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Serving Retirement Plan Sponsors for More than 60 Years
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U.S. Department of Labor
Office of Regulations and Interpretations
Employee Benefits Security Administration
Washington, DC
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RE: RIN 1210-AB20
Advance Notice of Proposed Rulemaking – Lifetime Income Streams

The Plan Sponsor Council of America (PSCA) is pleased to comment on the Advance Notice of Proposed Rulemaking (the ANPRM) regarding a requirement to include an account balance projection and lifetime income stream illustrations to the benefit statement provided to individual account plan participants and certain beneficiaries. PSCA is a nonprofit association that provides services, best practice information, and advocacy to defined contribution plan sponsors. Members have access to a broad range of resources and programs that address the varying needs of both small and large companies. Membership includes 1,000 companies ranging in size from Fortune 100 firms to small, entrepreneurial businesses.

A key element to retirement saving is establishing a savings level that will provide an adequate level of income during retirement. Because individuals intend to save until they retire, assumptions about future savings rates and earnings on those savings are critical factors, as is an assumption about future income that is a proxy for spending replacement in retirement. Other factors include current savings, age, inflation, household-level retirement assets and income, and other assets such as Social Security, a defined benefit retirement plan, and housing wealth. Savers need to know if they are “on target” for accumulating adequate retirement assets based on their current situation, and, if not, what corrective actions are required. PSCA is pleased that the Department of Labor (the Department) recognizes the importance of educating participants about this important issue, even though we disagree with the approach taken in the ANPRM. We believe there are other meaningful measures the Department can

implement that will expand the voluntary provision of retirement income calculators by service providers and plan sponsors.

DISCUSSION

PSCA does not support a mandate. PSCA has repeatedly opposed a mandate to provide a lifetime income illustration.¹ Given the broad availability of retirement income calculators, the cost-benefit analysis does not favor this new mandate, which would create new costs and fiduciary liability exposure for plan fiduciaries. These costs are often passed on to participants, thereby reducing earnings. Fiduciary liability exposure is a disincentive to offering a plan.

PSCA requests that the Department elaborate on its authority. Section 105 of ERISA, which is the subject of the intended rule, is narrowly constructed. It requires the disclosure of “total benefits accrued” and “nonforfeitable pension benefits.” Lifetime income stream illustrations and projected account balances are not required under Section 105. It will be helpful for the Department to explain how it determined that its authority under Section 505 permits this broad interpretation of Section 105. We note that Congress is currently considering HR 2171 and S 1145, the Lifetime Income Disclosure Act, which amends Section 105 to require that current account balances be expressed as a “lifetime income stream equivalent.” This legislation is evidence that Congress views Section 105, in its current state, as not permitting the requirements included in the ANPRM.

Retirement income calculators are broadly available to plan participants. PSCA believes that practically all major individual account plan service providers offer a retirement income calculator to plan participants, and a significant number of plan fiduciaries include these calculators on their plan websites. Some providers automatically calculate the level of retirement readiness for all participants and communicate the findings with participants. Often, this information is included in the benefit statement. The broad availability of these calculators diminishes the argument for a mandate. Additionally, Section 105 of ERISA, which was included in the Pension Protection Act of 2006, requires individual account plan benefit statements to include a notice directing participants or beneficiaries to a Department website for information about investing and diversification. That website, located at <http://www.dol.gov/ebsa/investing.html>, includes links to four retirement income calculators.

The safe harbor in the intended regulation will result in a major reduction in the availability of other retirement income calculators, to the detriment of participants. While PSCA does not support the mandatory approach encapsulated in the ANPRM, plan sponsors always welcome, and usually embrace, a safe harbor for required activity. Should the Department proceed with a mandate, PSCA recommends that the safe harbor be retained. Our members have indicated that if the intended rule were promulgated, they would provide the safe harbor disclosures. Furthermore, they would deny access, on the plan platform, to any other retirement income calculator because they use different assumptions than those in the safe harbor and might expose plan fiduciaries to increased liability. PSCA is aware that

¹ Comments of Edward Ferrigno on the Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans, May 3, 2010. Testimony of David L. Wray before the Joint Hearing on Lifetime Income Products, September 14, 2010.

the Department is concerned about this outcome, but it is probably unavoidable under a mandatory regime.

The safe harbor is, by necessity, a lowest common denominator provision. Lifetime income illustrations produced under the safe harbor will be much less robust than those produced by available retirement income calculators that often consider other retirement assets; spousal benefits; joint income; and variable income growth, contribution rates, retirement date, and earnings. Illustrations often provide a range of likely outcomes rather than a single assumption.

The ANPRM should be product neutral. The ANPRM expresses lifetime income only as an annuity income stream. A proposed rule should permit illustrations based on either insured products or non-insured structured payment products, or both. The goal of the ANPRM should be to assist individuals in assessing if they are saving adequately for retirement, not to promote one distribution option over others.

Plans offering an annuity distribution option should be permitted, but not required to use the assumptions underlying the annuity product.

The Department should specify that Field Assistance Bulletin 2006-03, which provides that disclosures required under Section 105 may be provided by delivering a notice that the disclosure is available at a secure website, and that a free written disclosure will be provided upon request, applies for the intended rule.

Projections are critical to any lifetime income illustration. PSCA is pleased that the ANPRM recognizes the value of projections in estimating future income replacement. However, we question the value of an estimate that does not consider future behavior. The problem with providing a lifetime income illustration based on the participant's current account balance (in the words of the ANPRM, "If I were old enough to retire today, this would be my monthly payment for life.") is that most people receiving the estimate will not be "old enough to retire today." An estimate based solely on a current balance does not help participants gauge if they are on track for a comfortable retirement. It is a meaningless number to anyone who plans to continue saving. PSCA rejects the rationale that it is proper to "scare" individuals to save more for retirement by using this approach. We are also concerned that it will discourage some individuals from continuing to save at all.

There are other ways for the Department to encourage retirement savings. The Department can play an important role in encouraging individuals to assess the adequacy of their savings behavior and in encouraging plan sponsors to provide retirement income calculators.

First, as we noted, Section 105 of ERISA requires individual account plan benefit statements to include a notice directing participants or beneficiaries to a Department website for information about investing and diversification. That website, located at <http://www.dol.gov/ebsa/investing.html>, includes links to four retirement income calculators. **PSCA recommends that the Department maintain the practice of including retirement calculators on the website and make changes to highlight their existence on the site.** Currently, the calculators are included in the *Taking the Mystery out of Retirement Planning* link

from the home page, but neither the home page nor the linked page prominently notifies participants that the calculators are available. PSCA also recommends that the Department consider establishing a panel of experts representing plan sponsors, service providers, academics, and participants to identify best-in-class calculators for inclusion on the Department's site.

Second, the Department should issue guidance relating to the provision of retirement income calculators similar to the guidance issued under Interpretive Bulletin 96-1 that relates to participant investment education. The guidance should clarify that the provision of a retirement income calculator that is based on generally accepted investment theories and actuarial theories (if applicable), takes future contributions and investment returns into account, and provides estimates that are expressed in current dollars constitutes the provision of investment education and not the provision of advice. The guidance should explain that income replacement illustrations may be based on insured products or non-insured structured payment products. Any illustration should describe the assumptions on which it is based and should state that the illustration is merely an estimate and that actual payments may vary from the illustration. The guidance should state that the provision of a retirement calculator does not result in a fiduciary act that creates personal or fiduciary liability under ERISA or create a basis for a claim or right under the plan. *This guidance should also specify that illustrations voluntarily offered or provided pursuant to this approach are not subject to the disclosure delivery requirements under 2520.104b-1.*

SELECTED QUESTIONS IN THE ANPRM

Should projected balances and income streams be discounted for inflation?

Yes. Inflation is a key factor in assessing retirement income adequacy.

Does it make more sense to show both the discounted projected account balance and the resulting monthly payments, or is it enough to show only the resulting monthly payments?

Both amounts should be displayed.

Should the projections and illustrations use a date other than the normal retirement date as defined in section 3(24)? If so, what date?

Plan administrators should be afforded the opportunity to voluntarily provide calculations based on both the plan's retirement age and age 65.

Are the five criteria for illustrating a lifetime income stream appropriate? (Payment start date; age of participant / beneficiary; form of payment (single life, etc.); mortality; interest rate.)

An option to provide a non-insured structured payment should be included in the intended rule.

Is the safe harbor section 417 mortality table appropriate? Should a different table be used? Should gender-based rates be utilized if a plan does not offer an annuity option?

Gender-based rates are appropriate if a plan does not offer an annuity option.

Should required disclosures include an explanation that a consequence of purchasing an annuity outside of a plan is that gender based mortality tables will be applied?

Yes. Also, see our comment above regarding gender-based rates.

How best to insure that assumption disclosures are written in a manner calculated to be understood by the average plan participant? Is there model language within the financial community or elsewhere? Are there other formatting or presentation techniques?

The Department's current rules for required disclosures are adequate. PSCA notes that the significant increase in the information in the benefit statement creates additional communication challenges and increases the likelihood that it will not be read by participants.

The Department specifically requests comments on the costs (and benefits) of complying with the ANPRM. How can costs be reduced? Would annual disclosures result in substantial savings?

PSCA believes that an annual disclosure will reduce costs.

Would there be substantial savings if the Department issued a table of conversion factors that satisfy the safe harbor without the need to reference rates, mortality tables, and other assumptions?

Yes, a table of conversion factors will reduce costs.

Is it more cost effective to require a J&S benefit as compared to doing so only for married participants and beneficiaries?

Plan administrators should be afforded the option to report all illustrations as a J&S benefit.

Is the proposed language that the illustration is only an estimate sufficient to minimize the likelihood that a participant might believe the illustration is a guarantee? Is the safe harbor adequate to address concerns about lawsuits?

PSCA believes that additional guidance is needed in this area. See our comments above under "There are other ways for the Department to encourage retirement savings."

Is there an alternative short of a mandate to get plan administrators to voluntarily provide lifetime income streams?

See our comments above under "There are other ways for the Department to encourage retirement savings."

Thank you for this opportunity to share our views. If you have any questions, or if I can be of any assistance, do not hesitate to contact me.

Respectfully,

Edward Ferrigno