

**DEPARTMENT OF LABOR****Employee Benefits Security Administration****29 CFR Part 2520**

RIN 1210-AB20

**Pension Benefit Statements—Lifetime Income Illustrations****AGENCY:** Employee Benefits Security Administration, Department of Labor.**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The Department of Labor (Department) is publishing an interim final regulation regarding the information that must be provided on pension benefit statements required by section 105 of the Employee Retirement Income Security Act of 1974, as amended (ERISA). This regulation reflects amendments made to ERISA section 105 by the Setting Every Community Up for Retirement Enhancement Act of 2019. When applicable, the interim final regulation requires plan administrators of ERISA defined contribution plans to express a participant's current account balance, both as a single life annuity and a qualified joint and survivor annuity income stream. These two income stream illustrations, which must be on the same pension benefit statement, will help participants better understand how the amount of money they have saved so far converts into an estimated monthly payment for the rest of their lives, and how this impacts their retirement planning. The regulation provides plan administrators with a set of assumptions to use in preparing the lifetime income illustrations, as well as model language that may be used for benefit statements by plan administrators who wish to obtain relief from liability for the illustrations. The interim final regulation also requests comments from interested parties on the requirements and methodologies of the regulation.

**DATES:**

**Effective date.** This interim final rule is effective on September 18, 2021, and shall apply to pension benefit statements furnished after such date.

**Comment date.** Written comments on the interim final rule must be received by November 17, 2020.

**ADDRESSES:** You may submit written comments, identified by RIN 1210-AB20 to either of the following addresses:

• *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

• *Mail:* Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N-5655, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, Attention: Pension Benefit Statements—Lifetime Income Illustrations, RIN 1210-AB20.

**Instructions:** All submissions received must include the agency name and Regulatory Identifier Number (RIN) for this rulemaking. Persons submitting comments electronically are encouraged not to submit paper copies. Comments will be available to the public, without charge, online at <https://www.regulations.gov> and <https://www.dol.gov/agencies/ebsa> and at the Public Disclosure Room, Employee Benefits Security Administration, Suite N-1513, 200 Constitution Avenue NW, Washington, DC 20210.

**Warning:** Do not include any personally identifiable or confidential business information that you do not want publicly disclosed. Comments are public records posted on the internet as received and can be retrieved by most internet search engines.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Davis or Kristen Zarenko, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693-8500. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:****A. Background***(1) ERISA Section 105*

Historically, section 105(a) of the Employee Retirement Income Security Act (ERISA) has required plan administrators of defined contribution plans to provide periodic pension benefit statements to participants and certain beneficiaries.<sup>1</sup> Benefit statements generally must be provided at least annually. If the pension plan permits participants and beneficiaries to direct their own investments, however, benefit statements must be provided at least quarterly. Section 105(a)(2) of ERISA contains the content requirements for benefit statements, including a requirement to indicate the participant's or beneficiary's "total benefits accrued." The other content requirements in section 105, such as vesting information, are not the focus of this rulemaking.

*(2) Advance Notice of Proposed Rulemaking*

On May 8, 2013, the Department of Labor (Department) published an advance notice of proposed rulemaking

(ANPRM) regarding the pension benefit statement requirements under section 105 of ERISA.<sup>2</sup> The ANPRM considered requiring up to four lifetime income illustrations: (1) A single life annuity based on the current account balance; (2) a qualified joint and 50% survivor annuity, if the participant is married, based on the current account balance; (3) a single life annuity based on a projected account balance (current account balance projected to normal retirement age, taking into account estimated investment returns, future contributions, and inflation); and (4) a qualified joint and 50% survivor annuity, if the participant is married, based on a projected balance. The ANPRM included a safe harbor that would have deemed it reasonable for a plan administrator to use certain assumptions when preparing these lifetime income illustrations. The Department received 125 comment letters on the ANPRM, which are available for review on the Department's website.

*(3) SECURE Act Amendments*

On December 20, 2019, ERISA section 105 was amended by section 203 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act).<sup>3</sup> As amended, ERISA section 105 requires, in relevant part, that "a lifetime income disclosure . . . be included in only one pension benefit statement during any one 12-month period." A lifetime income disclosure "shall set forth the lifetime income stream equivalent of the total benefits accrued with respect to the participant or beneficiary." A lifetime income stream equivalent means the amount of monthly payments the participant or beneficiary would receive if the total accrued benefits of such participant or beneficiary were used to provide a single life annuity and a qualified joint and survivor annuity.

The required lifetime income streams must be "based on assumptions specified in rules prescribed by the Secretary." In relevant part, section 105(a)(2)(D)(iii) of ERISA states that

<sup>2</sup> See 78 FR 26727 (May 8, 2013). The ANPRM followed a 2010 request for information (2010 RFI) on lifetime income options in retirement plans, which included questions on how best to disclose the income stream that can be provided from an individual account balance in a defined contribution plan. See 75 FR 5253 (Feb. 2, 2010). On September 14 and 15, 2010, the Department held a public hearing on lifetime income options to consider several specific issues raised by commenters on the 2010 RFI, including methods and assumptions for income stream illustrations. See 75 FR 48367 (Aug. 10, 2010).

<sup>3</sup> The SECURE Act was enacted as Division O of the Further Consolidated Appropriations Act, 2020, Public Law 116-94 (Dec. 20, 2019).

<sup>1</sup> 29 U.S.C. 1025(a).

“[n]ot later than 1 year after the enactment of the [SECURE Act], the Secretary shall . . . prescribe assumptions which administrators of individual account plans may use in converting total accrued benefits into lifetime income stream equivalents[.]” This section also provides that the Secretary “shall . . . issue interim final rules . . .” within this timeframe.

Section 105(a)(2)(D)(ii) of ERISA provides for a model disclosure. In relevant part it states that “[n]ot later than 1 year after the date of enactment of the [SECURE Act], the Secretary shall issue a model lifetime income disclosure, written in a manner so as to be understood by the average plan participant.”

Section 105(a)(2)(D)(iv) of ERISA provides a limitation on liability. In relevant part it states that “[n]o plan fiduciary, plan sponsor, or other person shall have any liability under this title solely by reason of the provision of lifetime income stream equivalents which are derived in accordance with the assumptions and rules [prescribed by the Secretary] and which include the explanations contained in the model

lifetime income disclosure [prescribed by the Secretary].”

Section 105(a)(2)(D)(v) sets forth the effective date of the SECURE Act amendments. In relevant part it states that the new lifetime income disclosure provisions “shall apply to pension benefit statements furnished more than 12 months after the latest of the issuance by the Secretary of . . .” the interim final rules, the model disclosure, or the assumptions prescribed by the Secretary. This final rule is considered an E.O. 13771 regulatory action. We estimate that it will impose \$12 million in annualized costs at a 7% discount rate, discounted to a 2016 equivalent, over a perpetual time horizon.

## B. Explanation of Interim Final Rule

### (1) Overview—Required Lifetime Income Streams

The Department is publishing an interim final rule (IFR) requiring, consistent with the SECURE Act amendments to ERISA section 105 and the Department’s prior work on issues related to lifetime income options in

defined contribution plans, that plan administrators of individual account plans include two lifetime income stream illustrations on participants’ pension benefit statements, in addition to the participant’s account balance. Specifically, paragraph (a) of the IFR provides that these illustrations must be furnished to participants at least annually. And paragraph (b) requires, in relevant part, that pension benefit statements include: The value of a participant’s account balance as of the last day of the statement period (paragraph (b)(2)); such account balance expressed as a lifetime income stream payable in equal monthly payments for the life of the participant (single life annuity) (paragraph (b)(3)); and such account balance expressed as a lifetime income stream payable in equal monthly payments for the joint lives of the participant and spouse as a qualified joint and survivor annuity (QJSA) (paragraph (b)(4)). The Department anticipates that this required information on a participant’s pension benefit statement might appear as follows:

Account balance as of [DATE]	Monthly payment at 67 (single life annuity)	Monthly payment at 67 (qualified joint and 100% survivor annuity)
\$125,000 .....	\$645/month for life of participant .....	\$533/month for life of participant. \$533/month for life of participant’s surviving spouse.

The specific requirements concerning these lifetime income illustrations, including the assumptions that must be used in preparing the illustrations, how the illustrations will be explained to participants, and the treatment of in-plan annuities, are discussed in the sections below. For purposes of the IFR, the term “participant” is defined, in paragraph (h)(1), to include an individual beneficiary who has his or her own individual account under the plan, such as an alternate payee for example. Throughout this preamble, unless otherwise specified, the Department intends this definition when using the term “participant.”

### (2) Assumptions for Lifetime Income Stream Illustrations

The IFR requires that plan administrators provide two lifetime income illustrations of the value of a participant’s account balance, at least annually, on the participant’s pension benefit statement. Plan administrators must prepare these lifetime income illustrations using the annuitization methodology set forth in the IFR, which will express a participant’s account

balance as a lifetime monthly payment to the participant, similar in form to a pension payment made from a traditional defined benefit plan. Insurance companies use this approach, for example, to determine payment amounts for their annuity products. Plan administrators, or their service providers, generally must consider four relevant factors when converting a participant’s account balance into lifetime income streams. The first is the date the payments would start, referred to as the “commencement date,” and the participant’s age on such date. The second is the marital status of the participant. The third is the interest rate that will be applied for the applicable mortality period. And the fourth is the expected mortality of the participant and spouse. The IFR generally addresses the required assumptions for each of these factors in paragraph (c) of the IFR. This section of the preamble discusses the Department’s reasoning behind the IFR’s assumptions for these four factors, and other matters germane to annuitization illustrations.

#### (a) Commencement Date and Age

Paragraph (c)(1) of the IFR establishes an assumed annuity commencement date and age that plan administrators must use to prepare the required illustrations. Specifically, paragraph (c)(1)(i) provides that the assumed annuity commencement date is the last day of the statement period (the commencement date). Thus, for example, if the benefit statement covers the period ending on December 31, 2025, the assumed annuity commencement date would be December 31, 2025. Paragraph (c)(1)(ii) of the IFR further requires that the required illustrations must assume the participant is age 67 on the commencement date, regardless of the participant’s actual age. If, however, the participant is older than age 67, the IFR requires the plan administrator to use the participant’s actual age as of the last day of the statement period. The Department understands that a younger assumed age at the assumed annuity commencement date would result in lower monthly payments in illustrations, and vice versa.

The Department considered a number of alternatives to age 67. For example, the Department considered using a plan's "normal retirement age," as defined in ERISA section 3(34). The Department decided against using this date, because it lacks uniformity and consistency by leaving it to each retirement plan to determine the retirement age for its participants. The Department has placed a premium on uniformity and consistency for the illustrations required by this IFR. The Department also considered age 60, which closely aligns with the earliest age that a participant could withdraw money from a qualified retirement plan without being subject to additional income tax on the early distribution.<sup>4</sup> The Department also considered age 62, which is the earliest date a person can begin receiving retirement benefits (although reduced benefits) under Social Security.<sup>5</sup> The Department understands that age 62 is a very common age for people to claim Social Security retirement benefits.<sup>6</sup> The Department also considered age 65, which is a common retirement age for many ERISA-covered retirement plans, and age 65 also was for many years the historical full or normal retirement age under Social Security. The Department also considered age 72, which is the age by which federal law generally requires commencement of minimum distributions from qualified retirement plans.<sup>7</sup> After considering these alternatives, the Department chose age 67, because this age aligns with full or normal retirement age under Social Security for most workers.<sup>8</sup> The Department believes that alignment of these two dates will provide participants a clearer picture of their potential future monthly retirement income from these two important sources, if they continue working to age 67. The Department's decision also is supported by a majority of the commenters on the ANPRM.

Although no specific age will be perfect for this purpose, the Department requests comments on whether age 67 is the most appropriate age. Commenters that believe a different age or approach would be better are encouraged to explain their reasoning and provide any

germane literature or data supporting their reasoning. The Department also requests comments on whether the final rule should *require* illustrations based on multiple ages on the annuity commencement date, rather than requiring only a single age. For example, illustrations could be based on assumed annuity commencement ages of 62 and 67. This would present smaller and larger monthly payment amounts, illustrating the potential effects of delaying retirement on the amount of money a participant could receive each month. This approach would resemble the Social Security statement, which presently shows monthly retirement income based on three assumed retirement ages: 62, 67, and 70.

#### (b) Marital Status and Amount of Survivor's Benefit

Paragraph (c)(2) of the IFR requires plan administrators to assume, for purposes of converting a participant's account balance into the QJSA required under paragraph (b)(4) of the IFR, that the participant is married and that the participant's spouse is the same age as the participant. Although a particular participant may not be married at the time a pension benefit statement is furnished, the statute nonetheless requires plan administrators to illustrate monthly payments reflecting both a single life annuity and a QJSA, and to assume a participant's spouse is the same age as the participant. By requiring both illustrations, participants (whether married or not) can better understand how a survivor benefit, if they are married at retirement and choose an annuity, could impact the amount of the participant's (and spouse's) monthly lifetime payment. According to general data from the Census Bureau, most individuals are or will be married at some point in their lives.<sup>9</sup> Hence, it is appropriate and helpful to show lifetime income amounts for both singles and couples, even if the participant does not have a spouse at the time of the benefit statement.

For the QJSA illustration, paragraph (c)(2)(ii) of the IFR requires plan administrators to assume that the survivor annuity percentage is equal to 100% of the monthly payment that is payable during the joint lives of the participant and spouse. The SECURE Act did not prescribe the specific

survivor annuity percentage to be used for illustrations under section 105 of ERISA or whether the benefit decreases only upon the participant's death (a contingent annuity) or upon the first death of either spouse (a survivor annuity). Instead, the SECURE Act directed the Department to make these decisions.

The Department considered a contingent annuity percentage of 50 percent, which is the lowest percentage permissible under ERISA section 205(d). The Department decided against a 50 percent contingent annuity, in part, because commenters on the ANPRM indicated that this type of annuity may be uncommon in the commercial insurance market, even though a contingent annuity percentage of 50 percent is common for defined benefit plans. The Department has concerns with illustrating for participants an outcome that may be uncommon in the commercial marketplace. Furthermore, public commentary on the ANPRM implied that economies of scale for a two-person household do not necessarily decrease by exactly 50 percent when one person leaves the household.<sup>10</sup> Rather, general notions of scale economies in consumption for couples suggest a more modest reduction of approximately 30 percent.<sup>11</sup> The Department, accordingly, is persuaded that it may not be appropriate to assume that a worker has higher spending needs than a surviving spouse or that the spending needs of a surviving spouse are precisely half of the consumption needs of the couple in a two-person household.

The Department, however, has chosen to use an assumption with a survivor benefit of 100 percent, rather than a reduced percentage. By incorporating the most generous benefit for a surviving spouse, a participant's benefit statement will illustrate the largest difference between the monthly payment that would result from a single life annuity and that which would result from a QJSA. The Department believes there is a benefit to showing the participant these extremes because all other annuity options fall somewhere in between.<sup>12</sup>

<sup>4</sup> See 26 U.S.C. 72(t) (absent an available exception).

<sup>5</sup> 42 U.S.C. 402(a).

<sup>6</sup> Alicia H. Munnell & Anqi Chen, *Trends in Social Security Claiming*, Center for Retirement Research (May 2015) (finding that 48 percent of women and 42 percent of men claimed Social Security retired-worker benefits at age 62 in 2013).

<sup>7</sup> 26 U.S.C. 401(a)(9)(C).

<sup>8</sup> Age 67 is the full Social Security retirement age for individuals born in 1960 or later.

<sup>9</sup> U.S. Bureau of the Census, *Marital Status of People 15 Years And Over, By Age, Sex, and Personal Earnings: 2016 Table A1* (2016), (showing that in 2016, 5.2% of individuals age 65 and older had never married, and of all individuals over age 18 years of age, 28.7 had not yet married) available at <https://www.census.gov/data/tables/2016/demo/families/cps-2016.html>.

<sup>10</sup> See Mark J. Warshawsky, *Illustrating Retirement Income for Defined Contribution Plan Participants: A Critical Analysis of the Department of Labor Proposal*, Mercatus Center (Apr., 2015) (advocating for an illustration of a survivor annuity percentage of 67 percent, also noting it is consistent with the spousal benefit rules of Social Security).

<sup>11</sup> *Id.*

<sup>12</sup> The expenditures for a retired married couple that are attributable to each spouse can vary significantly. For example, one spouse may have significant health care and/or assisted living costs while the other spouse does not. In the case of such

## (c) Interest Rate

Paragraph (c)(3)(i) of the IFR contains the interest rate assumption that must be used in preparing lifetime income illustrations under the IFR's annuitization methodology. Plan administrators must assume a rate of interest equal to the 10-year constant maturity Treasury (CMT) securities yield rate for the first business day of the last month of the period to which the benefit statement relates. In response to the ANPRM, one commenter with members representing more than 90% of the assets and premiums in the U.S. life insurance and annuity industry stated that its members believe that the 10-year CMT rate best represents the interest rates that are reflected in the actual pricing of commercial annuities. In addition, the 10-year CMT rate is published daily for the public and is widely recognized by industry participants.<sup>13</sup> The Department is of the view that it is helpful to participants to use a well-known market rate that approximates what it actually would cost them to buy a lifetime income stream on the open market.<sup>14</sup> In this regard lifetime income illustrations based on a current market rate, such as the 10-year CMT rate, would be especially beneficial for participants and beneficiaries who are close to retirement, and less so for those farther from retiring.

The Department solicits comments on whether the 10-year CMT rate assumption is the best interest rate assumption to use in this context, or whether a different interest rate or combination of rates should be used, and why. For example, should the Department consider using the "applicable interest rate" under Internal Revenue Code (Code) section 417(e)(3)(C)?<sup>15</sup> Furthermore, since the

a couple, the ongoing expenditures for the survivor will be significantly different depending on which spouse dies first. The Department believes that any specific percentage the Department might choose for the survivor benefit disclosure will be optimal for some participants, but not appropriate for others. It would not be helpful to show participants a survivor benefit based on average need when their own needs may be significantly different than the average.

<sup>13</sup> See <https://www.treasury.gov/resource-center/data-chart-center/interest-rates/pages/textview.aspx?data=yield>.

<sup>14</sup> See section B(2)(e) of the preamble, below, for a discussion of insurance loads (and commenters' observation of the implicit load in using the 10-year CMT rate).

<sup>15</sup> Code section 417(e)(3) generally provides that the present value of certain accelerated forms of benefit under a defined benefit plan (including single-sum distributions) must not be less than the present value of the accrued benefit calculated using applicable interest rates (under Code section 417(e)(3)(C)) and the applicable mortality table (under Code section 417(e)(3)(B)). The Department

10-year CMT rate fluctuates on a daily basis, we are soliciting comments on whether plan administrators should use the rate as published on the last (as opposed to the first) business day of the last month of the period to which the benefit statement relates. The IFR selects the first business day of such month in order to provide plan administrators with ample time to prepare and distribute benefit statements. Using the rate on the last business day of such month, however, would align with the date used for the account balance, and may not impose an unreasonable burden as interest rates are readily accessible and may be available before asset valuations are prepared.

## (d) Mortality

Paragraph (c)(3)(ii) of the IFR requires that plan administrators convert participants' account balances assuming mortality "as reflected in the applicable mortality table under Code section 417(e)(3)(B) in effect for the last month of the period to which the statement relates." Code section 417(e)(3)(B) provides a unisex mortality table that is created and published by the Internal Revenue Service (IRS).<sup>16</sup> A number of commenters on the ANPRM, which proposed use of the Code section 417(e)(3)(B) mortality table as a mortality assumption, supported use of this unisex table, explaining that it is administratively simple and would eliminate plan administrators' need to know participants' genders. Plan administrators, or plan recordkeepers or third party administrators, according to commenters, do not always have records of participants' gender. Applying unisex mortality assumptions also aligns with the requirement that, when lifetime annuities are offered by ERISA plans, they must be priced on a gender-neutral basis.<sup>17</sup> As a result, the lifetime income stream illustrations required by the IFR will be consistent with annuity options offered by plans.

Other commenters offered different suggestions for how to factor participants' life expectancy into required lifetime income illustrations. Alternative recommendations included, for example, allowing plan

notes that one commenter on the ANPRM expressed concern that the Code section 417(e)(3)(C) rates do not approximate current annuity prices.

<sup>16</sup> See IRS Notices 2019–26 (2019–15 I.R.B. 943) and 2019–67 (2019–52 I.R.B. 1510), which provide the static mortality tables that apply under Code section 417(e)(3) for distributions with annuity starting dates occurring during stability periods beginning in 2020 and 2021, respectively.

<sup>17</sup> See *Arizona Governing Comm. for Tax Deferred Annuity and Deferred Compensation Plans v. Norris*, 463 U.S. 1073 (1983).

administrators discretion to select reasonable mortality assumptions; if applicable, using the same mortality assumptions used for existing in-plan annuities; or requiring more conservative lifetime income illustrations (*i.e.*, lower annuity payments) by adding a number of years (*e.g.*, 5 or 10) to the Code section 417(e)(3)(B) mortality tables or mandating a specific end date, such as age 92 or 95. Some commenters questioned the use of a unisex methodology, such as in Code section 417(e)(3)(B), rather than gender-specific methodology. Their principal observation was that, although in-plan annuities must be priced on a gender-neutral basis, most plans do not actually offer annuities, and that gender-specific mortality assumptions would result in lifetime income streams that better reflect potential pricing in the commercial marketplace. Unisex tables result in illustrations with women's monthly payments being higher, and men's payments lower, than what individuals could actually purchase in the open market, all else equal, according to the commenters. Illustrations could have even wider variations when applied to same-sex spouses, some commenters noted.

The Department is not persuaded to use a different mortality assumption than was proposed in the ANPRM. Accordingly, paragraph (c)(3)(ii) of the IFR requires use of Code section 417(e)(3)(B) mortality tables. First, these tables are periodically updated by the Treasury Department. Second, these tables are publicly available and widely known and used by retirement plan service providers—typically for defined benefit pension plans, but many service providers support both defined benefit and defined contribution retirement plans. Third, the Department, by requiring gender-neutral assumptions in the IFR, is matching what a plan would do if it offered its participants an annuity.

Finally, to the extent plan administrators and their service providers do not have gender data for all plan participants, the use of unisex mortality tables reduces administrative burden for plan administrators who lack gender data while still using reasonable assumptions. For example, a gender-distinct approach would require that the plan administrator know a participant's gender. A gender-distinct approach also would require the plan administrator to know the marital status of the participant and the gender of the participant's spouse. Commenters on the ANPRM indicated that plans currently do not consistently collect

such information. Without these data points, a plan administrator would incur additional burdens to provide a gender-distinct illustration. A unisex approach to preparing lifetime income illustrations avoids these administrative complexities.

The Department requests comments on the IFR's use of the Code section 417(e)(3)(B) mortality tables. Commenters that believe a different approach is preferable are encouraged to identify their preferred approach and provide their reasoning in support of their position. Commenters that prefer a gender-distinct approach are encouraged to identify a table or tables that could be used to promote national uniformity and to identify the most efficient way to address the data gaps identified above.

#### (e) Insurance Loads

The IFR's required assumptions in paragraph (c) for converting participants' account balances into the required lifetime income streams do not include an "insurance load." In this context, the term "insurance load" describes the difference between the market price of lifetime income and the price of actuarially fair lifetime income. Put differently, a load factor refers to the extra amount that an insurance company may charge for a product given extra expenses and costs beyond the basic charges. An insurance load may include, for example, an allowance for an insurance company's profits, costs of insuring against systemic mortality risk, costs of holding cash reserves, advertising costs, the cost of anti-selection (if not accounted for in the mortality table), or other operating costs.

Commenters on the ANPRM expressed different views on whether and how insurance loads should be factored into hypothetical lifetime income illustrations. Some commenters supported the concept of incorporating insurance loads to ensure a more realistic illustration. One commenter, in fact, explained that an insurance load already is effectively factored into the illustrations if plan administrators use the 10-year CMT rate, especially when the Code section 417(e)(3)(B) mortality tables also are used.<sup>18</sup> Other

commenters did not support the inclusion of insurance loads based their view on the fact that the overarching goal of providing lifetime income illustrations should be educational in nature. Although illustrations reasonably should reflect actual market conditions, according to these commenters, this goal can be achieved in large part based on illustrations that reflect the price of actuarially fair lifetime income, without requiring the use of insurance loads. Commenters also pointed to the variability in insurance loads across the wide spectrum of available products and issuers, arguing that it would be arbitrary and inappropriate for the Department to select a uniform pricing load for the illustrations required by the IFR. The Department is persuaded that the insurance load implicit in use of the 10-year CMT rate renders unnecessary any additional or different mandatory insurance load assumption in paragraph (c) of the IFR. Nonetheless, the Department requests comments on whether paragraph (c) of the final rule should require that insurance loads be factored differently into lifetime income stream illustrations. Commenters on this IFR that disagree with the Department's and commenters' analysis and that support the inclusion of an explicit insurance load, in addition to the effective load implied by other IFR assumptions, are encouraged to explain in detail how the IFR and its assumptions should or could be amended to reflect such a requirement.

#### (f) Inflation Adjustment

The IFR does not include an assumed adjustment to the required lifetime monthly payment illustrations for inflation. Consequently, the IFR requires a fixed nominal annuitized income stream. The Department understands that, even with a low inflation rate, the purchasing power of a fixed nominal income stream can easily be cut in half over the remaining lifespan of the typical retiree. Many commenters on the ANPRM made this very point, and suggested that the Department require plan administrators to illustrate an inflation-indexed income stream. On the other hand, many other commenters cautioned the Department against adopting complex methodologies for what should be a simple hypothetical illustration. These commenters asserted that many plan participants do not properly understand the concept of inflation, and that an inflation-adjusted income illustration (with a resulting lower starting income amount) would add unnecessary complexity and potentially confuse participants.

Further, the lower starting income amount might discourage participants from saving, according to some commenters. Commenters did agree, however, that if the Department requires fixed nominal annuitized income streams, then the benefit statement should at least contain a clear disclosure to the effect that the purchasing power of such an income stream will decline over time. The Department chose this approach, and discusses below the explanation requirements about this declining purchase power, but solicits comments on whether the right balance has been achieved.

Commenters are invited to address whether, in lieu of a fixed nominal annuitized income stream, the final rule should require an illustration of monthly payments that increase with inflation. This could be accomplished by substituting the 10-year Treasury Inflation-Protected Securities (TIPS) rate for the 10-year CMT rate in paragraph (c)(3)(i) of the IFR, according to one analysis.<sup>19</sup> The final rule also would need to add an explanation that the illustrated monthly payment amounts are not fixed and would increase annually to keep pace with inflation, as measured by the Consumer Price Index. Are there potential benefits of this approach? Are there potential drawbacks to this approach? For example, would this approach require the introduction of an "insurance load" to more accurately replicate annuity pricing in the open market? Would this approach conflict with other benefit statements ERISA participants might receive from other plans (such as former employers' plans that have in-plan fixed nominal annuities)? Although a goal is that the IFR requires illustrations that are educational, another goal is that illustrations be as realistic as possible and actionable by participants. The Department seeks to avoid mandating illustrations based on theories that cannot be replicated by products or services in the insurance marketplace, due to a lack of demand or otherwise. In this regard, comments and data are solicited on the state of the market for inflation-indexed annuities in the United States and whether the size and maturity of the market is relevant to this approach.

#### (g) Terms Certain or Other Features

Section 203(b) of the SECURE Act gives the Department discretion to prescribe special rules and assumptions for lifetime income streams with "a term certain or other features." A number of annuity features and products exist, the

<sup>18</sup> One commenter on the ANPRM explained that the 10-year CMT rate is a reasonable approximation for a rate that insurers would offer to consumers, which reflects an estimated insurance load. Another commenter agreed that use of the 10-year CMT rate assumption, combined with the Code section 417(e)(3)(B) mortality assumptions, would result in reasonably conservative annuity payout rates, without necessitating an additional insurance load adjustment (which, if required, would result in annuity payout rates that are too low).

<sup>19</sup> See Warshawsky, *supra* note 10.

treatment of which currently is not reflected in the IFR, for example guaranteed lifetime withdrawal benefits (GLWBs), also referred to as guaranteed minimum withdrawal benefits (GMWBs), terms certain, and other optional riders that may accompany annuities. The Department requested feedback from interested parties on the role of these features in lifetime income illustrations when it issued the ANPRM. Commenters on the ANPRM however, as a general matter, did not provide the Department with sufficiently detailed or consistent proposals on whether or how these features should be treated on pension benefit statements. Therefore, the Department requests comments in response to the IFR as to whether, and how, to incorporate such features into the IFR's framework for lifetime income illustrations. Commenters also are encouraged to provide data and observations about the prevalence of these and similar features in annuities purchased by retirement savers.

### (3) Explanations for Lifetime Income Stream Illustrations

To better assist participants in understanding the lifetime income illustrations required by the IFR and the SECURE Act, it is essential that pension benefit statements include brief, understandable explanations of the assumptions underlying the illustrations. Commenters on the 2010 RFI and the ANPRM agreed with the Department's view that information about the lifetime income illustrations should be disclosed to participants for multiple reasons, but primarily in order to clarify to participants that the projected monthly payments are not guarantees.

Paragraph (d) of the IFR contains the various explanations that plan administrators must provide to participants, as well as model language that may be used to satisfy the explanations required in these paragraphs. The explanations themselves in paragraph (d) are required, but the model language is optional. Plan fiduciaries or other persons who wish to benefit from the liability relief provided in paragraph (f) of the IFR, however, must use the model language—either separately as presented in paragraph (d), or as set forth in the Model Benefit Statement Supplement that is attached as Appendix A to the IFR. Paragraph (d) contains eleven paragraphs, each of which is structured so that it includes the explanation requirements in paragraph (i) and the corresponding model language in paragraph (ii). This approach enables plan administrators to separately insert

the model language from each of the eleven paragraphs into their existing pension benefit statements, if they choose to do so, without significantly disturbing the existing format and presentation of the statements. Plan administrators who alternatively prefer a consolidated approach to including the IFR's model language may instead insert into or attach the Model Benefit Statement Supplement to their pension benefit statements.

Paragraph (d)(1) addresses the IFR's assumed annuity commencement date and age that plan administrators must use to prepare the required illustrations. Paragraph (d)(1)(i) requires “[a]n explanation of the commencement date and age assumptions in paragraph (c)(1)” of the IFR. This paragraph also provides model language that the plan administrator may use to satisfy the explanation requirements. Specifically, paragraph (d)(1)(ii) provides the following model language: “The estimated monthly payments in this statement assume that payments begin [*insert the last day of the statement period*] and that you are [*insert 67 or current age if older*], on this date. Monthly payments beginning at a younger age would be lower than shown since payments would be made over more years. Monthly payments beginning at an older age would be higher than shown since they would be made over fewer years.”

Paragraph (d)(2) addresses the IFR's “single life annuity” illustration. Paragraph (d)(2)(i) requires “[a]n explanation of a single life annuity.” This paragraph also provides model language that the plan administrator may use to satisfy the explanation requirements. Specifically, paragraph (d)(2)(ii) provides the following model language: “A single life annuity is an arrangement that pays you a fixed amount of money each month for the rest of your life. Following your death, no further payments would be made to your spouse or heirs.”

Paragraph (d)(3) addresses the IFR's “survivor annuity” illustration. Paragraph (d)(3)(i) requires “[a]n explanation of a qualified joint and 100% survivor annuity, the availability of other survivor percentage annuities, and the impact of choosing a lower survivor percentage.” This paragraph also provides model language that the plan administrator may use to satisfy the explanation requirements. Specifically, paragraph (d)(3)(ii) provides the following model language: “A qualified joint and 100% survivor annuity is an arrangement that pays you and your spouse a fixed monthly payment for the rest of your joint lives.

In addition, after your death, this type of annuity would continue to provide the same fixed monthly payment to your surviving spouse for their life. An annuity with a lower survivor percentage may be available and reducing the survivor percentage (below 100%) would increase monthly payments during your lifetime, but would decrease what your surviving spouse would receive after your death.”

Paragraph (d)(4) addresses the IFR's assumed marital status of the participant. Paragraph (d)(4)(i) requires “[a]n explanation of the marital status assumptions in paragraph (c)(2)” of the IFR. This paragraph also provides model language that the plan administrator may use to satisfy the explanation requirements. Specifically, paragraph (d)(4)(ii) provides the following model language: “The estimated monthly payments for a qualified joint and 100% survivor annuity in this statement assume that you are married with a spouse who is the same age as you (even if you do not currently have a spouse, or if you have a spouse that is a different age). If your spouse is younger, monthly payments would be lower than shown since they would be expected to be paid over more years. If your spouse is older, monthly payments would be higher than shown since they would be expected to be paid over fewer years.”

Paragraph (d)(5) addresses the IFR's assumed interest rate. Paragraph (d)(5)(i) requires “[a]n explanation of the interest rate assumptions in paragraph (c)(3)” of the IFR. This paragraph also provides model language that the plan administrator may use to satisfy the explanation requirements. Specifically, paragraph (d)(5)(ii) provides the following model language: “The estimated monthly payments in this statement are based on an interest rate of [*insert rate*], which is the 10-year constant maturity U.S. Treasury securities yield rate as of [*insert date*], as required by federal regulations. This rate fluctuates based on market conditions. The lower the interest rate, the smaller your monthly payment will be, and the higher the interest rate, the larger your monthly payment will be.”

Paragraph (d)(6) addresses the IFR's mortality assumptions. Paragraph (d)(6)(i) requires “[a]n explanation of the mortality assumptions in paragraph (c)(3) of this section” of the IFR. This paragraph also provides model language that the plan administrator may use to satisfy the explanation requirements. Specifically, paragraph (d)(6)(ii) provides the following model language: “The estimated monthly payments in this statement are based on how long you and a spouse who is assumed to be

your age are expected to live. For this purpose, federal regulations require that your life expectancy be estimated using mortality assumptions established by the Internal Revenue Service.”

Paragraph (d)(7) requires plan administrators to caution participants that the lifetime income illustrations on their pension benefit statements are not guaranteed. Paragraph (d)(7)(i) requires “[a]n explanation that the monthly payment amounts required under paragraphs (b)(3) and (4) of [the IFR] are illustrations only.” This paragraph also provides model language that the plan administrator may use to satisfy the explanation requirements. Specifically, paragraph (d)(7)(ii) provides the following model language: “The estimated monthly payments in this statement are for illustrative purposes only; they are not a guarantee.”

Paragraph (d)(8) requires plan administrators to advise participants that a variety of factors could cause the participant’s actual monthly income, based on their current account balance, to be different than what is illustrated. Paragraph (d)(8)(i) requires “[a]n explanation that the actual monthly payments that may be purchased with the amount specified in paragraph (b)(2) of [the IFR] will depend on numerous factors and may vary substantially from the illustrations under this section.” This paragraph also provides model language that the plan administrator may use to satisfy the explanation requirements. Specifically, paragraph (d)(8)(ii) provides the following model language: “The estimated monthly payments in this statement are based on prevailing market conditions and other assumptions required under federal regulations. If you decide to purchase an annuity, the actual payments you receive will depend on a number of factors and may vary substantially from the estimated monthly payments in this statement. For example, your actual age at retirement, your actual account balance (reflecting future investment gains and losses, contributions, distributions, and fees), and the market conditions at the time of purchase will affect your actual payment amounts. The estimated monthly payments in this statement are the same whether you are male or female. This is required for annuities payable from an employer’s plan. However, the same amount paid for an annuity available outside of an employer’s plan may provide a larger monthly payment for males than for females since females are expected to live longer.”

Paragraph (d)(9) requires plan administrators to explain that monthly payment amounts will not be adjusted

for inflation. Paragraph (d)(9)(i) requires “[a]n explanation that the monthly payment amounts required under paragraphs (b)(3) and (4) of [the IFR] are fixed amounts that would not increase for inflation.” This paragraph also provides model language that the plan administrator may use to satisfy the explanation requirements. Specifically, paragraph (d)(9)(ii) provides the following model language: “Unlike Social Security payments, the amounts shown in this statement do not increase each year with a cost-of-living adjustment. Therefore, as prices increase over time, the fixed monthly payment will buy fewer goods and services.”

Paragraph (d)(10) requires plan administrators to explain that the monthly income illustrations assume that participants are 100% vested in their accounts. Paragraph (d)(10)(i) requires “[a]n explanation that the monthly payment amounts required under paragraphs (b)(3) and (4) of [the IFR] are based on total benefits accrued, regardless of whether such benefits are nonforfeitable.” This paragraph also provides model language that the plan administrator may use to satisfy the explanation requirements. Specifically, paragraph (d)(10)(ii) provides the following model language: “The estimated monthly payment amounts in this statement assume that your account balance is 100% vested.”

Finally, paragraph (d)(11) requires plan administrators to explain that the income illustrations assume, for participants who have taken plan loans and are not in default on such loans, that the loan is fully repaid by the time the participant retires. Paragraph (d)(11)(i) requires “[a]n explanation that the account balance includes the outstanding balance of any participant loan, unless the participant is in default of repayment on such loan.” This paragraph also provides model language that the plan administrator may use to satisfy the explanation requirements. Specifically, paragraph (d)(11)(ii) provides the following model language: “If you have taken a loan from the plan and are not in default on the loan, the estimated monthly payments in this statement assume that the loan has been fully repaid.” Plan administrators are not required to include the explanation in paragraph (d)(11)(i) for a plan that does not have a participant loan program.

The Department is interested in comments on both the substance of what plan administrators must explain to participants and the model language developed by the Department to implement the explanation

requirements. Is the model language in paragraph (d) “written in a manner calculated to be understood by the average plan participant,” as is required for information disclosed to participants? Are there additional or different formatting or presentation techniques relevant to this inquiry that the Department should have considered or included in the IFR? For example, does the Model Benefit Statement Supplement, attached as Appendix A to the IFR, work well for plan administrators as a unified insert into benefit statements? Alternatively, do commenters believe it is preferable to use the separate model language for each explanation requirement, in paragraph (d), which may provide additional flexibility to plan administrators as to how they incorporate the required information into existing pension benefit statements?

#### *(4) Special Rules for In-Plan Annuities*

Section 105(a)(2)(D)(iii) of ERISA, states that “to the extent that an accrued benefit is or may be invested in a lifetime income stream described in clause (i)(III), the assumptions described under subclause (I) shall, to the extent appropriate, permit plan administrators of individual account plans to use the amounts payable under such lifetime income streams as a lifetime income stream equivalent.” Pursuant to this provision, the IFR contains special rules for plans that offer distribution annuities, deferred annuities, or both. The special rules are described below.

##### *(a) Plans With Distribution Annuities*

Many defined contribution plans provide for distribution annuities so that participants may elect to receive their retirement benefits in periodic payments over the course of their lives, instead of as a lump sum payment. Paragraph (e)(1) of the IFR provides a special rule for plan administrators of plans that offer such annuities through a contract with a licensed insurance company. The special rule, if applicable, allows plan administrators to base the two mandatory lifetime income illustrations on the terms of the insurance contract, instead of on the otherwise mandatory assumptions set forth in paragraph (c) of the IFR. The special rule, thus, provides for illustrations based on annuities that participants may actually elect, instead of hypothetical illustrations otherwise required by the IFR. The special rule is optional. Plan administrators may elect to provide illustrations under this special rule or use the standard assumptions in paragraph (c) of the IFR.

A plan administrator is eligible for the relief under paragraph (f) of the IFR under either approach. Paragraph (e)(1) is adopted pursuant to section 105(a)(2)(D)(iii) of ERISA, which in relevant part states that “[t]o the extent that an accrued benefit is or may be invested in a lifetime income stream,” the IFR “shall, to the extent appropriate, permit administrators of individual account plans to use the amounts payable under such lifetime income stream as a lifetime income stream equivalent.”

While paragraph (e)(1) permits plan administrators to substitute actual contract terms for assumptions in paragraph (c) of this IFR, it contains certain limitations. Illustrations under paragraph (e)(1) still must show two lifetime income streams—a single life annuity and qualified joint and survivor annuity. These illustrations also still must assume the first payment is made on the last day of the statement period, that the participant is age 67 (unless older) on such date, and has a spouse the same age. Beyond these limitations, however, the illustrations under this special rule may be based on the actual contract terms. For example, the illustrations would use the interest rate assumptions under the contract, rather than the 10-year CMT rate. In addition, illustrations also would use the unisex mortality experience as provided for under the contract (for example, the insurance company’s tables), rather than mortality as reflected in the mortality tables under Code section 417(e)(3)(B). Illustrations also may reflect the survivor’s benefit percentage specified in the contract, if less than 100%.

As with lifetime income illustrations based on the Department’s required assumptions in paragraph (c) of the IFR, it is critical that illustrations provided pursuant to paragraph (e)(1) also be accompanied by clear and understandable explanations of the assumptions underlying the illustrations. For example, it is essential that participants understand the projected monthly payments are not guaranteed, and that there are a number of variables that impact the projected payments—variables that may change over time. Paragraph (e)(1)(iii) of the IFR contains the explanations that plan administrators must provide to participants, as well as model language that may be used to satisfy the explanation requirements. Consistent with paragraph (d) of the IFR, the explanations in paragraph (e)(1)(iii) are required, but the model language is optional, unless a plan fiduciary or other person wishes to benefit from the liability relief provided in paragraph (f)

of the IFR, in which case the model language is mandatory. The model language may be incorporated separately, as presented in paragraph (e)(1)(iii), into existing pension benefit statements, or in the consolidated format set forth in the Model Benefit Statement Supplement that is attached as Appendix B to the IFR. Also consistent with paragraph (d) of the IFR, paragraph (e)(1)(iii) contains eleven paragraphs, each of which is structured so that it includes the explanation requirement in paragraph (1) and the corresponding model language in paragraph (2).

The explanations and model language in paragraph (e)(1)(iii) are modeled on those in paragraph (d) of the IFR, with modifications necessary to accommodate potential variations in assumptions as a result of applicable contract terms. For example, the Department revised the explanations in paragraph (e)(1)(iii) to reflect the fact that a particular contract may offer a qualified joint and survivor annuity with a different survivor benefit percentage, such as 50% or 75%, price annuities based on different interest rate or mortality assumptions than those required in paragraph (c)(3) of the IFR, or provide for inflation or other adjustments to monthly payments over time. The Department is interested in comments on the modified explanations and model language in paragraph (e)(1)(iii), the Model Benefit Statement Supplement attached as Appendix B, as well as input on formatting or presentation techniques as discussed above, with respect to the explanations in paragraph (d) of the IFR.

#### (b) Plans With Participants That Purchased Deferred Annuities

In addition, or as an alternative, to distribution annuities, some plans offer participants the ability to purchase deferred income annuities (DIAs) during the accumulation phase. DIAs allow participants to purchase, or to make ongoing contributions toward the current purchase of, a future stream of retirement income payments that is provided by an insurance company. Although the purchase occurs during the accumulation phase, the payments themselves are deferred to a selected retirement age (or even later in the case of certain DIAs, such as qualifying longevity annuity contracts (QLACs)). Within any particular plan offering a DIA, some participants may choose to purchase deferred income and others may not. Each purchase reflects the interest rate environment and the participant’s age at the time of the purchase. Participants’ ownership

interests in DIAs often can be converted to a lump sum cash amount, but not always.

Paragraph (e)(2) of the IFR addresses how plan administrators must disclose on benefit statements the portion, if any, of a participant’s accrued benefit that has been used to purchase a DIA. For any portion of a participant’s accrued benefit that has been used to purchase a DIA, paragraph (e)(2)(i) of the IFR directs the plan administrator to ignore the otherwise applicable assumptions and disclosure requirements in paragraphs (c) and (d) of the IFR, and to instead disclose the amounts payable under the DIA in accordance with requirements in paragraph (e)(2)(ii) of the IFR. For any portion of the participant’s accrued benefit that has *not* been used to purchase a DIA, however, the plan administrator must use the generally applicable disclosure requirements in paragraphs (c) and (d), or paragraph (e)(1) if applicable, of the IFR.

Paragraph (e)(2)(ii) of the IFR sets forth the information that must be disclosed with respect to the portion of the participant’s accrued benefit that purchased the DIA. First, paragraph (e)(2)(ii)(A) requires disclosure of the date payments are scheduled to commence and the participant’s age on such date. The Department understands that participants select the age at which payments will commence when they purchase a DIA. The plan administrator also must disclose, under paragraph (e)(2)(ii)(B), the frequency and amount of deferred income stream payments under the contract as of the commencement date, in current dollars; and, under paragraph (e)(2)(ii)(C), a description of any survivor benefit, period certain commitment, or similar feature. The final disclosure requirement, in paragraph (e)(2)(ii)(D), is a statement as to whether the deferred income stream payments are fixed or will adjust with inflation or in some other way during retirement, and a general explanation of how any such adjustment is determined.

To align with the special treatment provided for DIAs by paragraph (e)(2) of the IFR, paragraph (b)(2) of the IFR provides that the value of a DIA is excluded from the participant’s account balance. This is to avoid confusion or double counting the value of the DIA. The Department solicits comments on this special rule.

#### (5) Model Disclosure

The SECURE Act requires that the Department issue a model lifetime income disclosure, written in a manner so as to be understood by the average

plan participant. The statute provides that the model income disclosure must explain a variety of topics, including the assumptions on which the lifetime income stream was determined and any other matters considered to be appropriate by the Department.

The IFR satisfies this requirement in two ways. First, as described in detail above, paragraph (d) of the IFR contains eleven brief model language inserts. Plan administrators may use these inserts to satisfy the general content requirements in paragraph (d) of the final rule, as well as to qualify for the liability relief in paragraph (f) of the IFR. Plan administrators may integrate these inserts into their existing pension benefit statements in any manner or format determined to be appropriate by the plan administrators. This flexibility is limited only by the general requirement in paragraph (a) of the IFR that the integrated benefit statement must be written in a manner calculated to be understood by the average plan participant.

Second, in contrast to the eleven brief inserts in paragraph (d), the Department included, as an Appendix to the IFR, a full model disclosure that may be used to satisfy the requirements in paragraph (d) of the IFR. This full model disclosure includes all of the substance of the eleven inserts collectively, but is formatted as a single document to supplement or append to an existing benefit statement, rather than being integrated into the statement. Like the eleven brief inserts, this full model disclosure, entitled Model Benefit Statement Supplement, can be used by plan administrators to satisfy paragraph (d) of the IFR and to qualify for the liability limitation in paragraph (f).

The IFR takes a similar approach for plans that use the special rule in paragraph (e)(1) of the IFR. Paragraphs (e)(1)(iii)(A) through (K) set forth both the required contents and brief model language inserts that may be used to satisfy these requirements. Alternatively, Appendix B to the IFR contains a full model disclosure document that also may be used to satisfy the content requirements.

The IFR does not, however, provide plan administrators with model disclosure language to use for benefit statements with respect to DIAs as provided for under paragraph (e)(2) of the IFR.<sup>20</sup> This is because the statutory

directive in section 203(b) of the SECURE Act, by its very text, is limited to lifetime income stream equivalents based on hypothetical assumptions. This makes the content requirements of that section wholly incompatible with DIAs which, of course, provide participants with specified monthly payments based on real factors and enforceable contracts. For example, section 203(b) of the SECURE Act requires model disclosure language to state “that the lifetime income stream equivalent is only provided as an illustration” and that “the actual payments under the lifetime income stream . . . which may be purchased with the total benefits accrued will depend on numerous factors and may vary substantially from the lifetime income stream equivalents” that are disclosed. These statements simply are not correct descriptions of *deferred* income streams, which already have been purchased, and for which actual (not illustrated or estimated) payments can be disclosed. The deferred income stream payments will not vary from the dollar amount illustrated on a participant’s benefit statement based on numerous assumed factors. Rather, the amount of the future payments (or the formula for the payments) was determined at the time the deferred annuity was purchased and can be disclosed in actual dollars. The rest of the model language required by section 203(b) of the SECURE Act similarly contemplates annuity payment *estimates and hypotheticals*, not actual annuity *payments* purchased by the participant.

#### (6) Limitation on Liability

Paragraph (f) of the IFR provides that no plan fiduciary, plan sponsor, or other person shall have any liability under Title I of the ERISA solely by reason of providing the lifetime income stream equivalents described in paragraphs (b)(3) and (4) of the rule. To qualify for this limitation on liability, paragraph (f)(1) requires that such equivalents be derived in accordance with the assumptions in paragraph (c) or (e)(1)(i) of the IFR. In addition, paragraph (f)(2) requires that benefit statements include language substantially similar in all material respects to either the model language in paragraphs (d)(1)(ii) through (d)(11)(ii) of the IFR, or the Model Benefit Statement Supplement in Appendix A of the IFR. Alternatively, if a plan administrator elects to use certain contract assumptions instead of the

assumptions in paragraph (c) of the IFR, benefit statements must include language substantially similar in all material respects to either the model language in paragraphs (e)(1)(iii)(A)(2) through (e)(1)(iii)(K)(2) or the Model Benefit Statement Supplement in Appendix B of the IFR. Thus, although use of the model language is required for the relief from liability in paragraph (f), plan administrators will have flexibility under the IFR as to how they incorporate the model language. And although the IFR only requires that plan administrators furnish the illustrations in paragraphs (b)(3) and (4) at least annually, plan administrators may rely on paragraph (f) for liability relief with respect to more frequent illustrations. For example, the administrator of a participant-directed individual account plan may choose to provide lifetime income illustrations for each quarterly benefit statement. In that case, to the extent the plan administrator includes illustrations as described in paragraphs (b)(3) and (4) and satisfies the conditions of paragraph (f), the plan administrator will be eligible for liability relief for such quarterly lifetime income illustrations.

Liability relief under the IFR is available so long as plan administrators use the Department’s model language or language that is “substantially similar in all material respects” to the Department’s model language. Word-for-word adoption of the model language is not required, and plan administrators can make minor, non-substantive changes to the IFR’s model language or format in their plans’ benefit statements without losing relief from liability. Any such changes may not, individually or in combination, affect the substance, clarity, or meaning of the model language; otherwise relief from liability will not be available under paragraph (f) of the IFR. For example, plan administrators may not deviate from any of the IFR’s required assumptions (*e.g.*, required commencement date, age, rate of interest, mortality). The “substantially similar” standard in the IFR is intended only to provide flexibility to plan administrators to make minimal and substantively immaterial modifications. A plan administrator could, for example, refer to “your statement” instead of “this statement;” add a reference to the plan by name (*e.g.*, “the COMPANY XYZ Profit Sharing Plan”); use the name of the employer or plan administrator instead of “we;” choose to say if “your spouse predeceases you” instead of if “your spouse dies first;” or describe a single life annuity as a “payment form”

<sup>20</sup> As a result, and as discussed further below in section B(6) of this preamble, *Limitation on Liability*, plan administrators and other parties will not be able to avail themselves of the liability relief provided in paragraph (f) of the IFR. The SECURE Act amended ERISA to provide such relief when both specified annuity assumptions and model

language provided by the Department are used; neither applies with respect to disclosure concerning deferred income streams.

rather than an “arrangement.”

Modifications of this scale would not render relief from liability under the IFR unavailable to a plan administrator.

Paragraph (f) addresses longstanding concerns of employers, plan sponsors, plan administrators and other plan fiduciaries, and plan service providers, that lifetime income illustrations could expose them to unwanted litigation from participants, for example because of unmet expectations. If participants, during their working years, mistakenly believe that the lifetime income illustrations on their pension benefit statements are promises or guarantees of a specific income stream, they might sue if their actual account balances at retirement do not generate an income stream equal to or greater than the stream depicted in past benefit statement illustrations. Another concern of these parties is that illustrations could be viewed as a type of investment advice, for example, suggesting that participants choose investment options that contain or are offered through an annuity contract. Paragraph (f) of the IFR resolves these concerns by providing that no plan fiduciary, plan sponsor, or other person shall have any liability under Title I of the ERISA solely by reason of providing the lifetime income stream equivalents described in paragraphs (b)(3) and (4) of the rule.

Paragraph (f), however, is not available to plan administrators or other parties who must disclose information about deferred income streams under paragraph (e)(2) of the IFR. As a technical matter, the disclosure of this information does not qualify for relief, because the information is neither derived in accordance with the Department's prescribed assumptions in paragraph (c) of the IFR, nor disclosed using model language provided by the Department—each of which is a condition in section 203 of the SECURE Act for liability relief. As discussed above, in section B(4) of the preamble, *Special rules for in-plan annuities*, the contract-specific nature of payments that a participant will receive based on their purchase of deferred income streams is fundamentally different from the estimated illustrations of lifetime income that must be disclosed under paragraphs (b)(3) and (4) of the rule. And as a practical matter, disclosure about specific, actual payments that will be made to a participant in the future based on a prior purchase according to real contract terms does not present the same concerns that exist when plan administrators disclose projected, hypothetical lifetime income illustrations based on a number of

assumed factors. There is no similar concern about litigation risk based on a participant's unmet expectations regarding the lifetime income that can actually be obtained when they retire—the payment amounts disclosed under paragraph (e)(2) of the IFR are facts. Disclosure of these deferred payments also is not likely to be misconstrued as investment advice—the participant already has purchased the “investment” by contributing to the deferred annuity. Accordingly, although the limitation on liability in paragraph (f) is not available for plan administrators or other parties disclosing deferred income stream payments under paragraph (e)(2) of the IFR, the Department does not believe such relief is necessary or that these parties will be subject to the type of litigation and other potential liability risks that may exist when estimating a participant's future lifetime income.

Paragraph (f) also does not apply to any additional illustrations as permitted in paragraph (g) of the IFR. Paragraph (g) clarifies that plan administrators are not prohibited from including lifetime income stream illustrations on or as part of benefit statements in addition to the illustrations mandated by the rule. Commenters on the ANPRM and the 2010 RFI made it very clear that many plans already provide illustrations and have done so for decades, including through the use of continuous access websites and other similar technologies. Many of these illustrations are interactive, stochastic, and tailored to the individual plan and plan participant. According to the commenters, these highly adaptive, highly personal, sophisticated illustrations are, in many respects, superior for financial and retirement planning purposes to a one-size-fits-all, deterministic model like that in the IFR. The Department does not want to undermine these best practices or inhibit innovation in this area. The Department encourages the continuation of these practices. At the same time, the Department is unable to extend the relief in paragraph (f) of the IFR to all of these practices. Comments, however, are solicited on whether the Department, either separately or in conjunction with the adoption of a final rule, should issue guidance clarifying the circumstances under which the provision of additional illustrations described in this paragraph may constitute the rendering of “investment advice” or may, instead, constitute the rendering of “investment education” under ERISA. Such guidance could assist plan sponsors, service providers, participants, and beneficiaries in

ensuring that activities designed to educate and assist participants and beneficiaries in making informed decisions do not cause persons engaged in such activities to become fiduciaries with respect to a plan by virtue of providing “investment advice” to plan participants and beneficiaries for a fee or other compensation.

#### (7) *Interim Final Rule Comments; Dates*

##### (a) *Justification for Interim Final Rule; Comments*

The Department is publishing this IFR in response to Congress's explicit direction in the SECURE Act, to publish an interim final rule within one year, as discussed above in the *Background* section of this preamble. In formulating this IFR, the Department has reviewed the extensive public record relating to lifetime income illustrations, including hundreds of comments on the 2010 RFI and the ANPRM as well as a public hearing on this initiative. In view of the importance of this initiative and Congress's explicit direction to publish an IFR within one year of the SECURE Act's enactment, the Department is publishing this interim final rule. Additionally, the Department for good cause finds that the congressional mandate to publish an interim final rule within one year, combined with the regulated community's need for regulatory guidance and the Department's intention to publish a final rule after receiving comments, make pre-IFR notice and public comment procedures impracticable, unnecessary, or contrary to the public interest in this instance. The Department invites comments from interested persons on all aspects of the IFR, in accordance with the instructions and timeline for submitting comments described above in the *Addresses* section. The Department's intention is to adopt a final rule prior to the effective date after consideration of public comment, with an adoption date sufficiently in advance of the effective date in order to minimize compliance burdens.

##### (b) *Dates*

Paragraph (i) provides the effective date and applicable date for this IFR. ERISA section 105(a)(2)(D)(v), in relevant part, states that the requirements of section 105(a)(2)(B)(iii) for individual account plans to provide the lifetime income disclosure “shall apply to pension benefit statements furnished more than 12 months after the latest of the issuance by the Secretary of” the interim final rules, the model disclosure, or the assumptions

prescribed by the Secretary. The IFR published today satisfies the three requirements of section 105(a)(2)(D)(v) and is effective on September 18, 2021 and applies to pension benefit statements furnished after such date. Thus, plans are not required to comply with the IFR until this date.

### C. Regulatory Impact Analysis

The SECURE Act aims to increase access to workplace retirement plans and generally to expand opportunities to save for retirement. As discussed above in the *Background* section of the preamble, section 203 of the SECURE Act amends section 105(a) of ERISA to require that pension plan administrators, at least annually, provide benefit statements illustrating participants' accrued benefits as two lifetime income stream illustrations: (1) A qualified joint and survivor annuity and (2) a single life annuity. The SECURE Act also directs the Department to prescribe assumptions and model language for plan administrators to use when producing and furnishing these illustrations. The SECURE Act provides that no plan fiduciary, plan sponsor, or other person shall have any liability under title I of ERISA solely by reason of the provision of lifetime income illustrations derived in accordance with the IFR's assumptions and which use the model language contained in the IFR. The IFR published today is consistent with the SECURE Act amendments to ERISA section 105 and the Department's prior work on issues related to lifetime income illustrations in defined contribution plans.

The Department has examined the effects of the IFR as required by Executive Order 12866,<sup>21</sup> Executive Order 13563,<sup>22</sup> the Congressional Review Act,<sup>23</sup> Executive Order 13771,<sup>24</sup> the Paperwork Reduction Act of 1995,<sup>25</sup> the Regulatory Flexibility Act,<sup>26</sup> section 202 of the Unfunded Mandates Reform Act of 1995,<sup>27</sup> and Executive Order 13132.<sup>28</sup>

#### (1) Executive Orders 12866 and 13563 and the Congressional Review Act

Under Executive Order (E.O.) 12866, the Office of Management and Budget

(OMB)'s Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and OMB review. Section 3(f) of E.O. 12866 defines a "significant regulatory action" as an action that is likely to result in a rule that (1) has an annual effect on the economy of \$100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. The Office of Information and Regulatory Affairs has determined that this IFR is economically significant under section 3(f)(1) of E.O. 12866. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OIRA has designated this rule as a "major rule," as defined by 5 U.S.C. 804(2).

E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify, and provides that, when appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

#### (2) Introduction and Need for Regulation

As discussed above, section 203 of the SECURE Act amends section 105(a) of ERISA to require, in relevant part, that pension plan administrators provide, at least annually, benefit statements illustrating participant's accrued benefit as two lifetime income stream equivalents. The IFR implements this section of the SECURE Act by establishing content, assumptions, and model language for the illustrations.

Workers today are required to take a more active role in managing their retirement assets, both while employed

and during their retirement years. This increased responsibility is primarily a result of the general shift from defined benefit pension plans to defined contribution plans.<sup>29</sup> In 1975, defined contribution plan participants accounted for 26 percent of pension plan participants. This share increased to 75 percent in 2017.<sup>30</sup> Moreover, in 2017, 84 percent of active defined contribution plan participants were participants in 401(k) plans, and 98 percent of these 401(k) plan participants were responsible for directing some or all of their account investments.<sup>31</sup>

Employers and unions sponsoring private defined benefit plans make contributions to fund promised benefits, and manage plan assets as ERISA fiduciaries. In addition, defined benefit plans are generally required to make annuities available at retirement, which provides protection against longevity risk (outliving one's retirement assets). In contrast to defined benefit plan participants, defined contribution plan participants bear significantly more investment risk. Employers make no promises with respect to the adequacy of a participant's final account balance nor the income stream that the balance will generate. Generally, defined contribution plans are not required to make annuities available to participants at retirement, and typically participants must determine the amounts and timing of withdrawals of their account balances from such plans. Consequently, defined contribution plan participants must ensure that their savings are adequate to protect them against longevity risk.

Evidence suggests that defined contribution plan participants have found it difficult to plan for retirement and manage their retirement assets.<sup>32</sup> For example, 80 percent of retirees say they do not have a formal retirement

<sup>29</sup> The number of private defined benefit plans fell from more than 103,000 in 1975 to fewer than 47,000 in 2017 (a drop of almost 55 percent in the last 42 years). The number of private defined contribution plans grew from just under 208,000 in 1975 to nearly 633,000 in 2017 (an increase of nearly 205 percent for the same time period). See *Private Pension Plan Bulletin Historical Tables and Graphs 1975–2017*, Employee Benefits Security Administration, (Sep. 2019), at 1, <https://www.dol.gov/sites/dolgov/files/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan-bulletin-historical-tables-and-graphs.pdf>.

<sup>30</sup> *Id.*, at 5.

<sup>31</sup> *Id.*, at 9, 25, 32. Please note that the number of active participants in 1975 and 2017 are not directly comparable because of adjustments in the definition of a participant. This adjustment is detailed in the appendices of the cited source.

<sup>32</sup> See Angela Hung, Jeremy Burke, Lauren Mayer, and Noreen Clancy, "Retirement Benefit Statements: Focus Group, Survey, and Experimental Evidence," *RAND Research Report*, RR–1072, (Jan. 2015).

<sup>21</sup> Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993).

<sup>22</sup> Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 18, 2011).

<sup>23</sup> 5 U.S.C. 801 *et seq.*

<sup>24</sup> Reducing Regulation and Controlling Regulatory Costs, 82 FR 9339 (Jan. 30, 2017).

<sup>25</sup> 44 U.S.C. 3506(c)(2)(A).

<sup>26</sup> 5 U.S.C. 601 *et seq.*

<sup>27</sup> 2 U.S.C. 1501 *et seq.*

<sup>28</sup> Federalism, 64 FR 153 (Aug. 4, 1999).

income plan.<sup>33</sup> Most investors planning for retirement do not know how much they need to save to maintain their current standard of living in retirement, or how to calculate that amount.<sup>34</sup>

The replacement rate, the ratio of post-retirement income to pre-retirement income, is one indicator of retirement income adequacy. A replacement rate of 75 percent is often cited as an illustrative target. Recent studies indicate that a significant portion of the participant population is not meeting this target, and younger participants (those more likely to participate in a defined contribution plan) are having more trouble meeting it than their older counterparts (those more likely to participate in a defined benefit plan).

The Center for Retirement Research at Boston College estimates that between 42 and 60 percent of households are at risk of having inadequate retirement savings.<sup>35</sup> A separate study projects that when individuals born between 1976 and 1985 reach age 70, 40 percent will be unable to replace 75 percent of their pre-retirement earnings.<sup>36</sup> Comparatively, 32 percent of the cohort born between 1936 and 1945, and 30 percent of the cohort born between 1956 and 1965, are projected to fall short of the 75 percent replacement rate at age 70.<sup>37</sup> Further, a study conducted by the National Bureau of Economic Research found that while the replacement rate has not worsened over time for households at or above median income levels, it has been falling for households with below-median income levels.<sup>38</sup>

Planning for retirement requires investors to determine how much to contribute to their plans, which generally entails a basic command of financial and investment concepts, such as portfolio allocation and risk

tolerance. These concepts are complex and many participants do not have the financial expertise necessary to make effective investment decisions and successfully plan for retirement. A recent survey of Americans between the ages of 60 and 75 found that only 26 percent of those surveyed were able to pass a retirement literacy test, and only 41 percent correctly answered questions specifically related to maintaining one's lifestyle in retirement.<sup>39</sup> Only 38 percent knew that an individual could only safely withdraw \$4,000 each year from a \$100,000 retirement account according to the "4 percent rule."<sup>40</sup> Additionally, researchers note that common cognitive constraints, such as procrastination and inertia, can interfere with proper retirement planning.<sup>41</sup>

Most plan participants think about their retirement income goals in terms of the monthly income they would need to maintain their current standard of living in retirement rather than as a lump sum.<sup>42</sup> Many participants do not know where to find information about lifetime income streams, or how to calculate such amounts on their own.<sup>43</sup> While some plans provide retirement income illustrations as part of their pension benefit statements, the practice is far from universal.

The SECURE Act directs the Department to take regulatory action to provide defined contribution plan participants and beneficiaries with a tool that will help them better understand their retirement savings as a vehicle for income replacement during retirement: Lifetime income illustrations. Many commenters on the ANPRM suggested that such a tool could motivate workers who are saving too little to increase their

contributions.<sup>44</sup> A survey conducted by the LIMRA Secure Retirement Institute found that women and low-income workers were less likely to have an estimate of their monthly retirement income than men and high earners.<sup>45</sup> The IFR could improve outcomes for these underserved groups.

### (3) Affected Entities

The IFR will affect all ERISA-covered defined contribution plans, although the impact on such plans already providing lifetime income illustrations in pension statements will be smaller than the impact on those that do not. Although plans providing the disclosure currently have systems and disclosures in place to produce these illustrations, they nonetheless will need to implement changes to ensure that the language and assumptions used for the illustrations comply with the requirements of the IFR. The Department solicits comments about the impact that plans currently providing lifetime income illustrations may experience in conforming to the conditions set forth in this IFR.

Based on Form 5500 data, there were 662,829 defined contribution plans and 76.8 million participants with account balances in defined contribution plans in 2017, all of whom will be affected by the IFR. Using these Form 5500 data and a survey conducted by the Plan Sponsor Council of America (PSCA),<sup>46</sup> the Department estimates that 112,681 plans already provide lifetime income illustrations, and thus are likely to experience a smaller impact than the 550,148 plans that do not already provide such illustrations.<sup>47</sup> Table 1 below shows the percentage of plans that have or have not provided projected monthly income to educate participants.

The Department believes that the PSCA survey results concerning the percentage of plans providing projected monthly income are an acceptable proxy for the percentage of plans already providing lifetime income illustrations in pension benefit statements. The PSCA survey asked plan sponsors to select approaches used to achieve defined contribution plan education,

<sup>39</sup> See 2017 RICP Retirement Income Survey Report, The American College, NY Life Center for Retirement Income, [https://retirement.theamericancollege.edu/sites/retirement/files/2017\\_Retirement\\_Income\\_Literacy\\_Report.pdf](https://retirement.theamericancollege.edu/sites/retirement/files/2017_Retirement_Income_Literacy_Report.pdf).

<sup>40</sup> The "4 percent rule" is a common retirement planning guideline that states a retiree should withdraw no more than 4 percent of their retirement portfolio on an annual basis to avoid the risk of running out of money.

<sup>41</sup> See Gopi Shah Goda, Colleen Flaherty Manchester, & Aaron Sojourner, "What Will My Account Really Be Worth? Experimental Evidence on How Retirement Income Projections Affect Saving," *Journal of Public Economics*, vol. 119(C), (2014), at 80–92.

<sup>42</sup> See Angela Hung, Jeremy Burke, Lauren Mayer, and Noreen Clancy, "Retirement Benefit Statements: Focus Group, Survey, and Experimental Evidence," *RAND Research Report*, RR–1072, (Jan. 2015).

<sup>43</sup> See ACLI Retirement Choices Study: Online Survey with Near-Retiree Defined Contribution Plan Participants, Mathew Greenwald & Associates, Inc., (Apr. 2010) (written statement for the record, U.S. Sen. Special Committee on Aging, *Hearing on The Retirement Challenge: Making Savings Last a Lifetime*, June 16, 2010, 111th Cong.).

<sup>44</sup> Research also suggests that a small change in information presented on or as part of the benefit statement can have a significant impact on savings behavior. See Goda et al., *supra* note 41.

<sup>45</sup> See Alison Salka & Cecilia Shiner, "Quarterly Retirement Perspectives 2013: Prospects for Income Projections," LIMRA Retirement Institute (2013).

<sup>46</sup> 62th Annual Survey of Profit Sharing and 401(k) Plans, Plan Sponsor Council of America (2019). This survey reported on the 2018 plan year experience of 608 defined contribution plans.

<sup>47</sup> The 112,681 and 550,148 figures are calculated by multiplying the number of all plans (662,829) by the percentage of plans providing lifetime income illustrations (17 percent) and not providing lifetime income illustrations (83 percent) respectively.

<sup>33</sup> *The Differences They Make*, LIMRA (2017).

<sup>34</sup> See Julie R. Agnew & Lisa R. Szykman, "Asset Allocation and Information Overload: The Influence of Information Display, Asset Choice and Investor Experience," *The Journal of Behavioral Finance*, vol. 6, no. 2 (2005), at 57–70.

<sup>35</sup> See Anqi Chen, Alicia H. Munnell, & Geoffrey T. Sanzenbacher, "How Much Income Do Retirees Actually Have? Evaluating the Evidence from Five National Datasets," *Center for Retirement Research at Boston College*, working paper 2018–14, (Nov. 2018).

<sup>36</sup> See Richard W. Johnson, Karen E. Smith, Damir Cosic, & Claire Xiaozhi Wange, "Retirement Prospects for the Millennials: What is the Early Prognosis?" *Center for Retirement Research at Boston College*, working paper 2017–17, (Nov. 2017).

<sup>37</sup> *Id.*

<sup>38</sup> See John Beshears, James J. Choi, David Laibson, & Shanthi Ramnath, "Trends in Retirement Income Adequacy: Evidence from IRS Tax Data," presented at 21st Annual Social Security Administration Research Consortium Meeting, National Press Club (Aug. 1, 2019).

and projected monthly income is one of the education approach options listed. Some plan sponsors may provide monthly income projections, but may not consider these projections to be education, and thus may have

responded to the survey accordingly. For this reason, the Department notes that the percentages shown in the table below serve as lower-bound estimates. The Department invites comments on the estimate of plan sponsors currently

providing lifetime income illustrations and solicits feedback on alternative data sources for the number of defined contribution plans and recordkeepers currently providing lifetime income illustrations.

	Plan Size by Number of Participants					All Plans
	2–49	50–199	200–999	1,000–4,999	5,000+	
[1] Number of Plans	484,933	105,364	35,252	8,674	2,685	662,829
[1-1] Provided	12%	15%	17%	14%	30%	17%
[1-2] Not Provided	88%	85%	83%	86%	70%	83%
[2] Number of Participants	5,673,308	7,270,793	11,178,989	13,901,752	38,757,260	76,787,047
[2-1] Provided	663,777	1,083,348	1,878,070	1,904,540	11,472,149	17,001,884
[2-2] Percentage of Participants Provided with Projected Monthly Income						22%

Sources: Form 5500 data in 2017, and Plan Sponsor Council of America, 62th Annual Survey of Profit Sharing and 401(k) Plans (Chicago, IL: 2019). This survey reported on the 2018 plan year experience of 608 defined contribution plans. Numbers in rows [1] and [2] come from the Form 5500 data in 2017. Percentages in row [1-1] come from the PSCA survey, while percentages in row [1-2] are calculated by deducting the corresponding percentages in row [1-1] from 100. Numbers in row [2-1] are calculated by multiplying the numbers in row [2] by the percentages in row [1-1]. The number of 662,829 includes 25,291 defined contribution plans whose plan sizes fall into the category of “None or Not Reported,” excluded from the table.

The IFR also will affect plans offering in-plan annuity products. According to two surveys of plan sponsors, nine to 12 percent of plans currently offer annuity options.<sup>48</sup> One large recordkeeper reports that about two out of ten plans it services, covering approximately eight percent of defined contribution plan participants it services, provided participants with a retirement annuity option in 2018.<sup>49</sup> Even when annuity products are offered, however, data suggest a relatively small number of participants purchase them. Analyzing

data from a large plan administrator, one study suggests that approximately 19 percent of retirees opted for annuitization in 2017, which declined from 54 percent in 2000.<sup>50</sup> The data in that study includes plans with highly educated and financially sophisticated participants. Further, the plans in that study have had annuity options for a long period of time. Therefore, some economists suggest that the annuitization rate is even lower for participants with more diverse backgrounds in terms of education level or financial literacy.<sup>51</sup> Since relatively

few plans offer annuity options and only a small number of participants purchase them, the impact of the IFR on these plans and participants is expected to be somewhat limited.

As discussed earlier in this preamble, there are different types of in-plan annuities. Some plans offer participants the ability to purchase DIAs. It is difficult to know how many plans provide a DIA purchase option. However, DIAs represent only a small part (\$1.7 billion) of the total \$179 billion annuity market in 2017.<sup>52</sup> QLACs, a subset of DIAs, represent \$255 million, approximately 15 percent of DIA sales in 2017.<sup>53</sup> Because these data

<sup>48</sup> According to a defined contribution plan sponsor survey, 9.3 percent of plans offered an in-plan annuity option to participants. (See PSCA 61st Annual Survey, Reflecting 2017 Plan Experience.) Another survey of plans suggests that 12 percent of plans offered an in-plan annuity product as an investment option in their plans in 2019. (See Deloitte “The retirement landscape has changed—are plan sponsors ready? 2019 Defined contribution Benchmarking Survey Report.”)

<sup>49</sup> See *How America Saves 2019*, Vanguard (June 11, 2019), <https://institutional.vanguard.com/iam/pdf/HAS2019.pdf>.

<sup>50</sup> Jeffrey Brown, James Peterba, & David Richardson, “Recent Trends in Retirement Income Choices at TIAA: Annuity Demand by Defined Contribution Plan Participants,” National Bureau of Economic Research (Sep. 30, 2019).

<sup>51</sup> See Alicia Munnell, Gal Wettstein, & Wenliang Hou, “How Best Annuitize Defined Contribution Assets?” Center for Retirement Research (Oct. 2019). See also Richard Johnson, Leonard Burman, & Deborah Kobes, “Annuitized Wealth at Older Ages: Evidence from the Health and Retirement Study,” Urban Institute (May 2004). According to

this study, approximately 10 percent of adults who left their jobs after age 65 annuitized their plan assets in 2000.

<sup>52</sup> This includes sales occurred beyond plans and IRA markets. See *U.S. Annuity Markets 2018: Remaining Well Capitalized and Adaptive*, Cerulli Report, at 42.

<sup>53</sup> This includes sales through qualified plans and IRAs. (See *Id.*, at 32.)

cover QLACs sold from both plans and individual retirement accounts (IRAs), participants who purchased QLACs through their employer-sponsored plans would represent an even smaller share of the annuity market.

#### (4) Benefits

The Department believes that the benefits of this IFR justify its costs, both of which are discussed below. The Department invites comments on these benefit and cost estimates, and is especially interested in obtaining additional data on the impacts that result from providing lifetime income illustrations in pension benefit statements.

The Department anticipates that the IFR will provide two primary benefits to participants: (1) Strengthening retirement security by encouraging those currently contributing too little to increase their plan contributions, and (2) saving some participants' time in understanding how prepared (or unprepared) they are for retirement by making lifetime income information readily available. Under certain circumstances, however, the Department expects the IFR will lead a minority of participants who might have over saved to reduce their contributions.<sup>54</sup> The Department also expects the limitation on liability provision will significantly reduce the litigation risk faced by plans providing lifetime income illustrations.

**Increased Contributions:** The Department believes that requiring benefit statements to contain lifetime income illustrations will encourage many participants to increase their plan contributions. One commenter on the 2010 RFI stated that translating retirement savings into an estimated future income stream will remind participants that retirement savings are needed to generate income throughout retirement. For example, if a participant sees that their \$100,000 account balance may only generate \$700 of monthly income for life, the participant may choose to take measures to increase his or her savings.<sup>55</sup>

Research supports the hypothesis that providing participants with customized information on their lifetime income stream can influence contribution behavior.<sup>56</sup> One study suggests that 40

percent of respondents aged 41–60 will increase their 401(k) contributions by four percentage points or more after seeing a lifetime income illustration.<sup>57</sup> Another study, involving participants in a University of Minnesota defined contribution plan, revealed those who received lifetime income illustrations increased their annual contributions by an average of \$85.<sup>58</sup> Although this is a modest increase, it is significant considering the many barriers that prevent participants from increasing contributions, including liquidity constraints. If the Department's IFR affects participant behavior in the same manner as the University of Minnesota study, it would increase aggregate annual contributions by \$5.1 billion.<sup>59</sup> It is unclear, however, whether the rule's impact will be similar to that observed in the study. Unlike the IFR, in addition to providing lifetime income illustrations, the statements in the University of Minnesota study also showed the impact of increased savings

*Near-Retiree Defined Contribution Plan Participants*, Mathew Greenwald & Associates, Inc., (Apr. 2010), (written statement for the record, U.S. Sen. Special Committee on Aging, *Hearing on The Retirement Challenge: Making Savings Last a Lifetime*, Jun. 16, 2010, 111th Cong.). (Sixty percent of respondents reported that if the illustration of the participants' lifetime income generated by their retirement plan account would not be enough to meet their retirement needs, they would "start saving more immediately," and 32 percent indicated that seeing an illustration would cause them to reevaluate and change their asset allocation.)

<sup>57</sup> See *Consumer Preferences for Lifetime Income Estimates on 401(k) Statements*, Insured Retirement Institute (Jan. 2015), [https://www.myirionline.org/docs/default-source/research/consumer-preferences-for-lifetime-income-estimates-on-401\(k\)-statements-web.pdf?sfvrsn=2](https://www.myirionline.org/docs/default-source/research/consumer-preferences-for-lifetime-income-estimates-on-401(k)-statements-web.pdf?sfvrsn=2). (This study asked respondents two questions to assess (1) whether they would increase 401(k) contributions after seeing retirement income estimates, and (2) by how much. The Department assumes those who reported they would increase contributions in the first question also responded to the second question. Because 50 percent of respondents aged 41–60 answered "yes" to the first question, and 75 percent of these respondents stated they would increase the contributions by 4 percentage points or more, it is assumed roughly 40 percent (50 percent \* 75 percent) of respondents aged 41–60 would increase their contributions by 4 percentage points or more.)

<sup>58</sup> See Goda et al., *supra* note 41.

<sup>59</sup> The \$5.1 billion estimate is calculated by multiplying the average savings estimate from the University of Minnesota study (\$85 per participant), the number of defined contribution plan participants with account balances (76.8 million, according to the 2017 Private Pension Plan Bulletin), and the assumed percentage of those participants not currently receiving lifetime income illustrations (78 percent). The 78 percent assumption comes from Table 1, which shows 22 percent of participants receive lifetime income illustrations. (\$85 \* 76.8 million \* 0.78 = \$5.1 billion). Whether the increase in contributions persists is not certain as the study's time horizons were between 6 months (e.g. Goda 2014) to 1 year (e.g. Fajnzylber & Reyes) following the receipt of the disclosures.

on participants' account balances and the additional annual income the increased savings would generate in retirement. The Department invites comments on the applicability of the University of Minnesota findings to the Department's rule.

The Federal Thrift Savings Plan began providing a lifetime income illustration as part of participants' benefit statements in 2010. In a 2013 Thrift Savings Plan Participant Satisfaction Survey, 29 percent of active participants reported taking action based on the monthly income estimate: 12 percent increased their contributions, 10 percent revised their investment allocations, and 7 percent delayed their planned retirement dates.<sup>60</sup>

A recent study in Chile suggested that defined contribution plan participants were 1.4 percentage points more likely to increase voluntary contributions after projections of retirement income were included in participants' annual statements.<sup>61</sup> The increase was larger in the 40–50 age group than it was in younger cohorts, consistent with myopia or liquidity constraints. The increase for women was significantly larger than that for men, likely reflecting a higher sense of urgency.<sup>62</sup>

The Department anticipates that if all defined contribution plan benefit statements were to contain lifetime income illustrations, many participants and beneficiaries would be better positioned to assess their retirement readiness and to prepare for retirement.<sup>63</sup> An illustration based on a person's current account balance would provide an immediate baseline for the participant to judge expected retirement readiness.

Adding lifetime income illustrations to defined contribution plan retirement account statements is supported by virtually all plan sponsors (96 percent).<sup>64</sup> This addition would benefit participants by making critical

<sup>60</sup> 2013 Thrift Savings Plan Survey Results, Aon Hewitt, <http://www.frtib.gov/ReadingRoom/SurveysPart/TSP-Survey-Results-2013.pdf>.

<sup>61</sup> Eduardo Fajnzylber & Gonzalo Reyes, "Knowledge, Information, and Retirement Saving Decisions: Evidence from a Large-Scale Intervention in Chile," *Economia*, vol. 15, no. 2 (Spring 2015), at 83–117.

<sup>62</sup> *Id.*

<sup>63</sup> Lena Larsson, Annika Sundén, & Ole Settergren, "Pension Information: The Annual Statement at a Glance," *OECD Journal: General Papers*, vol. 2008, no. 3 (Feb. 23, 2009), [https://www.oecd-ilibrary.org/economics/pension-information\\_gen\\_papers-v2008-art19-en](https://www.oecd-ilibrary.org/economics/pension-information_gen_papers-v2008-art19-en).

<sup>64</sup> *Lifetime Income Poll: Perspectives of Defined Contribution Plan Sponsors on Regulatory Developments*, MetLife (2016), <https://www.metlife.com/content/dam/metlifecom/us/homepage/institutionalRetirement/insights/LifetimeIncome/2016-Lifetime-Income-Poll.pdf>.

<sup>54</sup> See more discussion in the (6) *Uncertainty* section.

<sup>55</sup> As discussed in more detail in the *Uncertainty* section of the preamble, below, it is difficult to know what percentage of increased contributions can be interpreted as benefits (as categorized in a regulatory impact analysis, such as this one).

<sup>56</sup> See Goda et al., *supra* note 41. See also ACLI *Retirement Choices Study: Online Survey with*

retirement information readily available to aid their retirement planning. In a survey commissioned by the Insured Retirement Institute, over 90 percent of participants reported that they wanted to see some form of retirement income estimates on their 401(k) statements, and that such estimates would be very, or somewhat, helpful when planning for retirement.<sup>65</sup> In another survey, 75 percent of respondents were very, or somewhat, interested in converting some or all of their retirement savings to an investment option that would guarantee monthly income for life.<sup>66</sup>

**Time Savings:** Defined contribution plan participants will likely benefit from the IFR because it will save many of them time by making lifetime income information readily available. Participants can calculate lifetime income streams on their own by finding and using online interactive tools, applying economic formulas found in books, or seeking help from financial advisers. Unfortunately, many participants neither know where to find such information, nor possess the financial literacy needed to use it. Further, for those who know where to look, inertia might prevent them from acting on their knowledge.

This IFR greatly standardizes lifetime income illustrations across defined contribution plans, which will save time by minimizing confusion for participants. A standardized illustration would make it easy for workers to add together their estimated Social Security and ERISA benefits, minimizing some of the complexity of retirement planning.<sup>67</sup> This change will be of particular benefit to participants who change jobs or receive statements from multiple

defined contribution plans, as different benefit statements with few exceptions will use the same model language and assumptions, and present the information in the same manner. Participants will be able to spend their retirement planning time more efficiently, because they will not have to devote time, energy, and resources to seeking out lifetime income information on their own.

#### (5) Costs

**Overview of Methodology—Establishing a Baseline:** Some plan sponsors voluntarily provide lifetime income illustrations, but there is little data available on the number of sponsors providing illustrations or the type of illustrations they provide. As discussed in the *Affected Entities* section above, the PSCA survey for the 2018 plan experience suggested that only 17 percent of plan sponsors provide lifetime income illustrations. As shown in Table 1, larger plans were more likely to provide this information: 30 percent of plans with at least 5,000 participants provided such information, while 13 percent of plans with fewer than 5,000 participants did the same.<sup>68</sup> The results from the PSCA survey and Form 5500 data suggest that 22 percent of defined contribution plan participants received lifetime income illustrations. A 2013 survey found that only half of U.S. workers have ever seen monthly retirement income projections.<sup>69</sup> Another survey, conducted in 2012, suggested that only one-third of 214 plan sponsors provide income projections as part of benefit statements.<sup>70</sup>

<sup>68</sup> Table 1 shows four groups of plans with fewer than 5,000 participants—plans with (i) 2–49 participants, (ii) 50–199 participants, (iii) 200–999 participants, and (iv) 1,000–4,999 participants. The percentages of plans providing projected monthly income in these four groups are 12%, 15%, 17%, and 14%, respectively. See row [1–1] of Table 1. Therefore, the Department estimates that approximately 13 percent, 79,547 plans out of the total 634,223 plans in these four groups, provide projected monthly incomes. See row [1] of Table 1.

<sup>69</sup> Salka & Shiner, *supra* note 45. (Fifty-one percent of survey respondents answered “yes” to the following question: “Have you ever seen a projection or estimate of monthly income your savings could generate in retirement if you maintain your current saving habits?”)

<sup>70</sup> *Retirement Income Practices Study: Perspectives of Plan Sponsors and Recordkeepers for Qualified Plans*, MetLife (June 2012), <https://www.metlife.com/content/dam/metlifecom/us/homepage/institutional/Retirement/insights/LifetimeIncome/2012-Retirement-Income-Practices-Study.pdf>. (This survey also posed the same question as the Salka/Shiner survey (see previous note) to 12 large recordkeepers and found that half already provided income projections. In this analysis, a one-third early-adoption rate is applied because the Brightscope database of plan sponsors and recordkeepers reveals that the largest 214 plan

The Department estimates one-time and ongoing costs using data from the aforementioned PSCA survey. Regarding one-time costs, the Department assumes that plans not currently providing lifetime income illustrations will incur development costs of setting up a system for producing lifetime income illustrations. Plans that currently provide such illustrations will not incur development costs but likely will incur some transitional costs to comply with the Department’s assumptions and model language and to integrate the new illustrations into existing paper and online benefit statement formats. Using available data, it is difficult to predict how small recordkeepers and plan sponsors will respond to the rule in terms of development costs. Developing an information technology system that generates lifetime income illustrations requires a large up-front investment. Therefore, it is likely that many recordkeepers will choose instead to purchase products or license systems from recordkeepers that have already developed them. According to the Form 5500 data, in the 2017 plan year, there were 1,725 recordkeepers servicing defined contribution plans. The 445 largest recordkeepers (hereafter large recordkeepers) serviced plans holding approximately 99 percent of total plan assets, while the remaining 1,280 (small recordkeepers) serviced plans holding a mere 1 percent.<sup>71</sup> A different report shows a similar picture—a large concentration of the market held by a small number of recordkeepers.<sup>72</sup> The small recordkeepers may decline to develop their own systems, and instead opt to purchase software or license systems developed by other recordkeepers.

**Categorizing Major Cost Components:** The economic costs associated with the IFR fall into two categories of one-time costs and four categories of ongoing costs. The two one-time cost categories are (1) developing a system to produce

sponsors receive services from about 50 large recordkeepers, which covers more recordkeepers than the results from 12 recordkeepers. The respondents to this survey are mostly large plan sponsors, and the sample size of this survey is very small. The Private Pension Plan Bulletin and Form 5500 data suggests that there were over 663,000 defined contribution plans and 1,725 recordkeepers serving defined contribution plans in plan year 2017).

<sup>71</sup> The Department considered other thresholds for recordkeepers. For example, approximately 95 percent of total plan assets are serviced by the largest 119 recordkeepers. The Department selected the 99 percent threshold for recordkeepers to include more recordkeepers in cost estimates, and thus avoid underestimating costs.

<sup>72</sup> *Special Report: DC Record Keepers, Pensions & Investments* (Apr. 2, 2018), <https://corporate.voya.com/sites/corporate.voya.com/files/PI5797%20Voya-Final.pdf>.

<sup>65</sup> See Insured Retirement Institute, *supra* note 57. While the affected industry acknowledges that participants want this information and believes it would be helpful and educational, it is uncertain that such disclosures necessarily would increase over time without this IFR. This, in part, may be due to employers’ concerns with potential fiduciary liability and litigation for unmet expectations, *i.e.*, workers mistakenly believing the lifetime income illustrations are promises or guarantees. To the extent that lifetime income illustrations would become more common even without this IFR, the benefits and costs attributable to the IFR are potentially overstated.

<sup>66</sup> 2019 Retirement Confidence Summary Report, Employee Benefit Research Institute and Greenwald & Associates (Apr. 23, 2019), at 26, [https://www.ebri.org/docs/default-source/rcs/2019-rcs/2019-rcs-short-report.pdf?sfvrsn=85543f2f\\_4](https://www.ebri.org/docs/default-source/rcs/2019-rcs/2019-rcs-short-report.pdf?sfvrsn=85543f2f_4).

<sup>67</sup> Unlike the Department’s lifetime income illustration, estimated Social Security retirement benefits are based on projections, such as the amount of continued contributions to the Social Security. In addition, Social Security benefits are subject to future adjustment for inflation, while the Department’s illustration is fixed. However, combining the estimates at age 67 would provide a rough estimate of what a person might receive in the first month of retirement.

lifetime income illustrations, and (2) transitioning from existing assumptions and language to the required assumptions and language or model language and integrating the new illustrations into existing paper and online benefit statement formats. The four ongoing cost categories include: (1) Answering increased calls from participants, (2) printing lifetime income illustrations, (3) converting the account balance to annuities based on the DOL-specified assumptions at the statement date, and (4) training internal staff about lifetime income illustrations and efficient navigation of the system.

The development cost estimates assume no small recordkeepers would develop their own systems because it will likely be more cost effective for small recordkeepers to purchase software or license a system than to develop their own.

To gather information needed to convert participants' account balances to annuities based on the DOL-specified assumptions at the statement date, plan sponsors are likely to rely on their recordkeeper to provide the information. Some recordkeepers may have an actuary on staff who can calculate the appropriate information as of the benefit statement date. Other recordkeepers may need to obtain the appropriate information from an external actuary or other source.

**One-time Costs—Development Costs:** In order to provide lifetime income illustrations in benefit statements, recordkeepers may incur costs to develop a system that produces the lifetime income illustrations. Part of those costs would include those related to incorporating the assumptions mandated by the IFR. According to the PSCA survey, 30 percent of plans with 5,000 or more participants (hereafter large plans) already provide lifetime income illustrations. This 30 percent early-adoption rate serves as a baseline for this analysis.

The Department uses recordkeepers as a unit of analysis in estimating development costs. In commenting on the ANPRM, one commenter suggested that it would cost approximately \$715,000 to develop a system to produce lifetime income illustrations and web-based tools.<sup>73</sup> According to this commenter, its system features various functionalities such as the ability to incorporate social security projections

and IRAs; customize assumptions to see the impacts of those changes on the projected lifetime income streams; show the integrated effects of in-plan annuity investment options combined with other plan investments; estimate the gaps between projected monthly incomes at retirement and the desired monthly incomes; provide education about how to close those gaps, and personalize future draw-down strategies that incorporate social security and other retirement assets. Although these flexible and customizable features are likely to better engage participants, and thus, better prepare them for retirement, a recordkeeper can satisfy the conditions set forth in the IFR without these flexible and elaborate features. Furthermore, because the requirements in the IFR are limited in its scope and the IFR provides recordkeepers with model language and assumptions to convert account balances to the required lifetime income streams, a recordkeeper can develop at much lower costs a system capable of producing illustrations that meet the specifications of the IFR. Due to a lack of data, however, the Department relies on a unit cost estimate, \$715,000, provided by the commenter on the ANPRM and adjusts it down by a quarter to account for costs incurred to develop features applicable to only a small subset of plans or features that are truly optional. The Department invites comments about how many recordkeepers would develop a new system to provide lifetime income illustrations pursuant to the IFR and how much it would cost for them to do so. Applying the assumptions and methods discussed above, the Department estimates that costs to develop a new system to produce lifetime income illustrations meeting the specifications laid out in the IFR will be \$185 million.<sup>74</sup> This estimate assumes that 70 percent of large recordkeepers will develop their own systems, and that none of the small recordkeepers will develop their own systems.<sup>75</sup> As discussed above, it is plausible that more recordkeepers already have a capability of producing lifetime income illustrations, thus do not need to build a new system to

comply with the IFR.<sup>76</sup> Of those recordkeepers currently lacking a capability of providing lifetime income illustrations, some may elect to use other providers' systems instead of developing a new proprietary system. If so, then the Department may have overestimated costs to develop a new system. However, if more recordkeepers decide to develop a new system, the development costs in this analysis may be underestimated.

**One-time Costs—Transitional Costs:** To receive liability relief, plan sponsors, plan administrators, and plan recordkeepers currently providing lifetime income illustrations must modify their current assumptions and language to adopt the assumptions and model language in the IFR. They must then integrate the new illustrations into existing paper and online benefit statement formats. The Department assumes that these modifications and integration will take 20 hours from an attorney and 24 hours each from an actuary and a computer system analyst.<sup>77</sup> The Department estimates that transitional costs will be \$1.2 million, based on the aforementioned assumption and the hourly labor rates for attorneys (\$138.41), actuaries (\$146.39), and computer system analysts (\$118.63).<sup>78</sup> The Department is soliciting comments on the number of

<sup>76</sup> According to a survey conducted with defined contribution plan recordkeepers in 2018, about 80 percent responded that projected retirement incomes are automatically displayed on the participant's website. See the Cerulli Report, the U.S. Defined Contribution Distribution 2018 page 134. Separately, according to another survey conducted with defined contribution plan sponsors in 2019, about 77 percent of plan sponsors provided participants with retirement income projection illustrations online, which increased from 54 percent in 2015. See Deloitte 2019 Defined Contribution Benchmarking Survey Report page 22.

<sup>77</sup> These burden hours include time spent to review the IFR and current practices, convene meetings to discuss how to respond to the IFR and any necessary modifications in current practices and disclosures, implement those modifications, and review the revised illustrations.

<sup>78</sup> *Labor Cost Inputs Used in the Employee Benefits Security Administration, Office of Policy and Research's Regulatory Impact Analyses and Paperwork Reduction Act Burden Calculation*, Employee Benefits Security Administration (June 2019), <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf>. The estimate of \$1.2 million is calculated by summing up the costs associated with an attorney, an actuary, and a computer system analyst. The costs associated with each of the three types of professionals are calculated by multiplying four numbers: (1) 445 large recordkeepers; (2) the percentage of recordkeepers currently providing lifetime income illustrations (30 percent); (3) the hourly rate of a professional (an attorney, actuary, or a computer system analyst); and (4) number of hours (20 hours for an attorney and 24 hours each for an actuary and a computer system analyst).

<sup>73</sup> See Letter from Great-West Financial to Employee Benefits Security Administration, Comment on the Advanced Notice of Proposed Rulemaking (Aug. 7, 2013), available at <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB20/00095.pdf>.

<sup>74</sup> The development costs, \$185 million is estimated by multiplying three-quarters of the unit cost (\$715,000) by the inflation rate from 2013 to 2020 (11 percent), the number of recordkeepers (445 for large recordkeepers), and the percentage of recordkeepers developing their own systems (70 percent for large recordkeepers). If the full amount, instead of three-quarters, of the unit cost, \$715,000, is applied, the costs to develop a new system will increase from \$185 million to \$247 million.

<sup>75</sup> The assumption of 70 percent comes from Table 1, which shows 70 percent of large plans are not providing projected monthly income.

hours needed for an attorney, an actuary, and a computer system analyst (or other workers) to perform the aforementioned modifications and integration.

*Ongoing Costs—Costs Associated with Increased Calls from Participants:* Some recordkeepers indicate that they receive more and longer phone calls from participants after they provide lifetime income illustrations.<sup>79</sup> One recordkeeper estimated in 2013 that average costs associated with calls increased by \$0.28 per participant in the first year.<sup>80</sup> The IFR uses current account balances to calculate lifetime income. Since current account balances require no assumptions, they are more straightforward than projected account balances. The Department assumes that average increased call costs related to lifetime income illustrations calculated from current account balances will be \$0.16 per participant, which is half of the inflation-adjusted increased call costs calculated for projected account balances.<sup>81</sup>

According to the 2017 Private Pension Plan Bulletin, there are approximately 76.8 million participants with defined contribution plan account balances. For plans currently providing lifetime income illustrations, the Department assumes the IFR results in half of the increased call costs per participant with account balances in the first year (*i.e.*, \$0.08 per participant) due to the transition from using plans' own language to DOL's assumptions and model language, but this transition has no effects on calls after the first year. For plans not currently providing monthly income, the Department assumes the same increased call costs per participant with account balances in the first year (*i.e.*, \$0.16 per participant), half of the costs in the second year (*i.e.*, \$0.08 per participant), and one-third of the costs from the third to tenth year (*i.e.*, \$0.05 per participant). This decline in increased call costs is due to participants' becoming familiar with lifetime income illustrations. The Department invites comments on the reasonableness of the assumptions on

the degree of decline in increased call costs over time. The estimated costs from increased calls will be \$10.6 million in the first year,<sup>82</sup> \$4.8 million in the second year,<sup>83</sup> and \$3.0 million from the third to tenth year.<sup>84</sup>

*Ongoing Costs—Printing and Processing Costs:* Incorporating lifetime income illustrations in benefit statements may increase the costs associated with printing and processing for plans not currently providing lifetime income illustrations. For plans currently providing lifetime income illustration, the Department assumes the IFR's requirements may not increase the number of pages in their benefit statements and therefore may not increase their costs associated with printing and processing.<sup>85</sup> The IFR will require plans to supply lifetime income projections to participants at least once a year; however, plans can send them more frequently. For the purposes of this analysis, the Department assumes that participants with defined contribution plan account balances will receive lifetime income illustrations on an annual basis. The Department also assumes that some plan administrators will rely on the Department's rules concerning electronic delivery when furnishing pension benefits statements that include the required lifetime income illustrations.<sup>86</sup> Specifically, the Department estimates that in the first year, 92 percent of participants will receive their lifetime income illustrations electronically, while 8 percent will receive them in print.<sup>87</sup> A

<sup>82</sup> This estimate of \$10.6 million is calculated by summing up the increased call costs from participants with account balances currently receiving lifetime income illustrations (76.8 million\*22 percent\*\$0.08 per participant) and the costs from those not currently receiving these illustrations (76.8 million\*78 percent\*\$0.16 per participant).

<sup>83</sup> This estimate of \$4.8 million is calculated by multiplying the number of participants with account balances (76.8 million) by the percentage of participants not currently receiving lifetime income illustrations (78 percent) and the average increased call costs in the second year (\$0.08 per participant).

<sup>84</sup> This estimate of \$3.0 million is calculated by multiplying the number of participants with account balances (76.8 million) by the percentage of participants not currently receiving lifetime income illustrations (78 percent) and the average increased call costs in the third year (\$0.05 per participant).

<sup>85</sup> Plans may elect to voluntarily provide additional information, which may increase the number of pages or length of the benefit statements and therefore increase the costs associated with printing and processing.

<sup>86</sup> 85 FR 31884 (May 27, 2020).

<sup>87</sup> The 8 percent estimate is calculated by multiplying 18.5 percent of participants opting out of electronic delivery under the Department's 2020 Electronic Disclosure safe harbor by 44 percent of participants receiving lifetime income illustrations in print before the 2020 Electronic Disclosure safe

2013 comment letter provided data suggesting that the unit cost of printing and processing was approximately 2.6 cents per recipient at that time.<sup>88</sup> Applying these assumptions and an inflation rate of 11 percent from 2013 to 2020, the Department estimates that the printing costs will be \$0.14 million in the first year.<sup>89</sup> The Department excludes postage costs from this analysis because print illustrations will be included with the hard-copy statements that are currently mailed. The Department expects printing and processing costs to decrease in the second through tenth years.

*Ongoing Costs—Converting Account Balance to Annuities Using DOL Assumptions:* The Department assumes only plans not currently providing lifetime income illustrations will incur the costs associated with balance conversion. The Department understands that plans currently providing lifetime income illustrations will likely change their current assumptions to be consistent with assumptions set forth in the IFR. Once those adjustments are made in their systems, however, ongoing costs to convert account balances based on the assumptions set forth in the IFR would likely be similar to ongoing costs they already voluntarily incur to convert balances based on their own assumptions. Therefore, the Department assumes that while assumptions used before and after the IFR may differ, plans already providing lifetime income illustrations will not likely incur additional costs associated with balance conversion compared to their ongoing costs incurred before the IFR.

Actuaries or someone with similar abilities will be required to gather the information needed to convert individual account balances to annuities based on the applicable assumptions as of the statement date. Although some recordkeepers may have actuaries in-house, the Department assumes that

harbor rule was finalized. The 92 percent is calculated by deducting the 8 percent from all (100 percent) participants.

<sup>88</sup> <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB33/00656.pdf>. Based on a comment on the 2013 ANPRM, available on the Department's website, <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB20/00095.pdf>.

<sup>89</sup> The estimate of \$0.14 million is calculated by multiplying the following five numbers: (1) The unit cost of 2.6 cents, (2) the inflation rate of 11 percent from 2013 to 2020, (3) 76.8 million of participants with account balances not currently receiving lifetime income illustrations, and (5) 8 percent of the participants will receive the illustrations in print.

<sup>79</sup> See Letter from Great-West Financial to Employee Benefits Security Administration, *supra* note 73.

<sup>80</sup> *Id.*

<sup>81</sup> The estimate of \$0.16 per participant is calculated by multiplying the increased call costs calculated from projected account balances in 2013 (\$0.28 per participant) by half, and an inflation rate of 11 percent from 2013 to 2020. See "CPI Inflation Calculator," U.S. Bureau of Labor Statistics (2020), available at <https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=1&year1=201308&year2=202002>. The start month is August 2013 (when the comment letter was written) and the end month is February 2020 (when the latest CPI data is available as of March 25, 2020).

recordkeepers will consult with outside actuaries. In the first year, the Department assumes that an actuary will spend six hours per recordkeeper gathering information to convert account balances to annuities based on the Department-specified assumptions. The six hours consist of three components: (1) 2 hours to set up a spreadsheet or other computer program to calculate conversion factors for the ages and payment forms required initially, (2) 15 minutes per month to update the interest rate in the spreadsheet or computer program,<sup>90</sup> and (3) 1 hour per year to update the mortality rates in the program. The Department estimates that the hourly rate of an actuary is \$146.39.<sup>91</sup> According to Form 5500 data in the 2017 plan year, 1,725 recordkeepers serviced defined contribution plans. Therefore, the Department estimates the first-year costs will be \$1.3 million.<sup>92</sup>

The Department estimates costs associated with gathering information to convert account balances to annuities based on the Department-specified assumptions will decrease in the second year, and remain flat over the third through tenth years. This is because the Department assumes actuaries will generally maintain conversion spreadsheets, and need only to update

the interest rate monthly and mortality rate annually. Therefore, the Department estimates the second year costs will be \$0.8 million, and will remain at that level in subsequent years.

*Ongoing Costs—Training Costs:* To implement lifetime income illustrations, recordkeepers that do not currently provide these illustrations may need to train their staff to properly navigate the system. The Department assumes recordkeepers that currently provide these illustrations will not incur additional training costs because they provided training before the IFR. In the first year, the Department estimates that the training costs will be \$1.7 million.<sup>93</sup> In subsequent years, the Department anticipates these training costs will decrease as staff members become more familiar with lifetime income illustrations. Therefore, the Department estimates that the training costs will be \$0.8 million for the second year, and remain at that level in the third through tenth years.<sup>94</sup>

The Department invites comments about how much it would cost for a recordkeeper to operate and maintain a system that produces lifetime income illustrations and whether the unit-cost assumptions made to estimate ongoing costs as well as development costs are reasonable.

*Summary.* The Department estimates that in the first year, total costs will be \$201 million. In subsequent years, the Department expects costs to be substantially lower because development costs are one-time costs and comprise a substantial share of the total costs. In the second year, the Department estimates that total costs will be \$6.6 million. The third year costs are expected to be even lower, as recordkeepers, plan sponsors, and participants become more familiar with lifetime income illustrations. The Department estimates that third year total costs will be \$4.8 million. The Department expects total costs to continue to decrease slightly in subsequent years due to the minor decline in printing and processing costs.<sup>95</sup> In the tenth year, the Department estimates that total costs will be \$4.7 million. Using a three percent discount rate, the Department estimates that total costs over 10 years will be \$240 million. Using a seven percent discount rate, the Department estimates that total costs over 10 years will be \$233 million. Using a perpetual time horizon, the annualized costs in 2016 dollars are \$12 million at a 7 percent discount rate.

TABLE 2—SUMMARY TABLE OF COSTS FOR 10 YEAR  
[\$ Million]

	Years										Total <sup>1</sup>	Total <sup>2</sup>
	1	2	3	4	5	6	7	8	9	10		
Panel A: One-Time Costs:												
Development costs .....	\$185	.....	.....	.....	.....	.....	.....	.....	.....	.....	\$185	\$185
Transitional costs .....	1.2	.....	.....	.....	.....	.....	.....	.....	.....	.....	1.2	1.2
Panel B: Ongoing Costs:												
Costs associated with calls .....	10.9	4.8	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	36.0	32.1
Printing costs .....	0.14	0.13	0.11	0.10	0.09	0.08	0.08	0.07	0.06	0.06	0.84	0.74
Cost associated with balance conversion .....	1.3	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	7.8	6.7
Training costs .....	1.7	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	8.3	7.2
Total .....	201	6.6	4.8	4.8	4.8	4.8	4.8	4.8	4.7	4.7	240	233

Source: The Department's calculations.

<sup>1</sup> A 3 percent discount rate is applied to total costs.

<sup>2</sup> A 7 percent discount rate is applied to total costs.

## (6) Uncertainty

Although the literature is limited, the Department has carefully assessed the benefits and quantified the costs associated with providing lifetime income illustrations. However, these

estimates contain uncertainty based on several factors that are discussed below.

*Potential overestimation of contribution increases.* The *Benefits* section of this preamble discusses the possibility that lifetime income illustrations may motivate participants to increase contributions and suggests

that these aggregated increased contributions could total \$5.1 billion. This estimate is based on the empirical results of an experimental research study.<sup>96</sup> However, the Department urges caution in applying the study cited to

<sup>90</sup> A recordkeeper administers multiple plans whose benefit statement dates may fall in all of the 12 months. Therefore, a recordkeeper may need to update the interest rate every month.

<sup>91</sup> See Labor Cost Inputs, *supra* note 78.

<sup>92</sup> \$1.3 million is calculated by multiplying the hourly rate of an actuary (\$146.39) by 6 hours, by 1,725 recordkeepers, and by 83 percent of recordkeepers not currently providing lifetime income illustrations.

<sup>93</sup> The estimate of \$1.7 million assumes that (1) all recordkeepers not currently providing lifetime income illustrations (83 percent of 1,725 recordkeepers) need to train their staff members, (2) there are 10 computer system analysts per recordkeeper, and (3) 1 hour of training is needed in the first year for each computer system analyst. The hourly rate is assumed to be \$118.63, which is the hourly labor cost for a computer system analyst (see Labor Cost Inputs, *supra* note 78).

<sup>94</sup> For the second year, the training time is reduced to 30 minutes per computer system analyst.

<sup>95</sup> The minor decline comes from the Department's assumption about the number of participants who will opt out of electronic delivery in plans that rely on the Department's electronic delivery safe harbor.

<sup>96</sup> See Goda et al., *supra* note 41.

the broader population of defined contribution plan participants.

First, the lifetime income illustrations under the IFR differ from the illustrations used in the study cited. The illustrations in that study were presented in a separate, colorful brochure containing supplemental information on how participants can make changes to their contributions. Moreover, those lifetime income illustrations were framed as providing additional savings at retirement and increased annual income during retirement. This influential value of presentation or framing effects has been well documented in retirement savings literature.<sup>97</sup> The lifetime income illustrations required under this IFR will not include the same information received by the participants in the study. Consequently, there is some uncertainty that the IFR illustrations will motivate participants in the same way and to the same extent as those in the research study.

Second, increases in contributions may not be beneficial for some participants.<sup>98</sup> If lifetime income illustrations help participants make optimal choices between their current consumption and future consumption, by enhancing their understanding of the relationship between saving and future income, the impact would clearly be beneficial. However, research on optimal savings levels and how much participants should increase contributions is inconclusive. Increased contributions that are due to improved understanding of optimal choices between current consumption and future consumption would be beneficial for a participant. However, without a clear understanding about optimal savings levels, it is difficult to know

what percent of increased contributions can be interpreted as beneficial.<sup>99</sup>

*Potential underestimation of development costs.* The *Costs* section of this preamble assumes only large recordkeepers that do not currently provide lifetime income illustrations will incur costs to develop a system producing these illustrations, whereas none of the small recordkeepers will develop their own systems. Based on this assumption, the estimated development costs will be \$185 million, resulting in estimated total costs of \$240 million at a 3 percent discount rate over the 10-year period. However, the development costs may be underestimated if some small recordkeepers develop their own systems. It is difficult to know what percentage of small recordkeepers might choose to develop their own systems; therefore, the Department estimates the upper-bound development costs, where all recordkeepers not currently providing lifetime income illustrations develop their own systems to be \$852 million.<sup>100</sup> This results in estimated upper-bound total costs of \$906 million at a three percent discount rate over the 10-year period.

Alternatively, small recordkeepers may purchase software or licenses with added features for lifetime income illustrations, if they find it less costly than developing their own systems. The Department invites comments about costs of purchasing licenses or software that illustrate lifetime income streams.

#### (7) Alternatives

The Department considered alternative assumptions for plan administrators to rely on when converting a participant's account balance into a lifetime income stream. This section provides the Department's economic reasoning in weighing these alternative assumptions and augments the discussion on alternatives considered in section B(2)(a) of this preamble. The Department invites comments regarding these requirement assumptions.

#### (a) Commencement Date and Age

Paragraph (c)(1) of the IFR establishes an assumed annuity commencement date and age that plan administrators must use to prepare the required illustrations. The Department considered a number of alternatives to age 67. For example, the Department considered a plan's "normal retirement age," as defined in ERISA section 3(34). One of reasons the Department decided against using the plan's "normal retirement age" is because some commenters on the ANPRM suggested that many recordkeepers do not maintain this information. If the Department requires plan administrators to use the plan's "normal retirement age," recordkeepers would need to collect this information from each plan and customize their systems accordingly, which probably would result in a higher burden on recordkeepers and plans. This potential burden increase likely would outweigh any potential benefits, because participants are more likely to choose when to retire based on their individual circumstances than based on a plan's "normal retirement age." Selecting a different, but uniform, commencement age (e.g., 65 or 70), however, would not be expected to result in a burden increase.

The Department also considered requiring lifetime income illustrations with multiple commencement ages (e.g., ages 62, 67, and 72), which would benefit participants to the extent they are able to understand the effects of different retirement ages and, thus, make choices that better fit their personal circumstances and retirement goals. On the other hand, more is not always better, and the existence of multiple illustrations has some potential to overwhelm or confuse participants. With each additional age, for example, would come an additional illustration with a different set of monthly payments and corresponding explanations. This could be challenging to plan administrators who have the ultimate responsibility to ensure readability and understandability. Further, requiring multiple illustrations based on different ages may increase the burden on plan administrators and recordkeepers.

#### (b) Marital Status

The IFR requires plan administrators to assume, for purposes of calculating the lifetime income stream from a qualified joint and 100% survivor annuity, that the participant has a spouse who is the same age as the participant (regardless of whether the

<sup>97</sup> See Jeffrey R. Brown, Arie Kapteyn, & Olivia S. Mitchell, "Framing and Claiming: How Information-Framing Affects Expected Social Security Claiming Behavior?" *Journal of Risk and Insurance*, vol. 83, no. 1 (Mar. 1, 2016), at 139–162; see also Jeffrey R. Brown, Jeffrey R. Kling, Sendhil Mullainathan, and Marian V. Wrobel, "Framing Lifetime Income," *Journal of Retirement*, vol. 1, no. 1 (summer 2013), at 27–37.

<sup>98</sup> For example, according to the Bureau of Consumer Financial Protection, in 2018, approximately two-thirds of 235 million adults held at least one credit card account. In the same year, the consumer credit card debt was almost \$900 billion. The average balance for consumers with at least one general credit card was \$5,700 as of the end of 2018 and the average annual percentage rate (APR) for general purpose credit cards was 20.3 percent. (See Consumer Credit Card Market Report, Aug. 2019, the Bureau of Consumer Financial Protection.) For at least some of those who carry high credit card debt, it may be better to pay off credit card debt rather than increase contributions to their retirement plans.

<sup>99</sup> The lifetime income illustrations may persuade some participants to reduce their contributions. Decreasing contributions may be beneficial to find the optimal balance of present versus future consumption.

<sup>100</sup> The estimate of \$852 million is calculated by multiplying three-quarters of the unit costs (\$715,000\*0.75) by the inflation rate from 2013 to 2020 (11 percent), the number of all recordkeepers (1,725), and the percentage of recordkeepers developing their own systems (83 percent). The assumption of 83 percent comes from Table 1, which shows 83 percent of plans are not providing projected monthly income.

participant actually has a spouse). This assumption may diminish the value of the illustrations to some participants (e.g., a participant with a much younger or older spouse or a participant who is not married), because the illustrations reflect hypothetical scenarios and not the participants' actual personal circumstances. However, as compared to requiring illustrations based on the actual marital status of the participant, including the actual age of the participant's spouse, the approach in the IFR is less burdensome for recordkeepers and plan administrators. According to some commenters, recordkeepers often do not know (or have reason to know) if a participant has a spouse or the age of the spouse. Personalized QJSA illustrations would be more costly as some percentage of plans and their recordkeepers would need to establish new procedures to collect and update the information needed to make QJSA illustrations.

#### (c) Interest Rate

The IFR contains the interest rate assumption that plan administrators must use to prepare the two illustrations required by the IFR. Specifically, plan administrators must assume a rate of interest equal to the 10-year constant maturity Treasury (CMT) securities yield rate for the first business day of the last month of the period to which the benefit statement relates. The Department considered using the Code section 417(e)(3)(C) rates. However, the Department has reservations about using the Code section 417(e)(3)(C) rates partially because, according to commenters, those rates may not be suitable for preparing lifetime income illustrations.<sup>101</sup> Further, the Code section 417(e)(3)(C) rates contain three segment rates, the use of which would add more administrative complexity and costs to the process of converting account balances to monthly payments than using the 10-year CMT rate.

The Department recognizes that there is no single interest rate assumption that would be perfect for all participants. Those who will retire tomorrow and plan to purchase lifetime income will encounter pricing that reflects current interest rates. It is clear that for these participants, using an interest rate assumption based on current rates, such as the 10-year CMT, is appropriate. However, participants who are a substantial number of years away from retirement will encounter annuity pricing that reflects future interest rates

that currently are unknown. One way to project these future interest rates may be to use a long-term average of historical interest rates, with the belief that interest rates tend to regress to the mean. A third group of participants, those who will retire in a short number of years, are unique still from the other two groups. An example of an appropriate projection of interest rates at the time of retirement for these participants may be some combination of current and historical interest rates. Given that no single interest rate assumption would be perfect for all participants, the Department rejected the latter two approaches for the sake of regulatory uniformity and simplicity, and to reduce burdens on plan administrators.

#### (d) Mortality

The IFR requires that plan administrators convert participants' account balances assuming gender neutral mortality as reflected in the applicable mortality table under Code section 417(e)(3)(B), which is a unisex table. The Department also considered gender-specific mortality, which could produce more accurate (and, therefore, more useful) illustrations. Since the female mortality tables show a longer life expectancy and the male mortality tables show a shorter life expectancy, in each case compared to a unisex table, the dollar amount of a male participant's monthly payment would be higher, and a female participant's monthly payment would be lower, in an illustration using gender-based tables. However, the Department decided against gender-based tables, because plan administrators, recordkeepers, and third-party administrators do not always have records of participants' gender, according to commenters. Thus, requiring gender-specific assumption in the IFR would likely increase burden as plans would need to consistently collect such information. In addition, the use of gender-specific mortality for illustrations would not align with pricing for plans that contain in-plan annuities.

#### (e) Inflation

The IFR does not include an assumed adjustment to the required lifetime monthly payment illustrations for post-retirement inflation. Consequently, the IFR requires a fixed-nominal, annuitized income stream. The Department understands that, even with a low inflation rate, the purchasing power of a fixed-nominal income stream can be reduced significantly over the lifespan of the typical retiree. For the reasons explained earlier in section B(2)(d) of

this preamble, the Department considered, but declined to adopt, alternatives involving an inflation adjustment, but the IFR does require an explanation that monthly payments in the illustrations are fixed and do not increase for inflation. One concern of commenters was a potential negative impact on plan participants caused by a relatively lower monthly payment amount that occurs if reduced to reflect the cost of an inflation-adjusted annuity. Another potential concern is the complexity of the methodology and explanatory language that would be required for inflation-indexed annuity income streams, which increase with age, and may raise additional questions from participants. Commenters, nevertheless, are invited to address whether, in lieu of a fixed nominal annuitized income stream, the final rule should require an illustration of monthly payments that increase with inflation.

#### (f) Immediate Versus Deferred Annuities

The Department adopts an immediate annuity approach in the IFR. Under an immediate annuity approach, a participant's account balance is converted to single life and QJSA payments as if the account balance were used to buy these two forms of lifetime income with payments commencing on the last day of the statement period, and assumes that the participant is age 67 on that date (regardless of a participant's actual age, unless older than age 67). Thus, for a participant aged 40, for example, the illustrations under the IFR effectively assume a static account balance for the period between ages 40 and 67. This type of illustration serves as an immediate benchmark for participants, because it shows the size of monthly payments to expect if there were no further savings, gains or losses between the statement date and retirement. Also, a participant could create his or her own projection of a different account balance, by dividing the projected estimated account balance by the current account balance, and then multiply the result by the monthly payment amount on the statement. The result would be the estimated monthly amount of an annuity that could be purchased with the projected estimated account balance (assuming annuity market conditions at retirement are the same as the current market).

The Department could have instead chosen a deferred annuity approach for the illustrations. A deferred annuity approach generally would result in larger monthly payments, because such annuities would contain a growth feature for the deferral period, *i.e.*, the

<sup>101</sup> The Code section 417(e)(3)(C) rates are often used to convert a defined benefit amount to a lump sum amount for distribution.

period between the statement date and the actual annuity commencement date. The Department decided against this approach because of its increased complexity and potential for participant confusion, since the annuity amount either would be in future dollars, or would be discounted with an inflation rate to current dollars. In addition, the participant could not use the deferred annuity amount to convert his or her own projected estimate of the account balance to an annuity at retirement. Finally, because of the growth feature during the deferral period, the deferred annuity approach does not align as well with the SECURE Act's "current account balance" directive as does the immediate annuity approach.

#### (8) Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to allow the general public and Federal agencies to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA).<sup>102</sup> This helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Currently, the Department is soliciting comments concerning the information collection request (ICR) included in the Pension Benefit Statement information collection. To obtain a copy of the ICR, contact the PRA addressee shown below or go to <http://www.RegInfo.gov>.

The Department has submitted a copy of the rule to the Office of Management and Budget (OMB) in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronically delivered responses).

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503 and marked "Attention: Desk Officer for the Employee Benefits Security Administration." Comments can also be submitted by Fax: 202-395-5806 (this is not a toll-free number), or by email: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). OMB requests that comments be received within 30 days of publication of the ICR to ensure their consideration.

**PRA Addressee:** Address requests for copies of the ICR to G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N-5718, Washington, DC 20210. The PRA Addressee may be reached by telephone at (202) 693-8425 or by fax at (202) 219-5333. (These are not toll-free numbers.) ICRs also are available at <http://www.RegInfo.gov> (<http://www.reginfo.gov/public/do/PRAMain>).

The SECURE Act amends section 105(a) of ERISA to require the provision of two sets of lifetime income stream illustrations as part of at least one pension benefit statement furnished to participants during a 12-month period. These two lifetime income stream illustrations include a single life annuity illustration and a qualified joint and survivor lifetime income stream illustration. The IFR provides direction on assumptions plan administrators use when converting total accrued benefits into lifetime income stream illustrations. The IFR also provides model language to use when producing these illustrations.

ERISA section 105 requires pension benefit statements to be sent at least once each quarter, in the case of a defined contribution plan that permits participants to direct their investments; at least once each year, in the case of a defined contribution plan that does not permit participants to direct their investments; and at least once every three years or upon request in the case of defined benefit plans. ERISA section 105(a)(3)(A) permits plan administrators of defined benefit plans to fulfill the requirements of Section 105(a)(1)(B) by providing defined benefit plan participants with a notice of statement

availability on an annual basis. The Department currently does not have an OMB approved information collection for the pension benefit statement requirement. Therefore, this PRA analysis establishes a baseline hour and cost burden for participant benefit statements that are issued by all plans covered by ERISA section 105. It then adds the hour and cost burden associated with the IFR, which adds content requirements to the pension benefit statements provided to defined contribution plan participants by requiring a lifetime income illustration to be included with the statement at least annually.

**Baseline Cost of Preparing and Delivering Pension Benefit Statement.** Based on discussions with the regulated community, the Department believes the all-inclusive cost to produce pension benefit statements for defined contribution plan participants is approximately \$1.50 per paper (\$0.70 per electronic) statement,<sup>103</sup> while the all-inclusive cost to produce pension benefit statements for defined benefit plan participants is approximately \$15.00 per paper (\$14.40 per electronic) statement.<sup>104</sup> The Department believes that plan administrators of frozen defined benefit plans will provide the notice of statement availability, as described in section 105(a)(3)(A), to frozen defined benefit plan participants in lieu of a pension benefit statement, at an all-inclusive cost of approximately \$0.75 per paper (\$0.15 per electronic) notice.<sup>105</sup>

According to 2017 Form 5500 data, defined contribution plans that allow participants to direct investments cover 94.6 million participants. These plans must provide *quarterly* statements to participants. Plans produce the quarterly statement at an estimated cost of \$1.50 (\$0.70) per paper (electronic) statement and a resultant cost burden of \$289.5 million in the first year, \$287.1 million in the second year, and \$285 million in the third year. Defined contribution plans that do not allow

<sup>103</sup> A paper statement for a defined contribution plan participant typically has five pages with printing cost of \$0.05 per page. An electronic statement cost of \$0.70 is calculated by subtracting printing cost of \$0.25 and postage cost of \$0.55 from the paper statement cost of \$1.50.

<sup>104</sup> A paper statement for a defined benefit plan participant typically has one page with printing cost of \$0.05 per page. An electronic statement cost of \$14.40 is calculated by subtracting printing cost of \$0.05 and postage cost of \$0.55 from the paper statement cost of \$15.

<sup>105</sup> A paper notice for a frozen defined benefit plan participant typically has one page with printing cost of \$0.05 per page. An electronic notice cost of \$0.15 is calculated by subtracting printing cost of \$0.05 and postage cost of \$0.55 from the paper notice cost of \$0.75.

<sup>102</sup> 44 U.S.C. 3506(c)(2)(A) (1995).

participants to direct investments cover 7.9 million participants. These plans are required to furnish *annual* statements.<sup>106</sup> Plans produce the annual statement at an estimated cost of \$1.50 (\$0.70) per paper (electronic) statement and a cost burden of \$6.0 million in the first year, \$6.0 million in the second year, and \$5.9 million in the third year. Defined benefit plans that are not frozen cover 28.1 million participants. These plans are only required to provide benefit statements every three years. Plans produce the statement at an estimated cost of \$15.00 (\$14.40) per paper (electronic) statement and a cost burden of \$135.3 million each year. Frozen defined benefit plans cover 6.8 million participants and may furnish an annual notice of statement availability in lieu of a statement. At an estimated cost of \$0.75 (\$0.15) per paper (electronic) notice, this results in a cost burden of \$0.5 million in the first year, \$0.4 million in the second year, and \$0.4 million in the third year. As a baseline, under the current rules, the Department estimates that producing and distributing pension benefit statements costs plans a total of \$431.4 million in the first year, \$428.9 million in the second year, and \$426.6 million in the third year.<sup>107</sup>

*Lifetime Income Illustrations.* For each of the 76.8 million defined contribution plan participants with account balances whose statements will include a lifetime income illustration, the Department estimates that the IFR will increase the cost of producing and distributing statements by \$2.6 per participant in the first year, \$0.09 in the second year, and \$0.06 in the third year.<sup>108</sup> This results in a cost of \$201 million in the first year, \$6.6 million in

the second year, and \$4.8 million in the third year.

In total, the Department estimates that producing pension benefit statements and providing lifetime income illustrations for participants with account balances in defined contribution plans will cost altogether approximately \$632 million in the first year, \$435.5 million in the second year, and \$431.4 million in the third year.<sup>109</sup>

A summary of paperwork burden estimates follows:

*Title:* Pension Benefit Statement.

*OMB Control Number:* 1210–NEW.

*Affected Public:* Private Sector-business or other for-profit and not-for-profit institutions.

*Respondents:* 709,527.

*Responses:* 397,933,333 annually.

*Frequency of Response:* Quarterly, Annually, Triennially.

*Estimated Total Annual Burden*

*Hours:* 19,253 (3-year average); 31,986 during the first year; 12,886 during the second year; 12,886 during the third year.

*Estimated Total Annual Burden Cost:* \$497,108,843 (3-year average); \$627,847,556 during the first year; \$433,770,504 during the second year; and \$429,708,470 during the third year.

#### (9) Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are (1) required to be published as a notice of proposed rulemaking subject to the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b)) and (2) likely to have a significant economic impact on a substantial number of small entities. As stated above, section 203 of the SECURE Act added ERISA section 105(a)(2)(D)(iii) which includes a mandatory directive requiring the Secretary to issue an interim final rule (IFR) within 12 months of the date of enactment.

This IFR is exempt from the RFA, because the Department was not required to publish a notice of proposed rulemaking. Therefore, the RFA does not apply and the Department is not required to either certify that the IFR would not have a significant economic impact on a substantial number of small

entities or conduct a regulatory flexibility analysis. Nevertheless, the Department carefully considered the likely impact of the IFR rule on small entities in connection with its assessment of the IFR's cost and benefits under Executive Order 12866. Consistent with the policy of the RFA, the Department encourages the public to submit comments regarding the IFR's impact on small entities.

#### (10) Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each federal agency to prepare a written statement assessing the effects of any federal mandate in a proposed agency rule, or a finalization of such a proposal, that may result in an expenditure of \$100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector.<sup>110</sup> However, Section 202 of UMRA does not apply to interim final rules or non-notice rules issued under the 'good cause' exemption in 5 U.S.C. 553(b)(B).<sup>111</sup> For purposes of the Unfunded Mandates Reform Act, this rule does not include any federal mandate that the Department expects to result in such expenditures by State, local, or tribal governments. This IFR provides guidance for ERISA-covered defined contribution pension plans on providing lifetime income illustrations.

#### (11) Federalism Statement

Executive Order 13132 outlines fundamental principles of federalism, and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have "substantial direct effects" on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government.<sup>112</sup> Federal agencies promulgating regulations that have federalism implications must consult with State and local officials and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the final rule.

In the Department's view, these regulations will not have federalism implications because they will not have

<sup>106</sup> Section 105(a)(3)(A) of ERISA permits all DB plans, whether or not frozen, to provide an annual notice of availability of the pension benefit statement in lieu of a triennial statement. For purposes of this analysis, the Department assumes that all DB plans furnish the triennial statement. The Department welcomes comments regarding this assumption. The analysis does not take into account the requirement in Section 105(b) of ERISA to provide a benefit statement upon request subject to a limitation of one request every 12 months.

<sup>107</sup> The \$431.4 million estimate is the sum of the four estimated costs incurred by defined contribution plans allowing and not allowing participants to direct investments and frozen and non-frozen defined benefit plans. The \$428.9 and \$426.6 million estimates are calculated by the same method.

<sup>108</sup> The estimate of \$2.6 is calculated by dividing the first-year total costs of producing lifetime income illustrations (shown in Table 2) by the number of defined contribution participants with account balances (76.8 million). The estimates of \$0.09 and \$0.06 are calculated by the same method, but the numerator is the second- and third-year total costs of producing lifetime income illustrations, respectively.

<sup>109</sup> The estimate of \$632 million is the sum of the first-year total costs of producing lifetime income illustrations and the baseline cost of preparing and delivering pension benefit statement (\$431.4 million). The estimates of \$435.5 million and \$431.4 million are calculated by the same method, but the first-year total costs of producing lifetime income illustrations are replaced by the second- and third-year total costs, respectively.

<sup>110</sup> 2 U.S.C. 1501 *et seq.* (1995).

<sup>111</sup> See OMB, Memorandum for the Heads of Executive Departments and Agencies, M–95–09, "Guidance for Implementing Title II of S.1," 1995, available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/1995-1998/m95-09.pdf>.

<sup>112</sup> 64 FR 43255 (Aug. 4, 1999).

direct effects on the States, on the relationship between the national government and the States, nor on the distribution of power and responsibilities among various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in these rules do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such will have no implications for the States or the relationship or distribution of power between the national government and the States.

The Department welcomes input from affected States regarding this assessment.

#### List of Subjects in 29 CFR Part 2520

Annuity, Defined contribution plans, Disclosure, Employee benefit plans, Employee Retirement Income Security Act, Fiduciaries, Lifetime income, Pensions, Pension benefit statements, Plan administrators, Recordkeepers, Third party administrators.

For the reasons set forth in the preamble, the Department of Labor is amending 29 CFR part 2520 as follows:

#### PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

■ 1. The authority citation for part 2520 continues to read as follows:

**Authority:** 29 U.S.C. 1021–1025, 1027, 1029–31, 1059, 1134 and 1135; and Secretary of Labor's Order 1–2011, 77 FR 1088 (Jan. 9, 2012). Sec. 2520.101–2 also issued under 29 U.S.C. 1132, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.102–3, 2520.104b–1 and 2520.104b–3 also issued under 29 U.S.C. 1003, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.104b–1 and 2520.107 also issued under 26 U.S.C. 401 note, 111 Stat. 788. Sec. 2520.101–5 also issued under sec. 501 of Pub. L. 109–280, 120 Stat. 780, and sec. 105(a), Pub. L. 110–458, 122 Stat. 5092.

#### §§ 2520.105–1 and 2520.105–2 [Reserved]

■ 2. Add and reserve §§ 2520.105–1 and 2520.105–2 to subpart F.

■ 3. Add § 2520.105–3 to subpart F to read as follows:

#### § 2520.105–3 Lifetime Income Disclosure for Individual Account Plans.

(a) *Content requirements.* At least annually, the administrator of an individual account plan must furnish a benefit statement pursuant to section 105(a) of the Employee Retirement

Income Security Act of 1974 (Act) that is written in a manner calculated to be understood by the average plan participant and that contains the information required by this section, based on the latest information available to the plan.

(b) *Total benefits accrued; lifetime income disclosure.* A benefit statement described in paragraph (a) of this section must include:

(1) The beginning and ending dates of the statement period;

(2) The value of the account balance as of the last day of the statement period, excluding the value of any deferred income annuity described in paragraph (e)(2) of this section;

(3) The amount specified in paragraph (b)(2) of this section expressed as an equivalent lifetime income stream payable in equal monthly payments for the life of the participant (single life annuity), determined in accordance with paragraph (c) or (e)(1) of this section; and

(4) The amount specified in paragraph (b)(2) of this section expressed as an equivalent lifetime income stream payable in equal monthly payments for the joint lives of the participant and spouse (qualified joint and survivor annuity), determined in accordance with paragraph (c) or (e)(1) of this section.

(c) *Assumptions for converting an account balance into lifetime income streams.* The account balance specified in paragraph (b)(2) of this section shall be converted to the lifetime income streams described in paragraphs (b)(3) and (4) of this section using the following assumptions:

(1) *Commencement date and age.* (i) The first payment is made on the last day of the statement period (the commencement date); and

(ii) The participant is age 67 on the commencement date, unless the participant is older than age 67, in which case the participant's actual age must be used for the conversions under this section.

(2) *Marital status.* For purposes of paragraph (b)(4) of this section (relating to qualified joint and survivor annuity illustrations):

(i) The participant has a spouse that is the same age as the participant; and

(ii) The survivor annuity percentage is equal to 100% of the monthly payment that is payable during the joint lives of the participant and spouse.

(3) *Interest rate and mortality.* (i) A rate of interest equal to the 10-year constant maturity Treasury securities yield rate for the first business day of the last month of the period to which the benefit statement relates; and

(ii) Mortality as reflected in the applicable mortality table under section 417(e)(3)(B) of the Internal Revenue Code in effect for the calendar year which contains the last day of the statement period.

(4) *Plan loans.* The account balance includes the outstanding balance of any participant loan, unless the participant is in default of repayment on such loan.

(d) *Explanation of lifetime income streams.* Except as provided in paragraph (e) of this section, a benefit statement described in paragraph (a) of this section must include:

(1)(i) An explanation of the commencement date and age assumptions in paragraph (c)(1) of this section.

(ii) For purposes of paragraph (d)(1)(i) of this section, the plan administrator may use the following model language: “The estimated monthly payments in this statement assume that payments begin [insert the last day of the statement period] and that you are [insert 67 or current age if older] on this date. Monthly payments beginning at a younger age would be lower than shown since payments would be made over more years. Monthly payments beginning at an older age would be higher than shown since they would be made over fewer years.”

(2)(i) An explanation of a single life annuity.

(ii) For purposes of paragraph (d)(2)(i) of this section, the plan administrator may use the following model language: “A single life annuity is an arrangement that pays you a fixed amount of money each month for the rest of your life. Following your death, no further payments would be made to your spouse or heirs.”

(3)(i) An explanation of a qualified joint and 100% survivor annuity, the availability of other survivor percentage annuities, and the impact of choosing a lower survivor percentage.

(ii) For purposes of paragraph (d)(3)(i) of this section, the plan administrator may use the following model language: “A qualified joint and 100% survivor annuity is an arrangement that pays you and your spouse a fixed monthly payment for the rest of your joint lives. In addition, after your death, this type of annuity would continue to provide the same fixed monthly payment to your surviving spouse for their life. An annuity with a lower survivor percentage may be available, and reducing the survivor percentage (below 100%) would increase monthly payments during your lifetime, but would decrease what your surviving spouse would receive after your death.”

(4)(i) An explanation of the marital status assumptions in paragraph (c)(2) of this section.

(ii) For purposes of paragraph (d)(4)(i) of this section, the plan administrator may use the following model language: “The estimated monthly payments for a qualified joint and 100% survivor annuity in this statement assume that you are married with a spouse who is the same age as you (even if you do not currently have a spouse, or if you have a spouse who is a different age). If your spouse is younger, monthly payments would be lower than shown since they would be expected to be paid over more years. If your spouse is older, monthly payments would be higher than shown since they would be expected to be paid over fewer years.”

(5)(i) An explanation of the interest rate assumptions in paragraph (c)(3) of this section.

(ii) For purposes of paragraph (d)(5)(i) of this section, the plan administrator may use the following model language: “The estimated monthly payments in this statement are based on an interest rate of *[insert rate]*, which is the 10-year constant maturity U.S. Treasury securities yield rate as of *[insert date]*, as required by federal regulations. This rate fluctuates based on market conditions. The lower the interest rate, the smaller your monthly payment will be, and the higher the interest rate, the larger your monthly payment will be.”

(6)(i) An explanation of the mortality assumptions in paragraph (c)(3) of this section.

(ii) For purposes of paragraph (d)(6)(i) of this section, the plan administrator may use the following model language: “The estimated monthly payments in this statement are based on how long you and a spouse who is assumed to be your age are expected to live. For this purpose, federal regulations require that your life expectancy be estimated using gender neutral mortality assumptions established by the Internal Revenue Service.”

(7)(i) An explanation that the monthly payment amounts required under paragraphs (b)(3) and (4) of this section are illustrations only.

(ii) For purposes of paragraph (d)(7)(i) of this section, the plan administrator may use the following model language: “The estimated monthly payments in this statement are for illustrative purposes only; they are not a guarantee.”

(8)(i) An explanation that the actual monthly payments that may be purchased with the amount specified in paragraph (b)(2) of this section will depend on numerous factors and may

vary substantially from the illustrations under this section.

(ii) For purposes of paragraph (d)(8)(i) of this section, the plan administrator may use the following model language: “The estimated monthly payments in this statement are based on prevailing market conditions and other assumptions required under federal regulations. If you decide to purchase an annuity, the actual payments you receive will depend on a number of factors and may vary substantially from the estimated monthly payments in this statement. For example, your actual age at retirement, your actual account balance (reflecting future investment gains and losses, contributions, distributions, and fees), and the market conditions at the time of purchase will affect your actual payment amounts. The estimated monthly payments in this statement are the same whether you are male or female. This is required for annuities payable from an employer’s plan. However, the same amount paid for an annuity available outside of an employer’s plan may provide a larger monthly payment for males than for females since females are expected to live longer.”

(9)(i) An explanation that the monthly payment amounts required under paragraphs (b)(3) and (4) of this section are fixed amounts that would not increase for inflation.

(ii) For purposes of paragraph (d)(9)(i) of this section, the plan administrator may use the following model language: “Unlike Social Security payments, the estimated monthly payments in this statement do not increase each year with a cost-of-living adjustment. Therefore, as prices increase over time, the fixed monthly payments will buy fewer goods and services.”

(10)(i) An explanation that the monthly payment amounts required under paragraphs (b)(3) and (4) of this section are based on total benefits accrued, regardless of whether such benefits are nonforfeitable.

(ii) For purposes of paragraph (d)(10)(i) of this section, the plan administrator may use the following model language: “The estimated monthly payment amounts in this statement assume that your account balance is 100% vested.”

(11)(i) An explanation that the account balance includes the outstanding balance of any participant loan, unless the participant is in default of repayment on such loan.

(ii) For purposes of paragraph (d)(11)(i) of this section, the plan administrator may use the following model language: “If you have taken a loan from the plan and are not in default

on the loan, the estimated monthly payments in this statement assume that the loan has been fully repaid.”

(e) *Special rules for in-plan annuities.*—(1) *Plans that offer distribution annuities.* (i) If the plan offers single life and qualified joint and survivor annuities as distribution options pursuant to a contract with an issuer licensed under applicable state insurance law, the plan administrator may, but is not required to, use the contract terms to calculate the monthly payment amounts in paragraphs (b)(3) and (4) of this section instead of the assumptions in paragraph (c) of this section, except for the assumptions in paragraphs (c)(1) (relating to assumed commencement date and age) and (c)(2)(i) (relating to assumed marital status and age of spouse) of this section.

(ii) Plan administrators that elect to use the contract terms, as permitted in paragraph (e)(1)(i) of this section, must, in lieu of the explanations required in paragraph (d) of this section, provide the explanations set forth in paragraph (e)(1)(iii) of this section. To obtain the limitation on liability provided in paragraph (f) of this section, such plan administrators also must use either the model language for each such explanation in paragraph (e)(1)(iii) of this section or the Model Benefit Statement Supplement set forth in Appendix B to this subpart.

(iii) The benefit statement must include the following:

(A)(1) An explanation of the commencement date and age assumptions in paragraph (c)(1) of this section.

(2) For purposes of paragraph (e)(1)(iii)(A)(1) of this section, the plan administrator may use the following model language: “The estimated monthly payments in this statement assume that payments begin *[insert the last day of statement period]* and that you are *[insert 67 or current age if older]* on this date. Monthly payments beginning at a younger age would be lower than shown since payments would be made over more years. Monthly payments beginning at an older age would be higher than shown since they would be made over fewer years.”

(B)(1) An explanation of a single life annuity.

(2) For purposes of paragraph (e)(1)(iii)(B)(1) of this section, the plan administrator may use the following model language: “A single life annuity is an arrangement that pays you a specified amount of money each month for the rest of your life. Following your death, no further payments would be made to your spouse or heirs.”

(C)(1) An explanation of a qualified joint and survivor annuity and the survivor annuity percentage.

(2) For purposes of paragraph (e)(1)(iii)(C)(1) of this section, the plan administrator may use the following model language: “A qualified joint and survivor annuity is an arrangement that pays you and your spouse a specified monthly payment for the rest of your joint lives. When one spouse dies, the monthly payments continue to the surviving spouse for their life. If you die first, your spouse will receive [insert X %] of the monthly payment payable during your life. If your spouse dies first, you will receive [insert Y %] of the monthly payment.”

(D)(1) An explanation of the marital status assumptions in paragraph (c)(2) of this section.

(2) For purposes of paragraph (e)(1)(iii)(D)(1) of this section, the plan administrator may use the following model language: “The estimated monthly payments for a qualified joint and survivor annuity in this statement assume that you are married with a spouse who is the same age as you (even if you do not currently have a spouse, or if you have a spouse who is a different age). If your spouse is younger, monthly payments would be lower than shown since they would be expected to be paid over more years. If your spouse is older, monthly payments would be higher than shown since they would be expected to be paid over fewer years.”

(E)(1) An explanation of the contract's interest rate assumptions.

(2) For purposes of paragraph (e)(1)(iii)(E)(1) of this section, the plan administrator may use the following model language: “The estimated monthly payments in this statement are based on an interest rate offered by [insert name of insurer] under a contract with the plan. This rate may fluctuate. The lower the interest rate, the smaller your monthly payments will be, and the higher the interest rate, the larger your monthly payments will be.”

(F)(1) An explanation of the contract's mortality assumptions.

(2) For purposes of paragraph (e)(1)(iii)(F)(1) of this section, the plan administrator may use the following model language: “The estimated monthly payments in this statement are based on how long you and a spouse who is assumed to be your age are expected to live. Life expectancy is estimated by using mortality assumptions adopted by [enter name of insurance company].”

(G)(1) An explanation that the monthly payment amounts required under paragraphs (b)(3) and (4) of this section are illustrations only.

(2) For purposes of paragraph (e)(1)(iii)(G)(1) of this section, the plan administrator may use the following model language: “The estimated monthly payments in this statement are for illustrative purposes only; they are not a guarantee.”

(H)(1) An explanation that the actual monthly payments that may be purchased with the amount specified in paragraph (b)(2) of this section will depend on numerous factors and may vary substantially from the illustrations under this section.

(2) For purposes of paragraph (e)(1)(iii)(H)(1) of this section, the plan administrator may use the following model language: “The estimated monthly payments in this statement are based on prevailing market conditions and other assumptions. If you decide to purchase an annuity, the actual payments you receive will depend on a number of factors and may vary substantially from the estimated monthly payments in this statement. For example, your actual age at retirement, your actual account balance (reflecting future investment gains and losses, contributions, distributions, and fees), and the market conditions at the time of purchase will affect your actual payment amounts. The estimated monthly payments in this statement are the same whether you are male or female. This is required for annuities payable from an employer's plan. However, the same amount paid for an annuity available outside of an employer's plan may provide a larger monthly payment for males than for females since females are expected to live longer.”

(I)(1) An explanation as to whether the monthly payment amounts required under paragraphs (b)(3) and (4) of this section are fixed or may change over time, and how adjustments, if any, are determined.

(2) For purposes of paragraph (e)(1)(iii)(I)(1) of this section, the plan administrator may use the following model language, as applicable: “Unlike Social Security payments, the estimated monthly payment amounts in this statement do not increase each year with a cost-of-living adjustment. Therefore, as prices increase over time, the fixed monthly payments will buy fewer goods and services.”; OR “The amounts shown in this statement will increase over time based on [insert general explanation of how any adjustment is determined, e.g., to reflect inflation, a cost-of-living adjustment, etc.]”

(J)(1) An explanation that the monthly payment amounts required under paragraphs (b)(3) and (4) of this section

are based on total benefits accrued, regardless of whether such benefits are nonforfeitable.

(2) For purposes of paragraph (e)(1)(iii)(J)(1) of this section, the plan administrator may use the following model language: “The estimated monthly payment amounts in this statement assume that your account balance is 100% vested.”

(K)(1) An explanation that the account balance includes the outstanding balance of any participant loan, unless the participant is in default of repayment on such loan.

(2) For purposes of paragraph (e)(1)(iii)(K)(1) of this section, the plan administrator may use the following model language: “If you have taken a loan from the plan and are not in default on the loan, the estimated monthly payments in this statement assume that the loan is fully repaid.”

(2) *Participants that purchased deferred annuities.* (i) If any portion of a participant's accrued benefit currently includes a deferred lifetime income stream purchased by the participant in the form of a single life annuity or a qualified joint and survivor annuity pursuant to a contract with an issuer licensed under applicable state insurance law, such as a deferred income annuity contract or a qualifying longevity annuity contract, the amounts payable under this contract with respect to this portion shall be disclosed on the participant's benefit statement in accordance with paragraph (e)(2)(ii) of this section, instead of in accordance with paragraphs (c) and (d) of this section.

(ii) With respect to the portion of a participant's accrued benefit described in paragraph (e)(2)(i) of this section, the following information must be disclosed about such lifetime income payments:

(A) The date payments are scheduled to commence and the age of the participant on such date;

(B) The frequency and the amount of such payments payable as of the commencement date in paragraph (e)(2)(ii)(A) of this section, as determined under the terms of the contract, expressed in current dollars;

(C) A description of any survivor benefit, period certain commitment, or similar feature; and

(D) A statement whether such payments are fixed, adjust with inflation during retirement, or adjust in some other way, and a general explanation of how any such adjustment is determined.

(iii) The portion of the participant's accrued benefit that was not used to purchase a deferred lifetime income stream described in paragraph (e)(2)(i) of this section, however, must be

converted to the lifetime income stream equivalents in accordance with paragraphs (c) and (d), or paragraph (e)(1), of this section.

(f) *Limitation on liability.* No plan fiduciary, plan sponsor, or other person shall have any liability under Title I of the Act solely by reason of providing the lifetime income stream equivalents described in paragraphs (b)(3) and (4) of this section, provided that:

(1) Such equivalents are derived in accordance with the assumptions in paragraph (c) or (e)(1)(i) of this section; and

(2) The benefit statement includes language substantially similar in all material respects to:

(i) Either the model language in paragraphs (d)(1)(ii) through (d)(11)(ii) of this section or the Model Benefit Statement Supplement set forth in Appendix A to this subpart; or,

(ii) If applicable, either the model language in paragraphs (e)(1)(iii)(A)(2) through (e)(1)(iii)(K)(2) of this section or the Model Benefit Statement Supplement set forth in Appendix B to this subpart.

(g) *Additional lifetime income illustrations.* Nothing in this section precludes a plan administrator from including lifetime income stream illustrations on the benefit statement in addition to the illustrations described in paragraphs (b)(3) and (4) of this section, as long as such additional illustrations

are clearly explained, presented in a manner that is designed to avoid confusing or misleading participants, and based on reasonable assumptions.

(h) *Definitions.* For purposes of this section:

*Participant.* The term *participant* includes an individual beneficiary who has his or her own individual account under the plan, such as an alternate payee for example.

(i) *Dates.* This section shall be effective on the date that is one year after the date of publication of the interim final rule, and shall be applicable to pension benefit statements furnished after such date.

■ 4. Add appendices A and B to Subpart F to read as follows.

**APPENDIX A to SUBPART F – Model Benefit Statement Supplement**

Statement Period: *[Insert beginning and ending dates]*

This statement provides you with information about how much monthly income you could collect at retirement based on your current account balance. The estimated monthly payments in this statement are for illustrative purposes only; they are not a guarantee. Having this information now may help you plan how much money to save for your retirement.

Your account balance is *[insert statement balance]* as of *[insert last day of statement period]*. Below are estimates of how much money you could receive each month if you were to receive payments in one of the following two payment forms:

1. A single life annuity is an arrangement that pays you a fixed amount of money each month for the rest of your life. Following your death, no further payments would be made to your spouse or heirs.

If you receive payments in this form, we estimate you would receive *[insert single life annuity amount]* per month starting at retirement.

2. A qualified joint and 100% survivor annuity is an arrangement that pays you and your spouse a fixed monthly payment for the rest of your joint lives. In addition, after your death, this type of annuity would continue to provide the same fixed monthly payment to your surviving spouse for their life.

If you receive payments in this form, we estimate you would receive *[insert qualified joint and 100% survivor amount]* per month starting at retirement and, after your death, your surviving spouse would receive *[insert qualified joint and 100% survivor amount]* per month.

An annuity with a lower survivor percentage may be available, and reducing the survivor percentage (below 100%) would increase monthly payments during your lifetime, but would decrease what your surviving spouse would receive after your death.

The following information is to help you understand these estimated monthly payments.

- The estimated monthly payments in this statement assume that your account balance is 100% vested and, if you have taken a loan from the plan and you are not in default, the loan has been fully repaid.
- The estimated monthly payments in this statement assume that payments begin *[insert the last day of statement period]* and that you are *[insert 67 or current age if older]* on this date. Monthly payments beginning at a younger age would be lower than shown since payments would be made over more years. Monthly payments beginning at an older age would be higher than shown since they would be made over fewer years.

- The estimated monthly payments for a qualified joint and 100% survivor annuity in this statement assume that you are married with a spouse who is the same age as you (even if you do not currently have a spouse, or if you have a spouse who is a different age). If your spouse is younger, monthly payments would be lower than shown since they would be expected to be paid over more years. If your spouse is older, monthly payments would be higher than shown since they would be expected to be paid over fewer years.
- The estimated monthly payments in this statement are based on an interest rate of [*insert rate*], which is the 10-year constant maturity U.S. Treasury securities yield rate as of [*insert date*], as required by federal regulations. This rate fluctuates based on market conditions. The lower the interest rate, the smaller your monthly payment will be, and the higher the interest rate, the larger your monthly payment will be.
- The estimated monthly payments in this statement are based on how long you and a spouse, who is assumed to be your age, are expected to live. For this purpose, federal regulations require that your life expectancy be estimated using gender neutral mortality assumptions established by the Internal Revenue Service.
- The estimated monthly payments in this statement are the same whether you are male or female. This is required for annuities payable from an employer's plan. However, the same amount paid for an annuity available outside of an employer's plan may provide a larger monthly payment for males than for females since females are expected to live longer.
- The estimated monthly payments in this statement are based on prevailing market conditions and other assumptions required under federal regulations. If you decide to purchase an annuity, the actual payments you receive will depend on a number of factors and may vary substantially from the estimated monthly payments in this statement. For example, your actual age at retirement, your actual account balance (reflecting future investment gains and losses, contributions, distributions, and fees), and the market conditions at the time of purchase will affect your actual payment amounts.
- Unlike Social Security payments, the estimated monthly payments in this statement do not increase each year with a cost-of-living adjustment. Therefore, as prices increase over time, the fixed monthly payments will buy fewer goods and services.

**APPENDIX B to SUBPART F – Model Benefit Statement Supplement –  
Plans That Offer Distribution Annuities**

Statement Period: *[Insert beginning and ending dates]*

This statement provides you with information about how much monthly income you could collect at retirement based on your current account balance. The estimated monthly payments in this statement are for illustrative purposes only; they are not a guarantee. Having this information now may help you plan how much money to save for your retirement.

Your account balance is *[insert statement balance]* as of *[insert last day of the statement period]*. Below are estimates of how much money you could receive each month if you were to receive payments in one of the following two payment forms:

1. A single life annuity is an arrangement that pays you a specified amount of money each month for the rest of your life. Following your death, no further payments would be made to your spouse or heirs.

If you receive payments in this form, we estimate you would receive *[insert single life annuity amount]* per month starting at retirement.

2. A qualified joint and survivor annuity is an arrangement that pays you and your spouse a specified monthly payment for the rest of your joint lives. When one spouse dies, monthly payments continue to the surviving spouse for their life.

If you receive payments in this form, we estimate you would receive *[insert monthly payment amount]* per month starting at retirement. If you die first, your spouse will receive *[insert X %]* of the monthly payment payable during your life. If your spouse dies first, you will receive *[insert Y %]* of the monthly payment.

The following information is to help you understand these estimated monthly payments.

- The estimated monthly payments in this statement assume that your account balance is 100% vested and that, if you have taken a loan from the plan and you are not in default, the loan has been fully repaid.
- The estimated monthly payments in this statement assume that payments begin *[insert the last day of statement period]* and that you are *[insert 67 or current age if older]* on this date. Monthly payments beginning at a younger age would be lower than shown since payments would be made over more years. Monthly payments beginning at an older age would be higher than shown since they would be made over fewer years.

The estimated monthly payments for a qualified joint and survivor annuity in this statement assume that you are married with a spouse who is the same age as you (even if you do not currently have a spouse, or if you have a spouse who is a different age). If your spouse is

younger, monthly payments would be lower than shown since they would be expected to be paid over more years. If your spouse is older, monthly payments would be higher than shown since they would be expected over fewer years.

- The estimated monthly payments in this statement are based on an interest rate offered by *[insert name of insurer]* under a contract with the plan. This rate may fluctuate. The lower the interest rate, the smaller your monthly payments will be, and the higher the interest rate, the larger your monthly payments will be.
- The estimated monthly payments in this statement are based on how long you and a spouse who is assumed to be your age are expected to live. Life expectancy is estimated by using mortality assumptions adopted by *[enter name of insurance company]*.
- The estimated monthly payments in this statement are based on prevailing market conditions and other assumptions. If you decide to purchase an annuity, the actual payments you receive will depend on a number factors and may vary substantially from the estimated monthly payments in this statement. For example, your actual age at retirement, your actual account balance (reflecting future investment gains and losses, contributions, distributions, and fees), and the market conditions at the time of purchase will affect your actual payment amounts. The estimated monthly payments in this statement are the same whether you are male or female. This is required for annuities payable from an employer's plan. However, the same amount paid for an annuity available outside of an employer's plan may provide a larger monthly payment for males than for females since females are expected to live longer.
- [Unlike Social Security payments, the estimated monthly payment amounts in this statement do not increase each year with a cost-of-living adjustment. Therefore, as prices increase over time, the fixed monthly payments will buy fewer goods and services] OR [The amounts shown in this statement will increase over time based on *[insert general explanation of how any adjustment is determined, e.g., to reflect inflation, a cost-of-living adjustment, etc.]*]

Signed at Washington, DC, this 5th day of August 2020.

**Jeanne Klinefelter Wilson,**

*Acting Assistant Secretary, Employee Benefits  
Security Administration, Department of  
Labor.*

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