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

Subject: Pension Benefit Statements – Lifetime Income Illustrations (RIN 1210-AB20)

Greetings:

On behalf of the American Council of Life Insurers (ACLI), we appreciate the opportunity to provide comments in response to the Interim Final Rule (IFR) issued by the Department of Labor (the Department) that will require plan administrators of ERISA defined contribution plans to express a participant's current account balance, both as a single life annuity and qualified joint and survivor annuity income stream. The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) amended ERISA Section 105 to require that a lifetime income disclosure be included in one pension benefit statement during any 12-month period. The IFR provides plan administrators with a set of assumptions to use in preparing the lifetime income illustrations as well as model language that may be used by plan administrators who wish to obtain relief from liability for the illustrations.

ACLI strongly supports the IFR and the Department's timely efforts to implement the SECURE Act's lifetime income illustration provisions. We are pleased that many of the IFR assumptions align with the recommendations in ACLI's July 11, 2013 comment letter ("2013 Letter") responsive to the Department's 2013 Advance Notice of Proposed Rulemaking regarding Pension Benefit Statements.

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The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI's member companies are dedicated to protecting consumers' financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI's 280 member companies represent 94 percent of industry assets in the United States.

The SECURE Act's lifetime income illustration requirement will help educate workers on the retirement income potential of their savings and the value of their plan savings as a source of retirement income. The illustration will assist them in evaluating such factors as their income need, savings adequacy, and the amount of income devoted to retirement savings. It reframes the defined contribution plan as a plan that is intended to generate retirement income, rather than just a capital accumulation savings plan.

ACLI comments on the IFR's assumptions and special rules for in-plan annuities are detailed below. Additionally, we are providing comment in response to the Department's questions regarding the necessity of additional guidance clarifying the circumstances under which the provision of additional illustrations may constitute the rendering of "investment education" under ERISA.

I. Assumptions for Lifetime Income Stream Illustrations

Use of Current Account Balance

The IFR requires plan administrators of ERISA defined contribution plans to express a participant's current account balance as both as a single life annuity and qualified joint and survivor annuity income stream. ACLI strongly concurs with the Department's conclusion that the SECURE Act requires use of the participant's current, actual account balance and not some hypothetical future account balance that may or may not include projected additional contributions, earnings, or losses.

Indeed, the SECURE Act itself provides that the term "lifetime income stream of the total benefits accrued" means the amount of monthly payments the participant or beneficiary would receive if the **total accrued benefits** (*emphasis added*) of such participant or beneficiary were used to provide lifetime income streams expressed as both a single life annuity and qualified joint and survivor annuity, based on assumptions specified in rules prescribed by the Secretary.¹ Importantly, the term "accrued benefit" is defined in ERISA section 3(23) with respect to an individual account plan, as "the balance of the individual's account," *i.e.*, the actual balance, not some hypothetical balance.²

The goal of the illustration should be to focus participants on reframing their account balance from a lump sum to a source of monthly income so that participants can evaluate factors such as income need, savings adequacy, and the amount of income devoted to retirement savings. Consistent with this goal, the illustration should be simple – and based on the participant's current account balance, and plan administrators should use prescribed, specific, and uniform assumptions issued by the Department. The inclusion of random, hypothetical contributions, earnings, or losses based on assumptions that may differ from plan to plan will not further this goal and will only serve to confuse participants.

¹ See Further Consolidated Appropriations Act, 2020, Division O, Section 203 (b) (Dec. 20, 2019).

² See 29 U.S.C 1002(23).

While we strongly support the Department's approach regarding the required illustration of a participant's accrued benefit, the Department should be clear in its support of the tools offered by many plan administrators that provide plan participants with interactive tools and individualized information to help them to see possible future values (see Section III for further discussion). The Department should issue guidance affirming the furnishing of additional illustrations, including the use of illustrative tools, that project retirement income and disclose the methodology supporting the projections, constitutes the rendering of "investment education" under Interpretive Bulletin (IB) 96-1 and ERISA.

ACLI Recommendation: ACLI recommends that the Department retain the rule that plans illustrate the current accrued benefit and not require plans to make proscribed projections regarding the future value of the participant's account balance. A simple illustration provides sufficient information to reframe the account balance as retirement income.

Commencement Date and Age

The IFR provides that the assumed annuity commencement date is the last day of the statement period (*the commencement date*). Additionally, the required illustrations must assume the participant is age 67 on the commencement date. In our 2013 Letter, we suggested the plan's normal retirement age be used. However, age 67 is a reasonable alternative. The Department requests comments on whether the final rule should require illustrations based on multiple ages on the annuity commencement date, rather than requiring only a single age.

ACLI Recommendation. To simplify plan administration, the rule should require that the illustration be based on age 67, or if older, the participant's age on the reporting date, and not require illustrations based on multiple ages.

Marital Status and Amount of Survivor's Benefit

The IFR requires plan administrators to assume, for purposes of converting a participant's account balance into the QJSA required under paragraph (b)(4) of the IFR and the SECURE Act, that the participant is married and that the participant's spouse is the same age as the participant. Further, the IFR requires plan administrators to assume that the survivor annuity percentage is equal to 100% of the monthly payment that is payable during the joint lives of the participant and spouse.

ACLI Recommendation. ACLI recommends that the Department retain the IFR's requirement that, for purposes of the QJSA illustration, the participant is married and that the participant's spouse's age is the same age as the participant. ACLI also recommends that the final rule retain the IFR's assumed 100% survivor annuity percentage.

Interest Rate and Mortality Assumption

The IFR requires that Plan administrators assume a rate of interest equal to the 10-year constant maturity Treasury (CMT) securities yield rate for the first business day of the last month of the period to which the benefit statement relates. The IFR also requires that plan administrators

convert participants' account balances assuming mortality as reflected in the applicable mortality table under Code section 417(e)(3)(B) in effect for the last month of the period to which the statement relates.

Participant account balances reported on benefit statements are based on current market values. Similarly, the interest rate used in combination with the mortality factor to illustrate guaranteed lifetime income should approximate the current market rates for payout annuities. This is especially important when illustrating an account balance for a participant near retirement. Accordingly, the 10-year Treasury is the best representation of interest rates that are reflected in annuity pricing.

The current nature of the 10-year Treasury rate also provides symmetry with the current account value. 401(k) balances move with the market, and as interest rates rise, fixed income investments tend to go down in value (and participants who are closer to retirement tend to have a higher percentage of their account in fixed income investments). As interest rates rise, annuity pricing becomes more favorable to the purchaser. Since a change in interest rates will impact the account balance and the illustrated annuity value, the use of current interest rates, such as the 10-year Treasury, in the illustration will show annuity payment amounts that are more appropriately related to the current value of the account if the participant were eligible for a distribution in the form of an annuity or eligible to rollover a portion of their account to purchase an annuity for their retirement.

ACLI Recommendation. ACLI recommends that the final rule maintain the IFR's interest rate and mortality assumption. Further, ACLI recommends that Department combine these interest rates and mortality components into a table of annuity factors which can be published on a regular basis and used by plan administrators to provide the illustration. The 10-year constant maturity Treasury securities rate and the applicable mortality table under Internal Revenue Code §417(e)(3)(B) are reasonable and provide results that fairly represent current immediate payout annuity purchase rates. Exhibit 1 describes the method for developing a table of annuity factors based on the IFR's mortality table and interest rate assumptions.

Insurance Loads

The IFR's required assumptions in paragraph for converting participants' account balances into the required lifetime income streams do not include an "insurance load." The Department requests comments on whether paragraph (c) of the final rule should require that insurance loads be factored differently into lifetime income stream illustrations.

ACLI Recommendation. ACLI recommends against adding an insurance load factor to the final rule, as doing so would result in conversions at rates below current immediate payout annuity purchase rates to the extent of such load factor.

Terms Certain or Other Features

In the preamble, the Department notes that Section 203(b) of the SECURE Act gives the Department the discretion to prescribe special rules and assumptions for lifetime income streams with "a term certain or other features." The Department further states that, although a number of annuity features and products exist, the treatment of such annuity features and products are not

reflected in the IFR. The Department requests comments as to whether, and how, to incorporate such features into the IFR's framework for lifetime income illustrations.

ACLI Recommendation. To simplify plan administration, ACLI recommends that the final rule not prescribe special rules and assumptions for lifetime income streams with a term certain or other features, such as guaranteed lifetime withdrawal benefits (GLWBs), guaranteed minimum withdrawal benefits (GMWBs), and other optional riders that may accompany annuities.

II. Special Rules for In-Plan Annuities

The IFR provides that defined contributions plans that offer in-plan distribution annuities have the option of using the IFR's regulatory assumptions or basing the lifetime income illustrations on the actual terms of the plan's insurance contract, with certain limitations. Specifically, the plan administrator must assume (1) that payments will commence on the last day of the statement period; (2) that the participant is age 67 (unless the participant is older than 67); and (3) that the participant is married with a spouse of the same age. The alternative disclosure may use a survivor percentage of less than 100% if that is what the distribution annuity would provide.

There are a number of reasons why plans may prefer to use the IFR's assumptions of the draft rule over the terms of an annuity contract. An annuity contract's minimum purchase rates may be below the current purchase rates offered by the insurer to the plan and its participants. A 403(b) plan may be funded with a number of annuity contracts offered by more than one insurer. A plan may add (*for the first time or otherwise*) and/or remove insurance contracts. Accordingly, we believe plan flexibility is essential in such circumstances.

ACLI Recommendation: ACLI recommends that the final rule maintain the IFR's flexibility with respect to in-plan annuities and provide plan administrators with the option of using the IFR's regulatory assumptions or using the actual terms of the plan's insurance contract(s).

III. The Department Should Issue Additional Guidance Regarding Investment Education

While we agree with the Department that the SECURE Act requires only a simple lifetime income illustration as provided for in the IFR, we also agree with the Department that many plans already provide illustrations and other tools, many of which are interactive, stochastic, and tailored to the individual plan and plan participants. Some of these illustrative tools anticipate additional contributions and provide the opportunity to include other sources of potential income in retirement. Such tools can help participants see the potential benefits of increasing their contribution rate as well as the power of compound interest and possible market returns.

Plans should be encouraged to continue to provide these illustrative tools, and we recognize the significant benefits they can provide to retirement savers. Indeed, we expect that the ERISA section 105 lifetime income illustration will help make participants begin to think of their account savings in terms of a retirement income stream – and expect that they will seek additional information and education. While we agree that the liability protections in the SECURE Act

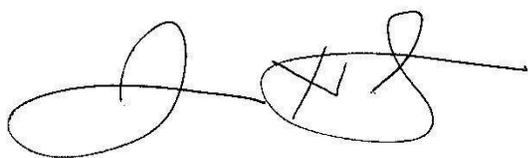
amendments to ERISA section 105 do not extend to these other educational initiatives, we are concerned that the SECURE Act's safe harbor protections may cause plan administrators to question whether they have liability risks when providing additional illustrations, concerns which may lead to a pullback in such offerings to the detriment of retirement savers.

Accordingly, ACLI strongly encourages the Department to issue guidance, either as part of the final rule, or separately, concurrent with issuance of the final rule, that provides clear support for the provision of illustrative tools by plan administrators. We recommend that this guidance be modeled after IB 96-1,³ which for years has successfully encouraged plans to furnish investment education to participants by specifically setting forth the Department's interpretation of ERISA section 3(21)(A)(ii) and 29 CFR 2510.3-21(c) as applied to the provision of investment related educational information to participants and beneficiaries in participant directed individual account plans. Importantly, IB 96-1 already addresses questionnaires, worksheets, software, and similar materials which provide a participant or beneficiary the means to estimate future retirement income needs and assess the impact of different asset allocations on retirement income. Guidance confirming that the furnishing of additional illustrations, including the use of illustrative tools that project retirement income and disclose the methodology supporting the projections, constitutes the rendering of "investment education" under IB 96-1 and ERISA would be fully consistent with the Department's interpretation of ERISA investment education as described in IB 96-1.

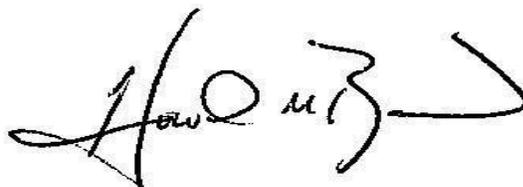
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On behalf of the ACLI member companies, thank you for your consideration of these comments. We welcome the opportunity to discuss these comments and engage in a productive dialogue with the Department.

Respectfully,



James H. Szostek



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³ 29 C.F.R. 2509.96-1 (June 11, 1996).

Exhibit 1 - Annuity Factor Calculation

Formula

$$\text{Annuity Factor} = \sum_{t=1} V_t P_{677+(t-1)}$$

Where: W = the last year of the mortality table

$$V_t = \text{the discount factor} \\ = (1+r)^{-(t-1)}$$

Where: r = the 10-year constant maturity treasury rate

$P_{67+(t-1)}$ = probability a person aged x will be alive after t years

$$= {}_{67}L_{67+t} / {}_{67}L_{67}$$

Where: ${}_{67}L_{67}$ = 100,000 (the starting population or any number)

${}_{67}L_{67+t}$ = the number of annuitants alive at age $6767+t$

$$L_{67+t} = L_{67+t-1} * (1 - \text{Mortality Rate}_{67+t-1})$$

Where: Mortality Rate $_{67+t}$ is from the the 417(e)(3)(B) unisex mortality table

Numerical example

From the 417(e)(3)(B) unisex mortality table⁴

Age	Mortality rate	L_x
67	0.009723	100,000
68	0.010687	99,028
69	0.011757	97,969
...
119	0.5	0.05
120	1.0	0.03

Where: the discount rate is 0.87% per year.

Year 1 or age 67

$$V_{67} \text{ equals } (1+0.87\%)^{-0} = 1$$

$$P_{67} \text{ equals } (100,000)/(100,000) = 1$$

$$V_{67}P_{67} \text{ equals } 1*1 = 1$$

Year 2 or age 68

$$V_{68} \text{ equals } (1+0.87\%)^{-1} = 0.991375$$

$$P_{68} \text{ equals } L_{68} / L_{67}$$

$$L_{68} = \text{Expected number alive or } (1 - \text{Mortality Rate}_{67}) * L_{67} = (1 - 0.009723) * 100,000 = 99,027.7$$

⁴ <https://www.irs.gov/pub/irs-drop/n-19-67.pdf>

$$L_{68} = 99,027.7/100,000 = 0.990277$$

$$V_{68}P_{68} \text{ equals } 0.991375 * 0.990277 = 0.981736$$

Year 3 or age 69

$$V_{69} \text{ equals } (1+0.87\%)^{-2} = 0.982824$$

$$P_{69} \text{ equals } L_{69} / L_{67}$$

$$L_{69} = \text{Expected number alive or } (1-\text{Mortality Rate}_{68}) * L_{68} = (1-0.010687) * 99,027.7 = 97,969.4$$

$$L_{69} = 97,969.4/100,000 = 0.979694$$

$$V_{69}P_{69} \text{ equals } 0.982824 * 0.979694 = 0.962867$$

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Year 53 or age 119

$$V_{119} \text{ equals } (1+0.87\%)^{-53} = 0.637345$$

$$P_{119} \text{ equals } L_{119} / L_{67}$$

$$L_{119} = \text{Expected number alive or } (1-\text{Mortality Rate}_{118}) * L_{118} = (1-0.5) * 0.112757 = 0.056378$$

$$L_{119} = 0.056378/100,000 = 0.000001$$

$$V_{119}P_{119} \text{ equals } 0.637345 * 0.000001 = 0.0000004$$

Year 54 or age 120

$$V_{120} \text{ equals } (1+0.87\%)^{-54} = 0.631848$$

$$P_{120} \text{ equals } L_{120} / L_{67}$$

$$L_{120} = \text{Expected number alive or } (1-\text{Mortality Rate}_{119}) * L_{119} = (1-0.5) * 0.056378 = 0.028189$$

$$L_{120} = 0.028189/100,000 = 0.0000003$$

$$V_{120}P_{120} \text{ equals } 0.631848 * 0.0000003 = 0.0000002$$

The annuity factor equals:

$$1 + 0.981736 + 0.962867 + \dots + 0.0000004 + 0.0000002 = 18.29925$$

If \$100,000 is being annuitized, the annual payment = \$100,000/ 18.29925 = \$5,464.70

Interest Rate	Mortality Table	Age	Annuity Factor	Account Value	Annual Payment
10-yr Treasury	417(e)(3)(B) unisex	67	18.29925	100,000	5,464.70