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FILED ELECTRONICALLY

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: Pension Benefit Statements

Dear Sir or Madam:

We are writing on behalf of the Committee of Annuity Insurers (the “Committee”) in response to the request for comments on the Department of Labor’s (the “Department”) proposal to show a participant, on his or her benefit statement, an estimate of the lifetime retirement income that the participant might expect.¹ The Committee is pleased to **support** this proposal, which is a crucial part of helping Americans achieve a secure retirement as defined contribution plans and Individual Retirement Arrangements become the dominant retirement savings vehicles.

Achieving financial security in retirement is a critical goal of all Americans, and the Committee strongly supports public policies that help individuals meet that goal. In recent years, considerable attention has been given to the importance of saving for retirement, and rightfully so. However, accumulating retirement savings is only one half of the retirement security equation. The other half is making those savings last throughout retirement. The Committee believes that this Advance Notice of Proposed Rulemaking (“ANPRM”) is an important step that will help participants ensure that they are saving enough for retirement and are considering the

¹ The Committee is a coalition of life insurance companies formed in 1982 to participate in the development of federal policy with respect to annuities. The Committee’s current 28 member companies represent approximately 80% of the annuity business in the United States and are among the largest issuers of annuity contracts in connection with employer-sponsored retirement plans and individual retirement arrangements. A list of the Committee’s member companies is attached.

use of products, such as annuities and living benefit guarantees, that ensure the availability of a lifetime of income.

As fewer individuals have access to a defined benefit pension plan, Americans are increasingly responsible for ensuring that their retirement savings last. A worker in a 401(k), 403(b), or other defined contribution plan knows the total value, right now, of his or her account balance. But it is not easy to understand what that account balance would generate as a stream of income. This contributes to what research shows is a growing unease among workers about whether they will be able to retire comfortably.² Part of the problem is that workers simply do not know how much they need to save to replace their working income.³ Workers who have taken the step of calculating the amount of income they will need in retirement, which is not easy, are considerably more confident in their ability to save the amount needed.⁴

I. The Committee Supports Requiring an Annuity Illustration on Benefit Statements

This is an important tool for retirement savers. The Committee supports the Department's proposal to require lifetime income illustrations on participants' pension benefit statements using an annuitization approach to convert a participant's account balance into a lifetime income stream. Converting a retirement nest egg into a sustainable stream of retirement income can be a daunting task for an individual to undertake without the right tools – and we applaud the Department for proposing that Americans have this tool in their tool box.

The Committee agrees with the Department's view that furnishing participants with a lifetime income illustration would help participants make informed retirement planning decisions. The Committee's suggestions for improvement focus on how the Department can develop a proposal that will serve the best interests of participants while removing potential administrative obstacles that plans and plan service providers could experience in facilitating the development of the illustrations.

Lifetime income illustrations are not new and are commonplace in the retirement market. Many Committee members that provide retirement plan services, as well as other service providers, already make a lifetime income illustration available for plans to place on participant benefit statements. The illustrations currently in the market take a variety of approaches and use a variety of assumptions. For example, some service providers use a

² The Employee Benefit Research Institute's ("EBRI") long running *Retirement Confidence Survey* shows that Americans' confidence in their ability to retire comfortably remains at historic lows. Ruth Helman et al., *The 2013 Retirement Confidence Survey: Perceived Savings Needs Outpace Reality for Many*, EBRI Issue Brief No. 384 (Mar. 2013), http://www.ebri.org/pdf/surveys/rcs/2013/EBRI_IB_03-13.No384.RCS.pdf.

³ More than half of all those surveyed by EBRI had not taken what EBRI calls a "basic planning step" -- determining how much money they are likely to need in retirement and how much they will need to save to meet that goal. EBRI & Matthew Greenwald & Assocs., *2013 Retirement Confidence Survey: Preparing for Retirement in America* (Fact Sheet # 3), http://www.ebri.org/pdf/surveys/rcs/2013/Final-FS.RCS-13.FS_3.Saving.FINAL.pdf.

⁴ *Id.*

systematic withdrawal approach based on Monte Carlo simulations, while others use an annuitization approach (including the Federal government's Thrift Savings Plan). Thus, there is no reason to believe that the annuitization approach presents any greater complexity or administrative burdens than do the other approaches currently in use. More importantly, while the other approaches undoubtedly can be useful to participants, only the annuitization approach reflects true lifetime income. Thus, we urge the Department to be skeptical of those who may suggest that mandating the annuitization approach will harm participants or is impossible to implement.

The lifetime income illustration should be based on an estimate of income that will last for life. The Committee also agrees with the Department's expressed view in the ANPRM that use of an "annuitization approach" to convert a participant's account balance into a stream of income is the best approach. As noted by the Department, this approach reflects "lifetime" income, whereas use of a "systematic withdrawal" approach reflects an income stream that may or may not be payable for the life of the participant.

Calculating the lifetime income stream using an annuitization approach does not require a participant to buy a particular product, or even suggest that any one way of managing assets is better than another. It simply gives the participant an estimate based on a *guaranteed* stream of income.

The Department has the authority to issue this rule. The Committee agrees that the Department has the authority pursuant to ERISA sections 105, 109, and 505 to propose rules that would require a participant's pension benefit statement include showing an account balance as an estimated lifetime income stream of payments. The Department has broad authority to interpret ERISA and promulgate rules that are in the best interests of participants and beneficiaries. ERISA section 505 provides, in relevant part, that the Secretary of Labor may prescribe such regulations as the Secretary finds necessary or appropriate to carry out the provisions of title I of ERISA. Courts have repeatedly upheld this broad grant of authority.⁵ ERISA section 109(c) provides that the Secretary may prescribe the format *and content* of the summary plan description, the summary annual report and "any other report, statements or documents... which are required to be furnished or made available to plan participants and beneficiaries receiving benefits under the plan." The pension benefit statement is clearly a statement that is required to be furnished to participants.⁶

⁵ See, e.g., *Massachusetts v. Morash*, 490 U.S. 107, 116-117 (1989) (stating that the Secretary of Labor is specifically authorized to define ERISA's accounting, technical, and trade terms, and is entitled to deference); *Stern v. Int'l Bus. Machines Corp.*, 326 F.3d 1367 (11th Cir. 2003) (same); *Tibble v. Edison Int'l*, 711 F.3d 1061, 1071 (9th Cir. 2013) (upholding the Department's view of ERISA section 404(c) and stating that Congress gave the Secretary of Labor authority to promulgate binding regulations interpreting Title I of ERISA) (all citing ERISA section 505, 29 U.S.C. § 1135).

⁶ Section 105 of ERISA states that the plan administrator "shall furnish a pension benefit statement . . . to a participant or beneficiary."

There is little doubt the Congress intended the Department to provide implementing regulations when Congress amended ERISA section 105 as part of the Pension Protection Act of 2006. Congress tasked the Department with providing model language and provided the Department with a special, *additional* grant of authority to promulgate interim rules under ERISA section 105.⁷

II. The Importance of Simplicity

While the Committee supports the Department's proposal to require that lifetime income illustrations be made part of a participant's benefit statement, we believe that the Department's proposal should have simplicity and clarity as its guide in order to maximize the benefits of the illustrations to the participant and lessen confusion.

For many participants, the Department's proposal would require displaying two account balances and six illustrations, which poses an administrative burden and the potential for confusion for participants. The Department's proposal would require that a married participant not yet at normal retirement age receive up to *eight* different numbers: the current account balance, the projected account balance, two single life monthly payment estimates, two joint lives monthly payment estimates, and two survivor monthly payment estimates. All but one of those numbers (the current account balance) is an estimate. Although the Committee's members have different views on which of these eight numbers might be eliminated, all agree that eight is far too many.

The Committee believes that providing participants with potentially six different lifetime income illustrations would be confusing to many participants and would impose additional administrative burdens on plan administrators. The Committee supports an approach that would require plan administrators to display only one account balance and one lifetime income illustration on a participant's benefit statement. Such an approach balances the interests of participants and plan administrators. For participants, requiring only one account balance and illustration will ensure that participants are not overloaded with information. For plan administrators, requiring only one account balance and illustration will allow them to focus on ensuring that the information is accurately furnished to the participant in an easy-to-understand manner. Further, requiring that only one account balance and illustration be displayed also promotes uniformity and will allow administrators to manage furnishing the pension benefit statements in a cost-effective manner.

We believe that for most participants, the level single life payment will be sufficient to provide the participant with an appropriate and valuable estimate of the income that the account balance might generate in retirement. If the Department believes that a joint and survivor illustration could be helpful, this should be available as an option, but not a requirement.⁸

⁷ Pension Protection Act of 2006, Pub. L. No. 109-280, § 508(b), 120 Stat. 780, 951 (2006).

⁸ In general, we think it is worthwhile for the proposal to make clear that a plan can provide additional illustrations. A model for this can be found in the Department's participant disclosure regulation, which allows a plan

III. Committee Member Views on Using Specific Safe Harbor Assumptions

The ANPRM envisions a rule in which the projected account balance and the lifetime income illustrations must be based on reasonable assumptions. The ANPRM includes specific assumptions, however, that are treated under the rule as being reasonable, which the Department describes as “safe harbors.” Committee members have strong, but differing, views on the effectiveness of this approach.

Some Committee members believe that specific “safe harbor” factors would have the effect of pushing all plans to a single approach and that this would have unintended and unfortunate consequences and the rule should not include specific factors. These members think that a better approach would be more general, similar to the approach used for investment education in Interpretive Bulletin 96-1.⁹ Other Committee member companies believe that having specific safe harbor assumptions is important to and would benefit participants, plans and service providers. As a result, they support a rule that contains specific safe harbors that can be used in making the lifetime income disclosures. Nevertheless, regardless of their individual views on whether there should be any safe harbors, all member companies agree that there are certain considerations the Department should reflect in the proposal. These considerations are outlined below.

First, as the ANPRM is focused only on adding a new required element to benefit statements, it is silent regarding existing on-line modeling tools which are predominantly provided as complements to required plan communications. As a result, an inference may be drawn that the assumptions behind such tools would need to conform to those of the safe harbor in order to be equally protected from liability. The Department could address this by making it explicit that no inference should be drawn.

Second, the Department should ensure that tools that complement the required disclosure are not discouraged. The Department should clarify that any additional tools are considered education, not advice. (*See* section IV, below.) This would enable sponsors to continue to offer such tools because it would recognize that by their nature, they could utilize assumptions other than those in the statement safe harbor.

Third, the flexible general rule under the proposal serves a useful function, as it would protect the plan sponsors and firms that today provide illustrations on benefit statements that they believe are most appropriate for their participants without requiring these entities to change those illustrations.

administrator to provide additional information that the plan administrator determines appropriate to facilitate comparisons among investment options, provided the additional information is not inaccurate or misleading. *See* 29 C.F.R. § 2550.404a-5(d)(2)(ii).

⁹ 29 C.F.R. § 2509.96-1.

For the remainder of this letter we assume for purposes of our comments that the Department's proposal may include specific safe harbors of some kind.

IV. Ensuring Protection from Frivolous Claims

The proposal should include strong fiduciary protection for providing the lifetime income illustrations, including any estimate that does not follow the safe harbor. Life insurers and other service providers that assist plans in preparing these statements must be comfortable that they will not face frivolous and expensive lawsuits, which have become increasingly common for defined contribution plans. The numbers that plans will be required to disclose under the ANPRM are estimates, based on assumptions about what will happen in the future. For this reason we think it would be prudent for the Department to include in the proposal clear protection from frivolous lawsuits.

This protection could be provided in a number of ways. For example, the Department could provide guidance that the income illustration is *education*, not advice, similar to the guidance in Interpretative Bulletin 96-1. This would provide comfort to insurers and others that assisting a plan with preparing the illustrations will not inadvertently trigger fiduciary status. The Department also might provide guidance or a regulation under ERISA section 404(a) providing relief for fiduciaries who use either general rules (reasonable assumptions) or the safe harbor assumptions. This is important to encourage innovation and allow plan sponsors comfort to innovate how these illustrations are done. Otherwise, the safe harbor assumptions will become the *de facto* requirement, and innovation responding to improved learning will cease.

V. Making the Proposal Most Effective for Plans that Offer Annuity Distributions

For the proposal to be most effective, it must integrate well with plans that offer an annuity distribution option. We want to encourage, not discourage, plans to offer an annuity or other lifetime income distribution option. We applaud the Department for addressing, in the proposal, plans that offer such an option, and we have a few suggestions to make the proposal more effective in this regard.

The conversion of a participant's account balance will require, among other assumptions, the use of certain mortality and interest rate assumptions. Under the ANPRM, the Department has proposed a general standard and safe harbor approach for mortality and interest assumptions. The general standard would require that illustrations be based on "reasonable" mortality and interest rate assumptions "taking into account generally accepted actuarial principles." The safe harbor approach provides that safe harbor assumptions are deemed to be reasonable. The safe harbor interest rate is a rate 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. The mortality assumption under the safe harbor approach is based on the applicable mortality table under section 417(e)(3)(B) of the Internal Revenue Code (the "Code") in effect for the month that contains the last day of the period to which the statement relates.

The Department should clarify that plans that offer an annuity form of distribution may use the assumptions built into the contract or may use the general approach or safe harbor assumptions. It is clear the ANPRM is intended to allow plans that offer an annuity distribution option to reflect the mortality and interest rate assumptions from the contract in the lifetime income illustration. We support allowing the use of these assumptions and think many plans and annuity providers will want to use them. The text of the ANPRM, however, is somewhat unclear as to whether a plan would be required to use the assumptions in the annuity contract.¹⁰ If plans that offer a safe harbor are *required* to calculate the lifetime income stream using the mortality and interest rate provisions from the contract, plans that offer an annuity option would lose an alternative approach that other plans have. Put another way, under such an approach plans would be given *less flexibility* if they took the step of offering an annuity distribution option.

In fact, for many plans, requiring the use of “the plan’s assumptions” would be impossible, unworkable, or counterproductive. Many plans offer multiple annuity options, as is common in 403(b) plans. In addition, many plans offer an annuity for only a part of the account balance, such as in a defined contribution plan that contains a grandfathered money purchase plan component or a legacy annuity. Even among Committee members that routinely provide annuities and may be the only provider, the purchase rates in contracts made available to participants may vary depending on when the premiums were paid, that is, one purchase rate may be guaranteed for premiums paid before year X, and another purchase rate may be guaranteed for premiums paid on or after year X. Finally, a service provider may find that accommodating special assumptions for a limited subset of plans significantly increases the cost to plans.

We think there will be some “plain vanilla” annuity distribution options where it makes perfect sense – and is in the interests of participants – to use the assumptions built into the contract. But those might be the exception, not the rule. Accordingly, we strongly urge the Department not to require that plans that offer an annuity option use the assumptions contained in the annuity contract in calculating the lifetime income illustration. In addition, plan fiduciaries should receive the same level of safe harbor protection for using either the contract’s assumptions or the regular safe harbor assumptions.¹¹ It is critical the Department make this clear.

¹⁰ Prop. Reg. § 2520.105-1(e)(1)(iii) states that the lifetime illustration must be based on the assumptions set forth “in paragraph (e)(2)...subject to the requirements in paragraph (e)(3).” Paragraph (e)(2)(i) provides the general rule allowing reasonable and generally accepted actuarial principles. Paragraphs (e)(2)(ii)(A) and (B) describe two assumptions that are “deemed reasonable” for purposes of paragraph (e)(2)(i). Paragraph (e)(3) then states that if the plan offers an annuity form of distribution, “the plan shall substitute actual plan terms for the assumptions set forth in paragraphs (e)(2)(ii)(A) and (B) of this section.” We see three ways to interpret these rules: (1) the plan must use the assumptions in the annuity contract and no other; (2) the plan may use the general test or a safe harbor, but the contract’s assumptions, and not the regular safe harbor assumptions, are the safe harbor; (3) the plan may use the general test, may use the normal safe harbor assumptions, or may use the assumptions in the contract and receive the same safe harbor protection.

¹¹ Put another way, the proposal should provide that, in a plan that offers an annuity distribution option, the assumptions in the annuity contract are simply another example of reasonable actuarial assumptions.

The Department should clarify the reference to “plan terms” in the proposal. The proposal states that a plan that offers an annuity form of distribution should substitute “actual plan terms.” Most plans do not contain annuity assumptions within what are traditionally thought of as the “plan terms” – that is, the terms of the plan document. Rather, the assumptions are described in the annuity contract that provides the annuity form of distribution made available to participants.¹² The preamble makes clear that this is what the Department intended.¹³ We recommend that the Department clarify this in the proposal’s text.

The Department should clarify that the annuity illustration may use any minimum rates built into a contract, or, where the annuity provider makes available its current purchase rates, the current rates. Many annuity contracts set forth minimum annuity purchase rates that the insurance company guarantees will be available. In some circumstances, it would be appropriate for a plan to use these minimum rates in the annuity illustration. However, the life insurance company may offer to annuitize a plan balance at current annuity purchase rates if current rates are more favorable, *i.e.*, will produce a higher annuity payment. In that circumstance, we believe the current annuity purchase rates appropriately may be used in calculating the lifetime income illustration. These are the rates that the insurer would actually offer if the account was immediately annuitized.

VI. Making the Proposal Most Effective for Plans that Offer In-Plan Annuities or Guaranteed Lifetime Withdrawal Benefits

Increasingly, participant-directed defined contribution plans are offering participants the ability to allocate their account to investment options that purchase guaranteed deferred income protections. A plan might offer what the Department describes as an “in-plan” annuity, which is a deferred fixed annuity contract that allows participants to currently purchase a lifetime income stream commencing at a stated age, such as age 65 or the plan’s normal retirement age. Such an arrangement has the virtue of allowing participants to lock in current interest rates and mortality assumptions and purchase annuity income on a payroll deduction basis, thereby mitigating interest rate and mortality risk in much the same way that the practice of dollar cost averaging tends to average the unit cost of an investment over time.

Another option might be a variable or fixed annuity contract investment option that allows a participant to purchase a guaranteed lifetime withdrawal benefit (“GLWB”), which provides that a participant may withdraw a specified portion (*e.g.*, 5%) of a notional account balance (*e.g.*, premiums plus 4% interest) for life even if the participant’s account balance has been reduced to zero. A GLWB provides insurance protection against an individual outliving the income that the account balance of his or her defined contribution plan can provide. A GLWB

¹² The Department should keep in mind in developing the proposal that the annuity form of distribution may be offered in different ways. Many plans enter into a group annuity contract that allows participants access to annuities through the issuance of a certificate under the plan. Other plans – including but not limited to 403(b) plans – issue individual contracts, and the participant may be the owner of the contract, even before annuitization.

¹³ 78 Fed. Reg. 26,727, 26,734 (May 8, 2013).

achieves this by providing longevity insurance with respect to specified or referenced assets of the plan. The referenced assets can be either the annuity contract's cash value or other plan assets. The insurer guarantees that the reference assets will be sufficient to sustain a specified level of withdrawals (the "guaranteed withdrawal amount") for the life of a participant or the joint lives of the participant and a beneficiary. If the referenced assets are exhausted due to market declines and periodic withdrawals, the participant's and/or beneficiary's longevity, or both, the insurer will begin making periodic payments from its own assets equal to the guaranteed withdrawal amount for the remainder of the employee's life or joint lives of the employee and beneficiary.

These deferred annuities offered as plan investment options and plan distribution options have the virtue of beginning the conversation about retirement security at an earlier age and enhancing the likelihood that a participant will choose a life-contingent payout. Thus, it is critical that the Department's proposal integrates well with these options, when offered.

The Department should modify the proposal to accommodate in-plan annuities by allowing the plan to use any of the Department's three proposed approaches. In the preamble, the Department describes three possible approaches for incorporating in-plan annuities into participants' lifetime income illustrations.¹⁴ Under the first approach, the current fair market value of all in-plan annuity units accumulated by a participant could be added to the rest of the participant's account balance before determining the projected account balance. The second approach would disclose the total guaranteed monthly payment amount derived from all of a participant's in-plan annuity units and then disclose the estimated monthly payment amount of the non-annuity portion of the participant's account, if any.¹⁵ Finally, the third approach would be converting the participant's entire account balance, including the portion 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.

The ANPRM essentially requires the first approach, because it requires that any investment held in an account be valued at its fair market value. We think the first approach, however, may not make sense conceptually for many in-plan annuities. Currently, Committee members that furnish illustrations to participants on benefit statements use either the second or third approaches. We think either could be entirely appropriate based on how the plan administrator views the in-plan annuity in the context of the plan's overall menu.¹⁶ Giving plans

¹⁴ *Id.* at 26,735-36.

¹⁵ Under the Department's description, the plan would "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. It might be appropriate to disclose those two numbers separately, as the in-plan annuity unit is a guaranteed payment and has a different character. A plan may wish to provide a total, but the Department might consider whether this should be required.

¹⁶ In the case of the second approach, the Department would need to address whether it is necessary to project forward the account balance. On one hand, the annuity income purchased by the participant already takes into account that the income is not payable until some date in the future, and builds in the implicit return of the product. On the other hand, under the proposal, the *projected* account balance takes into account future contributions.

that offer in-plan annuities the option to utilize any of the three approaches offers flexibility and ensures that administrators can select the option that will best fit the plan's particular in-plan annuity option(s). So long as the disclosure informs participants what method is used, we think any of the three would be prudent.

All three approaches should have the full protection (safe harbor or otherwise) available for other illustrations. For example, if a plan were to use the third approach, converting the participant's entire account balance to a lifetime income stream using the current unit price of the in-plan annuity option, the plan should be protected in a manner similar to the protection afforded for using the purchase rates of an annuity distribution option.

The "second" and "third" approaches, however, should recognize that an in-plan annuity option may provide for a payout that begins at a different age than the plan's normal retirement age. Many in-plan annuity options define the purchased benefit as a stream of guaranteed income beginning at a stated age, such as age 65. The life insurer does not modify the product to fit the "normal retirement age" in an individual plan, and there is no reason that it should. In most defined contribution plans, the plan's normal retirement age is not particularly important, other than for vesting purposes. Rather than being forced to use the plan's normal retirement age, we recommend that the plan administrator be allowed to use the stated beginning age of the in-plan annuity contract for purposes of the lifetime income illustration.

Alternatively, the Department might consider broadly requiring that all illustrations (whether related to an in-plan annuity or not) be based on a standard age, like age 65, rather than the normal retirement age in the plan. We think uniformity on this point could be very beneficial and reduce costs and complexity. The "normal retirement age" in modern defined contribution plans tends to have little effect on a participant's benefit, other than vesting, and little effect on when a participant will actually receive the benefit, which tends to be at termination of employment.

The Department should address QLACs. As the Department knows, the Department of Treasury has issued a proposal to modify the required minimum distribution regulations under Code section 401(a)(9) to provide an exception for "qualified longevity annuity contracts" ("QLACs").¹⁷ The proposed regulations define a QLAC as a deferred fixed annuity with an annuity starting date no later than age 85 which provides no cash value and limited death benefits. Under Treasury's proposal, the value of a QLAC would be excluded from the account balance used to calculate a participant's required minimum distribution. It seems quite likely that Treasury will issue final regulations allowing the value of a QLAC to be excluded from account balances for RMD purposes.¹⁸

Should the plan assume some percentage of future contributions will be made to the in-plan annuity, such as the percentage currently allocated to the in-plan annuity under the participant's current election for new contributions?

¹⁷ 77 Fed. Reg. 5,443 (Feb. 3, 2012).

¹⁸ A number of commenters recommended that the allowable features of a QLAC be modified in the final regulations, but there was broad support for the fundamentals of the proposal.

Assume a participant, at age 60, uses 25 percent of his or her account balance to purchase a QLAC that is scheduled to commence payments at age 80. How should these future income payments be taken into account under the lifetime income disclosure? It would not seem appropriate to include these payments in the ordinary lifetime income stream amount, because by definition they are not available for lifetime income at normal retirement age. We recommend that the stream of payments be disclosed separately, describing the income that has been purchased beginning at age 80.

The Department should provide flexibility for GLWBs. As stated earlier, if a plan offers a GLWB, the participant is typically purchasing a guarantee that the reference assets will be sufficient to sustain a guaranteed withdrawal amount for one or more lives. The insurer often provides that the withdrawal amount will be based on the greater of the actual return on the reference assets or a hypothetical return, *e.g.*, 4% annually. Because these products are new and continue to develop, we think it important that the Department's proposal provide flexibility in how plans integrate them. For example, the Department should consider that for a GLWB product, the concept of an account projection may or may not make sense depending on the terms of the GLWB. Thus, it might be appropriate to allow a plan to ignore the hypothetical return for purpose of the illustration but make clear that a plan may provide additional information on the GLWB guaranteed withdrawal amount.

Committee members also think that, conceptually, a GLWB could be integrated into a lifetime income illustration similar to an in-plan annuity using either the Department's "second" or "third" approaches. For example, under the "second" approach, the plan would disclose the guaranteed withdrawal amount derived from the assets in the plan that are "referenced" assets subject to the guarantee, and then disclose the estimated monthly payment amount for any assets not part of the referenced assets. Similarly, under the "third" approach, the plan would disclose the guaranteed income that would be available if the participant were to purchase the GLWB coverage for the participant's entire account balance.

We believe that GLWBs and other similar guaranteed lifetime income products will become increasingly common and will prove to be valuable solutions for many retirement plans. These products are not done evolving. The goal should be a framework that allows this lifetime illustration to be flexible for the future.

VII. Addressing Plans that Offer Multiple Annuity Providers or Vendors

The proposal should not require a single income illustration of the entire account balance where the participant's account is held at more than one life insurance company or vendor. The ANPRM could be read to require a single lifetime income illustration covering the entire account balance. If a plan offers access to multiple annuity providers or other vendors, as is very common in 403(b) plans, it is not feasible for the plan to provide the participant with a single statement reflecting the entire account balance. It is not required under current guidance

for a plan to provide a single pension benefit statement.¹⁹ It would be particularly inappropriate to require a lifetime income disclosure where a plan offers access to multiple annuity providers, all of whom have different annuity purchase assumptions in their contracts.

It would be expensive to coordinate annuity statements, and the current deadline for providing benefit statements (45 days after the end of the statement period) does not allow sufficient time. New systems would be required to collect and store the data needed to generate, distribute, and retain copies of consolidated statements. Even where a multivendor plan has a single recordkeeper coordinating the vendors, we are aware of no methodology to transmit interest rates and mortality assumptions among insurance companies and recordkeepers. This would place a significant burden on plan sponsors which, in the case of 403(b) plans, are non-profit entities.

VIII. Coordinating the Proposal with Other Laws and Regulations

To the extent that the participant benefit statement is viewed as insurance company or producer marketing material or issuer or broker-dealer written communication, it would be subject to content and other standards imposed by state insurance laws and regulations, federal securities laws, and Financial Industry Regulatory Authority (“FINRA”) rules. We applaud the Department for considering and identifying possible conflicts with other regulations and working to address them. In the ANPRM, the Department points to NASD Rule 2210(d)(1)(D) (now FINRA Rule 2210(d)(1)(F)), which provides that “[c]ommunications 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.” We think it is crucial that the Department resolve this and similar issues *before finalizing its rule*. However, we do not believe that Rule 2210 is inconsistent with the kind of illustration that the Department is contemplating, because the proposal requires the plan to state the assumptions used and that this is an estimate for illustration purposes only. Therefore, we believe that guidance from FINRA largely would be confirmation of the absence of any conflict with Rule 2210.

The Department should also work with the Securities and Exchange Commission (“SEC”) to provide similar guidance on the sales literature rules. Rule 156 under the Securities Act of 1933, which addresses investment company sales literature, states that it may be misleading to make any representations about future investment performance, including implying that future gain or income may be inferred from or predicted based on past investment performance.²⁰ The Rule also cautions against conveying impressions about net investment results that are not justified under the circumstances. We believe that providing a lifetime income disclosure, even if the final rule requires a projection of the account balance, can be done

¹⁹ Field Assistance Bull. 2006-03 (Dec. 20, 2006). We strongly recommend that the guidance in Field Assistance Bulletin 2006-03 allowing multiple documents to constitute the pension benefit statement be incorporated into any general regulations under ERISA section 105.

²⁰ 17 C.F.R. § 230.156 (2013).

in a way that complies with Rule 156. Nonetheless, we recommend the Department consult with the SEC to provide appropriate guidance.

Relief from the FINRA should not imply that any communication from a plan administrator is a broker-dealer communication. The retirement industry was pleased to see the relief that FINRA provided in Regulatory Notice 12-02 (Jan. 2012) that clarified that broker-dealers can assist plan administrators in complying with the Department's participant disclosure rules. Unfortunately, the language in the Notice could be read to imply that a communication from a plan administrator is a communication from a broker-dealer, which is not correct. We ask the Department to work with FINRA to ensure similar confusion does not result from guidance issued in connection with the lifetime income disclosure rule.

The Department needs to address state insurance laws that relate to disclosure of annuity projections and that cover ground similar to the Department's rule. The National Association of Insurance Commissioners' ("NAIC") Advertisements of Life Insurance and Annuities Model Regulation,²¹ which includes broad standards regarding the content of advertising material, would require that any projection and related statement be complete, and neither misleading or deceptive, or have the capacity to mislead or deceive. Under these rules, an illustration which may be factually correct is nevertheless forbidden if its impact misleads or deceives. In addition, the NAIC's Annuity Disclosure Model Regulation, particularly sections 6 (annuity illustration) and 7 (report to contract owner), prescribes rules concerning content of annuity illustrations.²² Because it may not be practical for the Department to discuss these issues with 50 individual states, we recommend that the Department work with the NAIC, because the NAIC regularly addresses issues of common interest to state insurance regulators.

* * * * *

We appreciate this opportunity to offer input on the ANPRM. If you have any questions, or if we can be of any assistance in your consideration of the issues summarized above, please do not hesitate to contact any of the undersigned at 202-347-2230.

Sincerely,



Joseph F. McKeever



Michael L. Hadley



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Attachment

²¹ See NAIC, ADVERTISEMENTS OF LIFE INSURANCE AND ANNUITIES MODEL REGULATION 570, available at <http://www.naic.org/store/free/MDL-570.pdf>.

²² See NAIC, ANNUITY DISCLOSURE MODEL REGULATION 245, §§ 6-7, available at <http://www.naic.org/store/free/MDL-245.pdf>.

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AIG Life & Retirement, Los Angeles, CA
Allianz Life Insurance Company, Minneapolis, MN
Allstate Financial, Northbrook, IL
Aviva USA, Des Moines, IA
AXA Equitable Life Insurance Company, New York, NY
Commonwealth Annuity and Life Insurance Co., Southborough, MA
Fidelity Investments Life Insurance Company, Boston, MA
Genworth Financial, Richmond, VA
Great American Life Insurance Co., Cincinnati, OH
Guardian Insurance & Annuity Co., Inc, New York, NY
ING North America Insurance Corporation, Atlanta, GA
Jackson National Life Insurance Company, Lansing, MI
John Hancock Life Insurance Company, Boston, MA
Life Insurance Company of the Southwest, Dallas, TX
Lincoln Financial Group, Fort Wayne, IN
MassMutual Financial Group, Springfield, MA
Metropolitan Life Insurance Company, New York, NY
Nationwide Life Insurance Companies, Columbus, OH
New York Life Insurance Company, New York, NY
Northwestern Mutual Life Insurance Company, Milwaukee, WI
Ohio National Financial Services, Cincinnati, OH
Pacific Life Insurance Company, Newport Beach, CA
Protective Life Insurance Company, Birmingham, AL
Prudential Insurance Company of America, Newark, NJ
Symetra Financial, Bellevue, WA
The Transamerica companies, Cedar Rapids, IA
TIAA-CREF, New York, NY
USAA Life Insurance Company, San Antonio, TX

The Committee of Annuity Insurers was formed in 1981 to participate in the development of federal tax and securities law policies with respect to annuities. The member companies of the Committee represent approximately 80% of the annuity business in the United States.