ASPPA®
WORKING FOR AMERICA'S RETIREMENT

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August 7, 2013

Mr. John J. Canary, Director
Office of Regulations and Interpretations
US Department of Labor
Employee Benefits Security Administration
Frances Perkins Bldg., Rm.  N-5655
200 Constitution Ave., NW
Washington DC 20210

**Re: Advanced Notice of Proposed Rulemaking RIN 1210-AB20**

Dear Mr. Canary:

The American Society of Pension Professionals & Actuaries (ASPPA) is pleased to provide comment with respect to the Advance Notice of Proposed Rulemaking (ANPRM) regarding a potential rule to require a participant's accrued benefit in a defined contribution plan to be expressed on a participant benefit statement as an estimated lifetime stream of payments.[1]

ASPPA is a national organization of more than 16,000 retirement plan professionals who provide consulting and administrative services for qualified retirement plans covering millions of American workers. ASPPA members are retirement professionals of all disciplines, including consultants, investment professionals, administrators, actuaries, accountants and attorneys. Our large and broad-based membership gives ASPPA unique insight into current practical applications of ERISA and qualified retirement plans, with a particular focus on the issues faced by small- to medium-sized employers. ASPPA's membership is diverse but united by a common dedication to the employer-sponsored retirement plan system.

## Background

ASPPA has long been supportive of efforts to increase the retirement readiness of participants in 401(k) and other types of retirement plans. It is an issue of great concern to our members, the plan sponsors with which they work and the American workers covered by their plans. Understanding the role of lifetime income distribution options is an important element in retirement planning. ASPPA previously provided comments on this topic in response to the joint

[1] 78 Fed. Reg. 26727 (May 8, 2013).

Request for Information on Lifetime Income Options by the Department of Labor (DOL) and the Department of the Treasury.[2]

## Summary

The following is a summary of ASPPA's recommendations which are described in greater detail in the **Discussion** section which follows.

I. **Benefit Statement Information Should Be Concise and Easy to Administer** – Participants receive a great deal of information about their plan, their account balance, and, for plans with self directed accounts, the available investments. In the context of the many disclosures that are required today, it is important that the lifetime income information be direct and to the point so participants can get a general sense as to the monthly lifetime income that can be expected from their savings. The calculation on the benefit statement should be focused, concise and provide information based on three prescribed earnings assumptions. For more individualized calculations, participants should be directed to either the DOL online calculator or a similar online calculator provided by a private service provider.

II. **Safe Harbor for Calculations Should Be Included but Modified** - The proposal must include a "safe harbor" for the assumptions used in calculating the lifetime income stream. The assumptions, however, should be modified and limited (as described below) with the opportunity for more varied assumptions provided through an online calculator.

III. **DOL Online Calculator Should Be Enhanced and Its Use Encouraged** - The DOL online calculator should be enhanced and its use or the use of a private service provider online calculator should be encouraged so participants can individualize the assumptions used to calculate potential lifetime income distribution streams.

## Discussion

### I. Benefit Statement Information Should Be Focused and Easy to Administer.

The goal of the proposal is one that is strongly supported by ASPPA's membership. It is critically important that employees understand the concept of lifetime income and the role it may play in retirement planning. This is particularly true given today's prevalence of defined contribution retirement savings plans. Describing these lifetime income concepts in a meaningful way, however, is at best a challenge and some may say impossible. It is, therefore, important that the benefit statement disclosure work in tandem with an online calculator of either a private service provider or the DOL to better enable participants to understand that data they are receiving.

To ensure participants get the basic picture of what their savings might provide in the way of a lifetime income distribution, the benefit statement should include a straightforward calculation of

[2] 75 Fed. Reg. 5253 (February 2, 2010).

what the participant’s current account balance, projected for earnings and discounted for inflation, could be expected to provide at a prescribed age (65 or Social Security Normal Retirement Age (SSNRA)). For purposes of the benefit statement disclosure, the projected account balance should not be increased for future contributions, whether by the employer or employee. Our members are greatly concerned about the administrative difficulty of including a calculation assumption for future contributions that is a function of the most recent contribution amount, particularly in plans where contributions may fluctuate from year to year. This type of calculation may imply to participants that future contributions, whether by the employer or the employee, are assured and certain for purposes of retirement planning, despite the fact that they are rarely guaranteed. Including these uncertain amounts in a summary calculation on a benefit statement will cause participants to have a false sense of security.

Future contributions may and should be considered through the affirmative action of a participant’s use of an enhanced online calculator that separately accounts for employer and employee contributions. The online calculator is the better place to explain to participants the uncertainty of future contributions. If the participant inputs the contribution amounts, he or she will be clearly aware of the impact that future contributions will have on his or her retirement planning.

In addition to there being uncertainty about future contributions, there is no guarantee what the future investment returns will be. If the only projection provided on the benefit statement is based on a 7% nominal rate of return, the participant may infer that this is a guaranteed rate of return, even if there are warnings to the contrary. For this reason, the benefit statement calculation should be shown using three assumed nominal rates of return. In addition to the 7% nominal return under the ANPRM, projections should be made and shown on the benefit statement for a 5% and 3% nominal annual investment return. These amounts should be discounted for inflation at the 3% rate included in the ANPRM. By showing the calculation on the benefit statement using three separate earnings assumptions, participants will better recognize that future earnings are unpredictable.

To reduce administrative costs associated with collecting data, the projection should be limited to a single life annuity and a 50% survivor annuity assuming the spouse is the same age as the participant. The calculation should only be required to be given annually and the benefit statement should include a clear and definitive warning, based on model language from the DOL, that the calculation is an estimate based on the assumptions provided and that it is not a guarantee of future earnings or benefits. For plans utilizing vesting schedules, it should include a statement that the actual benefit is subject to the schedule. The benefit statement should also strongly encourage participants to enhance and individualize the calculation assumptions by utilizing the online calculator provided by the DOL or a private service provider.

ASPPA’s recommendations are intended to facilitate the provision of useful information and to avoid overloading the benefit statement. The calculation as described above, with the modified assumptions described below, will avoid costly individualization beyond the participant’s account balance and attained age. It would provide a reasonable estimate of the lifetime income stream that the account balance might provide. More importantly, it would direct the participant to an online calculator where education and financial modeling tools may be individualized to the participant's needs and estimations of future events, such as future contributions and investment returns.

**ASPPA recommends** that the lifetime income stream disclosure be focused and concise. The estimates should be calculated using 3%, 5%, and 7% as the three nominal rates of return. The calculation, however, should be done without any assumption that there will be future contributions by the employer or the employee. For more individualized calculations, participants should be directed to either an enhanced DOL online calculator or a similar online calculator provided by a private service provider.

## II. Safe Harbor for Calculations should be Included but Modified.

The assumptions used to calculate the potential lifetime income stream that may be provided by a participant's account balance can have a dramatic impact on the result. In particular, the period of time during which an account balance is invested and the investment earnings that are expected to be generated will have a significant effect on the result. Obviously, the expected lifetime benefit will increase as the assumed investment period grows longer and/or the assumed rate of investment returns grows higher. Of these two most important variables, a fairly safe and reasonable assumption of the length of the investment period can be made is that it will extend until the participant reaches age 65 or SSNRA. The investment earnings assumption is more problematic.

As is universally acknowledged and part of many securities laws disclosures, "past performance is no guarantee of future returns." As discussed in the preamble to the ANPRM, investment earning assumptions can be problematic. ASPPA members are concerned about the potential detrimental behavioral effect if the earnings assumption used is higher than the actual returns so that the projected retirement account balance actually decreases each year.[3] On the other hand, if the investment earnings assumption is too low, it presents an unrealistic picture that lifetime savings goals cannot reasonably be attained, which in turn might discourage some participants from saving at all. Additionally, earnings assumptions are inherently flawed because they are not individualized to the actual asset allocations of the participant receiving the statement.

The uncertainty of estimating future investment returns can be ameliorated by presenting the projected benefit using a range of investment rates of return.. As described above, the projected account balance should be shown assuming 3%, 5%, and 7% as the nominal rate of investment returns. The discount for inflation should be 3% in each case. These three alternatives would allow the participant to choose the result that best matches the participant's own expectations for future returns. To the extent there are any internal annuities held by the plan, the participant could periodically request that the plan administrator provide the calculation or can perform an estimate using the enhanced on-line calculator (see Section III below). The time period for the projection should be a static age rather than dependent on plan language defining normal retirement age. In a defined contribution plan, the plan's stated normal retirement age typically has little impact on a participant's accrued benefit or actual date of retirement. Using age 65 or the participant's SSNRA is more in line with the average American's expectations for retirement.

[3] *See*, 78 Fed. Reg. 26733, fn. 24 (May 8, 2013).

It would simplify the determination of the accumulation time period because plan language defining normal retirement age would not need to be reviewed.

To keep administrative costs to a minimum, the form of distribution should be limited to a single life annuity and a 50% joint and survivor annuity for a spouse of the same age. Additionally, for plan sponsors without access through other means, the DOL should periodically release a table of conversion factors that could be used to perform the calculation. This will lead to consistent results from plan sponsor to plan sponsor.

As mentioned in the preamble to the ANPRM, two reasons many plan sponsors have been reluctant to provide a lifetime income calculation in the past are the potential cost of doing so and the fear of litigation.[4] If the DOL intends to make the disclosure of the lifetime income calculation a mandatory element of a participant's benefit statement, then it is absolutely critical that the regulation include model language that can be used to warn recipients that the projected benefits shown and the assumptions used are estimates. The model language would make it clear that to the extent the calculation was based on the assumption promulgated by the DOL or otherwise reasonable assumptions, then the plan sponsor and administrator have no liability for what actual results may provide.

**ASPPA recommends** that the proposal include a "safe harbor" that may be relied upon by plan sponsors for the assumptions used in calculating the lifetime income stream, and that those assumptions be modified as described herein to facilitate the disclosure regime in a cost-effective manner.

## III. DOL Online Calculator Should Be Enhanced and Its Use Encouraged

In conjunction with the release of the ANPRM, the DOL announced the availability of an online calculator. Located on the DOL website, the interactive calculator allows participants to make the calculations contemplated by the ANPRM. ASPPA commends the DOL for making a tool such as this available to American workers. The online calculator can be even more beneficial through application of some upgrades to its capabilities.

As expressed in our earlier comments, the estimation of future earnings is inherently a guessing game when applied to individual participants. The benefit statement can counter that flaw by using a range of three possible nominal rates of investment return. The online calculator can do that even more effectively by allowing the individual to input a much broader range of investment return assumptions. It should also allow for individuals to include a projection for future employee and employer contributions. As discussed above, inclusion of a future contribution assumption on the benefit statement is administratively costly and may lead to unfulfilled expectations and ultimately a retirement savings shortfall. The calculator is the better place to allow for consideration of future contributions as it would require a participant to give considered thought as to whether such amounts are likely to be available at retirement. It would also allow the participant to see the impact of higher or lower contribution amounts on the expected benefit. This would hopefully motivate participants to increase their own savings rate in order to increase the expected benefit at retirement.

[4] 78 Fed. Reg. 26736 (May 8, 2013).

The online calculator could be a very valuable resource that could be applied to increase the retirement readiness of American workers. To fulfill this potential, it should be enhanced to be more educational and to allow consideration of many different assumptions including retirement assets held outside of the plan, such as in an IRA.[5] There are many such calculators currently being made available by private service providers.

**ASPPA recommends** that the DOL online calculator be enhanced and its use or the use of a private service provider online calculator should be encouraged so participants can individualize the assumptions used to calculate potential lifetime income distribution streams.

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These comments were prepared by ASPPA's Government Affairs Committee. Please contact Craig P. Hoffman, Esq., APM, General Counsel and Director of Regulatory Affairs, at (703) 516-9300 if you have any comments or questions on the matters discussed above. Thank you for your time and consideration.

Sincerely,

/s/
Brian H. Graff, Esq., APM
Executive Director/CEO

/s/
Judy A. Miller, MSPA
Chief of Actuarial Issues

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[5] Other examples of additional variable inputs would be actual age for the participant's spouse, a different expected retirement age, different survivor annuity percentages, etc..