DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2520

RIN 1210-AB20

Pension Benefit Statements

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Labor (Department) is developing proposed regulations regarding the pension benefit statement requirements under section 105 of the Employee Retirement Income Security Act of 1974, as amended (ERISA). This advance notice of proposed rulemaking (ANPRM) describes certain rules the Department is considering as part of the proposed regulations. The rules being considered are limited to the pension benefit statements required of defined contribution plans. First, the Department is considering a rule that would require a participant's accrued benefits to be expressed on his pension benefit statement as an estimated lifetime stream of payments, in addition to being presented as an account balance. Second, the Department also is considering a rule that would require a participant's accrued benefits to be projected to his retirement date and then converted to and expressed as an estimated lifetime stream of payments. This ANPRM serves as a request for comments on specific language and concepts in advance of proposed regulations. The Department intends to

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consider all reasonable alternatives to direct regulation, including whether there is a way short of a regulatory mandate that will ensure that participants and beneficiaries get constructive and helpful lifetime income illustrations.

DATES: Comments are due on or before [Insert date that is 60 days after publication in the Federal Register].

ADDRESSES: You may submit comments, identified by RIN 1210–AB20, by one of the following methods:

- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- E-mail: e-ORI@dol.gov. Include RIN 1210-AB20 in the subject line of the message.
- Mail: Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N-5655, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, Attention: Pension Benefit Statements Project.

Instructions: All submissions received must include the agency name and Regulation Identifier Number (RIN) for this rulemaking. Comments received will be posted without change to *http://www.regulations.gov* and *http://www.dol.gov/ebsa,* and made available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue, NW, Washington, DC 20210, including any

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personal information provided. Persons submitting comments electronically are encouraged not to submit paper copies.

FOR FURTHER INFORMATION CONTACT: Suzanne Adelman or Tom Hindmarch at (202) 693-8500. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

This ANPRM has two main sections followed by Appendix A. The first section, entitled "Background," contains the relevant statutory language on which the Department is basing the ANPRM and a discussion of the Department's general policy concern underlying the ANPRM. The second section, entitled "Overview of Intended Regulations," presents questions, ideas, and potential language on certain rules the Department is considering as part of proposed regulations under section 105 of ERISA. Each of these sections has multiple subsections. Appendix A contains an example that demonstrates how to calculate a lifetime income illustration, using the regulatory framework in this ANPRM, for a hypothetical male participant, age forty-five, who has a spouse. In conjunction with the publication of this ANPRM, the Department also has made available on its website an interactive calculator that calculates lifetime income streams in accordance with such regulatory framework. This calculator is at www.dol.gov/ebsa/regs/lifetimeincomecalculator.html.

I. Background

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A. Section 105 of ERISA

Section 105(a) of ERISA, as amended by section 508 of the Pension Protection Act of 2006 (Pub. L. 109-280), requires administrators of defined contribution plans to provide periodic pension benefit statements to participants and certain beneficiaries. 29 U.S.C. 1025(a). Benefit statements must be provided at least annually. If the plan permits participants and beneficiaries to direct their own investments, however, benefit statements must be provided at least quarterly. Section 105(a)(2) of ERISA contains the content requirements for benefit statements. Section 105(a)(2)(A)(i)(I) requires a benefit statement to indicate the participant's or beneficiary's "total benefits accrued." The proposed rules being considered by the Department are pursuant to this section of ERISA, as well as ERISA section 505. Section 505, in relevant part, provides that the Secretary may prescribe such regulations as the Secretary finds necessary or appropriate to carry out the provisions of title I of ERISA. 29 U.S.C. 1135. Collectively, these provisions provide the authority on which the Department is considering a rule that would require a participant's "total benefits accrued" to be expressed as an estimated lifetime income stream of payments, in addition to being presented as an account balance.

B. General Policy Concern Being Addressed by this ANPRM

Workers today face greater responsibility for managing their assets for retirement, both while employed and during their retirement years. This greater responsibility is primarily a result of the trend away from defined benefit plans, where a worker's retirement benefit is typically a specified monthly payment for life, and toward defined contribution plans, where

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typically contribution, asset allocation, and drawdown decisions are assigned to the participant.[1] Managing finances in order to provide income for life for oneself and one's spouse is a tremendously difficult but important task. The rule under consideration by the Department would provide participants with information that the Department believes will ease the burden of this task.

Research suggests that people want to continue their current lifestyle after they retire and are concerned about having adequate precautionary savings for emergencies or illness.[2] Individuals may not understand, however, what savings, asset allocation, and drawdown decisions are necessary to achieve both of these goals. In particular, participants may have difficulty envisioning the lifetime monthly income that can be generated from an account balance.

In a comment letter to the Department, a national non-profit trade association of investment managers, consultants, recordkeepers, insurance companies, plan sponsors and others stated that "[t]ranslating the amount saved into a future income estimate will serve to remind

[1] The number of private defined benefit plans has fallen from just over 103,000 in 1975 to fewer than 48,000 in 2009 (a drop of over 50 percent in the last 34 years). The number of private defined contribution plans has grown from just over 207,000 in 1975 to almost 660,000 in 2009 (an increase of over 200 percent for the same time period). See Employee Benefits Security Administration, U.S. Department of Labor, *Private Pension Plan Bulletin Historical Tables and Graphs* (Mar. 2012), Table E1: Number of Pension Plans by type of Plan, 1975-2009, at http://www.dol.gov/ebsa/pdf/historicaltables.pdf.

[2] Some individuals may also want to leave bequests to their children and other heirs; however, the bequest motive may be less salient in retirement savings and spending decisions than other priorities. See Jonathan Skinner and Stephen P. Zeldes, *The Importance of Bequests and Life-Cycle Saving in Capital Accumulation: A New Answer,* American Economic Review 92(2): 274- 279 (May 2002) and Jeffrey R. Brown, Jeffrey R. Kling, Sendhil Mullainathan and Marian V. Wrobel, *Why Don't People Insure Late Life Consumption? A Framing Explanation of the Under-Annuitization Puzzle*, American Economic Review 98(2): 304-309 (May 2008).

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participants that their DC plan accumulations are needed to generate income throughout retirement. Additionally, when they see that $100,000 may only generate $700 of monthly income for life, the participant may be incented to save more aggressively."[3] The Department believes that expressing a participant's current and projected account balances as lifetime income streams would allow participants to make more informed retirement planning decisions. Recent research supports the hypothesis that providing participants with customized information on the decumulation phase can influence contribution behavior.[4]

In view of the importance of this issue, the Department and the Department of the Treasury, on February 2, 2010, published a request for information, entitled "Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans" (RFI). See 75 FR 5253. As stated in the summary to the RFI, the Departments are reviewing the rules under ERISA and the plan qualification rules under the Internal Revenue Code of 1986 (Code) to determine whether, and, if so, how, the Departments could or should enhance, by regulation or otherwise, the retirement security of participants in employer-sponsored retirement plans and in individual retirement arrangements (IRAs) by facilitating access to, and use of, lifetime income or other arrangements designed to provide a lifetime stream of income after retirement. The RFI contained 39 questions on a wide array of subjects.

[3] See comment no. 656 in response to the Department's Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans. Comments are available on the Department's Web Site at www.dol.gov/ebsa/regs/cmt-1210-AB33.html.

[4] See Goda, Gopi Shah, Colleen Flaherty Manchester, and Aaron Sojourner, "What Will My Account Really Be Worth? An Experiment on Exponential Growth Bias and Retirement Saving," NBER Working Paper 17927, March 2012. See also ACLI Retirement Choices Study, Greenwald & Associates, April 2010 (Study revealed that 60 percent of respondents say that if the illustration of the participants' lifetime income generated by their retirement plan account would not be enough to meet their retirement needs, they would "start saving more immediately.")

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The Department received in excess of 700 comments in response to the RFI. The Departments subsequently held a joint hearing on lifetime income options for retirement plans on September 14 and 15, 2010, in order to further consider several specific issues. Comments received in response to the RFI, written hearing testimony submitted to the Department, and the Department's official hearing transcripts are available on the Department's Web Site at www.dol.gov/ebsa/regs/cmt-1210-AB33.html.

The RFI contained a section entitled "Disclosing the Income Stream That Can Be Provided From an Account Balance." Within this section, the RFI contained the following questions relevant to this ANPRM:

> 21. Should an individual benefit statement present the participant's accrued benefits as a lifetime income stream of payments in addition to presenting the benefits as an account balance?
>
> 22. If the answer to question 21 is yes, how should a lifetime stream of income payments be expressed on the benefit statement? For example, should payments be expressed as if they are to begin immediately or at specified retirement ages? Should benefit amounts be projected to a future retirement age based on the assumption of continued contributions? Should lifetime income payments be expressed in the form of monthly or annual payments? Should lifetime income payments of a married participant be expressed as a single-life annuity payable to the participant or a joint and survivor-type annuity, or both?
>
> 23. If the answer to question 21 is yes, what actuarial or other assumptions (e.g., mortality, interest, etc.) would be needed in order to state accrued benefits as a lifetime stream of payments? If benefit payments are to commence at some date in the future, what interest rates (e.g., deferred insurance annuity rates) and other assumptions should be applied? Should an expense load be reflected? Are there any authoritative tools or sources (online or otherwise) that plans should or could use for conversion purposes, or would the plan need to hire an actuary? Should caveats be

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> required so that participants understand that lifetime income payments are merely estimates for illustrative purposes? Should the assumptions underlying the presentation of accrued benefits as a lifetime income stream of payments be disclosed to participants? Should the assumptions used to convert accounts into a lifetime stream of income payments be dictated by regulation, or should the Department issue assumptions that plan sponsors could rely upon as safe harbors?

After reviewing the responses to these questions, the Department agrees with those commenters who see a need to change the perception of retirement savings from simply a savings account to a vehicle for income replacement during retirement. Showing a participant the monthly retirement income he or she will receive from his or her retirement plan may help change that perception and, perhaps as suggested by many commenters, motivate workers to increase their savings.[5] We also understand from the commenters that, due to the broadening recognition of the importance of improving participants' retirement preparedness, a growing number of plans already provide a lifetime income illustration and often provide access to other lifetime income planning tools or retirement calculators.

Therefore, as part of the proposed regulations under section 105 of ERISA, the Department is considering the following ideas:

- A participant or beneficiary's pension benefit statement would contain that individual's current account balance. In addition, the current account balance would be converted to an estimated lifetime income stream of payments. The conversion illustration would

[5] Research also suggests that a small change in information presented on the benefit statement can have a significant impact on savings behavior. See Gopi Shah Goda, Colleen Flaherty Manchester, and Aaron Sojourner, *What Will My Account Really Be Worth? An Experiment on Exponential Growth Bias and Retirement Saving,* NBER Working Paper No. 17927 (March 2012) at http://www.nber.org/papers/w17927.

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assume the participant or beneficiary had reached normal retirement age under the plan as of the date of the benefit statement, even if he or she is much younger.

- For participants who have not yet reached normal retirement age, the pension benefit statement would show the projected account balance, as well as the lifetime income stream generated by it. A participant or beneficiary's current account balance would be projected to normal retirement age, based on assumed future contribution amounts and investment returns. The projected account balance would be converted to an estimated lifetime income stream of payments, assuming that the person retires at normal retirement age.

- Both lifetime income streams (*i.e.*, the one based on the current account balance and the one based on the projected account balance) would be presented as estimated monthly payments based on the expected mortality of the participant or beneficiary.[6] In addition, if the participant or beneficiary has a spouse, the lifetime income streams would be presented based on the joint lives of the participant or beneficiary and his or her spouse.

- Pension benefit statements would contain an understandable explanation of the assumptions behind the lifetime income stream illustrations. In addition, pension benefit statements would contain a statement that projections and lifetime income stream illustrations are estimates and not guarantees.

[6] The term "expected mortality" here refers to the probabilities in a mortality table, as opposed to life expectancy which is a single number that can be calculated from those probabilities.

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The Department anticipates that if pension benefit statements were to have these key features, participants and beneficiaries might be in a better position to assess their retirement readiness and to prepare for their retirement.[7] An illustration based on a person's current account balance will provide an immediate baseline to judge their present retirement readiness, i.e., "If I were old enough to retire today, this would be my monthly payment for life." An illustration based on a projected account balance will show, not what the participant has saved to date, but what he or she might realistically expect to have at retirement, i.e., "In twenty years, this could be my monthly payment for life at my current savings rate."

II. Overview of Intended Regulations

This Overview section of the ANPRM presents questions, ideas, and potential language on certain rules the Department is considering as part of proposed regulations under section 105 of ERISA. The goal is to provide an early opportunity for interested stakeholders to provide advice and input into the policy development of future proposed regulations. This Overview section contains multiple subsections pertaining to the major issues raised in response to the RFI. This Overview section is followed by a regulatory framework and Appendix A. Appendix A provides an example of how to use the assumptions in the ANPRM's regulatory framework to calculate a projected account balance and convert the current and projected account balances into lifetime income streams.

[7] Lena Larsson, Annika Sundén, & Ole Settergren, *Pension Information: The Annual Statement at a Glance*, OECD Journal: General Papers, February 19, 2008 available at: http://www.oecd.org/dataoecd/38/42/44509412.pdf.

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A. Current and Projected Account Balances

Among those responding to the RFI, there are competing views as to whether a lifetime income illustration should be based on a participant's or beneficiary's current account balance or a projected account balance. While many commenters believe it is better to provide an illustration based on a current account balance, approximately the same number of commenters believes it is better to provide an illustration based on a projected account balance. A few commenters support both approaches.

Commenters who support using a participant's current account balance generally believe it is better and more helpful to base an illustration on what the participant *actually* has than on what the participant *may* have at some point in the future. They make the following observations. First, participants and beneficiaries will more readily understand illustrations based on actuality than on illustrations based on projections. Second, and related, a person is more likely to take some planning action if he understands the illustration. Third, because projections necessarily will be based on a number of assumptions (e.g., future contributions and future investment returns), such projections are mere guesses and therefore likely to be flawed. Fourth, because lifetime income illustrations are educational in nature, a static number at a point in time should be sufficient to meet that educational purpose. Fifth, illustrations based on current account balances may motivate participants and beneficiaries to save more if the monthly payments are small.

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By contrast, those who support the use of projected account balances believe that an illustration based on a projection is actually more relevant and meaningful to a participant than an illustration based on that participant's current account balance, notwithstanding the inherent uncertainty in projecting an account balance. They make the following observations. First, at present it is common practice among financial planners to use projections when providing their clients with financial planning advice. Accordingly, if the Department's goal is to have pension benefit statements serve as a useful planning tool, then illustrations on benefit statements similarly should be based on projections. Second, projections may be based on assumptions, but not all assumptions are inherently flawed. Several commenters believe that the Department can establish reasonable parameters for assumptions, in order to avoid deception or abuse and increase the accuracy of projections. Third, there is no evidence that participants and beneficiaries necessarily will fail to comprehend a lifetime income illustration, or a projection, merely because it is based on assumptions, particularly where there are sufficient disclosures of the assumptions underlying the projections. Fourth, showing participants and beneficiaries the power of compound earnings may be a significant motivator to increase savings rates. Fifth, an illustration based on current account size simply has no relevance to a participant with decades to retirement age; and, in fact, such incomplete information may very well have the unintended consequence of discouraging savings and participation. Sixth, illustrations based on current balances may be considered flawed because account balances constantly change and, indeed, may change dramatically depending on market fluctuations.

The Department acknowledges the potential merit in both approaches. An illustration based on a participant's or beneficiary's current account balance could serve as an immediate

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benchmark for that participant because it would show the size of the monthly payment to expect if there were no further savings, gains or losses between now and retirement. It, in effect, shows participants and beneficiaries what they actually have, now, in the form of monthly payments. Although this type of benchmark is simplistic, the commenters may be right that it could motivate participants and beneficiaries to increase their savings rates now, especially if the participant or beneficiary perceives the monthly payment to be small relative to his or her current income needs. An illustration based on a participant or beneficiary's projected account balance, on the other hand, ordinarily will reflect larger monthly payments. The Department also agrees with those commenters who believe this methodology of framing benefits (i.e., showing larger monthly payments than those based on a current account balance) may sufficiently motivate participants and beneficiaries to stay the course or even to increase their savings rates in order to increase their monthly amounts. Although the addition of necessary assumptions under this approach may create some additional uncertainty, this uncertainty can be mitigated somewhat by requiring that only reasonable assumptions be used in the calculations and appropriate cautions be included in the disclosure to participants and beneficiaries.

Accordingly, the Department is considering a proposal that generally would require pension benefit statements for all defined contribution plans to include the following information: (1) the value of the account balance as of the last day of the period covered by the statement (i.e., "current balance"), (2) a projected account balance, and (3) two lifetime income illustrations. The first lifetime illustration would be based on the participant's or beneficiary's current account balance, *i.e.*, the "fair market value of the account balance as of the last day of the period covered by the statement." See ANPRM §2520.105-1(c)(2)(v). The second lifetime

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income illustration would be based on a participant's or beneficiary's projected account balance, i.e., "the current dollar value of the projected balance at normal retirement age." See ANPRM §2520.105(c)(2)(vi). To avoid confusion and unnecessary complication, the second illustration would not be required on any pension benefit statement on behalf of a participant who has reached normal retirement age under the plan as of the date of the benefit statement.

The presentation of this data on a participant's or beneficiary's benefit statement might look something like this:

Current Balance	Projected Balance
$125,000	$557,534
Monthly Payment	Monthly Payment
$625	$2,788

This shows both total balances (current and projected) and the monthly payments generated by each. The projected balance ($557,534) and related monthly payment ($2,788) would be discounted by an inflation factor in order to be shown in today's dollars. The reasoning behind this is that by removing inflation from the equation it will be easier for participants and beneficiaries to budget for their retirement years, today. For example, they can compare their projected monthly payments expressed in today's dollars with their current budget needs (i.e., current consumption needs) and see how close they are to covering those needs. If there is an undesirable gap, they might increase their contributions. The Department invites comments on whether the projected balance and related monthly payment should be discounted for inflation.

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Many commenters on the RFI believe that projections should be presented in today's dollars in order to put future buying power into a meaningful context.

Many of the sample benefit statements reviewed by the Department show only the projected monthly payment expressed in today's dollars (the $2,788 figure in the example above), and not the discounted projected account balance (the $557,534 figure in the example above). The Department welcomes comments on whether it makes more sense to show both the discounted projected account balance ($557,534) and the resulting monthly payments ($2,788), or whether it is enough to show only the resulting monthly payments ($2,788).

All projections and lifetime income illustrations under consideration would be based on the participant's "normal retirement age under the plan." See ANPRM §2520.105-1(c)(2)(vi), (d)(1), (d)(2)(i) and (e)(4). Section 3(24) defines this as "the earlier of—(A) the time a plan participant attains normal retirement age under the plan, or (B) the later of—(i) the time a plan participant attains age 65, or (ii) the 5th anniversary of the time a plan participant commenced participation in the plan." The Department is considering this date because it already is a significant date for ERISA purposes. However, this date could be a number of years before the participant or beneficiary is actually ready or able to retire from the workforce. A number of commenters suggested using the social security retirement age. Accordingly, the Department specifically welcomes comments on whether the projection and lifetime income illustrations should use a date other than the normal retirement age, as defined in section 3(24) of ERISA, and if so what date and why. For example, comments could address the appropriateness of

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using age 65, social security retirement age (e.g., currently age 66 or 67 depending upon the participant's birthdate), the minimum required distribution date (e.g., age 71) or some other age.

The mechanics involved in projecting an account balance are discussed below in Section II.B of this document, entitled "Methodology for Projecting an Account Balance." The mechanics involved in converting account balances into lifetime income streams are discussed in Section II.C of this document, entitled "Methodology for Converting an Account Balance into a Lifetime Income Stream."

B. Methodology for Projecting an Account Balance

As explained above, the Department is considering a proposed rule that would require a participant's or beneficiary's current account balance to be projected to his or her normal retirement age under the plan. This section of the ANPRM describes the standards, rules and assumptions being contemplated that plan administrators would have to follow when projecting participant and beneficiary account balances to retirement. In developing these standards, rules and assumptions, the Department believes it is important that: (1) projections be meaningful to participants and beneficiaries, (2) projections not be overly burdensome for plan administrators to perform, and (3) any regulatory framework does not disturb current projection and illustration best practices or stifle innovation in this area.

Based on the RFI comments and the public hearing record, the Department understands the act of calculating a participant's projected account balance ordinarily would require

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consideration of the following five variables: (1) the participant's current account balance; (2) the number of years until the participant retires; (3) future contributions to the account (both employer and employee); (4) a rate of investment return; and (5) an inflation adjustment to convert the projected amount to today's dollars. The Department specifically requests comments on whether these are the appropriate variables that should be factored into the projections being considered by the Department. If not, why not, and are there other essential variables?

As explained in more detail below, the Department is considering a "reasonableness" standard as a general rule combined with a regulatory "safe harbor." The general rule would permit a broad array of projection "best practices" to continue (which practices we assume meet the "reasonableness" standard), while the safe harbor would offer certainty for those plan administrators who seek that result or who do not currently provide projections. Plan administrators who follow the deterministic conditions of the safe harbor would have the comfort of knowing they have satisfied the primary elements of the general rule (i.e., those elements of the general rule that otherwise would require discretionary activity of the plan administrator). In this regard, the safe harbor would be an option and not a regulatory requirement.

The general rule being considered by the Department is that "projections shall be based on reasonable assumptions taking into account generally accepted investment theories." See ANPRM §2520.105-1(d)(1). A projection will not be considered reasonable, however, "unless it is expressed in current dollars and takes into account future contributions and investment returns." Id. Thus, the general rule being considered by the Department does not require any single method or single set of assumptions for projecting an account balance to normal

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retirement age, although it does require overall reasonableness in light of generally accepted investment theories. Nor does the general rule limit the specific factors that must be considered, although it does require consideration of at least future contributions, investment returns, and inflation.[8]

By contrast, the safe harbor being considered by the Department is narrower and more prescriptive than the general rule under consideration. The contemplated safe harbor would prescribe a specific set of assumptions for contributions, returns, and inflation.[9] The set of assumptions, when used together, would be considered per se reasonable for purposes of the general rule. Thus, by using the safe harbor assumptions together, plan administrators will be deemed to be in compliance with the portion of the general rule that requires them to take into account contributions, returns, and inflation when projecting account balances.

The first assumption is that "contributions continue to normal retirement age at the current annual dollar amount, increased at a rate of three percent (3%) per year."[10] See ANPRM

[8] The general rule is intended to provide plan administrators with flexibility to preserve current best practices regarding benefit statements and not stifle the development and innovation of technological tools in this area. For example, the general rule would permit plans that have online tools that employ stochastic modeling, such as retirement calculators and similar planning devices, to use the same technology to project account balances on pension benefit statements, provided that the projection methodology meets the reasonableness requirement in the general rule. A stochastic model is a tool for estimating probability distributions of potential outcomes by allowing for random variation in one or more inputs over time usually based on observed historical data for the selected inputs. Probability distributions of potential outcomes are derived from a large number of simulations (stochastic projections) which reflect the random variation in the input(s). The Department specifically welcomes comments on whether the general rule sufficiently facilitates the use of stochastic modeling for pension benefit statements. The Department also welcomes comments on other modeling or projection methods that might be appropriate for benefit statements and whether the general rule facilitates their use.

[9] Two of the five variables (current balance and years to retirement) are information known to the plan at the time the benefit statement is generated and, therefore, the safe harbor would not include assumptions pertaining to those variables.

[10] The assumed dollar amount (not the contribution percentage) would increase by a rate of 3% per year. For example, if contributions for year one were $10,000, the projected contributions would be $10,300 (1.03 x $10,000) for year two, $10,609 (1.03 x 10,300) for year three, and so forth.

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§2520.105-1 (d)(2)(i). A yearly contribution increase is included in this safe harbor assumption because many workers' contribution elections are expressed as a percentage of wages, and wages tend to increase over a worker's career due to raises, promotions, cost-of-living adjustments, and other factors. The Department is considering a whole number percentage (3%) in order to avoid giving participants and beneficiaries the false impression that account balance projections are exact.

The Department considers a 3% per year increase in wages to be a conservative assumption, and intentionally chooses a conservative assumption in this instance due to the wide variation of wage movement across workers. Some workers, particularly young workers, can expect their wages to rise at a rate higher than 3% per year. However, older workers often see wages increase no faster than the rate of consumer price inflation.[11] The Department believes that more harm would be done by overestimating wage increases for workers whose wages will remain flat than would be done by underestimating wage increases for workers whose wages are likely to rise quickly. The Department welcomes comments on this topic. [12]

The second and third assumptions are investment returns of seven percent (7%) per year (nominal) and a discount rate of three percent (3%) per year for establishing the value of the projected account balance in today's dollars. See ANPRM §2520.105-1(d)(2)(ii) and (d)(2)(iii). As with the wage increase assumption, the Department is considering whole number percentages

[11] There is a large body of literature on age-earnings profiles which shows that workers' wages tend to increase rapidly when young, but at a rate similar to inflation at older ages. See, for example, Murphy, Kevin M. and Finis Welch, "Empirical Age-Earnings Profiles," *Journal of Labor Economics*, Vol. 8, No. 2 (Apr. 1990), pp. 202-229.
[12] See below for a discussion of historical and projected consumer price inflation.

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(7% and 3%) in order to avoid giving participants and beneficiaries the false impression that account balance projections are exact.

The 3% discount rate is included in the safe harbor to account for consumer price inflation (specifically inflation in the prices of goods that retirees consume). The Department is considering 3% because it reflects both historical inflation and expectations for future inflation. Since 1913, inflation has averaged 3.2 % according to Consumer Price Index data from the Bureau of Labor Statistics. Furthermore, the trustees of the Social Security Trust Fund assume that cost of living adjustments (which are determined by the CPI-W) will average 2.8% between 2019 and 2086. Comments are specifically requested on these assumptions, taking into account the purpose for which these assumptions are being used.

Why a 7 Percent Rate of Investment Return Assumption?

The 7% safe harbor assumption under consideration is based on historical market returns, actual returns derived by participants in 401(k) plans, and future return forecasts. The 7% rate is a nominal rate of return, which corresponds to an approximate 4% real return assuming 3% inflation in the future.[13] Again a round number is being considered in order to avoid giving participants and beneficiaries the false impression that projected future account balances are exact. The following analysis led the Department to this rate.

[13] To be exact, it would correspond with 3.88 % real returns.

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From 1996 to 2009, the share of 401(k) assets in equities varied from 56 % to 76 %.[14] In 2009, this total was approximately 60 %. If beginning in 1926, 60% of assets were invested in an equity portfolio that mirrored the S&P 500 and 40% were invested in a bond portfolio and the assets were rebalanced at the beginning of each year without cost to preserve the 60/40 allocation, an investor would have averaged a 5.6 % real return through 2010.[15]

However, it is unlikely that average investors would replicate this rate of return and more likely would achieve a lower real rate of return due, in part, to fees and transaction costs. For example, an asset weighted account analysis performed by the Investment Company Institute (ICI) indicates that 401(k) plan expense ratios average approximately 65 basis points.[16] Therefore, expense ratios alone would reduce the average real return to approximately 5 %.[17] Average real returns also are reduced by transaction costs, including costs derived from turnover by the fund managers. According to ICI, the average dollar weighted turnover rate of 401(k) mutual fund holders is 43 percent. These transaction costs are not included in expense ratios.[18]

Turnover that occurs due to participants' management of their accounts also reduces average real returns. Some of these transactions represent poor timing of the markets, leading to further underperformance relative to buy-and-hold strategies. Academic literature suggests that

[14] These estimates are based on Employee Benefit Research Institute/Investment Company Institute 401(k) plans surveys.

[15] Returns are based on Ibbotson data. The calculations were performed with the bond share of the portfolio being held either all in long-term corporate bonds (40 percent of total funds) or half in intermediate government bonds (20 percent of total funds) and half in long-term corporate bonds (20 percent of the total funds). The relative share made little difference. However, including riskier equities in the portfolio does matter. If 30 % of assets were in small cap funds, 30 % in an equity portfolio mirroring the S&P 500, and 40 % in bonds, the returns would be approximately 1 % larger.

[16] Sarah Holden, Michael Halladay, and Shaun Lutz, *The Economics of Providing 401(k) Plans: Services, Fees, and Expenses, 2010*, ICI Research Perspective, Vol. 17, No. 4 (June 2011).

[17] Returns are calculated as a geometric return $g=[(1+r_1)(1+r_2)\ldots(1+r_n)]^{(1/n)}$ where r_n=returns in the n^{th} year.

[18] Holden, *supra* at footnote 16.

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participants often mistime their investments by pulling their money out of equities before periods of strong growth and investing more heavily in equities just before a market downturn, with load funds experiencing even worse mistiming.[19]

The measured disparity between the average annual returns that costless buy-and-hold strategies would generate and actual participant returns is consistent with recent Department statistics. Where a dollar invested in a 60/40 balanced fund with no transaction costs would have generated an 8.4 % nominal return between1990-2009, Department of Labor Form 5500 data indicate that large defined contribution plans achieved a nominal return of only 7.1% during the same period.[20]

Moreover, past return information, such as U.S. equity returns between 1926 and 2010, does not provide a sufficient basis for estimating future reasonable expected returns.[21] This was illustrated when the Department solicited peer review comments from economists in 2006 on the application of its Pension Simulation Model to assess the impact of its Qualified Default Investment Alternatives rule (QDIA) on pension savings. The commenters maintained that expected future U.S. equity returns are lower today than historic returns and will remain lower in the future. Based on these comments, the Department revised its initial real equity return

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[19]Geoffrey C. Friesen and Travis Sapp, *Mutual Fund Flows and Investor Returns: An Empirical Examination of Fund Investor Timing Ability*, 31 Journal of Banking and Finance, 2796 (2007) available at SSRN: http://ssrn.com/abstract=957728. According to the article, the underperformance of investors due to poor timing is over 1.5 % compared to what buy-and-hold strategies would have generated. The performance gap with buy and hold strategies due to poor investor timing is twice as large for load funds compared to non-load funds.

[20] The 8.4 % returns are based upon Ibbotson data. The hypothetical fund would have 60 percent stocks, 20 percent long term corporate bonds and 20 percent intermediate government bonds. The portfolio would be rebalanced each year at no cost. S*ee* U.S. Department of Labor, Employee Benefits Security Administration, Private Pension Plan Bulletin Historical Tables and Graphs: 1975-2009, Table E21 (March 2012) at http://www.dol.gov/ebsa/publications/form5500dataresearch.html#statisticalsummaries.

[21] Ibbotson data begins in 1926.

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assumption used to project future pension savings to approximately 4.9 %.[22] Industry groups have reached similar conclusions. For example, as a follow up to a 1997 survey, a 2007 survey asked 400 finance professors to forecast what equity returns would be over the next 30 years; and the estimates were, on average, more than one percent below the 1997 results.[23]

For the reasons discussed above, which take into account historical market returns, actual returns derived by 401(k) plan participants, and future return forecasts, the Department believes that a 7% nominal return assumption (approximately 4% real return and 3% future inflation) is a reasonable rate of return assumption for plan administrators to use when calculating a future account balance at normal retirement age. However, the Department specifically is requesting comments on the appropriateness of this 7% investment return assumption.[24] Are there other valid approaches or data sources EBSA should consider in constructing a prospective safe

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[22] *See* http://www.dol.gov/ebsa/regs/peerreview.html#section1. These peer review comments were submitted to help inform the Department's Pension Simulation model that is used to forecast savings outlook for participants. Under the model, a portfolio consisting of 60 % equity and 40 % long-term government bonds would generate an approximate 7% nominal return.

[23] *See* Ivo Welch, *Views of Financial Economists on the Equity Premium and on Professional Controversies* 73 Journal of Business 501 (2000). *See also* Ivo Welch, *The Consensus Estimate for the Equity Premium by Academic Financial Economists in December 2008*, Social Sciences Research Network Paper No. 1084918, January 18, 2008 (last revised July 22, 2009) at http://ssrn.com/abstract=1084918.

[24] In this regard, one idea the Department intends to explore further is the behavioral effects of this assumption and whether the assumption should be more conservative. As explained in the text above, the 7% expected future investment returns is an average. As such, it is neutral, meaning that individual participants may realize higher or lower returns. In 2010, over 22% of 401(k) participants had fewer than 40% of their 401(k) assets invested in equity, while 40% had over 80% of assets in equity. See Jack Van Derhei, Sarah Holden, Luis Alonso, and Steven Bass, *401(k) Plan Asset Allocation, Account Balances, and Loan Activity in 2010*, EBRI Issue Brief No. 366 (December 2011), Figure 30 at p. 29. Thus, a safe harbor assumption that is aimed at the average 401(k) participant would be out of line with the asset allocation of a majority of 401(k) participants. Participants with conservative asset allocations who, in fact, consistently generate returns lower than the 7% neutral rate assumption will see their projected balance decreasing year after year (even though contributions remain stable). What impact will a declining projected balance have on these participants? At least some literature suggests people dislike declining sequences. See George F. Loewenstein and Drazen Prelec, *Preferences for Sequences of Outcomes*, 100 Psychological Review 91 (1993). Would a more conservative safe harbor assumption (e.g., risk-free return rate, which typically averages about 5% nominal (2% real) returns) have a more positive long-term effect than a neutral assumption on how participants and beneficiaries would view the lifetime income stream illustration and ultimately use it to aid their retirement planning?

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harbor? Commenters are encouraged to keep in mind the Department's stated objectives (above) behind a projection requirement. Commenters not in favor of this safe harbor assumption are encouraged to provide empirical data supportive of alternative approaches.

Projections and Rules of the Financial Industry Regulatory Authority

National Association of Securities Dealers (NASD) Rule 2210(d)(1)(D), in relevant part, provides that "[c]ommunications with the public may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast."[25] In response to questions regarding the relationship, if any, between the projection requirement under consideration by the Department and NASD Rule 2210(d)(1)(D) of the Financial Industry Regulatory Authority (FINRA), the Department and FINRA staff intend to work together and, if necessary, provide guidance, which may be similar to the guidance provided in connection with the Department's recently finalized participant-level fee disclosure regulation under 29 CFR 2550.404a-5.[26] The Department, therefore, is requesting comments on whether, and to what extent, such guidance is needed and why.

C. Methodology for Converting an Account Balance into a Lifetime Income Stream

[25] In March 2012, the SEC approved new FINRA rules governing communications with the public that will replace NASD Rule 2210. Under the new rules, which took effect in February 2013, a modified version of this provision will be found in FINRA Rule 2210(d)(1)(F). *See* FINRA Regulatory Notice 12-29 (June 2012) (announcing SEC approval of new FINRA communications rules).

[26] *See* FINRA Regulatory Notice 12-02 (January 2012) (providing guidance on application of communications rules to disclosures required by 29 CFR 2550.404a-5). *See also* SEC Staff No Action Letter (October 26, 2011) (agreeing to treat information provided by a plan administrator to participants required by and complying with disclosure requirements of section 404 of ERISA as if it were a communication that satisfies requirements of Rule 482 under the Securities Act of 1933).

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As explained above, in addition to a participant's or beneficiary's current and projected account balance, the Department is considering a requirement that each balance be expressed as a lifetime stream of income. Thus, each benefit statement ordinarily would contain two monthly estimated payment illustrations, one based on the current balance and a second based on a projected account balance.[27]

The commenters on the RFI identified two methods to convert an account balance to a stream of income in retirement. The first method was described as a "draw down" or "systematic withdrawal" approach. This method assumes the participant will withdraw each year a fixed dollar amount or a fixed percentage (e.g., 4%) of the account until the account is gone. The commenters suggested that three, four or five percent per year might be reliable withdrawal rates for a participant who starts drawing down his account at age 65. The income stream illustrated under this approach would be the fixed dollar amount or fixed percentage, and could be shown as either monthly or annual payments. The second method is the annuitization approach. This approach, for example, expresses the benefit as a lifetime monthly payment to the participant similar in form to a pension payment made from a traditional defined benefit plan. This approach also is the method that insurance companies use to determine payment amounts with their annuity products.

The proposal the Department is considering would use the second method of conversion because, of the two approaches, the second method reflects "lifetime" income whereas the first

[27] A projected account balance would not be required if the participant has reached normal retirement age under the plan. See ANPRM §2520.105-1(c)(2)(vi).

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method reflects an income stream that may or may not be payable for the life of the participant (e.g., in the case of a participant who retires at age 65 and dies at age 94, a 4 % draw down, assuming a constant zero rate of return, would exhaust the account in 25 years instead of life). The second method reflects one of the Department's primary goals in encouraging meaningful benefit statements—that plan participants and beneficiaries are informed of their financial readiness for the entirety of their retired lives, not just a portion of it.

According to the RFI commenters and others, there are five relevant factors that must be considered when illustrating or converting an account balance (whether current or projected) to a lifetime income stream. The first is the date the payments would start, often referred to as the "annuity start date" (ASD). The second is the age of the participant or beneficiary at the ASD. The third is the form of payment (e.g., single life annuity). The fourth is the expected mortality of the participant or beneficiary and any spouse. The fifth is the interest rate for the applicable mortality period. The Department specifically requests comments on whether these are the appropriate variables for illustrating an account balance as a lifetime income stream. If not, why not, and are there other essential variables?

Each of the foregoing factors is addressed in ANPRM §2520.105-1(e). For example, with respect to the form of payment, lifetime income illustrations would be based on level payments for the life of the participant or beneficiary. See ANPRM §2520.105-1(e)(1)(i). If the participant or beneficiary is married, however, a second illustration would be required. This second illustration would be a level payment for the life of the participant based on the joint lives of the participant/beneficiary and spouse, with a fifty percent survivor's benefit to the surviving

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spouse. See ANPRM §2520.105-1(e)(1)(ii). For this purpose, the plan may assume the spouse is the same age as the participant. Id.

The lifetime income illustrations being contemplated would assume that payments begin immediately and that the participant or beneficiary generally is normal retirement age under the plan (e.g., 65 years old) even if the participant or beneficiary is much younger. For example, for a participant age 25 in a plan with a normal retirement age of 65, the assumed commencement date in a quarterly benefit statement that covered the period October 1, 2015 through December 31, 2015 would be January 1, 2016. See ANPRM §2520.105-1(e)(4). In addition, the 25-year-old participant is assumed to be age 65 (i.e., normal retirement age) on January 1, 2016. However, if the participant is older than normal retirement age, the plan administrator is required to use the participant's actual age.[28]

With respect to mortality and interest rate assumptions, many RFI commenters and others suggested that when a plan offers an annuity form of distribution, the actual mortality and interest rate provisions contained in the plan's annuity contract should be reflected in the lifetime income illustrations.[29] The Department agrees and intends to include this concept as part of the proposed regulation. See ANPRM §2520.105-1(e)(3). However, for plans that do not offer annuity forms of distribution, the Department is considering a safe harbor approach for mortality

[28] If the participant has reached normal retirement age under the plan, the only illustration that would be required for this participant is the illustration based on his or her current account balance. An illustration based on a projected account balance would not be required in these circumstances. See ANPRM §2520.105-1(c)(2)(vi).

[29] In 2010, 18 percent of private industry workers participated in a defined contribution retirement plan providing an option to take an annuity form of distribution at retirement. See Table 21a of U.S. Department of Labor, Bureau of Labor Statistics, "National Compensation Survey: Health and Retirement Plan Provisions in Private Industry in the United States, 2010," Bulletin 2770, August 2011.
Available at: http://www.bls.gov/ncs/ebs/detailedprovisions/2010/ownership/private/table21a.pdf

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and interest rate assumptions (similar to the safe harbor for the projection requirement set forth in ANPRM §2520.105-1(d)). Specifically, the proposal would start with a general requirement that illustrations must be based on "reasonable" mortality and interest rate assumptions "taking into account generally accepted actuarial principles." See ANPRM §2520.105-1(e)(2)(i). This standard is intended to be flexible and to preserve current best practices, on the one hand, but protective on the other hand in that it would prohibit the use of assumptions that do not comport with generally accepted actuarial principles. Many commenters on the RFI requested some degree of flexibility in this area in order to match illustrations on benefit statements with illustrations provided through online tools. At the same time, however, other RFI commenters expressed concern with potential ERISA liability in connection with picking mortality and interest rate assumptions for lifetime income illustrations and strongly encouraged the Department to adopt safe harbor assumptions. Accordingly, the Department is considering the following safe harbor assumptions, each of which, when used together, would be deemed reasonable under the general requirements in ANPRM §2520.105-1(e)(2)(i).

The safe harbor rate of interest under consideration is a "rate of interest equal to the 10-year constant maturity Treasury securities rate, for the first business day of the last month of the period to which the statement relates." See paragraph (e)(2)(ii)(A). One commenter with members representing more than 90 % of the assets and premiums in the U.S. life insurance and annuity industry stated that its members believe that the 10-year constant maturity Treasury rate best represents the interest rates that are reflected in actual annuity pricing. In addition, the 10-year constant maturity Treasury rate is published daily to the public and widely recognized.[30]

[30] See www.federalreserve.gov/releases/h15/data.htm.

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The Department agrees that it may be helpful to participants to use a market rate that approximates what it actually would cost them to buy a lifetime income stream on the open market. In this regard, an illustration based on a current market rate would be especially beneficial for those participants or beneficiaries who are close to retirement, and less so for those farther from normal retirement age.[31]

The Department, however, is specifically requesting comments on whether the 10-year constant maturity Treasury rate assumption is the best interest rate assumption to use in this context, or whether there is a different interest rate or combination of rates that should be used, and why. For example, other RFI commenters mentioned that the Department might give some consideration to using the Pension Benefit Guaranty Corporation (PBGC) select and ultimate rates used to determine liabilities of terminated single-employer plans under section 4044 of ERISA which are published monthly by the PBGC[32] or the "applicable interest rate" under section 417(e)(3)(C) of the Code, although these commenters did not provide reasoning behind their suggestions. The commenter in favor of the 10-year constant maturity Treasury rate is concerned that the PBGC rates may not be sufficiently current for this type of illustration; or that

[31] The Department recognizes that there is no single interest rate assumption that would be perfect for all participants. Those who will retire tomorrow and plan to purchase lifetime income will face pricing that reflects current interest rates. It is clear that for these participants, using an interest rate assumption based on current rates is appropriate. However, participants who are a substantial number of years away from retirement will be faced with annuity pricing that reflects future interest rates that are unknown. An appropriate way to project these future interest rates may be to use a long-term average of historical interest rates, with the belief that interest rates tend to revert to the mean. A third group of participants, those who will retire in a short number of years, are unique still from the other two groups. An example of an appropriate projection of interest rates at the time of retirement for these participants may be some combination of current and historical interest rates. In choosing a safe harbor assumption, the Department must consider all of these groups of participants and how their projections would be affected. For example, if the Department ultimately uses current interest rates as the safe harbor, movement in interest rates would be an additional source of variation in benefits statement projections year over year for participants who are a substantial number of years away from retirement.

[32] See 29 CFR 4044, Appendix B. See also www.pbgc.gov/prac/interest/monthly.html.

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such rates are not appropriate for pay out annuities. This commenter, in addition, is concerned that the Code section 417(e)(3)(C) rates, which it states are used for converting defined benefit amounts to a lump sum for distribution, do not approximate current annuity prices.

The safe harbor mortality assumption under consideration is "the applicable mortality table under section 417(e)(3)(B) of the Code, in effect for the month that contains the last day of the period to which the statement relates." See ANPRM §2520.105-1(e)(2)(ii)(B).[33] The section 417(e)(3)(B) applicable mortality table is a unisex table created and published by the Treasury Department.[34] The same commenter that suggested using the 10-year constant maturity Treasury rate also suggested using the section 417(e)(3)(B) applicable mortality table. Other commenters suggested the mortality table used by the PBGC to determine the liabilities of terminated single-employer plans under section 4044 of ERISA.[35]

The Department selected the section 417(e)(3)(B) applicable mortality table for the following three reasons. First, the Treasury Department periodically updates the mortality table.[36] Second, unlike the PBGC mortality tables, the section 417(e)(3)(B) applicable mortality

[33] The Department welcomes comments on the use of this month to determine the mortality, or whether it would be more appropriate to use the mortality table in effect for the month containing the assumed commencement date as defined in ANPRM §2520.105-1(e)(4).

[34] Currently, the applicable mortality table is based on the Society of Actuaries, RP 2000 Mortality Tables Report at http://www.soa.org/ccm/ content/research-publications/experience-studies-tools/the-rp-2000-mortality-tables, with a fixed blend of 50% of the static male combined mortality rates and 50% of the static female combined mortality rates promulgated under 26 CFR 1.430(h)(3)-1(c). See IRS Notice 2008-85, IRB 2008-42 which published unisex mortality tables for purposes of Code section 417(e)(3)(B) through 2013.

[35] See 29 CFR 4044, Appendix A.

[36] The 417(e)(3)(B) mortality table is derived from the mortality tables prescribed under the funding rules of Code section 430(h)(3)(A) which states that the mortality tables prescribed by the Treasury Department "shall be based on the actual experience of pension plans and projected trends in such experience… taking into account results of available independent studies of mortality of individuals covered by pension plans."

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table is unisex.[37] Third, the table is publicly available and widely known to employee benefit plan service providers. The Department, however, is specifically requesting comments on whether the section 417(e)(3)(B) mortality table is the best mortality assumption to use in this context, or whether there is a different mortality assumption that should be used, and why. For example, one commenter suggested that if the plan did not provide an annuity option, the plan should be permitted to use gender based mortality tables in order to illustrate the dollar amount of a lifetime income stream which the participant or beneficiary could achieve if his or her account was rolled over into an individual retirement account and used to purchase a commercial annuity contract using gender based mortality.[38]

The rules and assumptions for converting current and projected account balances into lifetime income streams, discussed above and set forth in ANPRM §2520.105-1(e), do not include an "insurance load." In this context, the term "insurance load" is intended to describe the difference between the market price of lifetime income and the price of actuarially fair lifetime income. The insurance load may include insurance company profits, costs of insuring against systemic mortality risk, costs of holding cash reserves, advertising costs, the cost of selection (if not accounted for in the mortality table), and other operating costs. The Department specifically is requesting comments on whether a proposed rule should contain provisions requiring that such loads be factored into lifetime income streams and, if so, how should or could the rules and assumptions in ANPRM §2520.105-1(e), including the safe harbor assumptions in ANPRM

[37] To the extent an individual account plan offers an annuity option, the mortality factors have to be the same for males and females to comply with *Arizona Governing Committee v. Norris*, 436 U.S. 1073 (1983).
[38] Since the female mortality tables show a longer life expectancy and the male mortality tables show a shorter life expectancy than a unisex table, the dollar amount of a male participant's monthly payment would be higher and a female participant's monthly payment would be lower in an illustration using gender based tables.

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§2520.105-1(e)(2)(ii), be modified to reflect such a requirement. For example, should the Department consider using a load assumption similar to the one used by the PBGC to determine the value of benefits for a single employer plan that has been involuntarily terminated and placed in trusteeship by the PBGC?[39]

D. Disclosure of Assumptions

Most of the commenters on the RFI indicated that the assumptions underlying any illustration should be disclosed to participants and beneficiaries. The Department agrees that clear disclosure of assumptions is needed for multiple reasons, but primarily in order to make it clear to participants and beneficiaries that projected amounts are not guarantees. The proposal under consideration, therefore, would require disclosure of any assumptions used in the benefit statement with regard to the projected account balance and the illustration of the lifetime income streams. See ANPRM §2520.105-1(c)(6)(i) and (ii). In addition, the proposal would require that the pension benefit statement include a statement that the lifetime income stream is only an illustration and that actual periodic payments that may be purchased at retirement will depend on numerous factors and may vary substantially from the lifetime income stream illustration in the benefit statement. See ANPRM §2520.105-1(c)(6)(iii). The Department is interested in comments on whether it would be helpful to participants and beneficiaries if their benefit statements explained that a consequence of purchasing an annuity outside of their pension plan is that gender-based mortality tables may be used and, if so, men will receive higher monthly payments and woman will receive lower monthly payments.

[39] See 29 CFR 4044, Appendix C.

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It is essential that assumption disclosures be written in manner calculated to be understood by the average plan participant. The Department, therefore, is interested in comments and suggestions on how best to achieve this result. For example, is there model language within the financial community or elsewhere that plan administrators could use to plainly explain or describe this information so as to increase its readability and understandability? Are there other formatting or presentation techniques relevant to this inquiry?

E. In-plan Annuities

In addition to traditional distribution annuities, the Department is aware of the marketing and presence of in-plan annuity arrangements as investment options, sometimes generically referred to as "incremental" or "accumulating" annuities. According to the RFI commenters, these are arrangements that permit participants to make ongoing contributions toward the current purchase of a future stream of retirement income payments, which are guaranteed by an insurance company. Thus, conceptually, each contribution buys a small annuity. In this fashion, a participant has the ability to accumulate multiple small annuities over a career which, in the aggregate, could provide significant lifetime income.

More specifically, the RFI commenters explained that under these arrangements, typically, the ongoing participant contributions actually accumulate ownership units, that each

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such unit has a current market value, and that each unit will pay a fixed amount (usually per month) for the life of the owner commencing at retirement. For example, assume the current purchase price of a unit is $500 and each unit purchased will pay $15 per month, for life, commencing at retirement. A participant who has accumulated 100 units over his career will receive payments of $1,500 per month, for life, commencing at retirement. The RFI commenters further explain that although the current price of a unit ($500 in this example) fluctuates depending on a number of factors, such as the interest rate environment and the employee's age when the unit is purchased, the guaranteed monthly payment of each unit purchased (e.g., $15 in this example) is fixed. RFI commenters also indicate that some products allow the participant to transfer out of the incremental annuity investment option and into another of the plan's designated investment alternatives, such as a mutual fund or other similar plan investment option, prior to normal retirement age or some other date (e.g., the date distributions commence). The price per unit or pay out rate of an in-plan annuity with this transferability feature may differ from one without this feature.

The Department is soliciting comments on how best to factor investments of this type into lifetime income illustrations. For instance, one approach is that the current market value of all in-plan annuity units accumulated by a participant could be added to the rest of that participant's account balance under ANPRM §2520.105-1(c)(2)(v), before determining the projected account balance under ANPRM §2520.105-1(c)(2)(vi).[40] A second approach is to add

[40] For example, assume a participant has $100,000 invested in certain of the plan's designated investment alternatives. Also assume that in addition to those investments, the participant also has 10 in-plan annuity units and that the current market value of a unit is $500. Under this approach, the participant's total account balance under

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the total guaranteed monthly payment amount derived from all of a participant's in-plan annuity units to the estimated monthly payment amount of the non-annuity portion of the participant's account, if any, determined under ANPRM §2520.105-1(c)(2)(vii) and (viii).[41] A third approach is to convert the participant's entire account balance, even any part that is not allocated to an in-plan annuity option, to a lifetime income stream using the current unit price of the in-plan annuity option.[42]

These three approaches are not necessarily the only options for incorporating the in-plan annuity values in lifetime income illustrations and the Department welcomes suggestions on other approaches. In this regard, commenters are encouraged to address whether, and to what extent, the language in ANPRM §2520.105-1(e)(3) would need to be modified.[43] In addition, the Department welcomes the submission of actual benefit statements or similar documents

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ANPRM §2520.105-1(c)(2)(v) would be $105,000, and the lifetime income illustrations would be based on this amount.

[41] For example, assume a participant has accumulated 100 units of an in-plan annuity and that each unit accumulated will pay $15 per month, for life, commencing at retirement. Thus, this participant will receive payments of $1,500 per month, for life, commencing at retirement based on these 100 units. Also assume this participant has a projected monthly payment of $2,500 based on investments in other designated investment alternatives under the plan (e.g., mutual funds) using the safe harbor assumptions. Under this approach, the guaranteed monthly payment of the in-plan annuity ($1,500) could be added to the estimated monthly payment of $2,500, totaling $4,000 per month, for life.

[42] For example, assume a participant had accumulated 100 in-plan annuity units that each pay $15 per month, for life, commencing at retirement (totaling $1,500 per month). Also assume the participant had another $100,000 invested in other designated investment alternatives under the plan (such as mutual funds) and that the purchase price of a unit on the last day of the statement period is $500. Under this approach, the lifetime income illustration could be as if the participant had accumulated an additional 200 units with the $100,000 ($100,000 / $500 = 200), totaling $3,000 per month in retirement income. Thus, the total estimated monthly payment under this approach would be $4,500 ($3,000 + $1,500) per month, for life.

[43] Paragraph (e)(3) provides that "[i]f the plan offers an annuity form of distribution pursuant to a contract with an issuer licensed under applicable state insurance law, the plan shall substitute actual plan terms for the [safe harbor mortality and interest] assumptions set forth in paragraphs (e)(2)(ii)(A) and (B) of this section."

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showing how plans or insurance companies currently disclose in-plan annuity unit prices and monthly payment guarantees. Finally, given the wide array of ERISA plans and investment products, the Department also is soliciting comments on whether there are any foreseeable product-specific problems for products similar to in-plan annuities.

F. Miscellaneous

Many RFI commenters, hearing witnesses, and others who support lifetime income illustrations believe that the Department should take steps to encourage, rather than require, such illustrations on pension benefit statements. According to these individuals, mandating lifetime income illustrations would be expensive and may expose plan fiduciaries to litigation from plan participants and beneficiaries for a variety of reasons. The most commonly cited reason for potential lawsuits is unmet expectations. For example, if participants and beneficiaries during their working years mistakenly believe that the lifetime income illustrations on their pension benefit statements are promises or guarantees of a specific income stream, the participants and beneficiaries might sue if their actual account balances at retirement do not generate an income stream equal to or greater than the stream depicted in the illustrations in prior pension benefit statements.

The Department believes both concerns may be overstated. As to costs, first, some plans already provide lifetime income illustrations on pension benefit statements.[44] Thus, for these

[44] In one survey of large U.S. plan sponsors, 33% of respondents indicated that they provide retirement income projections to participants on benefit statements. See MetLife, "Retirement Income Practices Study," June 2012 Located at: https://www.metlife.com/retirementincomestudy

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plans, there may be little if any additional cost associated with the ANPRM's regulatory framework. Second, pursuant to section 105 of ERISA, pension benefit statements already are required to include certain participant account information. Thus, for plans not already providing lifetime income illustrations on pension benefit statements, the Department does not believe that adding the lifetime income illustrations described above to these statements should significantly increase the cost of pension benefit statements.

The Department, however, specifically requests comments on the costs (and benefits) of including the illustration described herein in pension benefit statements. In this regard, the Department welcomes ideas on how the cost of the contemplated lifetime income illustrations might be reduced without compromising the anticipated benefits. For example, would there be substantial cost savings if illustrations were required only annually rather than quarterly? If yes, please explain why and quantify if possible. In addition, would there be substantial cost savings if the Department published (and periodically updated) a table of conversion factors based on the safe harbor assumptions contemplated in paragraph (e) of the ANPRM's regulatory framework? Such a table would make it possible to produce projections that satisfy the safe harbor with simple calculations and without the need to reference Treasury rates, mortality tables and other actuarial assumptions.[45] If yes, please explain why and quantify if possible. In addition, would

[45] For example, such a table would be based on the interest, mortality, and other assumptions selected by the Department and would contain factors for calculating a single life annuity and a joint and 50 percent survivor annuity. The relevant factor multiplied by the number of $1,000 increments comprising the participant's or beneficiary's total account balance would equal the monthly lifetime income stream. Assume, for example, that the participant has an account balance of $100,000 and the factor for single life annuity commencing at age 65 is 5.00 per thousand dollars. The $100,000 account balance would equate to a lifetime income stream of $500 per month ([$100,000 ÷ 1,000] x 5.00).

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there be substantial cost savings if all benefit statements were required to contain joint and survivor illustrations of the type described in ANPRM §2520.105-1(e)(1)(ii), as opposed to including such illustrations only in benefit statements of married participants and beneficiaries? In other words, would there be cost savings in not having to track and determine marital status solely for pension benefit statement requirements? If yes, please explain why and quantify if possible.

As to the concern about potential lawsuits based on unrealized expectations, the Department believes this issue might be addressed in two ways. First, benefit statements could include a clear and definitive statement that the lifetime income illustration is an estimate, based on specific assumptions, and not a guarantee. The Department believes this disclosure would serve to put participants and beneficiaries on notice that the illustration is only an estimate and, thereby, minimize the likelihood that they would believe the illustration is a promise or guarantee. The Department specifically requests comments on the extent to which the language in ANPRM §2520.105-1(c)(6) would accomplish this result. Second, the Department is considering establishing a regulatory safe harbor under section 105 of ERISA for plan administrators to rely on when developing lifetime income illustrations for pension benefit statements. By specifying the precise standards and assumptions a plan administrator would use to make a lifetime income illustration on a pension benefit statement, a regulatory safe harbor would substantially reduce the likelihood of lawsuits against that administrator based on an imprudent or improper calculation of lifetime income. See ANPRM §2520.105-1(d)(2) and (e)(2)(ii). The Department specifically requests comments on the extent to which the regulatory safe harbor being considered would help address concerns about such potential lawsuits.

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Furthermore, the Department has not concluded that the ANPRM's regulatory framework is the only or best approach. The Department intends to consider all reasonable alternatives to direct regulation, including whether there is a way short of a regulatory mandate to get plan administrators voluntarily to provide their participants and beneficiaries with constructive and helpful lifetime income illustrations. In developing the framework, the Department was mindful of the fact that administrators of defined contribution plans have been free to provide lifetime income illustrations to participants and beneficiaries for nearly 40 years since the enactment of ERISA, yet few actually have done so despite the apparent support for them evidenced by the vast majority of responsive RFI commenters and hearing witnesses who supported the concept. This ANPRM, nonetheless, solicits comments on all reasonable ideas, either in lieu of or in conjunction with a direct regulation, to address this very important issue. Commenters are encouraged to be specific with the responses and include data if possible to support their positions. The Department also welcomes the submission of sample benefit statements or similar documents currently being provided to participants and beneficiaries that include lifetime income illustrations.

List of Subjects in 29 CFR Part 2520

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

For the reasons set forth in the preamble, the Department of Labor proposes to amend 29 CFR part 2520 as follows:

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PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

1. The authority citation for part 2520 is revised to read as follows:

Authority**:** 29 U.S.C. 1021–1025, 1027, 1029–31, 1059, 1134 and 1135; and Secretary of Labor's Order 1–2011, 77 FR 1088 (Jan. 9, 2012). Sec. 2520.101–2 also issued under 29 U.S.C. 1132, 1181–1183, 1181 note, 1185, 1185a-b, 1191, and 1191a-c. Sec. 2520.101–4 also issued under 29 U.S.C. 1021(f). Sec. 2520.101-6 also issued under 29 U.S.C. 1021(k) and Pub. L.109-280, §502(a)(3), 120 Stat. 780, 940 (2006). Secs. 2520.102–3, 2520.104b–1 and 2520.104b–3 also issued under 29 U.S.C. 1003,1181–1183, 1181 note, 1185, 1185a-b, 1191, and 1191a-c. Secs. 2520.104b–1 and 2520.107 also issued under 26 U.S.C. 401 note, 111 Stat. 788. Sec. 2520.105-1 also issued under sec. 508(a) of Pub. L. 109-280, 120 Stat. 780.

2. Add § 2520.105-1 to subpart F to read as follows:

§ 2520.105-1 Periodic Pension Benefit Statements—Individual Account Plans

(a) [Reserved]

(b) [Reserved]

(c) Content requirements. A benefit statement furnished under this section shall prominently display the beginning and ending dates of the period covered by the statement and contain the following information, based on the latest information available to the plan:

(1) [Reserved]

(2) Total benefits accrued.

(i) – (iv) [Reserved]

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(v) The fair market value of the account balance as of the last day of the period covered by the statement;

(vi) If the participant has not reached normal retirement age as defined under the plan, the current dollar value of the projected account balance at normal retirement age determined in accordance with paragraph (d) of this section;

(vii) The amount specified in paragraph (c)(2)(v) of this section expressed as a lifetime income stream in accordance with paragraph (e) of this section; and

(viii) The amount specified in paragraph (c)(2)(vi) of this section expressed as a lifetime income stream in accordance with paragraph (e) of this section.

(3) – (5) [Reserved]

(6) Explanation of lifetime income stream illustration.

(i) Disclosure of the assumptions used pursuant to paragraph (d) of this section to establish the present value of the projected account balance required by paragraph (c)(2)(vi);

(ii) Disclosure of the assumptions used pursuant to paragraph (e) of this section to establish the lifetime income stream illustration required by paragraphs (c)(2)(vii) and (c)(2)(viii) of this section; and

(iii) A statement that the lifetime income stream illustrations required under paragraphs (c)(2)(vii) and (c)(2)(viii) of this section are illustrations only and that actual monthly payments that may be received at normal retirement age will depend on numerous factors and may vary from the illustrations in the benefit statement.

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(d) Rules and assumptions for projecting an account balance to normal retirement age.

(1) General. For purposes of paragraph (c)(2)(vi) of this section (which sets forth the requirement to project a current account balance to normal retirement age under the plan), projections shall be based on reasonable assumptions taking into account generally accepted investment theories. A projection is not reasonable unless it is expressed in current dollars and takes into account future contributions and investment returns.

(2) Safe harbor. The following set of assumptions, when used together, are deemed reasonable for purposes of paragraph (d)(1) of this section:

(i) Contributions continue to normal retirement age at the current annual dollar amount, increased at a rate of three percent (3%) per year;

(ii) Investment returns are seven percent (7%) per year (nominal); and

(iii) A discount rate of three percent (3%) per year (for establishing the value of the projected account balance in current dollars).

(e) Rules and assumptions for converting current and projected account balances into lifetime income streams. For purposes of paragraphs (c)(2)(vii) and (c)(2)(viii) of this section—

(1) Measuring lives. A lifetime income stream shall—

(i) Be expressed as a level monthly payment, payable for the life of the participant beginning on the assumed commencement date, as defined in paragraph (e)(4) of this section;

(ii) If the participant is married, also be expressed as a level monthly payment, payable for the life of the participant beginning on the assumed commencement date, as defined in

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paragraph (e)(4) of this section, with a survivor's benefit, which is equal to fifty percent (50%) of the monthly payment payable to the participant, payable for the life of the surviving spouse. For this purpose, it is permissible to assume the spouse is the same age as the participant; and

(iii) Be based on the assumptions set forth in paragraph (e)(2) of this section subject to the requirements in paragraph (e)(3) of this section.

(2) Assumptions.

(i) General. The interest and mortality assumptions behind a lifetime income stream shall each be reasonable taking into account generally accepted actuarial principles.

(ii) Safe harbor. The following assumptions are deemed reasonable for purposes of paragraph (e)(2)(i) of this section:

(A) A rate of interest equal to the 10-year constant maturity Treasury securities rate, for the first business day of the last month of the period to which the statement relates; and

(B) Mortality as reflected in the applicable mortality table under section 417(e)(3)(B) of the Internal Revenue Code, in effect for the month that contains the last day of the period to which the statement relates.

(3) Plan terms. If the plan offers an annuity form of distribution pursuant to a contract with an issuer licensed under applicable state insurance law, the plan shall substitute actual plan terms for the assumptions set forth in paragraphs (e)(2)(ii)(A) and (B) of this section.

(4) Assumed commencement date. For purposes of paragraph (e) of this section, the assumed commencement date shall be the first day following the period to which the statement relates, and the participant shall be assumed to be normal retirement age (as defined in section

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3(24) of the Act) on this date (unless the participant is older than normal retirement age, in which case the participant's actual age should be used).

(f) [Reserved]

Note: The following appendix will not appear in the Federal Regulations:

APPENDIX A

LIFETIME INCOME ILLUSTRATION

(a) Purpose. This Appendix A contains an example that illustrates the application of the safe harbor provisions set forth in ANPRM §2520.105-1(d) and (e). The example is intended to aid the reader in understanding how the two safe harbors operate, independently and together, when calculating lifetime income streams based on current and projected account balances. The example is not intended as a model format or to provide model content for pension benefit statements, including the explanation for participants and beneficiaries required by ANPRM §2520.105-1(c)(6).

(b) Example: Facts. Plan A is an individual account plan described in section 3(34) of the Act. Since the plan does not provide for the allocation of investment responsibilities to participants and beneficiaries, the plan is required to provide a benefit statement at least once each calendar year. The statement period and the plan year are the 2012 calendar year. Normal retirement age under the Plan is age 65. Participant P is age 45. His birth date is June 30, 1967. He is married. His account balance on December 31, 2012, the last day of the statement period, was $125,000. His contributions (employee and employer) for 2012 were $9,709. His contributions for 2013 are assumed to be $10,000 ($9,709 x 1.03). Contributions are assumed to be made on January 1 each year.

(c) Safe harbor for projecting an account balance to normal retirement age. Based on the safe harbor assumptions in ANPRM §2520.105-1(d)(2) (as reflected in Table 1), the present value of the current balance ($125,000) projected to normal retirement age, as required by ANPRM §2520.105-1(c)(2)(vi), is $557,534. P's December 31, 2012 account balance of $125,000 is projected to be $467,621 assuming a 7% return, compounded annually. Future contributions increasing at 3%, compounded annually with earnings at 7%, compounded annually, are projected to be $524,575 on June 30, 2032. P's aggregate projected account balance on June 30, 2032 is $992,196 ($467,621 + $524,575). The projected account balance of $992,196 discounted to December 31, 2012 at 3%, compounded annually, is $557,534.

TABLE 1	
Normal Retirement Date	June 30, 2032
Number of years in projection	19.5 (January 1, 2013 through June 30, 2032)

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Number of contributions	19 ($10,000 per year adjusted by contribution increase rate) + 1 (final contribution of $5,000 in 2032, adjusted by contribution increase rate)
Paragraph (d)(2)(i) safe harbor - contribution increase rate	3% compounded annually
Paragraph (d)(2)(ii) safe harbor - rate of return applied to current account balance of $125,000 and post 2012 projected contributions	7% compounded annually
Paragraph (d)(2)(iii) safe harbor- discount rate used to determine present value of the projected account balance	3% compounded annually

(d) Safe harbor for converting current and projected account balances into lifetime income streams. Based on the safe harbor assumptions in ANPRM §2520.105-1(e)(2)(ii) (as reflected in Table 2), the lifetime income stream illustrations of the current and projected balances required by ANPRM §2520.105-1(c)(2)(vii) and (c)(2)(viii), respectively, are set forth below. Using the assumptions in Table 2, the factor for converting a single sum into a level monthly payment for the life of P only (Single Life Form) is $5.00per $1,000 of account balance. The factor for converting a single sum into a level monthly payment for the life of P with a 50% survivor benefit payable to P's spouse following his death (Joint and 50% Survivor Form) is $4.51 per $1,000 of account balance.

TABLE 2	
Paragraph (e)(2)(ii)(A) safe harbor -10 year constant maturity Treasury rate on December 3, 2012:	1.63%, compounded annually
Paragraph (e)(2)(ii)(B) safe harbor- Code section 417(e)(3)(B) applicable mortality table:	Unisex mortality table published in IRS Notice 2008-85
Assumed commencement date	January 1, 2013
Assumed Age of P on the assumed commencement date	65
Assumed Age of P's spouse on the assumed commencement date	65 (i.e., same as P)

Applying the factors described above to the December 31, 2012 current and projected account balances, the pension benefit statement would show the following lifetime income streams:

Account Balance On Last Day of Statement Period (12/31/12)	**Single Life Form (Monthly Payment for P's Life with No Survivor Benefit)**	**Joint and 50% Survivor Form**	
		Monthly Payment During P's Life	**Monthly Payment After P's Death To Surviving Spouse**

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Current – $125,000	$625	$564	$282
Projected – $557,534	$2,788	$2,514	$1,257

Signed at Washington, D.C., this 17th day of April, 2013.

Phyllis C. Borzi

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

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