Lincoln
Financial Group®

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Filed Electronically

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

Attention: Pension Benefit Statements Project

Re: RIN 1210-AB20

Dear Sir or Madam,

Lincoln Financial Group is writing in response to the Department of Labor's ("Department") request for comments regarding the Department's development of proposed regulations under section 105 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") that would require a participant's accrued benefits be expressed as an estimated lifetime income stream of payments on his or her pension benefit statement.[1]

Lincoln Financial Group is the marketing name for Lincoln National Corporation and its affiliates (collectively, "Lincoln"). Lincoln provides platform recordkeeping services to approximately 13,000 defined contribution plans subject to Title I of ERISA that provide retirement benefits to hundreds of thousands of participants. As a 'platform record keeper' to ERISA-covered defined contribution plans, Lincoln supports the Department's initiative to provide participants with information expressing their account balances as lifetime income streams on quarterly pension benefit statements. Lincoln believes providing participants with lifetime income stream illustrations will encourage participants to examine the amount of money they are currently saving for retirement and take action to enhance their retirement security. As such, Lincoln appreciates the opportunity to comment on the Advance Notice of Proposed Rulemaking ("ANPRM") set forth in 78 Fed. Reg. 26727-26739.

As discussed in more detail in the remainder of this letter, Lincoln would like to offer the following comments for the Department's consideration:

1. Lincoln supports the use of a standardized retirement age assumption for purposes of retirement income illustrations on participant pension benefit statements.

2. Lincoln supports the Department's promulgation of safe harbor assumptions (interest rate, mortality, etc.) for purposes of retirement income illustrations on participant pension benefit statements.

3. Lincoln supports the Department's proposed safe harbor assumptions for converting an account balance to an annuity.

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[1] 78 Fed. Reg. 26727 – 26739 (May 8, 2013)

4. Lincoln believes that illustrations based on reasonable non-safe harbor assumptions should be permitted.

5. Lincoln urges the Department to make clear in this regulation that providing retirement income illustrations on participant pension benefit statements using reasonable assumptions is investment education, not investment advice. This will allow plan sponsors and service providers to provide illustrations outside of the safe harbor without fear of fiduciary liability.

6. Lincoln agrees that guidance is needed on how to comply with a retirement income illustration requirement without running afoul of Financial Industry Regulatory Authority (FINRA) rules.

7. Lincoln supports the use of an annuity form of payment in the retirement income illustrations.

8. For in-plan annuity investments, Lincoln recommends converting the participant's entire account balance, including any in-plan annuity option, to a lifetime income stream using the current market value of all investments in the participant's account.

9. Lincoln urges the Department to codify the electronic disclosure compliance standards set forth in Field Assistance Bulletin ("FAB") 2006-03 into the pension benefit statement regulation to reduce the costs associated with including retirement income illustrations on the pension benefit statements.

10. To incorporate marital status in the retirement income illustrations, Lincoln believes that the illustrations should be required to contain either single life annuity illustrations only, or in the alternative, both single life and joint and survivor annuity illustrations, without regard to a participant's actual marital status. We do not believe the illustrations should include joint and survivor annuity illustrations only on benefit statements of married participants and beneficiaries.

ANPRM, Section II, A. Current and Projected Account Balances

Definition of Normal Retirement Age

All lifetime income stream projections and income illustrations under consideration by the Department in the ANPRM are based on the participant's "normal retirement age under the plan." See ANPRM §§ 2530.105-1(c)(2)(vi), (d)(1), (d)(2)(i) and (e)(4). Department requested comments on whether the projection and lifetime income illustrations should use a date other than the normal retirement age, as defined in section 3(24) of ERISA, and if so what date and why.

Section 3(24) of ERISA defines normal retirement age ("NRA") as,

"The earlier of:

A. The time a plan participant attains normal retirement age under the plan, or
B. The later of:
    i. The time a plan participant attains age 65, or
    ii. The 5th anniversary of the time a plan participant commenced participation in the plan."

The Department noted that is considering using NRA "because it already is a significant date for ERISA purposes."

Lincoln Comment: Lincoln believes a projected account balance and lifetime income illustration based on a standardized normal retirement date, such as age 65, would be more meaningful to participants than one based on NRA.

While Lincoln agrees with the Department that NRA is a significant date under ERISA for defined benefit plan purposes, Lincoln believes NRA has much less substantive meaning in the context of a defined contribution plan.

In a defined benefit plan, NRA has real and meaningful implications for benefit accrual, calculation of benefits, vesting, and commencement of benefits. As a result, participants in a defined benefit plan are very cognizant of the date they will reach NRA because it impacts when they are eligible to begin receiving payments from the plan and the amount they will receive.

In contrast, in a defined contribution plan, the significance of the NRA is a limited to rules requiring full vesting and prohibiting the suspension of accruals on or after NRA. Because of the way defined contribution plans are typically designed, neither of these rules have any significant impact today.[2]

Because NRA has little practical significance in defined contribution plans, Lincoln believes the definition of NRA contained in a defined contribution plan has virtually no meaning to participants. Very few participants in a defined contribution plan use a plan's definition of retirement date in determining when they should retire because the date has no substantive impact on their benefits. In addition, as participants move from plan to plan as they change jobs throughout their careers, different plan NRA definitions would produce different results, potentially confusing participants and undermining the intent and purpose of lifetime income illustrations.

In addition, variability in retirement age based on plan provisions and the age of a participant will be costly for service providers to program and prepare benefit statements. Some service providers may pass this cost onto plan sponsors and participants, thereby reducing retirement savings of participants.

Finally, attainment of age 65, the age when full social security benefits were initially available for decades under the Social Security Act, has become synonymous with retirement for many Americans. For example, even the definition of NRA in section 3(24) of ERISA incorporates age 65 in apparent recognition of the significance of age 65 as the historical social security full retirement age.

For these reasons, Lincoln believes a standardized retirement date based on attainment of age 65 would promote consistency across record keeping platforms, benefit statements and plans and provide participants with illustrations based on an assumed retirement age that has significant meaning to them. Consistency will enhance the participant experience by eliminating an arbitrary factor such as a plan's NRA and give the income illustrations more relevance to individual participants.

[2] Section 203(a)(2)(B) of ERISA requires a participant's account in a defined contribution plan to be 100 percent vested and nonforfeitable upon completion of either a "3-year cliff" or "6-year graded" vesting schedule. Thus, the vast majority of plan participants in a defined contribution plan are fully vested in their account balance well before they attain NRA, making full vesting at NRA a moot point. Likewise, the design of defined contribution plans makes the prohibition on suspending post NRA benefit accruals virtually meaningless in the defined contribution context.

ANPRM, Section II, B. Methodology of Projecting an Account Balance

General v. Safe Harbor Standards

The Department is considering a "reasonableness" standard as a general rule combined with a regulatory "safe harbor" standard.

The general rule being considered by the Department is that account balance "projections shall be based on reasonable assumptions taking into account generally accepted investment theories." See ANPRM § 2520.105–1(d)(1). A projection will not be considered reasonable, however, "unless it is expressed in current dollars and takes into account future contributions and investment returns." Thus, the general rule being considered by the Department does not require any single method or single set of assumptions for projecting an account balance to normal retirement age, although it does require overall reasonableness in light of generally accepted investment theories. Nor does the general rule limit the specific factors that must be considered, although it does require consideration of at least future contributions, investment returns, and inflation.

Lincoln Comment: Lincoln expresses no view on the appropriateness of including a future contribution assumption in account balance projections. However, Lincoln agrees with the Department that a general rule in which projections are based on reasonable assumptions taking into account generally accepted investment theories is both appropriate and desirable. However, Lincoln believes success of a general rule is contingent upon formal recognition by the Department that providing account balance and resulting monthly income illustrations is the provision of participant investment education within the meaning of Interpretive Bulletin 96-1, not investment advice within the meaning of section 3(21)(A)(ii) of ERISA and the regulations thereunder.

Formal recognition by the Department that furnishing income illustrations is participant investment education is consistent with the tenants of Interpretive Bulletin 96-1. In the bulletin, the Department specifically provided that furnishing information and materials that inform a participant about estimating future retirement income needs "would not constitute rendering 'advice' or making 'recommendations' 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' for purposes of section 3(21)(A)(ii) of ERISA."

Lincoln believes failure to formally recognize income illustrations as participant investment education would effectively render the general rule unusable for many employers and service providers because of concerns that they may be considered to be rendering investment advice under section 3(21)(A)(ii) of ERISA, which would result in fiduciary responsibility and potential liability. This outcome is counter to the fundamental intent and purpose of the ANPRM of providing participants with information vital to managing finances in order to provide income for life. Therefore, we urge the Department to formally acknowledge that these illustrations do not constitute investment advice or otherwise constitute a fiduciary act resulting in fiduciary or plan liability.

Finally, while Lincoln fully supports the safe harbor being considered by the Department as described below, the very existence of a safe harbor amplifies the need to formally recognize income illustrations as participant investment education under the general rule. Safe harbor rules in general have the tendency to marginalize broader, general rules. Out of fear of being deemed to be rendering investment advice, plan sponsors and service providers may avoid exploring other innovative formats, presentations, illustrations and forms of participant education regarding lifetime income to the detriment of those who the Department is trying to help, the participants themselves.

Safe Harbor Factors

The safe harbor being considered by the Department is narrower and more prescriptive than the general rule under consideration. The contemplated safe harbor would prescribe a specific set of assumptions for contributions, returns, and inflation. The set of assumptions, when used together, would be considered per se reasonable for purposes of the general rule. Thus, by using the safe harbor assumptions together, plan administrators will be deemed to be in compliance with the portion of the general rule that requires them to take into account contributions, returns, and inflation when projecting account balances.

The first assumption is that "contributions continue to normal retirement age at the current annual dollar amount, increased at a rate of three percent (3%) per year." See ANPRM § 2520.105–1(d)(2)(i).

The second and third assumptions are investment returns of seven percent (7%) per year (nominal) and a discount rate of three percent (3%) per year for establishing the value of the projected account balance in today's dollars. See ANPRM § 2520.105–1(d)(2)(ii) and (d)(2)(iii).

Lincoln Comment: As noted previously, Lincoln expresses no view on the appropriateness of including a future contribution assumption in account balance projections. In addition, while we agree that returns and inflation are necessary factors to include in an account balance projection, we do not express a view on the appropriateness of the 7% return assumption and the 3% discount factor included in the ANPRM. However, Lincoln does fully support the use of standardized assumptions in illustrations that are applied without regard to NRA defined in the plan or annuity contracts held in the plan. With this being said, market volatility can shift the paradigm of future market return estimates as evidenced by the last several years. As such, Lincoln respectfully suggests the Department consider reserving the right to change the assumptions set forth in the regulation as appropriate based on actual market trends and inflation in the future.

Consistent with our comments on the general rule, Lincoln urges the Department to formally recognize that providing account balance and resulting monthly income illustrations via the safe harbor is the provision of participant investment education within the meaning of Interpretive Bulletin 96-1, not investment advice within the meaning of section 3(21)(A)(ii) of ERISA and the regulations thereunder. Although the safe harbor may mitigate some concerns that a plan sponsor or service provider would be deemed to be rendering investment advice, it will not eliminate such concerns in the absence of a formal pronouncement by the Department.

Projections and Rules of the Financial Industry Regulatory Authority

In response to questions regarding the relationship, if any, between the projection requirement under consideration by the Department and National Association of Securities Dealers (NASD) Rule 2210(d)(1)(D) of the Financial Industry Regulatory Authority (FINRA), the Department and FINRA staff intend to work together and, if necessary, provide guidance, which may be similar to the guidance provided in connection with the Department's recently finalized participant-level fee disclosure regulation under 29 CFR 2550.404a–5. The Department requested comments on whether, and to what extent, such guidance is needed and why.

Lincoln Comment: NASD Rule 2210(d)(1)(D) provides in part, "communications with the public may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast." Calculating projected account balances and resulting monthly payment illustrations in accordance with the ANPRM necessarily requires the use of a host of assumptions, including contributions, returns and inflation assumptions. As such, the NASD rule appears on its face to potentially prohibit a plan sponsor or service provider from furnishing projected account balances and resulting monthly payment illustrations to participants. In the absence of joint guidance from the Department and FINRA, plan sponsors and service providers will be faced with the potential of violating one or both agencies' compliance requirements.

As evidenced by FINRA Regulatory Notice 12-02 (January 2012) and SEC Staff No Action Letter (October 26, 2011), the Department has a successful history of working with other federal regulatory agencies to provide relief to seemingly conflicting agency compliance requirements. In light of the Department's success in working with FINRA in the past, and to alleviate potential cross-agency compliance concerns, Lincoln urges the Department to work with FINRA and provide joint guidance indicating compliance with the tenants of the ANPRM will not trigger a violation of NASD Rule 2210(d)(1)(D). In addition, any guidance should make clear that retirement income illustrations are plan administrator communications, not broker-dealer communications.

ANPRM, Section II, C. Methodology for Converting an Account Balance into a Lifetime Income Stream

Draw Down v. Annuitization Approach

When converting an account balance into a lifetime income stream, the Department considered at least two conversion methods:

1. Draw Down Approach; and
2. Annuitization Approach.

In the "draw down" approach, the participant is assumed to withdraw a fixed dollar amount or fixed percentage each year from his or her account until the account is depleted.

In the "annuitization" approach, the benefit is expressed as a lifetime monthly payment to the participant similar in form to a pension payment made from a traditional defined benefit plan. This approach is also the method that insurance companies use to determine payment amounts with annuity products.

The proposal the Department is considering would use the annuitization approach of conversion because, of the two approaches, the second method reflects "lifetime" income whereas the first method reflects an income stream that may or may not be payable for the life of the participant. The second method reflects one of the Department's primary goals in encouraging meaningful benefit statements that help inform plan participants and beneficiaries about their financial readiness for the entirety of their retired lives, not just a portion of it.

<u>Lincoln Comment</u>: Lincoln fully supports the Department's use of the annuitization approach to convert an account balance into a lifetime income stream illustration. As an insurance company, it may come as little surprise to the Department that Lincoln supports the annuitization approach. However, Lincoln's support of the annuitization approach extends far beyond the obvious reasons an insurance company may have for supporting annuity based conversion methods.

As a central tenant of our philosophy on retirement security, Lincoln believes a fundamental component of participants' retirement success is the ability to ensure that their retirement savings will last for the rest of their lives. While drawdown plans can attempt to ensure this, they cannot guarantee lifetime income. Even if a participant never withdraws more than provided for under a drawdown plan, and the account's investment returns meet or exceed projections, the participant can still run out of money if he lives longer than expected. Added to this longevity risk is the risk that a participant will take excess withdrawals or even cash out the whole account. Finally, even participants who meticulously craft and follow a well-designed draw down strategy may see the strategy fail due to market volatility.

In Lincoln's opinion, if the goal of the retirement income illustration is to help participants accumulate sufficient savings to last them through their entire retirement lives, then the annuity should be the basis for that illustration, because an annuity is the only mechanism for retirement income that addresses all of the above-described risks. This is in keeping with primary intent of the ANPRM as stated by the Department that, "plan participants and beneficiaries are informed of their financial readiness for the ***entirety*** [emphasis added] of their retirement lives, not just a portion of it."

In contrast, the draw down approach would provide participants with income illustrations that assume participants will never live longer than projected at the time the draw down plan is developed and will voluntarily refrain from spending more than a fixed amount or percentage each year. Such illustrations would also presuppose that market volatility will not erode participant's account balance. We believe the validity of such assumptions has not been borne out by past experience and would understate level of retirement savings that participants will need to ensure lifetime financial security.

For these reasons, Lincoln believes the annuitization approach best supports the Department's stated goal of providing true lifetime income stream estimates to participants.

Lifetime Income Stream Annuitization Factors

There are five relevant factors that must be considered when illustrating or converting an account balance (whether current or projected) to a lifetime income stream. The first is the date the payments are expected to start, often referred to as the "annuity start date" (ASD). The second is the age of the participant or beneficiary at the ASD. The third is the form of payment (*e.g.,* single life annuity). The fourth is the expected mortality of the participant or beneficiary and any spouse. The fifth is the interest rate for the applicable mortality period. The Department specifically requests comments on whether these are the appropriate variables for illustrating an account balance as a lifetime income stream.

<u>Lincoln Comment</u>: Lincoln agrees with the Department that the five stated factors are the essential factors needed when illustrating or converting an account balance (whether current or projected) to a lifetime income stream. In addition, Lincoln believes that standardized safe harbor actuarial assumptions, including ASD, form of payment, expected mortality and interest are appropriate to create consistency and credibility for lifetime income illustrations across plans and the retirement plan service provider industry.

Use of Mortality and Interest Rate Provisions Contained in the Contract

ANPRM § 2520.105–1(e)(3) provides that when a plan offers an annuity form of distribution, the actual mortality and interest rate provisions contained in the plan's annuity contract should be reflected in the lifetime income illustrations. For plans that do not offer annuity forms of distribution, the Department is considering a safe harbor approach for mortality and interest rate assumptions

<u>Lincoln Comment</u>: Lincoln recommends use of a safe harbor approach for mortality and interest rate assumptions for all plans, without regard to the annuity form of distribution or lack thereof that is actually offered under the plan.

Annuity contracts generally provide participants access to the minimum annuity purchase rates set forth in the contract or the current annuity purchase rates offered by the insurance company, if higher. This contract design is extremely common in plans that offer annuity forms of distribution. Basing lifetime income illustrations solely on the minimum rates set forth in the plan's annuity contract would be inaccurate and misleading to participants. Because annuity contract minimum rates would inflate the estimated income stream, this may result in denying the participant access to information necessary to change the perception of retirement savings as simply a savings account and undermine efforts to motivate participants to save more for retirement.

Alternatively, a safe harbor based on current mortality and interest rate assumptions for all plans, would provide participants with a more realistic and holistic illustration of the lifetime income that may be generated from their retirement plan account balances today. Standardizing current mortality and interest rate assumptions would also have the added benefit of bringing consistency across plans and service providers. For these reasons, Lincoln believes it would be better to use a safe harbor approach for mortality and interest rate assumptions for all plans, without regard to the annuity form of distribution or lack thereof that is actually offered under the plan.

Safe Harbor Mortality and Interest Rate Assumptions

The safe harbor mortality assumption under consideration is "the applicable mortality table under section 417(e)(3)(B) of the Code, in effect for the month that contains the last day of the period to which the statement relates." See ANPRM § 2520.105–1(e)(2)(ii)(B).

The Department selected the section 417(e)(3)(B) applicable mortality table for the following three reasons:

1. The Treasury Department periodically updates the mortality table;
2. The section 417(e)(3)(B) applicable mortality table is unisex; and
3. The table is publicly available and widely known to employee benefit plan service providers.

The safe harbor rate of interest under consideration is 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."

<u>Lincoln Comment</u>: Lincoln supports use of the applicable mortality table under section 417(e)(3)(B) of the Code and the 10-year constant maturity Treasury securities rate in the safe harbor.

With regard to use of the mortality table under section 417(e)(3)(B) of the Code, Lincoln recommends use of the table in effect for the month containing the assumed commencement date, as opposed to the table in effect for the month that contains the last day of the period to which the quarterly benefit statement relates. Lincoln feels the table in effect for the month containing the assumed commencement date provides a more realistic and meaningful illustration to the participant. Lifetime income illustrations are based on the premise of depicting the amount of income a participant could expect to begin receiving on a hypothetical commencement date in the future. Annuity payments are directly tied to the anticipated life expectancy of the participant on that commencement date. Therefore, Lincoln feels it is appropriate to use a mortality table containing assumed commencement date to provide the most realistic illustration possible to the participant.

With regard to use of the 10-year constant maturity Treasury securities rate, Lincoln agrees with the Department that no single interest rate assumption will be perfect for all participants. Nevertheless, Lincoln feels the 10-year constant maturity Treasury securities rate is the best choice. We agree with the RFI commenter who indicated that the 10-year constant maturity rate most closely represents the interest rates that are reflected in actual pricing of annuities. In addition, we believe using current interest rates as represented by the 10-year constant maturity Treasury securities rate would help educate participants on annuity pricing throughout their career by illustrating the effect of changes in rates with market fluctuation. As a potential, future purchaser of annuities, understanding how annuity prices are impacted by current interest rates will help better prepare a participant to make the best decision possible when purchasing an annuity.

ANPRM, Section II, E. In-Plan Annuities

The Department is soliciting comments on how best to factor investments of this type into lifetime income illustrations. For instance, one approach is that the current market value of all in-plan annuity units accumulated by a participant could be added to the rest of that participant's account balance under ANPRM § 2520.105–1(c)(2)(v), before determining the projected account balance under ANPRM § 2520.105–1(c)(2)(vi). A second approach is to add the total guaranteed monthly payment amount derived from all of a participant's in-plan annuity units to the estimated monthly payment amount of the non-annuity portion of the participant's account, if any, determined under ANPRM § 2520.105–1(c)(2)(vii) and (viii). A third approach is to convert the participant's entire account balance, even any part that is not allocated to an in-plan annuity option, to a lifetime income stream using the current unit price of the in-plan annuity option.

Lincoln Comment: Lincoln recommends converting the participant's entire account balance, including any in-plan annuity option, to a lifetime income stream using the current market value of all investments in the participant's account. We believe this approach most closely approximates disclosures currently furnished today by service providers. In addition, this approach provides a realistic snapshot of lifetime benefits a participant could expect to receive from his or her account as invested currently. Finally, this approach most closely treats in-plan annuities like all other investments in a participant's account balance. We believe differentiating in-plan annuities from other investments in standardized lifetime income illustrations will only confuse participants and detract from the goal of providing meaningful information to participants regarding lifetime income.

ANPRM, Section II, F. Miscellaneous

Idea on How to Reduce the Cost of Lifetime Income Illustrations

The Department welcomes ideas on how the cost of the contemplated lifetime income illustrations might be reduced without compromising the anticipated benefits.

Lincoln Comment: Lincoln urges the Department to codify the electronic disclosure compliance standards set forth in Field Assistance Bulletin ("FAB") 2006-03 into the pension benefit statement regulation to reduce the costs associated with producing pension benefit statements without compromising consumption of information by participants. Lincoln believes embracing electronic disclosure will actually enhance consumption of disclosure information by participants and lower costs by reducing the amount of expensive paper mailings.

Americans of all ages are increasingly reliant on and accustomed to receiving and have constant access to all manner of important documentation through electronic means. The U.S. Congress recognized the movement towards electronic consumption of information by Americans and enacted Section 105(a)(2)(A)(iv) of ERISA in Section 508(a) of the Pension Protection Act of 2006 ("PPA")[3]. Section 105(a)(2)(A)(iv) of ERISA provides that a pension benefit statement "may be delivered in written, ***electronic*** [emphasis added], or other appropriate form to the extent such form is reasonably accessible to the participant or beneficiary."

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[3] Pub. L. No. 109-280, 120 Stat. 780 (2006).

In recognition of the statutory provision enacted by the U.S. Congress authorizing a plan sponsor to deliver pension benefit statements electronically, the Department issued FAB 2006-03 to provide guidance to plan sponsors on electronic delivery. FAB 2006-03 provides in part, "with regard to pension plans that provide participants continuous access to benefit statement information through one or more secure websites, the Department will view the availability of pension benefit statement information through such media as good faith compliance with the requirement to furnish benefit statement information, provided that participants and beneficiaries have been furnished notification that explains the availability of the required pension benefit statement information and how such information can be accessed by the participants and beneficiaries. In addition, the notification must apprise participants and beneficiaries of their right to request and obtain, free of charge, a paper version of the pension benefit statement information required under section 105. Such notification should be written in a manner calculated to be understood by the average plan participant, furnished in any manner that a pension benefit statement could be furnished under this Bulletin, and furnished both in advance of the date on which a plan is required to furnish the first pension benefit statement pursuant to section 105(a)(1)(A)(i) and (ii) of ERISA and annually thereafter."

The guidance in FAB 2006-03 regarding electronic disclosure has been embraced by plan sponsors, participants and service providers and implemented and operated without incident for nearly seven years. We believe the Department should take this opportunity to formally codify FAB 2006-03 into regulation.

Tracking Marital Status

The Department requested comments on whether there would be substantial cost savings if all benefit statements were required to contain joint and survivor illustrations of the type described in ANPRM § 2520.105–1(e)(1)(ii), as opposed to including such illustrations only in benefit statements of married participants and beneficiaries.

Lincoln Comment: Lincoln believes there would be both a cost savings and an added benefit to participants if all benefit statements were required to contain either single life annuity illustrations only or in the alternative, both single life and joint and survivor annuity illustrations, as opposed to including joint and survivor annuity illustrations only in benefit statements of married participants and beneficiaries.

Including only single life or both single life and joint and survivor illustrations on pension benefit statements helps standardize lifetime income illustrations across plans and the industry, leading to consistency and a better participant experience. In addition, a service provider may not be apprised of a participant's marital status until the participant requests a distribution. Prior to distribution, a service provider has a limited need to know the marital status of a participant. If a service provider is required to track marital status for purposes of knowing when to include a joint and survivor illustration, many service providers will simply include both single and joint and survivor illustrations to reduce programming costs and ease administrative burden, absent a prohibition to the contrary.

Potential Lawsuits

As to the concern about potential lawsuits based on unrealized expectations, the Department believes this issue might be addressed in two ways. First, benefit statements could include a clear and definitive statement that the lifetime income illustration is an estimate, based on specific assumptions, and not a guarantee. The Department believes this disclosure would serve to put participants and beneficiaries on notice that the illustration is only an estimate and, thereby, minimize the likelihood that they would believe the illustration is a promise or guarantee.

Second, 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. See ANPRM § 2520.105–1(d)(2) and (e)(2)(ii).

The Department specifically requested comments on the extent to which including a clear and definitive statement that the lifetime income illustration is an estimate and implementing the regulatory safe harbor being considered would help address concerns about such potential lawsuits.

Lincoln Comment: While Lincoln believes including a clear and definitive statement that the lifetime income illustration is an estimate and implementing the regulatory safe harbor being considered would help address concerns about potential lawsuits, we believe a significant reduction in potential litigation would be achieved by the Department's recognition—in the form of a regulation—that providing account balance and resulting monthly income illustrations—whether under the regulatory safe harbor or the general rule—is the provision of participant investment education within the meaning of Interpretive Bulletin 96-1, not investment advice within the meaning of section 3(21)(A)(ii) of ERISA and the regulations thereunder. Definitively indicating that furnishing account balances and resulting monthly income illustrations is the provision of participant investment education will diminish potential law suits alleging breach of fiduciary duty by plan sponsors and service providers who provide lifetime income illustrations in accordance with regulation.

ANPRM's Regulatory Framework

The Department has not concluded that the ANPRM's regulatory framework is the only or best approach. The Department intends to consider all reasonable alternatives to direct regulation, including whether there is a way short of a regulatory mandate to get plan administrators voluntarily to provide their participants and beneficiaries with constructive and helpful lifetime income illustrations. In this regard, the Department solicited comments on all reasonable ideas, either in lieu of or in conjunction with a direct regulation, to address this very important issue.

Lincoln Comment: Lincoln supports the Department's development of regulations requiring a participant's accrued benefits be expressed on his or her quarterly pension benefit statement as an estimated lifetime stream of payments. In alignment with the Department's reasoning for proposing the regulation and as stated throughout our comments, Lincoln believes providing this information on participants' quarterly pension benefit statements will provide vital information that will contribute significantly to the retirement success of American workers.

As the Department noted, administrators of defined contribution plans have been free to provide lifetime income illustrations to participants for nearly 40 years since the enactment of ERISA, yet few actually have done so despite the apparent support for such illustrations as evidenced by the vast majority of responsive RFI commenters and hearing witnesses who supported the concept.

Lincoln believes reluctance to provide lifetime income illustrations on benefit statements and concerns expressed by some regarding a regulatory mandate center on costs incurred to implement and incorporate lifetime income illustrations into benefit statements and fiduciary liability concerns.

Lincoln acknowledges the concerns, but believes the concerns can be greatly mitigated through standardized safe harbor assumptions and factors used to calculate lifetime income illustrations coupled with the Department formally acknowledging that providing account balance and resulting monthly income illustrations is the provision of participant investment education within the meaning of Interpretive Bulletin 96-1, not investment advice within the meaning of section 3(21)(A)(ii) of ERISA and the regulations thereunder.

Standardizing safe harbor assumptions and factors used to calculate lifetime income illustrations not only creates consistency and credibility for lifetime income illustrations as previously stated, it also reduces costs to implement and incorporate illustrations into benefit statements by greatly reducing the amount of programming involved in the creation of illustrations. If all plan sponsors and service providers wishing to use the safe harbor approach are using the same set of standardized assumptions and factors that are readily available in the marketplace to create the same set of standardized illustrations, a wide range of software, information technology firm service offerings and record keeping platforms will quickly be developed and brought to the market to fill the need. Competition, the catalyst of price reduction and innovation in the free market, will naturally cause the price of such products and services to decrease.

Lincoln acknowledges the concern that standardized safe harbor assumptions may stifle innovation of non-safe harbor illustrations, formats and other approaches of furnishing lifetime income illustrations to participants due to fiduciary liability concerns. However, Lincoln believes such concern could be virtually eliminated by the Department formally recognizing income illustrations as participant investment education. For years, some service providers have made numerous lifetime income illustrations available to participants without issue by the Department under the apparent assumption that such illustrations are merely education, not investment advice. This assumption is grounded in reliance on the tenants of Interpretive Bulletin 96-1. In the bulletin, the Department specifically provided that furnishing information and materials that inform a participant about estimating future retirement income needs "would not constitute rendering 'advice' or making 'recommendations' to a participant or beneficiary within the meaning of 29 CFR 2510.3-21(c)(1)(i). However, because Interpretive Bulletin 96-1 focuses primarily on asset allocation, there has been concern among many plan sponsors and service providers that it was not intended to address retirement income illustrations and other retirement income planning tools. This has impeded the adoption and use of these tools. Formal recognition by the Department that providing account balance and resulting monthly income illustrations is the provision of participant investment education within the meaning of Interpretive Bulletin 96-1 will allow plan sponsors and service providers to continue developing innovative lifetime income illustrations, formats and presentations for participants, just as they have done in the past, but now secure in the knowledge that they will not be deemed to have inadvertently provided investment advice.

Finally, Lincoln believes that a regulation's success is largely dependent on upon the collaborative efforts of the Department, plan sponsors and service providers working together to reach a common a goal. In the case of the ANPRM, the common goal is to ensure participants are provided with sufficient information to prepare themselves for successful retirement by incorporating lifetime income illustrations into quarterly pension benefit statements. Lincoln believes achieving this goal is well worth the effort and supports the Department's proposal to require inclusion of such illustrations on quarterly pension benefit statements.

Conclusion

Thank you for the opportunity to comment on this important initiative. We would welcome the opportunity to meet with the Department to discuss our comments regarding the proposed regulation in further detail.

Sincerely,

Abigail B. Pancoast

Abigail B. Pancoast
Chief Counsel - Retirement Plan Services

ABP/bl