



**November 17, 2020**

**VIA ELECTRONIC UPLOAD at [www.regulations.gov](http://www.regulations.gov) (Docket ID EBSA-2020-0009)**

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

Attention: Pension Benefit Statements—Lifetime Income Illustrations, RIN 1210–AB20

To Whom It May Concern:

Edelman Financial Engines appreciates the opportunity to engage with the Department of Labor (Department) on the interim final rule on *Pension Benefit Statements—Lifetime Income Illustrations* published on September 18, 2020, in the Federal Register<sup>1</sup> (Interim Final Rule). As America’s largest independent registered investment adviser with more than \$230 billion in assets under management, we agree with the Department’s goals of helping participants better understand their retirement savings and improve their retirement planning. However, we believe the Interim Final Rule can and should be improved in order to better achieve such goals. We look forward to working with the Department as it moves forward with rulemaking and, in furtherance of these efforts, respectfully submit the below comments.

### **Edelman Financial Engines**

Financial Engines Advisors L.L.C. is a wholly owned subsidiary of Edelman Financial Engines, LLC (Edelman Financial Engines or the Company), and is a federally registered investment adviser that provides personalized investment advice and management services to investors in the workplace and through retail advisory centers. Edelman Financial Engines provides such services as, where applicable, a fiduciary under the Employee Retirement Income Security Act of 1974 (ERISA), as amended, and the parallel prohibited transaction restrictions of the U.S. Internal Revenue Code of 1986, as amended (Code).

Edelman Financial Engines is the largest independent investment adviser in the United States, with more than \$230 billion in assets under management and serving more than 1.2 million clients.<sup>2</sup> We are also the leading provider of independent advisory services to the employees of the nation’s largest employers and partner with leading recordkeepers to provide access to advisory services for more than 10.6 million retirement participants in 401(k) and similar Defined Contribution (DC) plans.<sup>3</sup> Edelman Financial Engines was formed in 2018 from the merger of Financial Engines and Edelman Financial Services. Edelman Financial Engines is well known for providing discretionary investment management in the workplace through our Professional Management service (managed accounts program) since September 2004, and notably, the Company provides non-discretionary investment advice to more than 1.1 million

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<sup>1</sup> 85 Fed. Reg. 59132 (Sept. 18, 2020).

<sup>2</sup> As of September 30, 2020.

<sup>3</sup> As of September 30, 2020.

retirement plan participants. While we primarily provide access to our advisory services through DC plans in the workplace, Edelman Financial Engines also provides highly personalized, comprehensive financial planning and advisory services to approximately 90,000 individual clients who access our services directly through our 150+ offices around the country.<sup>4</sup>

With respect to retirement income illustrations, Edelman Financial Engines provides eligible plan participants a Retirement Evaluation or similar retirement readiness assessment upon rollout of our services and generally annually. Retirement Evaluations highlight specific risks in a plan participant's retirement account, provide an assessment of the likelihood of achieving the plan participant's retirement income goal, provide guidance on how to reduce those risks and introduce our services as a means of obtaining help in addressing these issues. Retirement Evaluations are based on data provided by the plan provider and include an evaluation of how well the plan participant is investing and saving in the retirement plan. Specifically, the evaluation considers the individual plan participant's risk, diversification, employer stock concentration and 401(k) contribution rate.

As initially issued, the Interim Final Rule takes a “one-size-fits-all” approach that can create a number of problems when dealing with the huge variety of real-world situations and household preferences Edelman Financial Engines addresses when counseling its clients.

**I. The Lifetime Income Illustrations under the Interim Final Rule Assume Full Annuitization, which is Unrealistic and Undesirable.**

Paragraph (b) of the Interim Final Rule requires that pension benefit statements include: The value of a participant's account balance as of the last day of the statement period; such account balance expressed as a lifetime income stream payable in equal monthly payments for the life of the participant; and such account balance expressed as a lifetime income stream payable in equal monthly payments for the joint lives of the participant and spouse as a qualified joint and survivor annuity (QJSA). The lifetime income illustrations required under the Interim Final Rule thus assume that a participant will annuitize their entire balance in a fixed annuity to obtain the illustrated income streams.

This is an incorrect and potentially harmful assumption. While we do not dispute the significant role annuities can play in lifetime income strategies, in our experience it is not recommended for plan participants to take their entire balance and convert it into an income annuity.<sup>5</sup> Full annuitization is undesirable in many situations for a number of key reasons:

- a. Social Security and employer pensions may provide adequate longevity insurance for many households.
- b. Some plan participants may anticipate a need for liquidity to accommodate uncertain health care expenses or lifestyle preferences. Annuities typically do not provide the ability to take withdrawals exceeding the contractual monthly payout.

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<sup>4</sup> As of September 30, 2020.

<sup>5</sup> For a discussion of these topics, please see Ric Edelman, *THE TRUTH ABOUT MONEY* 186-196 (4th ed. 2010) and *THE LIES ABOUT MONEY* 231-257 (2007).

- c. Most research on retirement shows that expenses start higher than average in early retirement, with steady declines as retirees get older.<sup>6</sup> A fixed annuity locks households into a flat spending profile.
- d. Fixed annuities, being implicitly fixed income investments, are unlikely to provide long-term growth that may be needed to fund long retirements. Modest allocations to equity investments, when combined with fixed income investments, can provide necessary growth to keep up with expected inflation when managed appropriately.
- e. As time goes on, inflation will continue to reduce the purchasing power of the annuity, because annuities typically do not provide annual increases to keep up with increases in the cost of living.
- f. Annuities can carry high fees for a low return and are not risk-free. Insurance companies can, and have, collapsed. If a plan participant is fully annuitized in a fixed annuity, the participant risks the loss of their entire income stream in such a circumstance.
- g. Uncertainty in longevity risk is not fully addressed by many annuity products. Continuing advances in medical technology are likely to extend life expectancies, as they've done for the past 120 years. Research from the Stanford Center on Longevity suggests that today's workers can expect to live beyond age 100 – but annuity products often rely on shorter life expectancies due to historic actuarial data. If large numbers of American retirees live longer than expected, there is a very real risk that annuity products may not be able to fulfill their promises of providing “lifetime” income.

It is therefore critical for many plan participants to avoid full annuitization and maintain sufficient assets in other investments, to allow flexibility, protect against risk, offset the impact of inflation, and provide for sufficient liquidity. We agree that annuities can have a legitimate role in providing retirement income, however annuities, and especially full annuitization, is not appropriate for all people. The assumption of full annuitization provided for in the Interim Final Rule is therefore misleading at best and potentially harmful at worst.

We propose including a comparative illustration of the full annuitization income streams to an income stream generated by a Systematic Withdrawal Plan, (“SWP”) whereby monthly or annual income is generated for a retiree from a globally diversified portfolio. SWPs can provide similar amounts of income, but allow income streams to be increased or decreased over time based on the needs of the plan participant and to adjust for inflation; allow for access to capital; and allow unspent account balances to heirs upon the plan participant’s death.

This comparative illustration could also show the impact of an annuity as one part of a retiree’s SWP. We would be pleased to discuss with the Department the assumptions and calculations we incorporate when creating SWPs for our clients.

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<sup>6</sup> “Economic Preparation for Retirement.” Michael Hurd and Susann Rohwedder. In Investigations in the Economics of Aging, eds. David A. Wise. University of Chicago Press. 2012.

## **II. Using A Fixed Annuity as the Benchmark Can Confuse Participants**

As discussed above, a fixed annuity provides a flat amount of income throughout retirement. Most alternative retirement income solutions do not suffer from that limitation. Therefore, comparing fixed annuity strategies with other strategies will create a confusing, apples-to-oranges comparison for plan participants. For example, a high-priced annuity product might offer a high income for 15 years but cease paying income at age 80. A benchmark based on such a product could unintentionally lead participants to choose an inferior product.

Most alternative retirement income solutions provide some type of death benefit, either based on an insurance guarantee or based on maintaining a liquid portfolio for some period. Higher death benefits would typically be accompanied by lower monthly payouts. Plan participants may not have the financial literacy they need to allow them to compare a strategy with one income level and a death benefit against a fixed annuity with a higher income level and no death benefit.

## **III. The Exceptions Granted to In-Plan Annuity Products under the Interim Final Rule May Disadvantage Non-Annuity Solutions, Discourage Innovation, and Create Confusion.**

Section (e) of the Interim Final Rule contains special rules for in-plan annuities. In the case of these in-plan annuities, the plan administrator has the choice of whether or not to use the assumptions required of other annuities under the Interim Final Rule, or the contract terms to calculate the monthly payment amounts.

Because these limited exceptions are granted only to in-plan annuities, they disadvantage other retirement income solutions. Such alternatives may include partial or no annuitization. Forcing alternatives to compete at a disadvantage discourages innovation and, as discussed in Section II above, may create confusion when participants are trying to compare their options.

## **IV. The Assumptions Built into the Illustrations Used in the Interim Final Rule Could Become Negative Self-Fulfilling Prophecies**

The lifetime income illustrations and their underlying assumptions, set out by the Interim Final Rule, could be viewed as providing plan participants with merely one example of potential lifetime income. However, policy-induced reference points, such as assumptions of retirement age, can have powerful influences on behavior.

For example, Social Security's "full retirement age" (also called "normal retirement age") greatly impacts the average person's decision about when to claim Social Security benefits. Only about 5 percent of retirees delay the start of their Social Security benefits until age 70 despite numerous studies showing that most retirees would benefit by doing so.

It would thus be an unfortunate and counterproductive outcome if the lifetime income illustrations set out in the Interim Final Rule induced plan participants to act against their own best interest in deciding whether and when to annuitize their retirement balances, simply because such participants are convinced that trying to match such illustrations is the standard. This influence could be particularly problematic

since annuitization is irreversible and full annuitization is undesirable in many situations as discussed in Section I above.

#### **V. The Assumptions Used in the Interim Final Rule Fail to Capture Many Typical Situations**

While we do not want to lose sight of our point in Section I – that full annuitization is not a desirable outcome for most households – we also note that the assumptions set out in the Interim Final Rule for the required annuity calculations are oversimplified and thus fail to capture many typical situations.

- a. The QJSA calculation assumes a 100% survivor benefit. This conflicts with many economic and demographic studies showing that single households need less money than two-person households. The result is that the illustration of the QJSA monthly amount will be lower than that of a more realistic annuity with a lower survivor benefit.
- b. Gender-neutral annuity calculations do not capture the fact that insurance companies take gender into account when looking at life expectancies. Because women live longer than men on average, the illustrations required by the Interim Final Rule will show a higher projected income stream than will actually be available for many women.
- c. The assumption that both members of a couple are the same age will result in inflated estimates when the estimate is provided to the husband, since husbands tend to be a few years older than their wives. While the opposite will be true for estimates provided to married women (with older husbands on average), these two effects do not cancel each other out. Gender differences in salaries, years in the workforce, and savings rates tend to mean men accumulate higher defined contribution plan balances. As a result, under the assumptions set forth in the Interim Final Rule, typical households will receive inflated estimates when combining their lifetime income illustrations.

#### **VI. Lack of Liability Protection Could Discourage Plan Sponsors from Using More Robust and Accurate Forecasts**

Paragraph (f) of the Interim Final Rule provides protection from liability to plan fiduciaries, plan sponsors, and other persons in connection with providing the lifetime income stream equivalents described in the Interim Final Rule, provided that these equivalents are derived in accordance with the Interim Final Rule's requirements and assumptions. Although paragraph (g) provides that plan administrators are not prohibited from including other illustrations, in addition to those required by the Interim Final Rule, the liability protection of paragraph (f) does not apply to such additional illustrations.

As discussed above, the assumptions used in the Interim Final Rule fail to capture many typical situations. As a consequence, illustrations that do take such factors into account may be more robust and accurate. Nevertheless, plan fiduciaries may avoid using these superior forecasts. Plan fiduciaries are generally risk adverse and may avoid providing additional illustrations in order to protect themselves from potential liability.

To encourage plan fiduciaries to provide the best information possible to plan participants, the Department should consider expanding the liability protection of paragraph (f) to cover additional illustrations, provided the plan administrator has prudently selected the provider of such illustrations.<sup>7</sup>

## **VII. Using only a Participant's Current Balance in the Calculation Limits the Usefulness of the Illustrations**

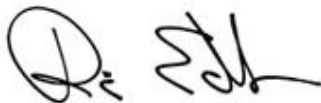
The Interim Final Rule requires a plan administrator to produce the lifetime income illustrations based on the "value of the account balance as of the last day of the statement period." Using only a participant's current balance ignores other important factors, such as future investment growth, the participant's current savings rate, and the employer contribution amount. This limitation severely restricts the usefulness of the illustrations for two reasons. First, participants in the early and middle parts of their career will not have accrued significant balances and thus will see discouragingly low-income estimates. Second, the power of compound growth is ignored. As a result, these estimates do not reflect the likely outcome for participants who are actively saving and may counterproductively discourage future savings.

For example, consider a 40-year-old plan participant with a balance of \$100,000 who is saving only a modest amount. Were she to increase her saving rate, her income estimate as shown per the Interim Final Rule would not change. She will have no idea how much her retirement outlook has improved and may as a result decide that saving more is not worthwhile. Edelman Financial Engines believes that participants should see the impact of positive decisions on their income projections. Immediate feedback helps encourage more saving.

## **Conclusion**

We appreciate the opportunity to comment on the Interim Final Rule and welcome the opportunity to work with the Department and to provide any further assistance that may be required. Please contact us should you have any questions.

Very truly yours,



Ric Edelman  
Founder  
Edelman Financial Engines



Christopher Jones  
EVP and Chief Investment Officer  
Edelman Financial Engines

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<sup>7</sup> In Field Assistance Bulletin 2007-01, the Department outlined the process that should apply to the prudent selection of service providers generally, indicating that "a fiduciary should engage in an objective process that is designed to elicit information necessary to assess the providers qualifications, quality of services offered and reasonableness of fees charged for the service. The process also must avoid self-dealing, conflicts of interest or other improper influence."