

MEMO# 32915

November 17, 2020

ICI Comment Letter on DOL Lifetime Income Disclosure Interim Final Rule

[32915]

November 17, 2020 TO: ICI Members
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: ICI Comment Letter on DOL Lifetime Income Disclosure Interim Final Rule

Today, ICI submitted the attached comment letter on the Department of Labor (DOL) interim final rule (IFR)[\[1\]](#) implementing Section 203 of the Setting Every Community Up for Retirement Enhancement Act (the SECURE Act).[\[2\]](#) Section 203 requires ERISA-covered defined contribution plans to include lifetime income stream estimates on participant benefit statements at least once every 12 months, setting forth the lifetime income stream equivalent of the participant's total account balance under the plan, calculated as both a single life annuity (SLA) and a qualified joint and survivor annuity (QJSA). As directed by the legislation, the IFR prescribes the assumptions to be used in calculating the lifetime income estimates and provides a model lifetime income disclosure.[\[3\]](#)

As a threshold matter, Part I of our letter recommends that DOL provide guidance clarifying the circumstances under which the use of alternative methods of illustrating retirement income estimates would not constitute the rendering of fiduciary investment advice under ERISA. We explain that this guidance is critical to ensuring that the innovative and effective retirement income illustration methods and tools already in use today and valued by participants (or future tools yet to be developed), are not supplanted by the "one-size-fits-all" annuity approach required by the SECURE Act. The loss or discontinuation of such widely used tools would have an untenable impact on the ability of plan participants and beneficiaries to understand how their savings and investment actions can impact their retirement preparedness and achieve better outcomes in retirement.

We also recommend in Parts II and III of the letter that DOL modify certain assumptions and supplement the model disclosure language specified in the IFR, including:

- Permitting use of the age 67 assumption regardless of the participant's actual age;
- Changing the QJSA estimate to reflect a 50 percent survivor annuity;
- Adding model language explaining the impact for women of purchasing an annuity outside of an employer's plan;
- Adding model language making clear that an annuity distribution option may not be

available from the plan;

- Adding model language regarding the potential impact of insurance loads on the monthly payment shown under the illustration; and
- Adding model language regarding the existence of other calculation methods for estimating the retirement income that could be generated by a participant's account balance.

In Part IV of the letter, we urge DOL to modify the special rules regarding participants who purchased deferred annuities to permit use of the generally applicable assumptions described in section 2520.105-3(c) as an alternative to use of the actual annuity contract terms. In Part V, we recommend certain clarifications to the limitation on liability set forth in section 2520.105-3(f) and expansion of the liability relief to cover lifetime income disclosures relating to deferred annuities. Finally, we urge clarification of the effective date and other miscellaneous issues, as discussed in Parts VI and VII.

Elena Barone Chism
Associate General Counsel - Retirement Policy

[Attachment](#)

endnotes

[1] The IFR is available here:

<https://www.govinfo.gov/content/pkg/FR-2020-09-18/pdf/2020-17476.pdf>. For our description of the IFR, see ICI Memorandum No. 32686, dated August 19, 2020. Available here: https://www.ici.org/my_ici/memorandum/memo32686

[2] For a description of the SECURE Act, see ICI Memorandum No. 32118, dated December 20, 2019. Available here: https://www.ici.org/my_ici/memorandum/memo32118.

[3] The IFR amends 29 CFR part 2520 by adding new § 2520.105-3, Lifetime Income Disclosure for Individual Account Plans.

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