

MEMO# 27227

May 8, 2013

DOL Advance Notice of Proposed Rulemaking on Lifetime Income Illustrations; ICI Conference Call Scheduled for May 21

[27227]

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TO: PENSION COMMITTEE No. 10-13
PENSION OPERATIONS ADVISORY COMMITTEE No. 10-13
RE:

DOL ADVANCE NOTICE OF PROPOSED RULEMAKING ON LIFETIME INCOME ILLUSTRATIONS;
ICI CONFERENCE CALL SCHEDULED FOR MAY 21

The Department of Labor has issued an Advance Notice of Proposed Rulemaking (ANPRM) regarding the inclusion of lifetime income stream illustrations on pension benefit statements for defined contribution plan participants. [1] The ANPRM is part of a broader DOL regulatory project that will address the requirements for benefit statements under ERISA §105, as amended by the Pension Protection Act of 2006. [2] Prior to issuing a proposed regulation under §105, DOL has asked for comment on various rules (including concepts and specific language) being considered for expressing a participant's accrued benefit as an estimated lifetime stream of payments (in addition to an account balance) and projecting the accrued benefit to the participant's retirement date (and likewise expressing the projected benefit as an estimated lifetime stream of payments). [3] Although the proposed language would require such illustrations and projections, DOL indicates in the release that it intends to consider all reasonable alternatives to direct regulation, including other ways of ensuring that participants get "constructive and helpful lifetime income illustrations." Comments on the ANPRM are due by July 8, 2013.

We will hold a committee conference call to discuss the proposal and ICI's response on Tuesday, May 21, 2013 at 3 pm ET. Please RSVP to Brenda Turner at bturner@ici.org (202/326-5820) no later than Monday, May 20. To participate, dial 1-800-369-1986 and enter passcode 34866. As a reminder, because all lines will be open to facilitate discussion, please remember to place your line on mute when not speaking and do not place the call on hold.

Projected Account Balance

The ANPRM proposes to require benefit statements for individual account plans to show the current account balance as of the last day of the statement period and, for participants who have not reached normal retirement age under the plan, the account balance projected to normal retirement age. Certain assumptions are necessary to calculate the projected account balance, and DOL proposes to create both a general standard and a safe harbor for these assumptions. The general standard would require reasonable assumptions, taking into account generally accepted investment theories, although, in any case, the projection must be expressed in current dollars and must take into account future contributions and investment returns. The proposed safe harbor assumptions for calculating the projected account balance are: (1) contributions will continue until normal retirement age at the current dollar amount, increasing 3 percent per year; (2) investment returns are 7 percent per year (nominal); and (3) the discount rate for converting to current dollars is 3 percent. The ANPRM provides DOL's reasons behind each of the three safe harbor assumptions and requests comment on whether different assumptions would be more appropriate.

DOL indicates that the general standard is intended to permit current best practices to continue, such as tools that use stochastic modeling to project account balances, as long as the tools' methodology otherwise meets the reasonableness standard. The ANPRM specifically invites comment on whether the proposal would facilitate the use of stochastic modeling or other methods that may be appropriate for benefit statements. DOL also requests comments on whether or not the projection should be shown in current dollars and whether or not the projected account balance should be provided (i.e., the benefit statement would show only the estimated monthly income stream resulting from the projected account balance without showing the projected balance itself).

The ANPRM briefly addresses FINRA rules that generally prohibit predictions or projections of performance in communications with the public (FINRA Rule 2210(d)(1)(F), corresponding to prior NASD Rule 2210(d)(1)(D)), noting that DOL and FINRA will provide guidance, if necessary, so that compliance with DOL's regulation will not result in a violation of FINRA standards. DOL requests comments on whether and to what extent such guidance is needed.

Lifetime Income Estimate

DOL is proposing to require benefit statements for individual account plans to express both the current account balance and the projected account balance in terms of a monthly annuity payment. [4] The lifetime income stream is described as "a level monthly payment, payable for the life of the participant beginning on the assumed commencement date [i.e., the first day following the statement period, and assuming the participant is at normal retirement age [5]]." The payments would be shown as a single life annuity and also, for married participants, a joint and 50 percent survivor annuity assuming the spouse is the same age as the participant.

Similar to the proposed rule for projections, there would be a general standard and safe harbor assumptions for converting to the annuity. Under the general rule, illustrations must be based on reasonable mortality and interest rate assumptions taking into account generally accepted actuarial principles. The assumptions deemed reasonable under the safe harbor would be (1) a rate of interest equal to the 10-year constant maturity Treasury securities rate, for the first business day of the last month of the statement period, and (2) mortality as reflected in the applicable mortality table under Internal Revenue Code §417(e)(3)(B) in effect for the month containing the last day of the statement period. Plans

with an annuity distribution option would be permitted to use that product's mortality and interest rate provisions under the safe harbor.

The proposed conversion rules do not include any "insurance load," i.e., the difference between the market price of an annuity and the price of an actuarially fair annuity. A load would include profits to the insurer and operating costs associated with offering annuity products. DOL is requesting comments on whether, and if so, how, such loads should be factored into the lifetime income stream conversion.

Disclosures

The proposal would require disclosure of any assumptions used in the account balance projection and illustration of lifetime income streams. It would also require a statement that the lifetime income stream illustrations are illustrations only and the actual monthly payments that may be received at normal retirement age will depend on numerous factors and may vary from the illustrations in the benefit statement. The ANPRM requests comments and suggestions on how to ensure the disclosures are written in a manner to be understood by the average plan participant.

Calculation Examples

Appendix A contains an example of how to calculate the lifetime income illustration that would be required under the framework outlined in the ANPRM. As described in the release, the Appendix would not appear in the eventual regulation and is not meant to be a model for benefit statements. Concurrent with publishing the ANPRM, DOL has posted on its website a lifetime income calculator using assumptions consistent with proposed framework for requiring income stream illustrations. [\[6\]](#)

Cost-Benefit Analysis

The ANPRM requests comments on the costs and benefits of requiring the projections and illustrations described above. DOL indicates a belief that there will be little, if any, cost associated with the requirements, at least for plans already providing lifetime income illustrations. For plans that do not currently provide such illustrations on benefit statements, DOL believes that adding the illustrations should not significantly increase the cost of pension benefit statements. Nevertheless, the release asks for suggestions on how to reduce costs of the illustrations without compromising the anticipated benefits (such as requiring the illustrations to be provided annually rather than quarterly). Also, as noted earlier, DOL indicates that it will consider alternative approaches designed to get plan administrators to voluntarily provide lifetime income illustrations on benefit statements.

Elena Barone Chism
Associate Counsel

[Attachment](#)

endnotes

[\[1\]](#) A copy of the ANPRM is attached. A fact sheet is available here:
<http://www.dol.gov/ebsa/pdf/fsanprm.pdf>.

[\[2\]](#) See [Memorandum](#) to Pension Members No. 48-06, Federal Legislation Members No. 5-06, and 529 Plan Members No. 13-06 [20250], dated August 4, 2006 (describing Pension

Protection Act); [Memorandum](#) to Pension Members No. 15-13 [27138], dated March 27, 2013 (describing planned study on benefit statements).

[3] In 2010, the Departments of Labor and Treasury jointly published a Request for Information on lifetime income options, asking a number of questions intended to help determine whether and how to facilitate access to and use of lifetime income arrangements. See Memorandum to Pension Members No. 4-10 [24125], dated February 2, 2010. Some of the RFI questions related specifically to lifetime income estimates on benefit statements. The ANPRM refers to many of the comments received in response to the RFI as background for the proposal as outlined. For ICI's response to the RFI, see Memorandum to Pension Members No. 11-10 and Research Committee No. 2-10 [24278], dated May 3, 2010.

[4] DOL indicated that it considered using a systematic withdrawal approach (such as the 4 percent method) for converting the account balance to a stream of income, but chose the annuitization approach because it "reflects 'lifetime' income" and "reflects one of [DOL's] primary goals in encouraging meaningful benefit statements—that plan participants and beneficiaries are informed of their financial readiness for the entirety of their retired lives, not just a portion of it." 78 Fed. Reg. 26727, 26733.

[5] If the participant is older than normal retirement age, the actual age would be used.

[6] The calculator is available here:
<http://www.dol.gov/ebsa/regs/lifetimeincomecalculator.html>