useful information and tools for their workers. As such, plans should be encouraged to continue using on-line tools and calculators that provide annuity and joint annuity calculations.[7] In addition, a final rule should make clear that plans that use on-line tools and calculators will be covered by the liability protections under the rule.

The Final Rule Should Allow the Use of On-line Tools. Instead of static disclosures based on a fixed set of assumptions, the Department should promote the use of on-line modeling tools. These dynamic tools would:

1. Allow participants to generate more realistic projections,
2. Encourage financial education, and
3. Demonstrate interactively the uncertainty inherent in any projection.

In contrast, providing three additional numbers on a benefit statement – even with the best possible assumptions – cannot provide a complete picture. A well-developed interactive tool would allow workers to reflect on their personal financial situations and estimate their retirement-readiness under different scenarios. For example, participants could model future Social Security benefits, investment returns and losses, changes in compensation, etc. Participants could also reflect their spouse's actual age, which might be significantly higher or lower than their own age. Considering different scenarios can also help participants understand the impact of certain financial decisions, including an increase or decrease in future contributions.

Research shows that people who use on-line calculators tend to more adequately prepare for retirement. The research found that individuals using an on-line calculator appear to set more adequate savings targets.[8] The Department has already developed two interactive calculators — one that participants can use to calculate lifetime income streams based on a current account balance and future contributions, and another that enables more robust planning.[9] Instead of a prescriptive mandate, the Department should issue guidelines for on-line calculators to provide the required disclosures and give participants the ability to model retirement income options based on individual circumstances such as expected working life, expected contributions, and personal financial goals.

The SECURE Act Allows the Department to Provide More Flexible Guidance. While the statute requires a lifetime income disclosure, it provides discretion to the Department in the

[7] We understand that there may be standards that the Department would like to implement for on-line calculators. We are willing to provide further input to the Department about this issue.

[8] A Retirement Dashboard for the United States by David C. John, Grace Enda, William G. Gale, J. Mark Iwry (October 2020), pp. 20-21 at https://www.brookings.edu/wp-content/uploads/2020/10/Retirement-Security-Project-Dashboards-Oct-2020.pdf (recommending a retirement dashboard to include an on-line calculator to help participants make better retirement savings decisions; Jack VanDerhei and Nevin Adams, *A Little Help: The Impact of On-line Calculators and Financial Advisors on Setting Adequate Retirement-Savings Targets: Evidence from the 2013 Retirement Confidence Survey*, Employee Benefits Research Institute (EBRI) (Mar. 2013).

[9] U.S. Department of Labor, *Lifetime Income Calculator*, available at https://www.askebsa.dol.gov/lia/; U.S. Department of Labor, *Taking the Mystery out of Retirement Planning*, available at http://askebsa.dol.gov/retirementcalculator/ui/general.aspx.

formulation of the disclosure. Specifically, ERISA section 105 as amended by the SECURE Act provides,

> [t]he lifetime income streams described in this subclause are a qualified joint and survivor annuity (as defined in section 205(d)), based on assumptions specified in rules prescribed by the Secretary, including the assumption that the participant or beneficiary has a spouse of equal age, and a single life annuity. ***Such lifetime income streams may have a term certain or other features to the extent permitted under rules prescribed by the Secretary***.[10] (emphasis added)

This language does not limit the Department's guidance to a static disclosure. As long as the disclosure includes a joint and survivor annuity and single life annuity, the Department has the discretion to include other features. Therefore, an on-line calculator that provides for the calculation of these annuities satisfies the statute. As such, we encourage the Department to allow the use of on-line calculators to satisfy the disclosure requirement in the final rule.[11]

Disclosures Made Under the Interim Rule Could Increase Litigation Risks. The disclosures could cause participants to bring lawsuits. While the lawsuits might ultimately lack merit, litigation will unnecessarily add to the cost of providing benefits. Numerous lawsuits have been filed against retirement plan sponsors over investment options offered to participants, including options for which the Department has provided safe harbor status. We appreciate that the Department has tried to mitigate this risk by providing liability relief in certain instances. However, this relief is not a guarantee, and it provides no relief for plan sponsors that do not follow the safe harbor exactly. Consequently, we recommend a broader liability provision that covers options, such as on-line calculators, that also provide lifetime income illustrations.

The Model Disclosures Should be Amended to Reflect that the Disclosures are Estimates and are Required by the Department to be Disclosed. It is imperative that the model disclosures emphasize that the lifetime income amounts are estimates and that the assumptions are dictated by the Department – especially if the Final Rule does not make changes to allow for on-line calculators. In Appendix B, we provide several specific recommendations for changes to the model disclosures. We also recommend that these changes be carried through to the model language provided for each assumption.

Conclusion

Disclosures should be helpful and appropriate for workers and not overly complicated. We believe that an on-line modeling system is a better method to facilitate participants'

[10] ERISA section 105(a)(2)(D)(i)(III).
[11] We believe that on-line retirement calculators provide an interactive educational experience but there are other options, such as a chart showing annuity estimates for various account balances, that would provide greater information than the static disclosures in the Interim Rule. We would also support such options as an alternative to the illustrations in the Interim Rule.

understanding of their retirement readiness because individuals can tailor the assumptions to their particular circumstances. In order to support employers in their effort to educate participants on the importance of retirement savings and planning, we believe the Department should provide principles and guidelines regarding lifetime income illustrations and not require a one-size-fits-all disclosure.

ERIC appreciates the opportunity to provide comments on lifetime income disclosures. If you have any questions concerning our comments, or if we can be of further assistance, please contact us.

Sincerely,

Aliya Robinson

Aliya Robinson
Senior Vice President, Retirement and Compensation Policy
The ERISA Industry Committee

Appendix A – Human Resources Questions

The purpose of this Appendix is to illustrate the difficulty that Human Resources professionals will encounter when attempting to assist employees in describing the new annuitized amount on plan statements. Human Resources professionals are the front line for employees in handling retirement-related matters, and these questions exemplify questions that they might receive as a result of the disclosures.

1. What is the new figure stated in the retirement plan statement?
2. What is an annuity (or lifetime income)?
3. Why is this figure stated on my retirement statement?
4. How can I invest in an annuity product?
5. Are there multiple types of annuity products?
6. Should I invest in an annuity product?
7. Which annuity product is appropriate for me?
8. What are the assumptions behind this annuity?
9. Why are those the assumptions?
10. I was not planning on retiring at the age of this illustration. How can I see the illustration based on a different age?
11. I contribute more than what the illustration uses to calculate the figure. How can I see the illustration based on a different contribution rate?
12. What if I change my contribution level? Does the illustration change or will it be set by the standard assumptions?
13. Does this illustration take into account the company matching contribution?
14. Does this illustration take into account the company profit sharing contribution, which can change each year?
15. Does this illustration take into account any qualified non-elective contributions, which can change each year?
16. What are mortality tables?
17. Will the mortality tables change in the future?
18. Does the assumption utilize the mortality table for singles or married couples?
19. What is the interest rate of return assumption?
20. What happens if there is a recession or economic prosperity? Will the interest rate of return adjust accordingly?
21. Does this illustration include amounts I have invested in another employer-sponsored plan?
22. I only plan on using 25% of my retirement funds for the purchase of an annuity and the remainder as a lump sum. How do I determine my potential annuity amount?
23. I am not married, but can I get a joint and survivor annuity with another family member?
24. What type of fees are associated with an annuity?
25. Are fees attached to an annuity product higher than mutual fund fees?
26. I want to purchase an annuity with a 10-year guarantee. Does this illustration reflect that type of annuity? If not, how do I determine that figure?
27. Will this amount be the same if I delay my annuity beyond age 67? If so, how much will it differ?

Appendix B – Recommended Changes to the Model Benefit Statement

It is critical that the model statement emphasizes that these disclosures are only estimates and that the assumptions are required by the Department of Labor. We recommend that the language in red be added to the model statement and that the language in strike through be removed from the model statement.

Model Benefit Statement Supplement

Statement Period: [*Insert beginning and ending dates*]

This statement is required by the Department of Labor ("Department") and does not reflect distribution options in your plan. This statement provides you with ~~information~~ estimates about how much monthly income you could collect at retirement based on your current account balance. The estimated monthly payments in this statement are for illustrative purposes only; they are not a guarantee. Having this information now may help you plan how much money to save for your retirement.

Your account balance is [*insert statement balance*] as of [*insert last day of statement period*]. Below are estimates of how much money you could receive each month if you were to receive payments in one of the following two payment forms:

1. A single life annuity is an arrangement that pays you a fixed amount of money each month for the rest of your life. Following your death, no further payments would be made to your spouse or heirs.

   ~~If you receive payments in this form, we~~ Under this arrangement, the Department estimates you would receive [insert single life annuity amount] per month starting at retirement.

2. A qualified joint and 100% survivor annuity is an arrangement that pays you and your spouse a fixed monthly payment for the rest of your joint lives. In addition, after your death, this type of annuity would continue to provide the same fixed monthly payment to your surviving spouse for their life.

   ~~If you receive payments in this form, we~~ Under this arrangement, the Department estimates you would receive [insert qualified joint and 100% survivor amount] per month starting at retirement, and after your death, your surviving spouse would receive [insert qualified joint and 100% survivor amount] per month.

   ~~An annuity~~ Annuities with a lower survivor percentage may be available in the market, and reducing the survivor percentage (below 100%) would increase monthly payments during your lifetime, but would decrease what your surviving spouse would receive after your death.

The following information is to help you understand these estimated monthly payments.

- The estimated monthly payments in this statement assume that your account balance is 100% vested and, if you have taken a loan form 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~~ may be lower than shown since payments would be expected to 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~~ may be lower than shown since they would be expected to be paid over more years. If your spouse is older, monthly payments ~~would~~ may 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 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 and may be different from commercial rates. 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 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.

- The estimated monthly payments in this statement are based on ~~prevailing market conditions and other~~ assumptions required under federal regulations. If you decide to purchase an annuity, the actual payments you receive will depend on a number of factors and may vary substantially from the estimated monthly payments in this statement. For example, your actual age at retirement, your actual account balance (reflecting future investment gains and losses, contributions, distributions, and fees), and the market conditions at the time of purchase will affect your actual payment amounts.

- Unlike Social Security payments, the estimated monthly payments in this statement do not increase each year with a cost-of-living adjustment. Therefore, as prices increase over time, the fixed monthly payments will buy fewer goods and services.