INVESTMENT COMPANY INSTITUTE

1401 H Street, NW, Washington, DC 20005-2148, USA
202/326-5800 www.ici.org

September 9, 2013

Submitted Electronically

Office of Information and Regulatory Affairs
Attn: OMB Desk Officer for DOL–EBSA
Office of Management and Budget
Room 10235
725 17th Street, N.W.
Washington, DC 20503

U.S. Department of Labor–OASAM
Office of the Chief Information Officer
Attn: Information Management Program
200 Constitution Avenue, N.W.
Washington, DC 20210

Re: Information Collection Request – Focus Groups and Survey Regarding Pension Benefit Statements; OMB ICR Reference Number 201305-1210-006

Ladies and Gentlemen:

The Investment Company Institute[1] appreciates the opportunity to provide comments on the Department of Labor's Information Collection Request (ICR) regarding focus groups and a survey on pension benefit statements. The ICR is intended to explore whether information presented in benefit statements can be presented in a manner that is understandable for participants and beneficiaries and makes them better prepared for retirement. The Institute believes that it is important for participants to understand their benefit statements and for such statements to include illustrations that help participants think about their balances in terms of the income they reasonably could generate in retirement. The ICR study materials, in relevant part, consist of three sample benefit statements, a focus group discussion guide ("Discussion Guide"), and a statement of survey questions for a survey to be conducted on-line ("Benefits Survey"). We understand that the Department intends to use results from the study to develop a proposed regulation on pension benefit statements under section 105 of

[1] The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $15.4 trillion and serve more than 90 million shareholders.

ERISA, including a model benefit statement as required under section 508 of the Pension Protection Act of 2006.

We support the Department's inclusion of participant testing as part of its efforts to develop model benefit statements and we believe the utility of this study could be enhanced by making the improvements described below. The Institute previously recommended numerous changes to the proposed ICR study materials in a letter to the Department dated March 25, 2013.[2] Although the Department made several of the changes we suggested to the study materials now submitted to the Office of Management and Budget (OMB), many of our concerns remain and we believe it is important to reiterate these unresolved concerns to the OMB. In particular, as discussed in Part I, although standard survey methodologies will be employed and the RAND American Life Panel (ALP) is a respected on-line survey sample, we have general concerns about certain aspects of the survey design and more specific comments on the sample benefit statements, Discussion Guide, and Benefits Survey. Parts II and III of the letter respectively discuss our concerns with the use of an annuity calculation to illustrate potential monthly income, and identify specific concerns with questions included in the Discussion Guide and Benefits Survey involving how participants receive their benefit statements.

I. Survey Design and Materials

A. General Comments

As discussed above, the Department intends to conduct a survey to explore whether information contained in benefit statements can be presented in a way that improves recipients' understanding of the statements and helps them plan better for retirement. The proposed survey design uses a standard methodology of pre-testing the survey (with both in-person interviews in a focus group setting and an on-line survey using 50 pre-test survey respondents) and then fielding the survey more broadly through the ALP. Respondents will be given the opportunity to comment on sample benefit statements presented for their consideration during the survey. The basic methodology proposed is sound and in line with common survey practices. However, we have concerns related to three elements of the survey design. In this respect, we believe that: (1) one-on-one in-person interviews may be more effective than a focus group setting given the complexity and personal nature of some of the material; (2) the sample sizes of the sub-populations receiving the different proposed treatments could be insufficient to reach reliable conclusions regarding survey data results; and (3) the Discussion Guide and Benefits Survey should be compared and more closely aligned with each other, given that the in-person pre-testing is meant to inform the on-line survey wording.

[2] www.ici.org/pdf/27138.pdf

1. One-on-One Interviews versus Focus Groups

When fielding new survey questions, it is helpful to test the questions on a sample of respondents before fielding the full survey to ensure that respondents understand the material. However, we find that one-on-one test interviews can be more effective than a focus group environment when the material is complicated, detailed, or personal in nature. Given the content of the proposed survey, we would recommend that the Department consider changing its approach for that component of the proposed survey work. In the focus group environment, individuals may feel intimidated and not wish to look uninformed, and thus not freely discuss the material presented. Furthermore, some participants may just follow the lead of others in the group, rather than venture forth with their own thoughts. In addition, some of the information that will be discussed might be considered personal or confidential and therefore is unlikely to be provided freely. For example, respondents might not be comfortable discussing their 401(k) contribution activity or the amount they expect they will need in retirement (whether discussed as a lump sum or an income flow) in a group environment.

2. Size of Treatment Groups within the RAND ALP

The RAND ALP is a widely used and respected survey panel. However, the survey design proposed may run into difficulty with sample sizes, which may become relatively small for certain of the treatment groups reviewing the different sample benefit statements. Although the ALP starts with approximately 4,500 respondents, due to reductions resulting from non-response and the excluded sample components, the expected sample will be approximately 2,900 individuals.[3] From the Institute's experience, it is likely that approximately half of those respondents should be expected to answer that they have a DC plan,[4] and approximately 30 percent would respond that they are retired,[5] reducing the final sample to approximately 1,000 individuals. It appears that the sample will then be split into nine groups, which leaves about 110 people per treatment. We are concerned that meaningful analysis by age or other demographic characteristics between samples will likely be constrained given these resultant sample sizes. Reducing the number of analysis groups will help with the robustness of the comparisons after the survey is completed.

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[3] *See* page 15 of the "Part B Supporting Statement" and page 1 of the "Part A Supporting Statement" provided by the Department.

[4] Each spring ICI conducts a nationwide household survey. The latest survey conducted in May 2012, found that of 4,019 U.S. households surveyed, 2,046 or 50.9 percent owned defined contribution plan accounts (whether at their current or former employers).

[5] In the ICI household survey referenced above, 1,204 of the 4,019 respondents, or 30.0 percent, indicated they were retired from their lifetime occupation.

3. In-Person versus On-Line Survey Questions

The Department indicates that the in-person interviews have the goal of pre-testing the survey questions before they are fielded more broadly in the on-line survey. However, the Discussion Guide and Benefits Survey vary in significant ways and should be conformed more closely with each other in order to ensure greater reliance on responses given. In addition, as the focus group and online survey are both scheduled to run concurrently between the end of October and the beginning of December, it will be difficult to use the results of the focus group to improve the online survey.

B. Additional Specific Comments on the Study Materials

In addition to our broader comments above, we have the following specific observations on the study materials: the sample benefit statements, the Discussion Guide, and the Benefits Survey.

1. Sample Benefit Statements

- Sample statement version 1 shows the projected account value at retirement, including an assumption regarding average life expectancy. The average life expectancy does not appear to be relevant here and may cause confusion. Footnote 1, regarding continued contributions, does appear to be relevant and the Department should be encouraged to move this text up to the assumptions listed in bullets.

- In the "Projections" section of both version 2 and 3 of the sample statement, the assumptions provided for the calculation in Row A ("An inflation rate equal to the expect rate of return on your investment, with no further account contributions") could lead to confusion. It would be clearer to explain that the calculation shows the monthly income that the current account balance would generate if the participant was age 65 today.

- In Section D ("Factors that could change monthly income at retirement") of versions 2 and 3 of the sample statement, under the heading "How much could I gain or lose depending on the performance of my investments," the "Caution" should be expanded to add some mention of the risk/return trade-off, time horizon, or range of results around the estimates presented.

2. Discussion Guide (Focus Group Survey)

The Discussion Guide progresses through six broad topic areas: (1) Introduction, (2) Ground Rules, (3) Retirement Goals, (4) Statement of Benefits, (5) Sample Retirement Account Statements, and (6) Additional Thoughts. The survey, however, does not appear to have a comprehensive approach to getting people to think about *all* of their retirement resources, before moving into a specific discussion of benefit statements from employer-sponsored defined contribution (DC) retirement plans. In the "Retirement Goals" section, respondents could easily be confused by the questions, and the questions do not appropriately focus respondents on all of their retirement resources. Specifically, the section starts with the comment: "Let's start by talking a bit about your retirement savings and your

goals." Households will draw on many resources in retirement, and they will not all fit into the category of "retirement savings." Perhaps the section should start more generically by talking about resources respondents will draw on in retirement and their goals. Finally, it is unclear why real estate is singled out in the question at the end of the section: "Do you have any other retirement savings, like real estate?" Furthermore, the term "real estate" has broad meaning and it is unclear whether this question is asking about investment real estate or homeownership. Respondents may have business assets or other resources that they will rely on in retirement that should be added to this question.

In the "Retirement account statements" section, it is unclear why participants are informed that the sample statements are "much shorter" than the statements they currently receive. The overall length of the sample statements is not inconsistent with the range of lengths of actual statements respondents may have received from their own plans. It would be sufficient to note that the sample statements "may be different than the statements you currently receive." In addition, we urge the Department to consider teeing up the sample benefit statements with additional language indicating that the leader will hand out different sample benefit statements for a DC plan participant who is a 40 year-old male. The Discussion Guide should also indicate that the participants should base their answers only on the material in the samples, not on what they may have been given by their own plan. Finally, we note that the retirement account balances stated in this section differ from the account balances provided on the sample statements and should be corrected.

In the "General Discussion of Assumptions," the respondents may be confused by the discussion points. For example:

- Respondents are asked about retirement at age 67, whereas the retirement age on the sample retirement statement is assumed to be 65.
- The contribution amount rises with inflation over time in the projections, yet respondents are asked if they think they will contribute the same amount.
- Respondents might also be confused by what the "same amount" might mean—the actual dollar amount or their contribution rate?
- It might be better to ask if 3 percent inflation is "reasonable," rather than "realistic."
- We also question what a survey respondent is to make of "reasonable for someone like you" as a descriptor of survivor benefits. Reasonable for the price? Reasonable for the spouse or based on the individual's marital status? The respondent has no benchmark against which to compare the joint and survivor annuity, and indeed may not understand exactly what it is. The interviewer should be instructed to probe why respondents answer as they do (for example, by asking about marital status; how much the respondent would choose to leave to a surviving spouse, noting that the current benefit would be reduced if the respondent chose a higher percentage; or whether the respondent desires to choose an annuity at all).

3. Benefits Survey

The Benefits Survey presumes that respondents know detailed information about their DC plan accounts. Questions such as the total value of multiple DC plan accounts or the combined asset allocation are unlikely to yield correct answers if respondents are asked to produce them from memory. If accurate responses are important, the requests should be simplified or respondents should be encouraged to look up the information from their DC plan provider. Set forth below are specific observations about concerns that arise from the questions in the Benefits Survey.

- We note that respondents should be asked about their employer contributions. It appears that later in the survey the respondent's information will be used to personalize the sample benefit statement, and employer contributions are necessary in order to complete the calculations in that statement.

- Question 14 suffers from the problem that a respondent may have more than one "employer-sponsored retirement plan" to rely on in retirement and will have difficulty responding to the question. A complete list was not provided, but the following should also be counted among the respondent's resources: individual retirement accounts (IRAs), wage and salary income from a job, business income, or income from employer-sponsored defined benefit plans.

- Although the language at the beginning of the survey refers to an "employer provided defined-contribution retirement plan," later questions just ask about the "employer-sponsored retirement plan." This could confuse respondents who are also covered by a defined benefit plan.

- Questions 19 through 21 involve complex calculations and could be difficult for some respondents to answer in a short amount of time. In addition, respondents are expected to do complicated math with little guidance. For example:

  - Question 19 requires respondents to calculate the future value of a stream of contributions and investment returns on a preexisting balance over 27 years at 7 percent interest. With the use of Excel this is a complicated question. For the average person without the aid of software, it's effectively impossible. In addition, respondents need to make an assumption on how frequently the annual 7 percent return is compounded.

  - Question 20 then requires respondents to take the result of question 19 and spend down that money with no guidance as to how they should approach the question. Respondents could purchase an annuity in the marketplace, they could assume a theoretical "actuarially fair" annuity, they could assume the 7 percent return from the prior question, or they could use a simple rule of thumb (like a 4 percent drawdown). Expecting respondents to produce an answer using any one of these methods is unreasonable, but the way the question is framed, there isn't even a "correct" way for respondents to answer.

  - Question 21 then asks respondents to take the result of question 19 and discount it back to today's dollars. With no guidance as to the proper discount rate, this question asks respondents to make forecasts of the next 27 years of inflation, coupled with their own personal time preferences. Any answer could be correct depending on respondents' own personal preferences and expectations of future inflation.

- In some cases, respondents may be asked about information they were not provided. For example:

  - Questions 23 and 24, regarding projected monthly income in retirement, are not applicable to version 1 of the sample benefit statement.

  - For question 28, item "d" (survivor benefits) only applies in versions 2 and 3 of the sample benefit statement. In addition, we note that items "c" through "f" lack answer choices for respondents to select.

- Respondents are asked to make judgments based on seeing only a portion of a household's balance sheet. The benefit statement from an individual employer-sponsored DC plan tells the individual about a portion of his or her resources available for retirement. Households generally draw on many resources in retirement—including Social Security—in addition to possibly multiple retirement accounts, including IRAs, or defined benefit plans. To ask respondents to judge retirement preparedness based on one slice of their retirement pie does not provide the appropriate context. However, it is important for respondents to understand what this slice can provide in retirement. For example:

  - Questions 25 and 26 ask about a person's preparedness for retirement based only on assets inside of the employer-sponsored DC plan. These questions should be reworked to reflect that the respondent is evaluating the role of this particular account in contributing to his or her overall retirement preparedness. Most respondents will have future Social Security benefits, and many have other assets such as other employer plan money (DC or defined benefit) or an IRA. Without looking at the whole balance sheet, respondents are biased towards responding that they are not prepared for retirement.

- Questions 27 and 28 (and the sample benefit statements themselves—see comments above) contain conflicting and confusing information on the contributions to the employer-sponsored DC plan account which may make it difficult for respondents to answer correctly (when they may otherwise understand). For example:

  - Question 27 asks for agreement with the following characterization of contributions: "The projections assume that contributions will increase at 3% per year." We think that respondents will better understand this statement if it were to read: "The projections assume that contribution *amounts* will increase 3% per year." In addition, the assumption of retirement at age 67 should be changed to 65 to match the sample benefit statement.

- Question 28 then states that the projections assume participants "[c]ontinue to contribute the same amount until retirement," when as we understand it, the contribution amounts grow on a nominal basis with inflation (wages apparently rising 3 percent per year).
- Question 29 lists "in the past week" for answer choice "a" and "In the past week" for answer choice "b". This duplication should be eliminated.

II. Lifetime Income Illustration

According to the Department, "the central focus of the study is to examine how providing projections of monthly income in retirement influences participants' intended retirement behavior and what participants understand about these projections."[6] In that regard, two of the sample benefit statements include lifetime income stream estimates based on what a joint and survivor annuity would pay.[7] The estimates are presented in two ways—one using the participant's current account value and the other using a projected account value at age 65 (assuming continued contributions and earnings). While the Institute believes that disclosure that translates an account balance into estimated monthly income is useful, as discussed below, we have several concerns with including only a joint and survivor annuity calculation on the sample statements, without including or considering any alternative methods of illustrating lifetime income.

As an initial matter, the sample statements do not provide pertinent information necessary to help participants understand the impact of purchasing a joint and survivor annuity at retirement, including, for example: that interest rates prevalent at the participant's retirement date may differ from that used in the illustration and consequently actual payment streams may be higher or lower; that the purchase of an annuity is generally irreversible and therefore participants should consider their need for access to their account balance to handle unexpected expenses and any need for an account balance at death for a participant's survivors (although there may be ongoing payments in the case of a joint and survivor annuity); and that the payment stream typically is not protected from the effects of inflation. Because such disclosures are crucial to a participant's understanding of an annuity, it seems unusual that a survey intended to measure a participant's understanding of his or her benefit statement would not include any reference to information of such material consequence.

As we indicated in our March 25, 2013 letter to the Department, we have significant concerns relating to the fact that the lifetime income stream illustrations used in the sample statements are limited to calculations based on annuity purchases. We believe it is important for the study to examine the impact of other reasonable methods of illustrating retirement income on participants' intended behavior and to examine participants' understanding of those illustration methods, in addition to the

[6] Part A Supporting Statement, p. 6, August 2013.

[7] It is not clear from the sample statement or the accompanying materials how the payment stream is actually determined—for example, whether the payments are based on actual surveys of the cost of such products in the retail market or using some other method.

annuity method. In response to our comments, the Department stated that it "believes that guaranteed income for life is a key component of a secure retirement, and therefore the projected monthly income on a retirement statement should reflect the ability to purchase lifetime income rather than a systematic withdrawal strategy or other non-lifetime-income strategy."[8] For the reasons discussed below, we believe this response is inadequate and does not address the concerns we have raised.

The Department is currently reviewing public comments received in response to an Advance Notice of Proposed Rulemaking (ANPRM) on pension benefit statement lifetime income illustrations, which, like this study, will inform the Department's eventual proposed regulation under section 105 of ERISA.[9] In that ANPRM, the Department outlined a draft proposal that would require DC plan benefit statements to include annuity-based monthly income illustrations similar to the illustrations included on the sample statements from this study. The Institute, along with numerous other commenters responding to the ANPRM,[10] urged the Department not to single out one specific method of illustration in the proposal, and we provided a very detailed explanation for our concerns with requiring all DC plans to use annuity-based illustrations. Many of the issues raised in our August 7, 2013 comment letter responding to the ANPRM (a copy of which is attached) are equally relevant to improving the efficacy of this study.[11]

Contrary to the Department's assertion, annuities are not the only way of generating a lifetime income stream in retirement.[12] DC plan participants have a range of options. In addition to life annuities, these options include installment payments and systematic withdrawal plans, life expectancy withdrawals, longevity insurance, and managed payout products. Most DC plan participants do not

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[8] Part A Supporting Statement, p. 6, August 2013.

[9] 78 Fed. Reg. 26727 (May 8, 2013).

[10] Comment letters submitted in response to the ANPRM are available at: www.dol.gov/ebsa/regs/cmt-1210-AB20.html.

[11] In summary, the Institute's August 7, 2013 letter explains that the narrow approach the Department is considering would not include many of the innovative approaches to providing income stream illustrations already in use today and would cut off further development of new and better tools for participants. The letter describes several specific concerns with the proposed annuity conversion method, including that the illustration's reliance on prevailing interest rates will result in variability of estimates; that the method is inconsistent with prevalent distribution behavior by participants (who tend not to annuitize); and that the estimates generated by the safe harbor assumptions do not reflect actual pricing of annuities. The letter recommends that the Department take a more flexible approach by encouraging, rather than requiring, illustrations through guidance expanding on Interpretive Bulletin 96-1. We urge that any guidance (mandatory or voluntary) should encompass other methods of translating an account balance into a lifetime income stream, such as systematic withdrawal calculations, and should not specify particular assumptions in any safe harbor. Finally, the letter questions whether the Department has authority under ERISA to mandate the inclusion of income stream illustrations on benefit statements and notes that the costs associated with the proposal likely would be much higher than the Department anticipates.

[12] In our view, the term "lifetime income" does not necessarily mean that the income stream must be guaranteed by an insurance company. Retirees have the ability to generate income over the full course of their retirement years without buying an insurance product with a guarantee.

have an annuity distribution option offered under their plan, and those that do tend not to select it.[13] This factor alone is sufficient reason not to focus solely on annuities in a lifetime income illustration for DC plan participants. But the question of how to best illustrate the potential future income that an account balance could generate depends on many factors.

Because the factors affecting the decisions on how to manage income and assets in retirement vary across households, there is not one best method of illustration for all participants. Given this unknown variable, it is important to be guided by the goals of such an illustration—to help participants determine whether their retirement savings goals in the particular plan are on track for their own particular circumstances and to ensure that they appreciate that the savings must last a number of years, rather than to steer participants toward any particular distribution method. Service providers who are already offering this type of disclosure on benefit statements or in tools offered on plan websites have carefully considered and designed their estimates to achieve these goals. In testing only an annuity-based estimate in the study, the Department will miss the opportunity to gauge reaction to other valid and well-thought out calculation methods already being used by service providers today. The narrow approach taken in the study also is incompatible with a significant number of comments submitted in response to the ANPRM, urging the Department to permit flexibility in determining which draw-down method to use in illustrating lifetime income.

As we have stated before, we believe the Department should not mandate or codify a single approach for calculating lifetime income illustrations. Likewise, we urge the Department not to focus on only one approach to lifetime income illustration in conducting this survey. As evident in the public record relating to the Department's ANPRM, the method of income stream illustration is very much an open question and we believe the Department has severely limited the study's usefulness by including only one methodology in the sample retirement statements.

III. Method of Statement Delivery

As noted in our March 25, 2013 letter to the Department on the proposed study materials, the Discussion Guide and Benefits Survey each include several questions involving the manner by which participants receive their benefit statements.[14] We believe that many of these questions, to the extent they are premised on a participant having received paper statements, may be confusing to DC plan participants and fail to consider the on-line statement delivery provisions contained in Field Assistance Bulletin 2006-03 ("FAB 2006-03"). FAB 2006-03 provides a specific electronic delivery rule for the delivery of pension benefit statements as follows:

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[13] *See* Plan Sponsor Council of America (PSCA), *55th Annual Survey of Profit Sharing and 401(k) plans (Reflecting 2011Plan Experience)*(2012); Deloitte Financial Advisory Services, *Annuities in the Context of Defined Contribution Plans* (2011).

[14] *See, for example*, Discussion Guide page 4: "How many of you have opted out of the paper statements and only receive your account information online?"

> With regard to pension plans that provide participants continuous access to benefit statement information through one or more secure websites, the Department will view the availability of pension benefit statement information through such media as good faith compliance with the requirement to furnish benefit statement information, provided that participants and beneficiaries have been furnished notification that explains the availability of the required pension benefit statement information and how such information can be accessed by the participants and beneficiaries. In addition, the notification must apprise participants and beneficiaries of their right to request and obtain, free of charge, a paper version of the pension benefit statement information required under section 105.

In the event that a plan utilizes the "notice and access" delivery method prescribed by FAB 2006-03, a participant is neither required to opt-out of receiving a paper statement nor will the participant receive a paper statement in addition to the available on-line statement—unless the participant specifically requests a paper statement. Therefore, for example, the questions on page 4 of the Discussion Guide regarding on-line versus paper (or "mailed") statements may be confusing to participants, as a participant or beneficiary whose plan utilizes the benefit statement delivery provisions of FAB 2006-03 will not receive a paper statement unless he or she specifically requests one.

In response to comments on the proposed study materials, the Department corrected many instances where the questions assumed that a participant would receive a paper statement in the mail, or would need to opt out of receiving a paper statement, but it did not correct every instance. In particular, the following questions appear on page 4 of the Discussion Guide:

- How many of you have opted out of the paper statements and only receive your account information online?
- Is your online account easier to access than the mailed statement?
- Is your online account easier to understand than the mailed statement?
- Is there information that you see online that you wish you could also get in the mailed statement of benefits?

In addition, the following questions appear in the Benefits Survey:

30. Have you opted out of the paper statements so that you only receive your account information online?

34. Is your online account easier to access than the mailed statement?

35. Is your online account easier to understand than the mailed statement?

36. Is there information that you see online that you wish you could also get in the mailed statement of benefits?

We recommend that the Department be encouraged to revise the questions enumerated above to account for the benefit statement delivery method contained in FAB 2006-03.

* * *

We would be pleased to meet and discuss these issues further with the OMB and the Department. Please contact the undersigned, David Abbey (david.abbey@ici.org or 202/326-5920) or Sarah Holden (sholden@ici.org or 202/326-5915), if you have any questions.

Sincerely,

/s/ David Abbey

David Abbey
Senior Counsel
Pension Regulation

/s/ Sarah Holden

Sarah Holden
Senior Director
Retirement & Investor Research

Attachment

INVESTMENT COMPANY INSTITUTE

1401 H Street, NW, Washington, DC 20005-2148, USA
202/326-5800 www.ici.org

August 7, 2013

Submitted Electronically: *e-ORI@dol.gov*

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

Re: Pension Benefit Statements; Advance Notice of Proposed Rulemaking (RIN 1210-AB20)

Ladies and Gentlemen:

The Investment Company Institute[1] is pleased to provide the following comments concerning the Department of Labor's advance notice of proposed rulemaking (ANPRM) on pension benefit statements for defined contribution (DC) plans under section 105 of the Employee Retirement Income Security Act of 1974, as amended (ERISA). The ANPRM outlines a proposed framework for requiring DC plan benefit statements to include illustrations of monthly income based on participants' current and projected account balances. As we have previously stated,[2] disclosure that translates DC account balances into forecasted retirement income streams helps participants determine whether their retirement savings are on track and can motivate changes in savings behavior. Many Institute members have developed well-received disclosure approaches and interactive tools for providing retirement income estimates. As our members and other participants in the retirement savings community have learned through research and experience, this information must be presented carefully so as to avoid misunderstanding and confusion by participants. We believe the rigid approach the Department is considering would replace the innovative methods already in use by retirement service providers and, if implemented, could mislead participants and would discourage the development and availability of other approaches that could be more effective.

In this letter, we first describe our concerns with the specific annuity method of illustration outlined in the ANPRM. For the reasons discussed below, we believe it would be inappropriate to

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[1] The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $14.9 trillion and serve more than 90 million shareholders.

[2] *See* Institute letter responding to joint Labor and Treasury request for information on lifetime income options, dated May 3, 2010, available at www.ici.org/pdf/24278.pdf.

single out one illustration method for inclusion in the proposal. We then recommend certain clarifications and changes in the event that the narrow annuity-based approach is retained in the proposal. Next, our letter discusses other illustration approaches that should be considered by the Department and notes significant problems that would result from imposing a mandate and narrow safe harbor. We caution against a mandatory lifetime income illustration and explain the advantages of using a flexible, voluntary approach to encourage lifetime income illustrations. In this regard, our comments question whether a mandate would fall within the Department's rulemaking authority under ERISA and whether the Department's assumptions about costs to plans and service providers are realistic. Instead of requiring lifetime income illustrations on benefit statements, we urge the Department to encourage the use of voluntary illustrations through an expansion of Interpretive Bulletin 96-1, without promoting any single methodology for translating the account balance into an income stream—thereby allowing continued innovation and improvement in the quality of this valuable information for participants.

I. Mandated Annuity Calculations

The ANPRM explains that the Department is considering proposing a regulation under section 105 of ERISA to require pension benefit statements for individual account DC plans to show a participant's total benefits accrued as an estimated lifetime income stream of payments, in addition to an account balance. The proposed regulation under consideration also would require projection of the participant's account balance to a future retirement date and then conversion of the projected amount into an estimated lifetime income stream of payments.[3]

The account balance and projected account balance would be converted to an estimated income stream using a calculation intended to approximate an annuity payable from an insurance company, based on a single life and, for married participants, the joint lives of the participant and a spouse. The income stream conversion must include interest and mortality assumptions, subject to a general standard taking into account generally accepted actuarial principles. According to the ANPRM, the Department is also considering providing a safe harbor set of assumptions that would be deemed reasonable: a rate of interest equal to the 10-year constant maturity Treasury securities rate and mortality as reflected in the mortality table under Internal Revenue Code section 417(e)(3)(B). For plans with an annuity distribution option offered by a licensed insurance company, the safe harbor interest and mortality assumptions would be replaced by those of the plan's annuity product.

While annuity-based illustrations may be a reasonable choice for some, this type of illustration should not be singled out and elevated to preferred status by the Department. It is not clear that this single method is the best illustration to help people envision "the lifetime monthly income that can be generated from an account balance." We have several concerns with mandating an annuity calculation as the sole method of conversion, as well as with certain of the safe harbor assumptions outlined in the

[3] *See* text accompanying footnote 20, *infra*, for a description of the proposal being considered by the Department for projecting the account balance to retirement.

ANPRM. We urge the Department to allow flexibility to use alternative conversion methods, whether the illustration is voluntary (as we recommend) or mandatory. As explained below, estimations of lifetime income streams based on annuity calculations can fluctuate substantially over a participant's working life due to the necessary reliance of such calculations on prevailing interest rates. The Institute is also concerned that illustrating future retirement income based on annuity calculations is not consistent with currently prevalent distribution behavior by participants and will not convey information in the most useful or relevant way.

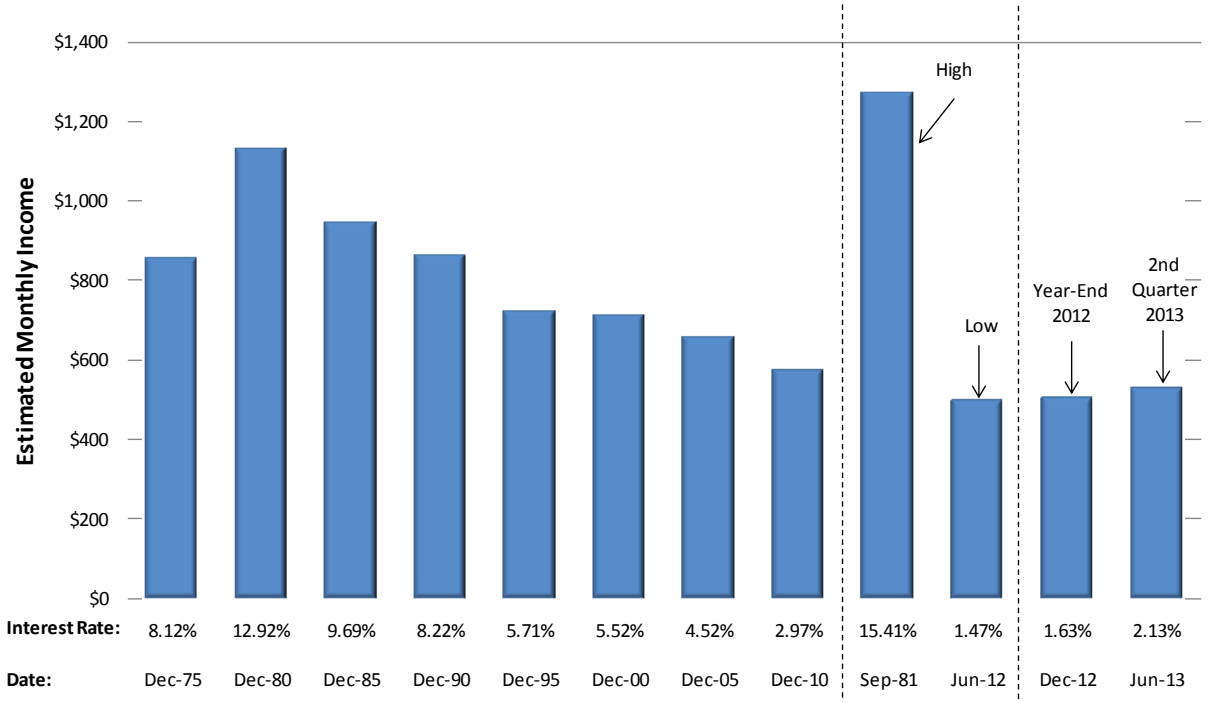
A. Variability of estimates

As discussed above, we question the usefulness of a lifetime income conversion methodology based on an annuity calculation, particularly for participants who are a significant number of years away from retirement.[4] In this respect, because such calculations would be based on prevailing interest rates and not interest rates in effect when the participant actually retires, the income stream generated by the Department's calculation methodology may have very little relationship to the actual lifetime income that a participant can expect to receive on or near to a projected retirement date. Furthermore, fluctuation in the 10-year constant maturity Treasury securities rate will result in fluctuating estimates regardless of changes in the account value, which could lead to confusion for participants. In the figure below, we illustrate the effect of this interest rate fluctuation on payment stream illustrations for a hypothetical participant using historical 10-year Treasury rates:

[4] As discussed below, the payment stream amounts generated under the Department's approach would also fail to realistically depict an annuity purchased at the time of the statement.

Projected Balance Remains the Same but the Income Generated by the Proposed Annuity Changes

Single-life annuity starting at age 65 purchased with $100,000; calculation uses 2012 unisex mortality tables and 10-year U.S. Treasury yields for select dates



Note: Interest rates are equal to the 10-year constant maturity Treasury securities rate for the first business day of the last month of the quarter.
Sources: Investment Company Institute tabulations, Federal Reserve Bank of St. Louis, and Internal Revenue Service

The figure illustrates the monthly payment estimates for a hypothetical worker who entered the workforce at age 25 in 1975, with an account balance that grows according to the Department's projection assumptions[5] so that the projected balance at retirement ($100,000) remains constant over the time period covered.[6] The projected balance is converted to a single-life annuity with no survivor benefit using 10-year Treasury rates[7] and the applicable mortality table for 2012 under section 417(e)(3)(B) of the Internal Revenue Code.[8] A worker who reaches age 63 in 2013 and who entered the workforce at age 25 in 1975 would have experienced all the interest rates illustrated in the figure

[5] The investment returns are 7 percent per year (nominal) with an inflation rate of 3 percent per year. Contributions continue to retirement at age 65 and the current annual contribution amount increases by 3 percent per year (at the rate of inflation).

[6] This ensures that the variability shown stems solely from the impact of prevailing interest rates and not from the assumptions used in projecting the hypothetical account balance.

[7] FRED, Federal Reserve Economic Data, Federal Reserve Bank of St. Louis: *10-Year Treasury Constant Maturity Rate (DGS10), Percent, Daily, Not Seasonally Adjustea*; Board of Governors of the Federal Reserve System; http://research.stlouisfed.org/fred2/graph/?id=DGS10; accessed August 2, 2013. Interest rates are for the first business day of the last month of the period to which a quarterly statement would relate.

[8] IRS Notice 2008-85, 2008-2 C.B. 905.

over the course of his or her career. With a projected balance of $100,000, the participant's 1975 year-end benefit statement would have shown expected monthly annuity payments of about $850 at age 65. Only 5 years later at age 30, the participant's year-end statement from 1980 would have shown expected monthly annuity payments of $1,140 at age 65 with the same $100,000 projected account balance. As this participant neared retirement in 2012 at age 62, however, his year-end statement would show expected monthly annuity payments of about $500 at age 65 with the same projected balance of $100,000. As this example shows, the income stream derived from the Department's annuity calculation methodology is highly variable and can produce wide swings in potential income from year to year. The preferred status that the safe harbor designation provides this method may signal to plan sponsors and participants that this calculation is superior, but, at best this calculation can only give a general indication of income in the future and at worst can be misleading to participants.

B. Relevance to participants

Support within the Department for requiring the annuity method of conversion appears to rest at least partly on a perception that more participants in DC plans should annuitize their accounts.[9] There is no evidence to support such a conclusion. All retirement income products and strategies involve tradeoffs and consideration of an individual's personal circumstances, such as other assets or income, health status and life expectancy, the need for emergency reserves, specific goals in retirement, and the need to provide for other family members. In this respect, retirees may conclude that they need access to a "liquid" asset balance that is available when such needs arise. Annuitization is difficult to reverse, and therefore reduces the liquidity available to the retiree. In fact, some of the observed "behavioral bias against annuitization" is simply prudent risk management on the part of real-world retirees, who have a greater awareness of the uncertainty of their own future spending needs. While annuities can be an appropriate and useful component of an individual's retirement income strategy, their inclusion as part of the overall retirement strategy for any retiree depends on the individual circumstances and preferences facing the retiree. As a matter of public policy then, any attempt to influence through regulatory initiatives more individuals to annuitize assets seems particularly inappropriate. In addition, the goal of this regulatory initiative is to illustrate for participants what payments they could reasonably expect to receive from the assets accumulated in a particular plan, and not to engage in the actual comprehensive decision process around distribution at retirement.

Institute research finds that, by and large, people act responsibly with their DC plan account balances at retirement. Few retirees cash out their balances, most select reinvesting a lump-sum distribution in a traditional IRA, installment payments, annuities, leaving the balance in their employer's plan or a combination thereof.[10] Furthermore, research finds that traditional IRA investors

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[9] *See, e.g.,* Theo Francis, "Retiree Annuities May Be Promoted by Obama Aides," *Bloomberg Businessweek*, Jan. 8, 2010 (www.businessweek.com/investor/content/jan2010/pi2010018_130737.htm); Kristen Ricaurte Knebel, "Release of Fiduciary Rule Delayed, DOL Awaiting Lifetime Income Input, Borzi Says," *BNA Pension & Benefits Daily*, May 13, 2013.

[10] *See* Institute letter responding to joint Labor and Treasury request for information on lifetime income options, dated May 3, 2010, pp. 11–15, available at www.ici.org/pdf/24278.pdf; Stephen P. Utkus, and Jean A. Young, *How America Saves*

are responsible stewards of those assets in retirement.[11] A key explanation for why annuity demand is low is that most retirees already hold most of their lifetime wealth in annuity-equivalent form, including Social Security benefits, defined benefit plans, and owner-occupied housing,[12] and logically may not want to annuitize more assets, preferring instead to focus on their 401(k) plan balances as a source of preserving needed liquidity and flexibility.[13] For these reasons, we think the Department has made an inappropriate value judgment in singling out an annuity method of calculation. An annuity-based illustration may make sense for some participants, but in our view is not the best measure for many participants.

C. Misleading estimates

The Department's stated goal is to provide an illustration of lifetime income in retirement. The adoption of an annuity illustration is not the best method because such an illustration ignores the context of most participants' distribution activity and thus is unlikely to provide an accurate picture of retirement readiness, given the probability that participants contemplate liquidity and flexibility needs and the potential impact of inflation in their retirement planning. This problem is compounded by the proposal's failure to include the costs of actually purchasing an annuity as well as the use of unisex tables in the monthly income stream calculation. In this respect, although intended to illustrate annuity payments that could be generated by purchasing an annuity at the time of the statement, the payments expressed would not accurately depict actual payments from an annuity product because the estimates lack an insurance load, and from the perspective of most annuity products purchased outside the plan, inaccuracy also results from the use of a unisex mortality table. The components of an insurance load, including profits and operating costs of the insurer, are important aspects in determining the monthly payments under an annuity product. Not including an insurance load will result in overstated

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2013: A report on Vanguard 2012 defined contribution plan data, Valley Forge, PA: The Vanguard Group (June 2013), available at https://institutional.vanguard.com/iam/pdf/HAS13.pdf; John Sabelhaus, Michael Bogdan, and Sarah Holden, *Defined Contribution Plan Distribution Choices at Retirement: a survey of employees retiring between 2002 and 2007,* Washington, DC: Investment Company Institute (2008), available at www.ici.org/pdf/rpt_08_dcdd.pdf.

[11] *See* Sarah Holden and Daniel Schrass, "The Role of IRAs in U.S. Households' Saving for Retirement, 2012," *ICI Research Perspective* 18, no 8 (December 2012), available at www.ici.org/pdf/per18-08.pdf.

[12] If a household did not own its home, it would be required to pay rent to live in the home. The primary benefit of owner-occupied housing is that it provides imputed rental income in excess of expenses, which reduces the need for a regular stream of income from other sources. For many households, the home is the most valuable asset. According to tabulations of the Federal Reserve Board's 2010 *Survey of Consumer Finances*, of households with a household head age 65 to 74, 83 percent own their home; and about half of these homeowners, or 41 percent overall, own a home unencumbered by mortgage debt.

[13] *See* Institute letter responding to joint Labor and Treasury request for information on lifetime income options, dated May 3, 2010, pp. 10–11, available at www.ici.org/pdf/24278.pdf; Alan L Gustman, Thomas L. Steinmeier, and Nahid Tabatabai, "How Do Pension Changes Affect Retirement Preparedness? The Trend to Defined Contribution Plans and the Vulnerability of the Retirement Age Population to the Stock Market Decline of 2008–2009," *University of Michigan Retirement Research Center Working Paper* 2009-206 (October 2009), available at www.mrrc.isr.umich.edu/publications/papers/pdf/wp206.pdf.

payments and seems inconsistent with the Department's overall movement toward fee transparency and goal of insuring participants have the information they need to make informed decisions about plan benefits and options.[14] The use of a unisex mortality table is inconsistent with how most retail annuities are priced, and thus could result in either overstatement or understatement of the payments depending on whether the participant is female or male. In certain circumstances, a plan sponsor may conclude that providing annuity-based illustrations would be appropriate for its plan participants, and in that case, the illustration would be more realistic if it reflected insurance loads and gender-based pricing, if applicable.

We also note that there is a technical discrepancy between what the proposed illustration purports to show—income for life expressed in current dollars—and what it actually shows. The illustration uses a fixed annuity payment not adjusted for inflation. As such, the monthly income estimated to be payable at the assumed retirement date would be expressed in current dollars as the ANPRM states, but ongoing monthly payments after the assumed retirement date would not in fact remain level in today's dollars. In other words, there is no assumption for continued inflation after the annuity starting date and, in an inflationary environment, the static monthly payments would decrease over time if expressed in today's dollars. This fact is not revealed in the ANPRM's disclosures. A fixed

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[14] An individual cannot purchase an actuarially fair annuity, like the Department's proposed calculation, in the market place. An "actuarially fair" investment is one that is expected, in present value, to provide a dollar of benefit for a dollar invested. For the average individual, a dollar invested in a fixed immediate life annuity is expected to pay out less than a dollar of benefits over the individual's lifetime. There are two reasons for this. First, as with all financial products, there are sales and administrative expenses that must be covered, and these are typically paid out of the proceeds used to purchase the annuity or by reducing the rate of return of the investment. These charges can vary depending on how the annuity is sold (for example, a group annuity versus and individual annuity) and on the efficiency of the administrative services.

However, the primary reason that annuities are not actuarially fair for the average individual is because of asymmetric information and adverse selection: typically individuals have a better estimate than an insurance company as to how long they will live. If an insurance company offered an annuity that was actuarially fair for the average individual (that is, paid out a dollar in expected benefits for a dollar invested), those who had private information indicating that they would live longer than average would choose to annuitize and those who had private information indicating that they would live shorter than average would choose not to annuitize. As a result, any insurance company that offered an annuity that was actuarially fair for the average individual would lose money. To stay in business, the insurance company needs to increase the price of (reduce the payments from) the annuity. The end result is that annuities are priced so that they are not actuarially fair for the average individual, and only a portion of individuals, who in aggregate expect to live longer than average, will annuitize their wealth. (Leaving aside sales and administrative expenses, annuities are presumably actuarially fair for the average annuitant; the average annuitant lives longer than the average individual.) The typical estimate is that the average individual can expect a nominal annuity to pay out 80 cents to 85 cents for each dollar invested; the typical annuitant can expect a nominal annuity to pay 90 cents to 95 cents for each dollar invested. *See* Jeffrey R. Brown, Olivia S. Mitchell, and James M. Poterba, "Mortality Risk, Inflation Risk, and Annuity Products," *NBER Working Paper,* No. 7812 (July 2000), available at www.nber.org/papers/w7812.pdf; Benjamin M. Friedman and Mark J. Warshawsky, "The Cost of Annuities: Implications for Saving Behavior and Bequests." *Quarterly Journal of Economics*, 105(1) (1990): pp. 135–154; and Olivia S. Mitchell, James M. Poterba, Mark J. Warshawsky, and Jeffrey R. Brown, "New Evidence on the Money's Worth of Individual Annuities," *The American Economic Review* (December 1999), pp. 1299–1318, available at business.illinois.edu/ormir/AER%20December%201999.pdf.

annuity will not preserve the annuitant's purchasing power over time.[15] Thus, contrary to the Department's assertion, the proposed method of conversion will not inform participants of their financial readiness for the entirety of retirement.

D. Necessary clarifications for mandatory annuity-based illustration

If the Department retains the requirement to show an annuity-based illustration, the disclosure should explain several key pieces of information. First and foremost, the illustration should include a disclaimer, where applicable, that the illustration does not reflect any particular product and does not reflect actual forms of payment available under the plan. In any case, the statement also should indicate that interest rates prevalent at the participant's retirement date may differ from that used in the illustration and consequently actual payment streams may be higher or lower; that the purchase of an annuity is generally irreversible and therefore participants should consider their need for access to their account balance to handle unexpected expenses and any need for an account balance at death for a participant's survivors (although there may be ongoing payments in the case of a joint and survivor annuity); and that the payment stream typically is not protected from the effects of inflation and does not reflect the actual cost of purchasing an annuity product. This information is crucial to help participants understand the impact of purchasing an annuity at retirement, regardless of whether the plan includes an annuity distribution option.

We also recommend the following changes and clarifications with respect to the annuity method described in the ANPRM. The Department should reconsider the requirement to provide married participants with illustrations of both a single life annuity and a joint and survivor annuity, which will increase the likelihood of participant confusion and information overload. The goals of the illustration can be achieved without providing the joint and survivor payment estimate, while at the same time reducing the costs of compliance. We note that providing the joint and survivor annuity estimate only for married participants could be more expensive than providing it for every participant, due to customization costs. Moreover, differentiating between single and married participants may not be worthwhile, since marital status can change. We also note that a plan administrator's knowledge of a participant's marital status is subject to the accuracy and timeliness of information provided by the participant, which in many cases, such as in the case of terminated participants, is unlikely to remain current over time. It is unclear from the ANPRM the steps a plan administrator must take to obtain and keep current a participant's marital status in order to comply with the rule. Therefore, we recommend either eliminating the joint and survivor component or permitting plans to provide the joint and survivor illustration to all participants regardless of marital status. Otherwise, guidance

[15] The erosion of purchasing power by inflation is a serious long-term threat to retirees. Assuming a relatively conservative 3 percent inflation rate (well below the 4.1 percent average of the last 50 years), the real value of a lifetime income stream will be cut approximately in half in just 23 years. Thus, an income stream from a lifetime income product of $30,000 a year must grow to over $60,000 during this period to provide the same purchasing power. The historical inflation rate is from *Ibbotson SSBI 2013 Classic Yearbook Market Results for Stocks, Bonds, Bills, and Inflation 1926–2012*, Chicago, IL, Morningstar, 2013.

should make clear that the plan administrator can rely on the participant's representation regarding marital status.

Other questions arise for plans that include annuity options because, for these plans, the proposal's safe harbor would require use of the interest rate and mortality assumptions of the plan's annuity product in place of the otherwise specified safe harbor assumptions. The Department should clarify how the special safe harbor rule would work where a plan offers multiple forms of annuities or annuities from multiple providers, or where it offers annuity payouts with respect to only a portion of the participant's account (*e.g.*, balances attributable to money purchase plans that have been merged into the existing plan). For example, the Department could specify that the safe harbor permits but does not require the use of the interest rate and mortality assumptions of the plan's annuity product as an alternative to the otherwise applicable safe harbor assumptions. Finally, we urge the Department to clarify that the special safe harbor rule for plans with an annuity form of distribution would apply only for pure annuity distribution options, where the plan's annuity option matches the characteristics of the annuity described in the Department's safe harbor (*i.e.*, a fixed annuity with no death payouts, guaranteed minimum withdrawal benefits, or guaranteed minimum income benefits).

II. Other Approaches

As discussed above, lifetime income estimates based on an annuity calculation can at best give only a general indication of how much income may be provided in the future and, at worst, can be confusing and potentially misleading to participants. Such limitations should not necessarily dissuade the Department from encouraging the use of income illustrations on participant statements, but should cause it to reflect upon the unintended consequences of adopting a single static methodology to the exclusion of other calculation methods such as systematic withdrawals,[16] life expectancy withdrawals,[17] or other forecasting methods yet to be developed, that may be more reflective of actual participant behavior and less likely to lead to confusion. In reality, DC plan participants have a range of income options, whether in or outside of the plan. In addition to life annuities, these options include installment payments and systematic withdrawal plans, life expectancy withdrawals, longevity insurance, and managed payout products.

Because the factors affecting the decisions on how to manage income and assets in retirement vary across households, there is not one best method of illustration for all participants. Given this unknown variable, it is important to be guided by the goals of such an illustration—to help participants determine whether their retirement savings in the particular plan are on track for their own particular circumstances and to ensure that they appreciate that the savings must last a number of years, rather

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[16] A systematic withdrawal approach, which some financial planners use when advising clients at retirement, would take a certain percentage, such as 3 percent or 4 percent, of the projected final account balance at retirement age. To determine monthly income in the first year of retirement, the amount would be divided by 12.

[17] A life expectancy approach would divide the projected account balance by the life expectancy stated on appropriate tables at a certain age, such as age 65 or 67, and then divide by 12.

than to promote use of a particular financial product as the Department appears to be doing.[18] Moreover, the illustration should not attempt to provide guidance on how to draw down assets in retirement. Decisions on managing assets in retirement are highly individualized and may involve a combination of several different products or strategies and possibly multiple accounts. Such decisions usually are better saved for when the participant is closer to retirement. In this respect, presenting estimated lifetime income on benefit statements is necessarily limited to what can be provided through a participant's current retirement plan. While such an illustration can be helpful to encourage the participant to focus on paycheck replacement and in recognizing that his or her retirement savings will need to last over a long period, employer-provided statements should not be thought of as a substitute for a comprehensive plan that would consider all sources of potential income (including other employer retirement plans), taxes, costs and other issues beyond the scope of any given employer-provided benefit statement.

For these reasons, some providers and plan sponsors have concluded that providing participants with on-line tools and calculators is more beneficial than including on benefit statements income stream estimates based on a pre-determined set of assumptions. Such tools can permit participants to factor in assets outside of the employer-provided plan and other individualized circumstances to make the estimate more meaningful. They are available when the participant is ready to engage in retirement planning information-gathering and may be more cost-effective than a mandatory one-size-fits-all approach.

However, even if illustrations will be required on benefit statements, it is crucial to allow flexibility to determine what type of conversion method would be appropriate for each plan. In many cases, illustrations of income based on systematic withdrawals could better serve DC plan participants than the Department's proposed annuity approach and it is unclear why the Department's approach is being proposed as the sole (and somehow superior) method to help people perceive retirement savings as "a vehicle for income replacement during retirement." Systematic withdrawal approaches for calculating lifetime income, based on modeling designed to achieve high probabilities of income replacement throughout retirement, can be used to illustrate future income streams that more realistically project potential income in a way that reflects likely participant behavior in retirement. This approach also has the advantage of being straightforward and easy to understand from a participant's perspective and, therefore, is likely to elicit favorable behaviors (*e.g.* better savings rates) as a result.[19] We do not suggest that this approach should be mandated in place of the annuity method, but given its merits, it should be included in any safe harbor established by the Department. As discussed below, any safe harbor should be both wide enough to encompass other methods of illustration and flexible enough to cover future innovation.

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[18] *See* footnote 9, *supra.*

[19] *See* Jack VanDerhei and Nevin Adams, "A Little Help: The Impact of On-line Calculators and Financial Advisors on Setting Adequate Retirement-Savings Targets: Evidence from the 2013 Retirement Confidence Survey," *EBRI Notes*, vol. 34, no. 3 (March 2013), pp. 2–15, available at www.ebri.org/pdf/notespdf/EBRI_Notes_03_Mar-13_RCS-PlFrm1.pdf.

III. Need for Flexibility

A. Impact of narrow safe harbor

As discussed above, in addition to mandating the use of an annuity calculation, the Department is considering requiring benefit statements to project a participant's account balance at retirement age. In this regard, the ANPRM notes that the Department is considering a "reasonableness" standard as a general rule (*i.e.*, projections "based on reasonable assumptions taking into account generally accepted investment theories") combined with a regulatory safe harbor which "would prescribe a specific set of assumptions for contributions, returns and inflation."[20] Accordingly, the sole safe harbor that would be provided by a likely rule would be limited to an annuity calculation based on a prescribed set of assumptions. Therefore, despite the availability of the general rule, the Department's proposed mandate and narrow safe harbor will most likely be considered the sole means of safely illustrating potential income in retirement and, consequently, will stifle further development of planning tools geared towards retirement plan participants.

Fear of risk exposure will drive plan sponsors to the safe harbor regardless of what approach best reflects participant behavior, changes in financial planning theory, and the changing realities faced by retirees.[21] This in turn will make plan service providers reluctant to spend resources on any further research and development in this area. Furthermore, liability concerns raised by straying from the proposed approach will effectively invalidate all existing methodologies that do not comport within the narrow lines of what the Department is considering, disadvantaging those forward-looking providers and sponsors who developed and implemented illustration approaches on a voluntary basis. Because the market for retirement plan services is highly competitive and providers have competed based on the quality of the information and services they provide to plans and participants, it would be in participants' best interests to allow such illustrations to be expanded throughout the plan market in a manner that ensures the continued development of the tools.

B. Advantages of flexible voluntary approach

Instead of introducing a new mandate for plans, we recommend that the Department provide guidance to encourage greater use of income stream illustrations; we are confident that more and more plans will begin to offer them. A significant step the Department could take in this regard would be to expand the guidance provided in Interpretive Bulletin 96-1 to clarify that this type of information qualifies as participant education and would not be considered investment advice within the meaning

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[20] Under both the general standard and the safe harbor, the projection would have to include assumptions about future contributions and investment returns and be expressed in current dollars. The following assumptions would be deemed reasonable under the projection safe harbor: continuing contributions at the same annual dollar amount increased 3 percent per year; investment returns of 7 percent per year (nominal); and an inflation rate of 3 percent per year.

[21] This is likely to occur even if the proposed safe harbor were to exist without a mandate to include the illustrations on benefit statements. Even under a voluntary approach, a narrow one-size-fits-all safe harbor would impede the use of other methods.

of ERISA section 3(21)(A)(ii). The Institute previously wrote to the Department suggesting language for revising the Interpretive Bulletin to explicitly cover information on distribution options and retirement income (the submission is attached as an appendix to this letter).[22] This relatively easily implemented change would ensure the continued development and innovation of illustrations of lifetime income in a way that is protective of participants. Complementary to clarifying participant education guidance, the Department also could require any illustrations to be accompanied by a clear statement that the illustration is an estimate and that actual payments in retirement will differ, as well as require disclosure of the assumptions used in projecting the account balance and converting the account balance to an income stream. A simple, broadly-applicable set of guidelines like this would likely generate greater interest and comfort among plan sponsors in providing illustrations.[23]

For those participants whose plans do not provide income stream estimates, it is important to remember that there are a number of widely-available interactive calculators, including the Department's own calculator.[24] If the Department is intent on mandating that benefit statements include some information pertaining to income stream illustrations, a better approach would be to require a reference to the calculator posted on the Department's website, with a link or other instruction on how to access the calculator. This reference should include a link to the Department's other materials regarding retirement planning, so that participants focus not just on the account to which the statement relates, but also other retirement plans and resources.

C. Projection flexibility

Again, we believe a flexible voluntary approach, based on expanding Interpretive Bulletin 96-1, will be more beneficial to participants in DC plans than the rigid mandate outlined in the ANPRM. This applies equally in the context of account projections. We commend the Department for recognizing the value of providing income stream illustrations based on projected future account balances. The principal goal of lifetime income stream disclosure should be to allow participants to see if their retirement savings are on track and to see how their potential actions, such as increasing contributions, would improve their prospects for retirement (consequently increasing the likelihood of their acting on that information). Illustrations based on current account values would provide meaningful information only to those participants close to retirement and would not allow participants further from retirement to assess whether their current elections are on track. Particularly for young or new participants, the illustrations would be meaningless and potentially confusing because their

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[22] *See* Letter from Mary S. Podesta, Senior Counsel – Pension Regulation, Investment Company Institute to Robert Doyle, Director, Office of Regulations and Interpretations, EBSA, dated February 18, 2011, available at www.ici.org/pdf/24982.pdf.

[23] In addition to the approach we suggest, which centers around expanding Interpretive Bulletin 96-1, the Department may determine to propose a regulatory safe harbor to address liability concerns raised by some plan sponsors and other groups. If a regulatory safe harbor is adopted, we strongly urge the Department to ensure that it is broad enough to encompass a variety of illustration methods in addition to annuity-based illustrations, including future innovation in this area.

[24] *See* the Department's Lifetime Income Calculator, available at www.dol.gov/ebsa/regs/lifetimeincomecalculator.html.

account balances likely will be small and generate very small monthly payments. This, in turn, could cause an individual to cash out the retirement account when he or she changes jobs rather than rolling it over to a new employer's plan or individual retirement account. To provide meaningful information to all participants, lifetime income disclosure should take into account and project future contributions and investment returns to an assumed retirement age.

If the Department determines a regulatory safe harbor for projections is necessary, the first part of the general standard for projecting future account balances outlined in the ANPRM ("projections shall be based on reasonable assumptions taking into account generally accepted investment theories") should serve as the safe harbor. The Department should not set forth specific, static assumptions for account growth in a safe harbor. The account growth assumptions being considered—continuing contributions at the same annual dollar amount increased 3 percent per year; investment returns of 7 percent per year (nominal); and an inflation rate of 3 percent per year—arguably appear to be reasonable assumptions for projecting a participant's account to retirement age in today's environment. However, reasonable minds can differ as to the best assumptions, particularly for a given population of plan participants. Such specificity in a safe harbor is likely to lead plans to use the given assumptions even if other assumptions would be more appropriate for their particular participant populations, such as higher or lower wage growth or more conservative returns. In addition, the assumptions will need regular review and adjustment based on changing market conditions. It would be difficult for the Department to adjust the safe harbor assumptions as often as may be needed if they are built into a regulation (particularly when notice and comment periods are required). A regulation should not include components that require regular updating unless absolutely necessary.

The ANPRM's general standard would also require that any projections be expressed in current dollars and take into account both future contributions and investment returns. We agree that any illustration should be expressed in current dollars to avoid misleading participants. To ensure needed flexibility, however, the rule should not require projections to take into account both future contributions and investment returns. In some cases, it may be appropriate to include future contributions without investment returns or vice versa. Examples of such circumstances include an active participant who has chosen to invest his account in conservative low-yield investments, or a terminated participant who remains invested but is no longer making contributions to the plan. Some models are designed to take into account a participant's actual investment allocation when identifying an investment return assumption. While such a customized approach would be more expensive to provide, it should not be discouraged by an inflexible safe harbor. Plan sponsors who want to tailor illustrations specific to each participant should be encouraged to do so.

Again, we reiterate that the most likely effect of a narrow safe harbor with specific assumptions will be that plan sponsors will gravitate to the specified assumptions, thus inhibiting customization and use of otherwise reasonable projection methods that may add value, such as stochastic modeling or other methods that account for market volatility.

If the Department determines to maintain a narrow, inflexible safe harbor approach, it will need to clarify certain questions associated with the assumption that contributions continue at the current annual dollar amount, increased 3 percent per year. In particular, it is unclear what assumptions to apply in the case of a new participant with no contribution history. Also, it seems inappropriate to assume a 3 percent annual increase for participants who contribute the maximum dollar amount of elective deferrals permitted under the Internal Revenue Code or to assume that the prior year's employer contribution amount will continue in plans where employer contribution amounts vary from year to year.

IV. Authority

The Department asks in the ANPRM whether there is a way, short of a regulatory mandate, to get plan administrators voluntarily to provide participants with lifetime income illustrations. We believe the Department could and should encourage these illustrations through expansion of Interpretive Bulletin 96-1, as explained earlier, which would achieve desired results without concern over burdensome regulation. Mandating lifetime income illustrations based on an annuity calculation would arguably exceed the Department's authority granted by Congress under ERISA. The Department indicates that it is relying on sections 105 and 505 for the relevant authority to require benefit statement lifetime income illustrations. Section 105 requires certain information to be included on pension benefit statements, including, in relevant part, the participant's "total benefits accrued" based on the latest available information. We understand that the Department has broad interpretive rulemaking authority under ERISA, and that section 505 permits the Secretary of Labor to prescribe such regulations as the Secretary deems necessary or appropriate to carry out the provisions of title I of ERISA.[25] Nevertheless, we question whether the Department's authority, however broad, would permit the imposition of a significant new burden on the regulated community that is beyond the scope of relevant statutory language or Congressional intent.

Courts continually hold that, even when Congress has delegated legislative authority to an agency, if Congress has spoken directly to the question at issue and the intent is unambiguously expressed, a court should give effect to that intent.[26] Under the *Chevron* doctrine, "[i]f Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation."[27] In this context, Congress arguably has spoken directly to the question at issue—the content of pension benefit statements—and it does not appear that it left an explicit gap for the agency to fill. Section 508 of the Pension Protection Act of 2006 enumerates specific items to be included on pension benefit statements, but does not in any way contemplate expressing account balances in the form of an annuity. Plugging a participant's account

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[25] ERISA section 109 also provides that the Department may prescribe the format and content of any report, statements, or documents required to be furnished or made available to plan participants and beneficiaries.

[26] *See Matinchek v. John Alden Life Ins. Co.*, 93 F.3d 96, 100 (3d Cir. 1996).

[27] *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837, 843-44 (1984).

balance into an arbitrary formula that attempts to (with understood limitations) depict payments under a particular financial product[28] does not equate to providing the participant's "total benefits accrued." We encourage the Department to explore further whether its imposition of a mandated annuity calculation would fall outside the Department's authority under sections 105, 109, and 505, given Congress' specificity with respect to the content of pension benefit statements and the significant burdens associated with the proposed rule, as described earlier in this letter. Instead of a mandate, guidance that supports voluntary income illustrations would be a welcome improvement over the status quo.

V. Costs

The Department states in the ANPRM that there may be little, if any, additional cost associated with the proposed regulatory framework, at least for plans already providing lifetime income illustrations on benefit statements. For other plans, the Department states that adding lifetime income illustrations to benefit statements should not significantly increase the cost of such statements. We are surprised at the Department's preliminary assessment of the cost burdens associated with a requirement to add a new individualized, multi-faceted component to a quarterly disclosure report. Contrary to the Department's assessment, our members have expressed concern that the costs associated with implementing the proposal described in the ANPRM will be significant (even for those plans already providing estimates), since they will have to change their existing methods and systems to conform to the Department's approach—in some cases going from a carefully constructed, well-received effective illustration to a one-size-fits-all safe harbor illustration that may not be as effective or informative for participants. Furthermore, changes in 10-year Treasury rates will require regular system updates.

We believe this requirement would be particularly burdensome if applied to small employers. Many small plans do not utilize integrated recordkeeping system products, but instead maintain individual retail accounts with one or more investment providers and either generate benefit statements internally or utilize a local small third party administrator to do so. The costs for these small plans to add lifetime income illustrations to their benefit statements will likely be onerous. If maintaining a retirement plan becomes too costly and complex, small employers may opt to stop offering plans to their employees. Although we urge the Department not to adopt a mandatory illustration for any plan, we recommend that, at a minimum, small plans (*e.g.*, plans with 100 or fewer participants) be exempt from the rule.

While it is difficult to quantify the costs associated with the proposed requirement, in preparing its cost-benefit analysis associated with any proposal issued in response to the ANPRM, we urge the Department to duly analyze the costs involved in modifying and maintaining systems necessary for performing the required calculations, how these costs would impact small plans, as well as the requirement's likely negative impact on future innovation.

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[28] Although we would disagree that there is a need to provide special promotion of annuities through changes to the DC plan regulatory framework, this is a policy goal that more appropriately rests with Congress.

* * *

Thank you for considering our comments on this very important topic. The Institute is available to provide additional information and clarification regarding these matters. Please do not hesitate to contact Elena Chism at 202-326-5821 (elena.chism@ici.org) or the undersigned at 202-326-5920 (david.abbey@ici.org).

Sincerely,

/s/ David M. Abbey

David M. Abbey
Senior Counsel, Pension Regulation

cc: J. Mark Iwry, Department of the Treasury

Attachment

INVESTMENT COMPANY INSTITUTE

1401 H Street, NW, Washington, DC 20005-2148, USA
202/326-5800 www.ici.org

Mary S. Podesta
SENIOR COUNSEL – PENSION REGULATION

202/326-5826 FAX: 202/326-5841
podesta@ici.org

February 18, 2011

Mr. Robert Doyle
Director, Office of Regulations and Interpretations
U.S. Department of Labor, Employee Benefits Security Administration
200 Constitution Ave, N.W., Suite N-5655
Washington, DC 20210

Re: Interpretive Bulletin 96-1

Dear Mr. Doyle:

In a comment letter on the Request for Information on lifetime income options issued in February 2010 by the Departments of Labor and Treasury, and at the follow-up public hearing held in September 2010, the Investment Company Institute[1] urged the Department of Labor to expand Interpretive Bulletin 96-1 to encompass education on the distribution or "decumulation" phase. We recommended that DOL extend IB 96-1 or provide other guidance that makes clear that sponsors and service providers may convey the general advantages and disadvantages of various distribution forms without triggering fiduciary liability. This letter provides more specific recommendations.

IB 96-1 has been highly successful in establishing clarity on how plans and their service providers can provide education and information to participants without being deemed to provide investment advice under section 3(21) of ERISA. Since its publication, IB 96-1 has helped significantly increase the availability and use of participant education materials and tools. We understand the Department is open to broadening the examples provided in IB 96-1 to include distribution-phase

[1] The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $12.68 trillion and serve over 90 million shareholders.

information and tools, so that sponsors and providers can offer more information about income and distribution options without triggering fiduciary concerns. Expanding the Bulletin to cover distribution decisions and retirement income approaches would be simple and logical, and would have the same significant positive impact on the provision of educational materials geared toward the distribution phase as the original Bulletin had on the provision of investment education materials generally.

Revisiting IB 96-1 is particularly timely, in light of the Department's proposed revision of the definition of investment advice fiduciary under 29 C.F.R. §2510.3-21. If finalized as proposed, the new definition would significantly widen the scope of potential providers of fiduciary investment advice. It thus becomes even more important to have clear guidance on what types of educational information and materials may be provided without triggering fiduciary status. Similarly, we believe it is important for the Department to clarify that the same types of educational information and materials described in IB 96-1 (and any future amendments to that Bulletin) in the context of participant-directed individual account plans, may be provided to IRA owners without triggering fiduciary status.

IB 96-1 currently sets out examples of four categories of information and materials that when furnished to participants would not constitute the rendering of investment advice under ERISA section 3(21): plan-specific information, general financial and investment information, asset allocation models, and interactive investment materials. The examples focus mainly on helping participants and beneficiaries make investment decisions within the context of saving for retirement. We believe the revisions we recommend (which would add retirement income examples) are within the scope of services originally contemplated by IB 96-1 and would not alter the fundamental nature of the guidance. In fact, the Bulletin already states that the safe harbor covers information and materials about estimating future retirement income needs.[2]

To make clear that providing information and materials on distribution and retirement income decisions would not be considered fiduciary investment advice, we recommend the Department add a new category in paragraph (d) of the Bulletin. Our suggested new language would fit within the current structure of the Bulletin with only minor conforming changes needed to existing language (including re-titling paragraph (d) as follows):

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[2] Moreover, the Bulletin specifies that the examples identified do not preclude providing other types of information, materials and educational services.

"(d) Investment and retirement income education.

* * *

(5) Retirement income information. Information, materials, and tools that inform a participant or beneficiary about distribution options and income in retirement. The information, materials and tools may be plan-specific, generally-applicable, and/or interactive, as described in subparagraphs (d)(1)-(d)(4) above.

(i) Plan information. Information on the benefits prior to retirement of identifying retirement income needs and other objectives in retirement and information, including comparative material, about the general advantages and disadvantages of distribution forms offered under the plan, including the tax and other financial consequences of different distribution options. For example, a lump sum distribution that is rolled over to another retirement plan or IRA allows a participant to consolidate assets, but the participant will lose any benefits associated with remaining a participant in X plan; an annuity distribution will provide guaranteed payments in retirement (subject to the plan's or insurer's ability to pay) but the participant may have less flexibility with respect to the money in the plan; installment payments allow a participant to determine the rate at which to withdraw assets from the plan, based on his or her own particular circumstances, and any money the participant currently does not need can remain invested in the plan (but the remaining assets are subject to market risk and there is no guarantee that the return on the account will allow the anticipated payments to continue as planned).

(ii) General information. Information and materials that inform a participant or beneficiary about: (A) methods and strategies for managing assets in retirement (e.g., systematic withdrawals, managed payout products, annuities and other guaranteed products), including those that could be used outside the plan; (B) investment alternatives that may be available in retirement (including investment options under the plan) and the general advantages or disadvantages of the investment alternative (without reference to the appropriateness of any individual investment alternative for a particular participant or beneficiary); (C) how to calculate the income stream that could be generated by the participant's account balance; (D) the various risks faced by retirees (e.g., longevity, market/interest rate, inflation, health and other emergency expenses) and how various products or strategies address these risks; (E) how to do a rollover, when a rollover might be advantageous, and entities that may accept rollovers; and (F) how to proceed with the purchase of an income annuity or other product and when such a purchase might be advantageous.

(iii) Retirement income models. Information and materials (e.g., sample calculations, estimates or case studies) that provide a participant or beneficiary with models, available to all plan participants and beneficiaries, of distribution methods or income streams for hypothetical individuals with different time horizons, risk profiles and ranges of assets, where: (A) such models or estimates are based on generally accepted draw-down theories that take into account average life expectancies and the historic returns of different asset classes (e.g., equities, bonds, or cash) over defined periods of time; (B) all material facts and assumptions on which such models or estimates are based (e.g., retirement ages, life expectancies, income levels, financial resources, replacement income ratios, inflation rates, rates of return, and other features and rates specific to income annuities or systematic withdrawal plans) accompany the models; (C) to the extent that a model or estimate identifies any specific option available under the plan, the model is accompanied by a statement indicating that other options may be available under the plan (or outside the plan) that may produce different calculations or estimates, and identifying where information on those options may be obtained; and (D) the models or estimates are accompanied by a statement indicating that, in applying particular models or estimates to their individual situations, participants or beneficiaries should consider their other assets, income, and investments (e.g., equity in a home, Social Security benefits, IRA investments, savings accounts, and interests in other qualified and non-qualified plans) in addition to their interests in the plan, to the extent those items are not taken into account in the model or estimate.

(iv) Interactive tools and services. Questionnaires, worksheets, software, and similar materials or services which provide a participant or beneficiary the means to estimate the retirement income stream that could be generated by an actual or hypothetical account balance, where: (A) such materials are based on generally accepted investment theories that take into account the historic returns of different asset classes (e.g., equities, bonds, or cash) over defined periods of time; (B) there is an objective correlation between the income stream generated by the materials and the information and data supplied by the participant or beneficiary; (C) all material facts and assumptions (e.g., retirement ages, life expectancies, income levels, financial resources, replacement income ratios, inflation rates, rates of return, and other features and rates specific to income annuities or systematic withdrawal plans) which may affect a participant's or beneficiary's assessment of the different income streams accompany the materials or are specified by the participant or beneficiary; (D) the materials either take into account other assets, income, and investments (e.g., equity in a home, IRA investments, savings accounts, and interests in other qualified and non-qualified plans) or are accompanied by a statement indicating that, in assessing the adequacy of an estimated income stream, participants or beneficiaries should consider their other assets, income, and investments in addition to their interests in the plan. Questionnaires, worksheets, software, and similar materials or services which allow a participant or

beneficiary to evaluate distribution options or vehicles by providing information covered under clauses (i) and (ii) above on an interactive basis.

As in subparagraphs (d)(1)-(d)(4), the information, materials and tools described above do not contain either "advice" or "recommendations" within the meaning of 29 CFR 2510.3-21(c)(1)(i) and , accordingly, would not constitute "investment advice" for purposes of section 3(21)(A)(ii) of ERISA."

Conforming Changes

The Department should make minor conforming changes to other sections of the Bulletin to reflect the expansion to cover education and information on distribution forms and retirement income planning. For example, in paragraph (b) the Department should mention the importance of making informed distribution decisions and that the Department is clarifying the applicability of ERISA section 3(21)(A)(ii) and 29 C.F.R. 2510.3-21(c) to the provision of educational information on distribution options and retirement income decisions, in addition to investment-related educational information, to participants and beneficiaries in participant-directed individual account plans. Similarly, we would expand the subparagraph references at the end of paragraph (d) to include the proposed new subparagraph (d)(5).

* * *

Thank you for considering these recommendations to update the valuable guidance provided in IB 96-1. We believe the changes we outline would be a positive step toward the Department's goal of helping retirees make informed, appropriate choices to ensure that their savings last a lifetime. We welcome the opportunity to discuss these recommendations further or to provide additional information to you and your staff as you work on these important issues.

Sincerely,

Mary S. Podesta

Mary S. Podesta
Senior Counsel – Pension Regulation