

August 7, 2013

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

Attention: Pension Benefit Statements Project (RIN 1210-AB20)

Dear Sir or Madam:

The Committee on Investment of Employee Benefit Assets (CIEBA) appreciates this opportunity to provide comments to the Employee Benefits Security Administration on the Advance Notice of Proposed Rulemaking (ANPRM) regarding lifetime income illustrations on participant defined contribution (DC) statements.

CIEBA represents more than 100 of the country's largest pension funds. Its members manage more than \$1.5 trillion of defined benefit and defined contribution plan assets on behalf of 17 million plan participants and beneficiaries. CIEBA members are the senior corporate financial officers who individually manage and administer Employee Retirement Income Security Act (ERISA) - governed corporate retirement plan assets.

CIEBA commends the Department of Labor for issuing this ANPRM requesting comments on lifetime income illustrations in advance of proposing regulations. The retirement security of millions of Americans depends on their ability to accumulate sufficient assets to provide a lifetime income stream. We believe that lifetime income illustrations are an effective tool in assisting participants in assessing their retirement readiness.

Background

With the continuing decline of corporate defined benefit plans and the growth of defined contribution plans a growing number of employees will be retiring with only an account balance from a 401(k) plan or an IRA. With increasing life expectancies, the risk of retirees outliving their retirement savings is a critical public policy challenge. One key issue is how to make employees aware of this risk without imposing significant burdens or potential liabilities on employers that voluntarily sponsor retirement plans.

General Policy Concerns

As voluntary sponsors of large corporate defined contribution plans, CIEBA members are committed to strengthening the private sector retirement system. As plan fiduciaries and investment professionals, CIEBA members are also committed to helping their plan participants prepare for retirement. CIEBA members agree that plan participants would benefit from the disclosure of their accrued benefits as an estimated lifetime income stream of payments, in addition to an account balance.

CIEBA believes that any approach to providing lifetime income illustrations should be:

- Educational
- Simple
- Cost effective
- Reasonable and
- Designed to encourage a change in participant behavior – increase retirement savings

CIEBA supports both plan sponsor and participant educational initiatives as first steps to understand how to translate current account balances into lifetime payments at retirement. By educating sponsors and participants on lifetime income, the Department can positively influence plan disclosures which will encourage participant behavior to improve their retirement security without imposing a mandate on all DC plans.

Lifetime income projections are a powerful way to focus individuals on the importance of retirement savings. We believe most participants are unable to convert a lump sum account balance into a monthly income amount for life commencing at a date that may be years into the future. For this reason, they may also be under the mistaken impression that their current 401(k) account balances will provide sufficient savings to fund their retirement. In reality, their balances today are likely insufficient, but participants have no intuitive way to convert today's balance into a retirement income stream.

Showing the value of retirement account balances as a lifetime monthly income stream gives plan participants a better understanding of their potential income in retirement based on what they have saved. This knowledge can help participants better understand their current financial position and encourage them to save more or consider additional steps to improve their retirement security.

CIEBA agrees that providing participants with lifetime income information would be beneficial to employees to help them better prepare for retirement. However, CIEBA believes that the Department should encourage – but not require – plan sponsors to provide illustrations of how account balances translate into lifetime income streams.

Current Lifetime Income Disclosures by CIEBA Members

We surveyed our membership to identify the steps CIEBA members are taking to offer lifetime income tools or disclosures to the DC participants. Additionally we attempted to determine what might be precluding members from offering such tools or disclosures. A summary of the survey results are detailed below:

- More than half of the CIEBA survey respondents currently offer some form of lifetime income illustration to participants, primarily provided either by the plan's recordkeeper or a third-party vendor.
- Generally speaking, the lifetime income illustrations currently provided by CIEBA plans are more robust than the proposal outlined in the Department's ANPRM. Specifically, many of these illustrations permit participants to include other forms of retirement income (e.g., defined benefit pension income stream, Social Security, etc.).
- Plans that provide lifetime income illustrations often make them available 'on demand' for participants to access whenever they choose, rather than being on set calendar date delivery.
- Plans surveyed that do not currently offer lifetime income illustrations to participants listed fiduciary issues as their primary reason, stating that such illustrations are not within the scope of current regulatory fiduciary safe harbors and the lack of regulatory guidance raises concern about potential fiduciary liability.

Current and Projected Account Balances

The Department is considering a rule which would require that benefit statements present a participant's accrued benefit as an estimated lifetime stream of income, in addition to the current account balance. The rule would also require that benefit statements project a participant's accrued benefit to normal retirement age under the plan and then present the projected benefit as an estimated lifetime income stream. In addition, if a participant is married, the rule would also require that these income streams be shown as a joint and survivor benefit.

To effectively encourage participants to save for retirement, we believe any new disclosures must be educational, simple, cost effective, and reasonable as noted above. Participants already receive large quantities of complex information. The effectiveness of any lifetime income illustration pivots on the likelihood that participants will read and understand the information provided. CIEBA believes that the value of these illustrations is inversely related to the complexity of the illustrations and the assumptions used in the calculation of the conversion of an account balance to a lifetime income stream.

We acknowledge that the Department requested comments on various assumptions that might be used in any conversion calculation or projection. Within CIEBA, there were disparate views as to how the calculation might be performed and the underlying assumptions. The diversity of views within CIEBA was such that we, as fiduciaries responsible for millions of defined contribution plan participants, would strongly encourage the Department to consider the approach we outline below.

We do believe in the following general philosophy. We believe the Department should encourage the use of conservative assumptions when providing an illustration today or projected in the future. We believe the participant's current contribution rate (and salary) should be held constant. We further believe any assumptions that drive projected balances should be conservative to reflect the dynamics of today's financial markets *and* so participants have a more realistic expectation of portfolio growth *unless they decide to increase their contribution rate*.

We further recommend the Department encourage the use of an annuitized conversion of account balances (either calculated today or projected to a future date). We propose the annuitization calculation *exclude* any insurance cost, but footnote that the income stream is indicative only and that there is no assurance such an annuity could be purchased. As discussed below, CIEBA recommends that the Department provide simple conversion tables that include examples of how much monthly income a participant could expect at normal retirement age based upon various current and projected hypothetical account balances. CIEBA also recommends that the Department encourage plan sponsors to provide a link to a lifetime income calculator, such as the one available on the DOL website.

Methodology for Projections and Conversions

The Department is considering both a general reasonableness standard, as well as a regulatory safe harbor for projecting a participant's account balance and for determining a lifetime income stream. CIEBA is concerned that mandating a specific approach to retirement income disclosure may disenfranchise the innovation that has already occurred in this area and discourage future innovation. A mandate also disadvantages companies who have voluntarily invested in infrastructure to support income projections using a different approach.

As noted above, many plan sponsors do not currently offer lifetime income illustrations to participants under the belief that such illustrations are not within the scope of current regulatory fiduciary safe harbors and the concern about potential fiduciary liability. A safe harbor that prescribed a specific set of assumptions that were considered reasonable would provide legal liability comfort to such plan sponsors. We request that the Department adopt a general reasonableness standard, instead of a mandate, as well as provide a safe harbor alternative. If the Department adopts a safe harbor, then we also request that the Department make it clear that the safe harbor assumptions are not the only “reasonable” set of assumptions for lifetime income illustrations. This would prevent plan sponsors from only utilizing the certainty of a safe harbor even when they believe their existing disclosures satisfy a reasonableness standard.

CIEBA believes that a reasonableness standard would give plan sponsors the flexibility to continue using current best practices and allow them to develop new tools. It would permit those plans who currently are providing some form of illustration the ability to maintain these practices (innovating as each plan feels appropriate) in offering illustrations to their participants.

We also recommend that the assumptions used for projection and conversion be made available to participants separately rather than presented as part of the lifetime income disclosure. Explanations of these assumptions will be lengthy and complex and will likely discourage participants from reading the information.

Proposal for an Alternative to Regulation

The Department has also asked for suggestions for alternatives to direct regulation. The majority of CIEBA members oppose any mandate that plans provide lifetime income disclosure. Mandates could discourage plan sponsorship, due to the complex nature of disclosures and the potential liability risks associated with them, and the costs of complying with a mandate would be paid by plan participants negatively impacting the growth in participant assets thereby diminishing their lifetime income streams.

Instead, we believe that guidelines are preferable to direct regulation. The Department should issue guidance on adopting reasonable assumptions, without prescribing particular assumptions or methodology. Plan sponsors would then continue to use their existing illustrations and have the flexibility to develop new tools. Allowing sponsors to continue to provide lifetime income illustrations using their existing tools would also minimize the potential confusion to participants and costs to both plans and their participants.

As a simple first step, CIEBA believes that the Department should provide conversion tables that include examples of how much monthly income a participant could expect at normal retirement age based upon various levels of current and projected hypothetical account balances. These

conversion tables would provide an easy to adopt, valuable first step for plans that currently provide no illustration (primarily small plans) and establishes more consistent availability of helpful information for participants in *all* plans. This tool would provide a valuable input for participants in assessing retirement readiness and turn the participant's focus on what they need to do to improve their outcome.

CIEBA also believes that the Department should encourage plan sponsors to provide a link to the Department's lifetime income calculator, or a similar calculator supplied by the plan or by a service provider to the plan. This would provide a simple, low-cost, more consistent method for all plans to provide education on lifetime income to participants.

Standardized Disclaimer Statement

More than half of CIEBA members already voluntarily provide information to educate participants about lifetime income options, but some members are concerned that any assistance they provide will expose them to fiduciary liability. The Department should prescribe standardized disclaimer language that any illustration does not establish a right to a benefit under the plan. While disclaimers may reduce potential liability, variance among employers' disclaimer language could lead to plaintiffs' attorneys pitting one sponsor's disclaimer against another. The language provided by this guidance should be clear and release sponsors from liability for the disclosure if prepared in accordance with reasonableness standards.

CIEBA also recommends that the Department provide a safe harbor, similar to that provided in Interpretive Bulletin 96-1, that providing lifetime income illustrations is educational information, not investment advice.

In-plan Annuities / Selection of Annuity Providers

A few CIEBA members have commenced offering in-plan annuity arrangements, even in advance of Department of Labor and IRS guidance. However to encourage more wide-spread adoption of these arrangements, plan sponsors need clear, simple fiduciary guidance that will allow them to provide lifetime income education and to make lifetime income options available to plan participants without risking potential fiduciary liability. We believe this guidance will increase plan offerings of these arrangements.

Current regulations (29 CFR 2550.404a-4) provide a fiduciary safe harbor for the selection of annuity providers for the purpose of benefit distributions from defined contribution plans. The Department should improve the current safe harbor to recognize more lifetime income designs, and should also provide a fiduciary safe harbor for the selection of in-plan retirement income products. Further, the safe harbor standards should be based on conditions found on the date of the initial selection and must explicitly protect fiduciaries from liability resulting from negative future events that could not have been foreseen at the time of adoption.

Recommendations

As an alternative to direct regulation, we urge the Department to encourage – but not require – plan sponsors to provide illustrations of how account balances translate into lifetime income streams. As a simple first step, CIEBA believes that the Department should provide a conversion table that includes examples of how much monthly income a participant could expect based upon various hypothetical account balances and encourage plan sponsors to provide participants a link to the Department’s online lifetime income calculator (or a similar calculator provided by the plan or a service provider). Regulatory guidance, that includes fiduciary protection for plan sponsors, could promote these illustrations as “best practices”.

Encouraging or mandating these disclosures will result in potential litigation risks for plan sponsors from employees whose ultimate retirement income could vary significantly from their projected income. To mitigate these risks and allow for continued innovation in this area, CIEBA recommends that the Department issue clear fiduciary guidance that allows plan sponsors to provide lifetime income illustrations to plan participants without risking potential fiduciary liability.

Thank you for the opportunity to comment on the ANPRM and for your consideration of our views. We applaud the goals of the proposal and we look forward to continuing to work with you on this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "R. L. Diamonte". The signature is written in a cursive, flowing style.

Robin L. Diamonte, Chair
The Committee on Investment of Employee Benefit Assets