**Yanela C. Frias**
President, Prudential Retirement

**The Prudential Insurance Company of America**
280 Trumbull Street
Hartford, CT 06103

November 3, 2020

*Filed via the Federal eRulemaking Portal*

Jeanne Klinefelter Wilson
Acting Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue N.W.
Washington, D.C. 20210

Attention: Pension Benefit Statements Lifetime Income Illustrations / RIN 1210-AB20

Dear Acting Secretary Klinefelter Wilson:

Prudential Financial, Inc. ("Prudential") appreciates the opportunity to comment on the Department of Labor's (the "Department") interim final rule addressing the requirements for lifetime income illustrations on pension benefit statements under section 105 of the Employee Retirement Income Security Act of 1974 (ERISA), as amended by the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019.[1]

Prudential is a financial services leader with a 145-year history of helping individuals and families strengthen their financial security. At present, Prudential is providing services and products to over 2,000 ERISA-covered retirement plans, with over 2 million participants. We believe the Department's proposal is a critical first step toward enhancing the financial awareness of the millions of working Americans participating in retirement plans.

---

[1] 85 FR 59132 (September 18, 2020).

In general, the interim final rule (IFR) provides for the annual disclosure of a participant's account balance in the form of a monthly lifetime income stream as part of the pension benefit statement. Based on the participant's current account balance, the IFR requires that the illustration take two forms, one based on a single life annuity payable at 67 or, in the case of older participants, the actual age of the participant; and the other based on a qualified joint and survivor annuity, applying the aforementioned assumptions in addition to assuming that the spouse and the participant are the same age and the survivor annuity percentage is 100% of the monthly payment that is payable during the joint lives of the participant and spouse.[2]

*Support for Interim Final Rule*

While we recognize the benefits of more robust lifetime income illustrations, we fully support the approach set forth in the IFR for purposes of compliance with the benefit statement requirements of ERISA section 105. The IFR, in our view, not only follows the legislative framework, but strikes an appropriate balance between informing participants about their retirement readiness at the time of issuance, without overwhelming them with prescribed projections, explanations and assumptions. Prudential believes that the framing of any new required disclosure regime must be guided by the need for clarity and simplicity.

As recognized by Executive Order 13847, today's retirement plan participants already face significant challenges in managing and assimilating the large volume of information – including the pension benefit statement - currently required to be furnished to them by statute and regulation.[3] However well-intentioned such disclosures may be, their practical value is ultimately dependent on the furnished information being read and understood by plan participants. In this regard, we are concerned that any mandated illustrations, beyond those required by the IFR, could, by virtue of the explanations, assumptions and cautionary statements required to accompany such, further discourage participants from reviewing their benefit statements. In this regard, we note that the Department's model language, for the simplest of approaches, could add multiple pages to the benefit statement. Thus, in the interest of not discouraging participants from reading their statements, we encourage the Department to consider permitting plans to provide the required descriptions and explanations via a link or website address.

---

[2] § 2520.105-3, Id at 59154

[3] Executive Order 13847 directs the Department, in consultation with the Department of the Treasury, to conduct a review of required retirement plan disclosures under ERISA and the Internal Revenue Code, for purposes of enhancing simplicity and reduction costs ( 83 FR 45321, September 6, 2019). Also see 2009 ERISA Advisory Council Report entitled *Promoting Retirement Literacy and Security by Streamlining Disclosures to Participants and Beneficiaries* at http://www.dol.gov/ebsa/publications/2009ACreport2.html.

We believe use of the current account balance for illustration purposes represents both an effective and practical approach to reframing how participants view their retirement savings. Similar principles may have guided the decisions of the Federal Thrift Savings Plan (TSP), the largest defined contribution plan in the United States, in opting to limit its illustrations to participants' current account balances. As recognized by the Department, the TSP approach to illustrating lifetime income streams, which is very similar to that reflected in the IFR, has resulted in a significant number of participants taking action to either increase contributions or change their investment allocations.[4]
We also believe that the Department's approach to illustrations in the IFR mitigates our shared concerns that any prescribed illustrations and attendant assumptions not undermine current best practices or inhibit innovation in the development and offering of tools designed to assist participants in assessing and understanding their retirement needs.[5]

*Need for "education" guidance*

With regard to the furnishing of illustrations beyond those required by the IFR, the Department specifically solicited comments on whether, separately or in conjunction with the IFR, guidance should be issued clarifying the circumstances under which the provision of such illustrations may constitute "education", rather than "investment advice", under ERISA. In soliciting those comments, the Department shared that such guidance could assist plan sponsors, service providers, participants and beneficiaries in ensuring that activities designed to educate are not confused with fiduciary activities.[6]

While we support the Department's approach to the required furnishing of illustrations for purposes of compliance with ERISA section 105, we also recognize the significant benefits that more robust illustrations can provide to plan participants generally, whether furnished in conjunction with a benefit statement or separately, or through an online tool, such as a retirement income calculator. Prudential, consistent with its 2013 comments on the Department's Advance Notice of Proposed Rulemaking and the views of other commenters, believes that more sophisticated illustrations may, in many respects, be superior for financial and retirement planning purposes to a one-size-fits-all deterministic model like that required by the IFR.[7] For this reason, we strongly encourage the Department to clarify, as part of the IFR or separately, the extent to which the offering or furnishing of illustrations not covered by the section 105 disclosure requirement constitute an educational, rather than fiduciary, activity.

[4] 85 FR 59145 (September 18, 2020).
[5] 85 FR 59141 (September 18, 2020).
[6] 85 FR 59141 (September 18, 2020).
[7] Id.

To some extent, the Department has already conceded the educational nature of such illustrations in its adoption of the now-vacated 2016 final rule defining who is a “fiduciary” by virtue of rendering investment advice.[8] Specifically, under the heading “Investment Education”, paragraph (b)(2)(iv)(D) of § 2509.3-21 defines education as including an “estimate of a retirement income stream that could be generated by an actual or hypothetical account balance.” Relevant to estimated retirement income streams, the aforementioned paragraph required that illustrations be based on generally accepted investment theories, the disclosure of all material facts and assumptions on which the estimate is based, and that, for purposes of assessing the adequacy of the estimated income, participants are informed they should consider their other assets, income and investments in addition to their interest in the plan.[9]

While the subject fiduciary rule was vacated *in toto* by the 5th Circuit Court of Appeals, it is significant that the “investment education” provisions of that rule were not themselves challenged or addressed by the Court. In addition, we note that there was nothing in the SECURE Act’s amendment of the provisions of ERISA section 105 that in any way limits the Department’s ability to define the development and furnishing of other lifetime income illustrations as an educational, rather than fiduciary, activity. Accordingly, we see no impediment to the Department moving forward in the issuance of guidance finding the offering or furnishing of lifetime income illustrations outside the parameters of those required by section 105 to be an educational activity.

The Department has long recognized that a safe harbor, properly framed, can be a valuable tool for plan sponsors. The Department also has recognized that plan sponsor concerns about fiduciary liability can be an impediment to the offering of educational programs designed to better prepare participants for managing their individual accounts.[10] Given the recognized need to further assist participants in assessing their retirement readiness and recognizing that the disclosure required by the IFR for purposes of compliance with section 105 represents only one approach to educating participants about the adequacy of their retirement savings, we encourage the Department to provide general guidance reaffirming the educational nature of lifetime income illustrations broadly. In this regard, Prudential proposes that the Department adopt a regulatory safe harbor or interpretive position modeled after Interpretive Bulletin 96-1,[11] which has served both participants and plan sponsors well for more than 24 years in encouraging and promoting the furnishing of investment education to plan participants.

Specifically, Prudential recommends that the Department make clear that, subject to certain conditions, the furnishing of a lifetime income illustration is an

---

[8] 81 FR 20946 (April 8, 2016), § 2509.3-21.

[9] Id. at 20999.

[10] 61 FR 29586 (June 11, 1996), adoption of Interpretive Bulletin 96-1.

[11] Id.

educational, not a fiduciary, activity and that, as such, will not, in and of itself, give rise to personal or fiduciary liability, or any claim or right to benefits under the plan. We propose that such a finding be conditioned on the illustration taking into account "generally accepted investment theories" and, accompany the illustration, a disclosure that includes: 1) an explanation of any assumptions on which the illustration is based or identifies a source for ready access to such explanations (e.g., a link or website address);[12] and 2) a statement that the illustration is merely an illustration and not a guarantee, and that actual monthly payments that may be received will depend on numerous factors and may vary from the included illustration.

Prudential believes that, similar to the fiduciary issues that surrounded the furnishing of investment education, the foregoing approach will address most fiduciary concerns attendant to the furnishing of lifetime income illustrations. We also believe such an approach avoids issues and concerns that might arise in the context of continued use of currently available online and other retirement readiness tools. Lastly, and consistent with the Department's goals, we believe this approach, without prescriptive assumptions and explanations thereof, preserves and encourages continued flexibility and innovation in the presentation of illustrations in the marketplace.

*Conclusion*

In closing, Prudential commends the Department for its timely publication of the IFR. The furnishing of lifetime income illustrations is a critical step toward assisting working Americans reframe defined contribution plan balances as a source for retirement income rather than merely an asset accumulation vehicle. We look forward to working with the Department on these and other issues critical to today's working Americans.

Should you have any questions concerning any of the matters discussed herein, please contact Robert J. Doyle, Vice President, Government Affairs, at robert.j.doyle@prudential.com.

Sincerely yours,

Yanela C. Frias

[12] Consistent with our earlier suggestion, this clause is intended to avoid the need to place assumptions on the same document as the illustration. As noted, explanations of underlying assumptions can be lengthy and complex (despite best efforts to simplify) and, therefore, may be a distraction for many participants. We believe making assumptions available via a link or website address ensures that interested participants have the ability to review, without overwhelming all participants to whom illustrations are furnished.

Copies:

Timothy D. Hauser, Deputy Assistant Secretary
Joe Canary, Director of Regulations and Interpretations
Jeffrey Turner, Deputy Director of Regulations and Interpretations
Kristen Zarenko, Office of Regulations and Interpretations
Rebecca Davis, Office of Regulations and Interpretations