



Wayne McClain III
Managing Director, Associate General Counsel and
Head of Pension Law Team

T (704) 988-5590
F 704-988-1615
Email: wayne.mcclain@tiaa.org

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

**Re: Pension Benefit Statements—Lifetime Income Illustrations
(RIN 1210-AB20)**

Dear Sir or Madam:

Teachers Insurance and Annuity Association of America (“TIAA”) appreciates the opportunity to respond to the Department of Labor’s (“DOL” or “Department”) request for public comment on the interim final rule (“IFR”) regarding the amendments made to section 105 of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended by the Setting Every Community Up for Retirement Enhancement Act of 2019 (“SECURE Act”).¹ We understand that the IFR will require administrators of ERISA defined contribution plans to express a plan participant’s current account balance both as a single life annuity and a qualified joint and survivor annuity income stream through a lifetime income illustration (“LII”) on pension benefit statements. TIAA has long advocated for the inclusion of an LII on benefits statements sent to retirement plan participants, and we support the overall intent and construct of the IFR. However, we would respectfully recommend several changes, further described below, that we believe would further advance the objectives of the IFR.

¹ *Pension Benefits Statements—Lifetime Income Illustration*, 85 Fed. Reg. 59132 (Sep. 18, 2020), available at: <https://www.govinfo.gov/content/pkg/FR-2020-09-18/pdf/2020-17476.pdf>.

About TIAA

Founded in 1918, TIAA is the leading provider of retirement services for those in the not-for-profit space, including the academic, research, medical, and cultural fields. Over our century-long history, TIAA's mission has always been to aid and strengthen the institutions and retirement plan participants we serve and to provide financial products that meet their needs. With our strong not-for-profit heritage, we remain committed to the mission we embarked on in 1918 of serving the financial needs of those who serve the greater good.

To carry out this mission, we have evolved to include a range of financial services, including asset management and banking services. TIAA has \$1.2 trillion in assets under management, and our investment model and long-term approach aim to benefit the 5 million retirement plan participants we serve across more than 15,000 institutions.²

403(b) Plans Encourage Participants to Focus on Lifetime Income

For employees working in the not-for-profit space, 403(b) plans are the primary retirement savings vehicle made available to them by their employers. 403(b) plans are unique from other types of retirement savings vehicles because they focus on ensuring that participants have access to products that provide guaranteed income in retirement, rather than simply helping participants accumulate assets. We believe that all retirement plans should follow the 403(b) model, encouraging participants and plan sponsors to focus on generating a stream of income that will last throughout retirement as a primary goal of retirement savings.

LIs Help Participants Understand Their Retirement Savings as a Monthly Income Stream.

We believe that providing LIs in pension benefits statements facilitates plan participants' retirement readiness by illustrating their retirement savings in the form of an income stream, rather than simply as a lump sum. In our experience, LIs help set participant expectations, encourage retirement planning and contributions, and remind savers that the most important goal of saving for retirement is creating a guaranteed income stream that will last throughout the entirety of their lives.

Encouraging individuals to think about income replacement in retirement, in addition to asset accumulation, will help them develop a more holistic and effective view of their retirement planning needs. LIs can help participants understand whether their current or projected asset accumulation will be sufficient to fund their retirement in its entirety. For example, a participant – especially one who is currently living paycheck-to-paycheck – may think that a savings amount of \$100,000 will be more than adequate to cover their financial needs in retirement. However, if an LI were to show

² As of September 30, 2020.

that this sum only translates into a retirement income stream of \$500 per month,³ it might spur the participant to take various responsive actions, including saving at a greater rate, recognizing at an early point that retirement may need to be delayed, finding ways to reduce anticipated spending levels in retirement, or seeking professional investment advice.

The ultimate goal of LII, and what we view as the overarching objective of section 203 of the SECURE Act, is to educate individuals about their financial needs in retirement, help them understand the future economic income value of their current and ongoing retirement savings, and spur greater participant engagement in their own retirement planning. While we do not expect or encourage participants to rely on LII as a formal financial planning tool, we do believe highlighting the level of income a participant's savings should ultimately generate will increase participants' overall financial literacy. We also expect that seeing personalized income projections on their statements will prompt participants to ask more questions about whether their current level of savings will generate sufficient income to see them through the entirety of their retirement.

LII should Factor in Existing Employee and Employer Contribution Rates to More Accurately Project Participants' Retirement Savings.

The definition of a "lifetime income stream equivalent" under ERISA, as amended by the SECURE Act, is "the amount of monthly payments the participant or beneficiary would receive if the total accrued benefits of such participant or beneficiary were used to provide a single life annuity and a qualified joint and survivor annuity."⁴ Though this definition does not factor in estimations of future employee and, if applicable, employer retirement savings contributions, we believe that LII should include these estimations. Including future contributions in retirement income projections will further the fundamental purpose of LII: encouraging ongoing participation in retirement savings plans, increasing contribution rates, and helping participants achieve a more secure level of income in retirement. Excluding future contributions from LII could be detrimental to retirement savers, leading them to mistakenly think that increasing or maintaining their contribution levels is not necessary to meet their retirement savings goals. Therefore, it is crucial that LII include future employee and employer contributions to provide an accurate projection of income streams in retirement. This is especially important for younger employees who have many years of savings and earnings ahead of them and cannot rely on current savings levels to accurately predict their retirement income.

³ Using DOL's calculator at <https://www.askebsa.dol.gov/lia/> under the following assumptions: Retirement Age 65; Current Accumulation \$37,000; \$1,000 Annual Contribution; 20 Years to Retirement.

⁴ See 29 CFR 2520(A)(3).

LlIs Should Include a Disclosure that Projected Retirement Income Streams Do Not Include Any Applicable Federal and State Income Taxes.

The IFR requires administrators of ERISA defined contribution plans to express a participant's current account balance as both a single life annuity and a qualified joint and survivor annuity income stream.⁵ According to the IFR, the intent of requiring two income stream illustrations is to help participants better understand how the amount of money they have saved so far will convert into an estimated monthly payment for the rest of their lives, which may impact their retirement planning. Furthermore, the IFR states that "to better assist participants in understanding the lifetime income illustrations required by the IFR and the SECURE Act, it is essential that pension benefit statements include brief, understandable explanations of the assumptions underlying the illustrations."⁶ To give participants a more accurate picture of their future retirement income stream, TIAA believes that such explanations should include a statement that the participant's estimated monthly payment does not reflect the participant's federal, state or local tax obligations or state taxes. We recommend that § 2520.105-3(d)(7)(ii) of the IFR be modified as follows:

(ii) For purposes of paragraph (d)(7)(i) of this section, the plan administrator may use the following model language: "The estimated monthly payments for this representation are for illustrative purposes only; they are not a guarantee, nor do they take into account any federal, state or local taxes."

The DOL Should Confirm that Other LlIs Will Continue to Qualify as Participant Investment Education.

TIAA uses a projected method when illustrating future monthly retirement income on participant benefits statements. The projection, which is displayed clearly and prominently on the first page of each statement, uses certain standard assumptions (e.g., retirement at age 65) to show participants what their monthly income would be at retirement if they continued at their current rate of savings or, alternatively, if they were to save another \$100 or \$250 per month. In addition, the projection suggests that participants speak with a TIAA representative or go online to learn more.

The IFR provides a safe harbor protecting plan fiduciaries and plan sponsors from liability when they provide lifetime income equivalents using certain assumptions and accompanied by certain language, as described in the IFR.⁷ We believe that most plan

⁵ 85 Fed. Reg. at 59132.

⁶ *Id.* at 59137.

⁷ Paragraph (f) of the IFR provides that no plan fiduciary, plan sponsor, or other person shall have any liability under Title I of ERISA solely by reason of providing the lifetime income stream equivalents described in paragraphs (b)(3) and (4) of the rule. To qualify for this limitation on liability, paragraph (f)(1) requires that such equivalents be derived in accordance with the assumptions in paragraph (c) or (e)(1)(i) of the IFR. In addition, paragraph (f)(2) requires that benefit statements include language substantially similar in all material respects to either the model language in

sponsors will want to adopt the safe harbor so they can know with certainty that they are always meeting the requirements of the general rule. For that reason, plan sponsors most likely will insist their retirement plan providers apply the safe harbor standard.

While TIAA fully supports the safe harbor standard set forth in the Limitation on Liability section of the IFR, we believe the Department should formally acknowledge that additional LIIs may constitute the rendering of “investment education” under ERISA.⁸ We are concerned that in the absence of a formal acknowledgement by the Department that these types of projections can constitute investment education, there will be a chilling effect on plan sponsors’ provision of additional LIIs – especially those that use a set of assumptions that account for future retirement plan contributions and growth in a participant’s retirement savings account.

For TIAA, providing different types of LIIs to our participants is a critical part of the investment education services we offer. One of the underlying goals of providing this information to our participants is to encourage them to take action and become more involved in the retirement planning process. TIAA’s online tools (both public and secured) allow participants to view more detailed retirement projections. Based on information plugged into a calculator by an individual, such as current contribution rates, accumulations, and allocations, our calculators provide a general snapshot of what the individual could expect in retirement and, more importantly, how much more he or she will need to save on an annual basis to meet certain retirement income goals.

Accordingly, we explicitly encourage participants to contact TIAA and speak with one of our retirement planning specialists or go online to obtain more information and/or further personalize their projections. We have online tools (both public and secured) that allow participants to view more detailed retirement projections. Based on information plugged into a calculator by an individual (e.g., current contribution rates, accumulations, and allocations), these tools provide a general snapshot of what the individual can expect in retirement and, more importantly, how much more he or she will need to save on an annual basis to meet certain retirement income goals. Our tools also allow participants to customize their income illustrations and review annuity income options, in addition to other distribution options such as systematic withdrawal and interest only options.

We offer these additional tools because we believe that all participants should be educated about lifetime income products. Increased education helps participants use their investments in both the deferral and income stages. It is important to ensure that plan participants become familiar with the concept of receiving lifetime income as soon as they start contributing to a retirement plan.

paragraphs (d)(1)(ii) through (d)(11)(ii) of the IFR, or the Model Benefit Statement Supplement in Appendix A of the IFR.

⁸ See 29 CFR § 2509.96-1.

Providing additional LIIs will help us communicate this crucial information to our participants; but we would feel more comfortable doing so if the DOL were to clarify that such additional LIIs qualify as “investment education” under the meaning set forth in ERISA. For these reasons, we request the Department formally acknowledge that additional LIIs may be provided as participant investment education within the meaning of 29 CFR § 2509.96–1.

The DOL Should Expand the Scope of the Statutory Protection to a Service Provider Who Develops and Communicates the LII Statement on Behalf of the Plan Sponsor.

As noted above, paragraph (f) of the IFR provides, in accordance with Section 105(D)(iv) of ERISA, as amended, that “no plan fiduciary, plan sponsor, or other person . . .” shall have any liability under Title I of ERISA solely by reason of providing lifetime income stream equivalents in accordance with the regulation.”⁹ We request that the Department state explicitly that service providers are included within this protection, consistent with the clear statutory reference to “other persons.” Service providers will generally develop and communicate the lifetime income statements on behalf of the plan sponsor as part of their recordkeeping services, and should be entitled to the same protection plan sponsors receive under ERISA. The preamble to the IFR supports our understanding by noting that “Paragraph (f) addresses longstanding concerns of employers, plan sponsors, plan administrators and other plan fiduciaries, and plan service providers, that lifetime income illustrations could expose them to unwanted litigation from participants . . .”¹⁰ Although the preamble’s language would be helpful in any litigation against a service provider, we request that the Department include an explicit statement in the regulation that service providers also enjoy protection from liability under Title I of ERISA in connection with providing lifetime income stream equivalents. Such a statement would provide important and much-needed clarity.

Conclusion

TIAA appreciates the Department’s work on the IFA and its ongoing dedication to improving retirement security for all Americans. We welcome the opportunity to engage further on any aspect of the foregoing.

Sincerely,



Wayne McClain III

Managing Director, Associate General Counsel

⁹ 85 Fed. Reg. at 59140.

¹⁰ *Id.* at 59141.