

August 1, 2013

SUBMITTED ELECTRONICALLY

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210
Attention: Pension Benefit Statements Project

Re: Advance Notice of Proposed Rulemaking - Lifetime Income Illustrations on
Participant Statements
RIN 1210-AB20

This letter is submitted on behalf of FMR LLC and its affiliated financial service companies, collectively known as Fidelity Investments ("Fidelity"), in response to the Advance Notice of Proposed Rulemaking (the "Notice") published by the U.S. Department of Labor (the "Department") in the Federal Register on May 8, 2013. We greatly appreciate the opportunity to comment on this important topic before the formal proposal of a regulation.

Fidelity provides investment management, record keeping, communications, custodial and trustee services to more than 20,000 401(k), 403(b) and other individual account plans covering more than 12 million participants and their beneficiaries. A Fidelity life insurance company and affiliated insurance agency are major distributors of variable and fixed annuity contracts and guaranteed benefit withdrawal annuity products. As part of its plan services model, Fidelity has developed various educational planning tools for plan participants that help them appreciate the need for retirement savings and the manner in which that savings may be distributed as income during their retirement years.

(1) Background

In the Notice, the Department has proposed a substantial addition to the requirements for individual account plan statements for participants and beneficiaries imposed by the Pension Protection Act of 2006 (the "Act"). The proposal would mandate that statements begin to include the projection of account balances to normal retirement age for participants who have not yet attained that age and the illustration of the current account balance and (if necessary) the projected account balance as a projected lifetime income stream in retirement. Additional illustrations in the form of a joint and survivor annuity would be required for married participants.

We agree completely with the Department's desire to educate participants about the income that their defined contribution plan accounts may generate in their retirement years. We have been working for a number of years on educational online tools to support that effort. Our experience has been quite positive - a substantial percentage of participants who utilize online illustration tools subsequently increase their rate of deferral under their retirement plan. We also agree that annuities are an important consideration in retirement planning for many participants. IRA owners and other Fidelity non-plan retail customers may obtain online annuity rate quotes from our annuity purchase service.

As discussed in detail below, however, we question the authority cited by the Department to mandate the additions to benefit statements proposed in the Notice as well as the annuity-based methodology proposed to implement a statement mandate.

(2) Lifetime Income Illustration as a Mandate

As an initial matter, it would be appropriate for the Department to clarify the statutory authority that would support a regulation requiring lifetime income illustrations on participant statements provided by individual account plans. The Notice cites Section 105(a) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") as partial authority for a new illustration mandate [78 FR 26728]. As amended by the Act, ERISA Section 105(a) requires in part that statements include the participant's or beneficiary's "total benefits accrued", which for 401(k) and other individual account plans is the current value of his or her account. Nothing in the statutory language references any type of income illustration or requires a benefit statement to project an accrued benefit (that is, the account balance) into the future.¹

As noted by the Department in the Notice, a lifetime income illustration is intended to help change a participant's perception of retirement savings [78 FR 26728]. However, the proposed illustrations would constitute neither a statement of his or her current accrued benefits nor a statement of the accrued benefits in an alternative form. First, the illustrations would need to be provided in an annuity form of benefit that is not even available to the great majority of individual account plan participants through the plan. In addition, the need acknowledged in the Notice to disclose to participants that the account balance projections and lifetime income stream illustrations are only estimates and not guarantees [78 FR 26729] provides a clear demonstration of their limited use.

The Notice also refers to the general authority conferred by ERISA section 505 on the Department to prescribe such regulations as the Secretary finds necessary or appropriate to carry

¹ ERISA section 109(c) provides that the Secretary may "prescribe the format and content of ... any [SPD, SAR] and any other report, statements or documents ... required to be furnished or made available to plan participants...." However, Section 109(c) would only give the Department authority to define the form and content of a lifetime income illustration on a statement to the extent there is a requirement to provide an illustration of lifetime income on statements in the first place. Section 109(c) does not provide independent authority for the Department to mandate the projections and illustrations in its proposal.

out the provisions of Title I of ERISA. We suggest that the necessary cost/benefit analysis will not support reliance on this provision as an alternate source of regulatory authority.

(3) Illustrating an Income Stream on Statements

Recent experience with participant disclosure notices mandated under ERISA Section 404(a)-5 strongly suggests that information provided in a static format does not promote participant engagement. As an equally important consideration, the disclosures that would need to accompany the projections and illustrations would greatly add to both the length and complexity of participant statements, increasing the risk of reader disengagement from any of the information provided on the statement.

If the Department is determined to pursue a new statement requirement, we recommend that the Department consider requiring that statements remind participants of the need for education on this topic and refer them to an online calculator, whether one furnished by the plan administrator or service provider or the calculator made available on the Department website. Online statements, which are preferred by the majority of participants in plans serviced by Fidelity, already provide a link to a number of educational online tools and calculators.

As mentioned in prior comment letters, we have tracked the usage by participants and beneficiaries of the Fidelity benefits website (NetBenefits®) and the resulting data demonstrates a substantial positive trend over more than a decade. On average the percentage of usage has doubled over that period. A chart is attached that breaks down access by age and by account balance (see Appendix A). The most important point of the attached data is that it measures the percentage of participants who actually access the website, not merely those who have website availability. Although the lowest percentage is among the oldest segment of the participant population, that segment also shows the most striking increase in the percentage of usage over a 12-year period.

In addition, our experience with participants who engage in online interactions is quite positive. A participant who understands the impact of his or her rate of deferral on potential retirement savings and income is much more likely to increase his or her deferral rate. The online tool may be designed to give the participant flexibility to decide what amount to illustrate and assess the impact of changes in the assumptions used to construct the illustration. Thus, a participant may illustrate only a portion of his or her account or include IRA or other non-plan assets in the illustration as well as assess the impact of different deferral rates. Many participants in the increasingly mobile workforce maintain significant retirement assets outside of their current employer's plan; thereby increasing the importance of allowing such individuals to model all of their retirement savings in an online tool, and decreasing the likelihood that any income illustration on their current plan's statement would be meaningful.

The Department has at times expressed concern that some participants may still favor paper disclosure. If that is the case here, notwithstanding the Department's provision of an

online calculator, the Department should continue with the approach taken in its transitional guidance in Field Assistance Bulletin No. 2006-3 (the “FAB”). That is, the notice on a participant’s statement pointing him or her to the plan provider or Department online calculator could also offer a paper illustration and how to obtain that paper illustration.

Providing a link to the calculator prescribed by the Department would not impose the significant costs imposed by a statement illustration mandate and would provide a consistent disclosure approach for all participants. Referral to a calculator made available by the Department is also far less likely to subject plan sponsors to lawsuits from participants or beneficiaries who were not able to obtain actual lifetime income streams that were as generous as those illustrated. Referral to a service provider online tool, on the other hand, would allow for greater flexibility and innovation by plan sponsors and plan service providers. It also permits plan sponsors to customize illustrations to their plan. For example, the online tool could include any benefits accrued under the employer’s defined benefit pension plan. In either case, tool interaction would enable participants to determine the approximate amount of lifetime income that any portion of their account balance might produce,² as well as take into account any IRA or other retirement assets they may have.

(4) Proposed Mandate Methodology

Most important, we do not think that mandating an illustration in a life annuity form will be meaningful to the great majority of participants who do not take their retirement income in the form of an annuity contract. Many providers in the industry have been working on lifetime income illustrations over the past decade and provide illustrations in a variety of formats. Commentary in the Notice also confirms the wide spectrum of perspectives on the proper form of lifetime income illustrations.

For example, many financial services firms, including Fidelity, offer their investors a systematic withdrawal plan (SWP) service to generate a payment stream (sometimes described as a “draw down”) from the existing account portfolio while allowing their remaining account assets to participate in market growth. Contrary to an example in the Notice [at 78 FR 26733], SWP distribution options may be designed to last for the participant’s lifetime, although the monthly payment will vary over time in due in part to investment performance. Use of a SWP format may provide a more realistic illustration for the great majority of participants.

A more detailed discussion of various concerns with the proposed methodology is provided in Appendix B.

² Note that experts generally agree that it is unwise for a participant to annuitize all of his or her retirement savings. Instead, participants should retain at least a portion of their savings in other investments that can be used for larger or unexpected expenses in retirement. A static annuity illustration based on a participant’s entire account balance could be misconstrued by participants as a recommendation to annuitize their entire account balances at retirement.

As an additional point, the proposed regulation language in the Notice would require that the required disclosure on participant statements include a statement that the lifetime income illustrations are illustrations only and that actual payments may vary. See §2520.105-1(c)(6)(iii). The same type of statement should be required for the projected account balance calculation for participants who have not attained normal retirement age.

(5) Annuity Contract Rates

The Notice proposes that plans offering an annuity form of distribution would use actual annuity contract rates in developing lifetime income illustrations. A similar approach is suggested for “in-plan” annuity products. The Notice describes three possible options for incorporating the in-plan annuity values in lifetime income illustrations, and invites suggestions on other approaches.

We recommend that any mandated illustrations not be required to incorporate information based on annuity forms of distribution or in-plan annuity products offered by a plan. As a general concept, it may seem reasonable to use actual annuity purchase rates if the illustration must be made in a life annuity format and the plan in fact buys annuity contracts for benefit distributions. In our experience, however, the variety of plan designs which may include annuity forms of distribution and of the types of annuity products currently used as plan investments pose serious challenges to meaningful participant disclosure and education. A more detailed discussion of those challenges and other suggestions for the DOL to consider are provided in Appendix C.

(6) FINRA Disclosure Rules

In the case of broker-dealer distributed participant account statements, we appreciate the efforts of the Department to address the Financial Industry Regulatory Authority (“FINRA”) requirements concerning the types of predictions or projections that may appear in broker-dealer communications with the public. These requirements generally prohibit broker-dealer communications from predicting or projecting performance, implying that past performance will recur or making any exaggerated or unwarranted claim, opinion or forecast. (NASD Rule 2210(d)(1)(D)). FINRA provides a limited exception to this prohibition on projections of performance in NASD IM 2210-6 – Requirements for Use of Investment Analysis Tools.

It will be extremely critical that FINRA officially confirm its approval of the final rule promulgated by the Department no later than the publication of the final rule. It would be quite disruptive to ask record keepers subject to broker-dealer regulation to begin work on a new systems solution absent such comfort. In the alternative, the effective date of the final rule should be set at least 12 months following the issuance of FINRA approval.

(7) Cost Assumptions

The Notice states that the Department believes that service providers that already provide a lifetime income illustration on participant statements would incur little if any additional cost due to the imposition of an illustration mandate. [78 FR 26736] In fact, it is unlikely that many providers provide a lifetime income illustration on statements that uses the exact same format and assumptions as those set forth in the Notice proposal. Thus, most providers would be required to build a new statement protocol.

The Notice goes on to state that the Department does not believe that adding a lifetime income illustration on participant statements would significantly increase the cost of pension benefit statements. This assumption ignores the substantial cost of creating the calculation methodology, creating a system for recalculating the assumptions (including marital status) on an periodic basis, statement redesign to accommodate a substantial increase in required disclosure, creating a system for affixing the illustration and accompanying disclosures on statements, and training the production and service staffs of the plan and its service providers.

We also believe that the Department has underestimated the potential liability to which the proposed illustrations would expose plan fiduciaries and their service providers and thus the costs represented by those liabilities.

All of these implementation and maintenance efforts and costs will need to be addressed in the Department's cost/benefit analysis for the formal proposal of a statement regulation.

* * * * *

We appreciate this opportunity to provide comments to the Department and would be pleased to respond to any questions or provide additional information that would be helpful to the Department.

Sincerely,



Douglas O. Kant
Senior Vice President and Deputy General Counsel

DOK/jam
Enclosures

APPENDIX A

| Age | Portion of Participants Contacting NetBenefits in Prior 12 Months (excludes tax-exempt orgs) | | | | | | | | | | | |
|----------------|--|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| | 12/31/2011 | 12/31/2010 | 12/31/2009 | 12/31/2008 | 12/31/2007 | 12/31/2006 | 12/31/2005 | 12/31/2004 | 12/31/2003 | 12/31/2002 | 12/31/2001 | 12/31/2000 |
| < 20 | #N/A | #N/A | #N/A | #N/A | #N/A | #N/A | #N/A | #N/A | #N/A | #N/A | #N/A | #N/A |
| 20 - 24 | 52% | 50% | 48% | 51% | 54% | 53% | 47% | 45% | 40% | 38% | 32% | 26% |
| 25 - 29 | 64% | 62% | 60% | 62% | 63% | 62% | 58% | 57% | 52% | 48% | 41% | 35% |
| 30 - 34 | 67% | 66% | 64% | 66% | 65% | 64% | 61% | 58% | 52% | 48% | 41% | 36% |
| 35 - 39 | 68% | 66% | 64% | 66% | 64% | 63% | 58% | 55% | 49% | 45% | 39% | 34% |
| 40 - 44 | 67% | 65% | 63% | 64% | 62% | 60% | 56% | 52% | 47% | 43% | 37% | 32% |
| 45 - 49 | 66% | 65% | 62% | 64% | 61% | 59% | 55% | 50% | 45% | 42% | 35% | 31% |
| 50 - 54 | 67% | 65% | 63% | 64% | 60% | 59% | 54% | 49% | 44% | 41% | 34% | 31% |
| 55 - 59 | 67% | 65% | 63% | 63% | 59% | 57% | 52% | 48% | 42% | 39% | 33% | 28% |
| 60 - 64 | 66% | 64% | 62% | 61% | 55% | 53% | 47% | 41% | 36% | 32% | 26% | 21% |
| 65 - 69 | 60% | 57% | 54% | 53% | 45% | 41% | 37% | 30% | 25% | 21% | 17% | 13% |
| 70+ | 42% | 41% | 37% | 38% | 31% | 29% | 24% | 17% | 13% | 11% | 9% | 7% |
| Overall | 65% | 64% | 61% | 62% | 60% | 59% | 54% | 51% | 45% | 42% | 36% | 31% |

| Account Balance | Portion of Participants Contacting NetBenefits in Prior 12 Months (excludes tax-exempt orgs) | | | | | | | | | | | |
|-----------------|--|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| | 12/31/2011 | 12/31/2010 | 12/31/2009 | 12/31/2008 | 12/31/2007 | 12/31/2006 | 12/31/2005 | 12/31/2004 | 12/31/2003 | 12/31/2002 | 12/31/2001 | 12/31/2000 |
| < \$1k | 34% | 34% | 30% | 32% | 33% | 32% | 28% | 24% | 20% | 18% | 14% | 11% |
| \$1 - 5k | 53% | 50% | 48% | 55% | 54% | 52% | 47% | 42% | 36% | 34% | 29% | 25% |
| \$5 - 10k | 60% | 58% | 57% | 61% | 58% | 55% | 50% | 45% | 41% | 40% | 35% | 29% |
| \$10 - 15k | 63% | 61% | 60% | 64% | 59% | 55% | 51% | 47% | 44% | 44% | 37% | 30% |
| \$15 - 20k | 66% | 64% | 63% | 66% | 60% | 57% | 53% | 49% | 46% | 46% | 38% | 32% |
| \$20 - 30k | 68% | 66% | 65% | 68% | 61% | 59% | 55% | 52% | 48% | 47% | 39% | 33% |
| \$30 - 40k | 70% | 68% | 67% | 70% | 63% | 61% | 57% | 54% | 51% | 48% | 40% | 34% |
| \$40 - 50k | 72% | 70% | 69% | 72% | 65% | 63% | 59% | 56% | 53% | 48% | 41% | 35% |
| \$50 - 70k | 74% | 73% | 71% | 74% | 67% | 65% | 62% | 59% | 54% | 50% | 42% | 37% |
| \$70 - 100k | 77% | 76% | 74% | 77% | 70% | 69% | 65% | 61% | 55% | 52% | 44% | 40% |
| \$100 - 150k | 81% | 79% | 78% | 80% | 74% | 73% | 68% | 64% | 58% | 55% | 47% | 44% |
| \$150 - 250k | 84% | 83% | 81% | 83% | 78% | 76% | 72% | 67% | 62% | 59% | 51% | 48% |
| \$250k+ | 89% | 88% | 86% | 87% | 83% | 81% | 77% | 73% | 67% | 63% | 55% | 53% |
| Overall | 65% | 64% | 61% | 62% | 60% | 59% | 54% | 51% | 45% | 42% | 36% | 31% |

APPENDIX B **Methodology Issues**

A critical advantage of online tools and calculators over a statement illustration is flexibility. The tools and calculators can be designed to provide a wide range of considerations for an individual to potentially model, depending on the individual's interest or tolerance for detail and variable scenarios. The following comments are intended in part to illustrate the difficulty of trying to impose a static one-size-fits-all disclosure mandate on statements.

Plan Servicing Simplification

For purposes of both simplicity and uniformity, any statement mandate should only require lifetime income illustrations based on payments beginning at age 65. In addition, plans should only be required to make any changes in the methodology or assumptions annually on December 31st. This approach would decrease the frequency of changes and provide some relief on plan servicing and cost issues.

Rate of Return Assumption

Personal financial projections should not be required to use a rate of return assumption that is unrelated to asset allocation. Historically, asset allocation has had a major impact on accumulated balances and consequently on income replacement. For example, the historical average return for a portfolio of 70% equities and 30% bonds is (using market index returns from Ibbotson & Associates) approximately 9%, while the historical average return for a portfolio of 50% bonds and 50% short-term investments is approximately 4.5%. Using a fixed 7% return or any other return that does not take a participant's asset allocation into consideration may result in substantially misleading projected account balances and income projections.

One of the challenges in mandating projections on participant statements is the lengthy explanation that would be necessary to explain the limited purpose of the illustration (education) and what it does not represent (a promise or commitment).

Annuity Form

- A) Annuity payments should be calculated with a cost of living adjustment (COLA) which is the same as the inflation rate assumption for account balance projections (currently 3%). A level-payment annuity can be very misleading as far as income sufficiency. With a 3% inflation assumption, the real value of a level-payment annuity after 15 years is only 64% of the starting amount and after 30 years is only 41% of the starting amount.
- B) The additional joint and survivor illustration for married participants will greatly add to the complexity and length of the additional statement disclosure. This will be particularly confusing because most 401(k) participants will not be subject to the qualified joint and survivor requirements unless they elect a life annuity form of benefit under their plan. In addition, most plans do not offer an annuity option, so the qualified joint and survivor option is irrelevant to participants in those plans.
- C) The Notice acknowledges that the safe harbor annuity assumptions do not include any cost or profit margin adjustments. This will overstate the amount of annuity income

that may actually be purchased in the marketplace. A reasonable proxy for those costs or adjustments should be included in the safe harbor assumptions.

Difficulties with Contribution Assumptions

- A) To calculate the projected future balance, the proposal would use the prior year total contributions from the employee and employer, with those amounts increased each year by 3% going forward until the participant's normal retirement date. In many instances assumed future contributions would be highly inaccurate, and potentially frustrating for participants. For example, if for the whole year the quarterly statements use the prior year's contributions then any action in the current year by the participant to increase contributions would be completely ignored – frustrating the participant. If the prior quarter's total contributions are used for future projections then the contribution amount may vary widely from quarter to quarter especially if the employer makes an end-of year profit-sharing contribution. These fluctuations in contributions would cause income projections to fluctuate drastically, particularly when balances are low and there is a lengthy period to retirement.
- B) The proposed safe harbor specifies a static real dollar future contribution amount (3% nominal growth to keep up with 3% inflation expectation). Many participants are enrolled in an automatic increase programs (AIP) and would likely expect planned future contribution increases to be accommodated in a personalized income projection. An improved safe harbor would encourage plan sponsors to use the more relevant AIP contributions rather than the static safe harbor contributions.
- C) Another situation that can occur is the suspension of contributions when a participant makes a hardship withdrawal. Using a partial contribution assumption for the remaining years to retirement simply because of a hardship withdrawal that caused a temporary suspension of contributions would be counterproductive.
- D) Many plan sponsors would be uncomfortable with providing any assumptions about the future level of employer contributions, out of concern that employees may view that assumption as a formal commitment for the future. The use of an online tool would permit the participant to incorporate his or her own assumptions about future contributions.
- E) The proposal furnished in the Notice does not take into account the possible impact of Internal Revenue Code limitations in the projection of future contributions to a participant's account. This will result in an overstatement of the projected account balance for participants affected by those limitations.

Conflicting Illustrations

Many companies, including Fidelity, provide income projections for participants in their online tools. These tools may in fact include lifetime income projections with an illustrated lifetime income annuity at the option of the participant. These online tools utilize both record-kept data and data provided by the participant. If these participants were to receive a separate plan statement illustration, based only on plan record-kept data, the two illustrations would generally be inconsistent. Equally important, the online tool methodology may differ substantially from the methodology mandated for statements.

Investment Risk

A single rate of return projection of balances from the present to an assumed retirement age completely ignores investment market risk. At a minimum the concept of market risk requires the use of different rates of return for comparison. These different rates of return may represent an expected rate of return and a poor market rate of return, a high, low, and medium rate of return, or some other illustrative set of returns.

Annuitization Assumption

100% annuitization is not appropriate for the great majority of participants as it does not allow for needed flexibility nor provide meaningful upside potential. The DOL should confirm that mandated disclosure to participants using 100% annuitization is not appropriate and that all financial projection are provided for illustrative purposes only. The requirement of a 50% annuitization or 50% systematic withdrawal plan (SWP) may be somewhat effective in communicating this message, but the flexibility of online tools again provides a better approach.

Taxability of Income

The Notice does not address how income sources with a different tax status should be treated. For example, will Roth sources be combined into a single income amount with pre-tax sources? If so, pre-tax sources will need to be converted to after-tax income amounts using an assumed tax rate. If they are kept separate each income amount on the statement will need to be clearly presented as after-tax or before-tax. The treatment of non-Roth after-tax sources (after-tax contributions and taxable earnings) as a third tax category should be clarified as well.

Loans

Many participants have loans. The Notice does not explain how 401(k) loans should be handled. That is, are loan balances ignored or included – does the projected balance at retirement and the associated income stream ignore or include the loan repayments? In either case, prominent disclosures will be needed on the statement to explain how loans are treated for purposes of the account balance projection and income illustrations.

APPENDIX C

Fidelity performs recordkeeping services for hundreds of 403(b) and 401(k) plans which offer annuity forms of distribution or in-plan investment options. Due to the infrequency of annuity purchases by participants, however, a plan administrator offering an annuity form of distribution typically would not have an ongoing contractual arrangement with a specific insurer. In addition, the experience in the insurance industry to date suggests that most individuals who purchase annuities (in-plan or otherwise) do not purchase fixed payment annuities. The variable and minimum guaranteed benefit annuities are more popular, but the guarantees are much lower than the amounts that may actually be payable starting at retirement if the contract experiences favorable investment results.

For all these reasons, it may not be clear what assumptions should be applied for an annuity form of distribution or an in-plan investment option offered by a plan. In such cases, the use of plan-specific annuity assumptions would not be appropriate notwithstanding that the plan offers annuities in some fashion.

The circumstances in which plan-specific annuity assumptions could be determined and applied based on an annuity option offered by a plan may be so limited as to not warrant the cost of building systems and special processes to do so. If the Department were nonetheless to require such assumptions to be used, however, there are several changes we would recommend.

Recommendations about Contract Assumptions

First, the Notice includes the following commentary with respect to the assumptions used for the lifetime income illustration of the participant's account balance and (if necessary) projected account balance:

“With respect to mortality and interest rate assumptions, many RFI commenters and others suggested 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. The Department agrees and intends to include this concept as part of the proposed regulation”. [78 FR 26734]

The draft regulatory proposal language in §2520.105-1(e)(3) differs from the description in the Notice preamble:

“If the plan offers an annuity form of distribution pursuant to a contract with an issuer licensed under applicable state insurance law, the plan shall substitute actual plan terms for the assumptions set forth in paragraphs (e)(2)(ii)(A) and (B) of this section”. [78 FR 26738]

The language quoted above seems to be based on the premise that annuity purchase rates are listed in 401(k) plan documents. In our experience, 401(k) and other defined contribution plans do not include annuity assumptions in the plan document.

Therefore, the draft regulatory proposal language in §2520.105-1(e)(3) should be replaced by the following:

“If the plan offers an annuity form of distribution pursuant to a contract with an issuer licensed under applicable state insurance law, the plan may substitute actual mortality and interest rate provisions contained in the plan’s annuity contract for the assumptions set forth in paragraphs (e)(2)(ii)(A) and (B) of this section.”

The experience in the insurance industry to date suggests that most individuals who purchase annuities (in-plan or otherwise) do not purchase fixed payment annuities. The variable and minimum guaranteed benefit annuities are more popular, but the guarantees are much lower than the amounts that may actually be payable starting at retirement with favorable investment experience. We applaud the Department’s solicitation of statements or other disclosure documents currently in use to disclose annuity price units and monthly payment guarantees. In addition, however, we believe that the Department will need further research on product design to provide a more precise proposal for the various products in use.

Disclosure Recommendations

Second, we recommend that the Department address the types of information that need to be provided to participants who are permitted to select annuity products as a distribution option under their plan. That is, the participant needs to understand (1) the irrevocable nature of the decision, depending on the refund features of the annuity product in question, (2) the challenge of determining financial viability far into the future, and (3) any surrender charges if there is a refund feature. These features would also appear to constitute necessary disclosure under the 404(c) regulations regarding restrictions on transferability.

Third, a plan and its record keeper trying to produce statements with lifetime income illustrations based on actual annuity rates would be dependent on the timely and accurate furnishing of information by one or more insurers. The final rule should confirm that any plan administrator or service provider responsibility for the illustration is conditioned on the insurer’s performance of those disclosure obligations.

Plans with Multiple RecordKeepers

Finally, the 403(b) plan universe would present an extremely difficult challenge because funds and annuity products are generally record kept separately by each record keeper for its own proprietary funds or contracts. Because 403(b) programs often offer products from different firms, multiple vendors provide recordkeeping services to the same plan. This will likely mean the use of different annuity assumptions for the multiple accounts of participants who purchase products from more than one vendor. Similar disparities would occur for plans that change carriers or freeze contract purchases from a given carrier.

We recommend that 403(b) programs (and any other individual account plans) record kept by multiple vendors should be permitted to use a general safe harbor separately for each participant account balance recordkept by a different vendor. Participants may be reminded that actual annuity quotes may be obtained from the issuer of any annuity contract that may be purchased for their account.