

August 6, 2013

Filed Electronically

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

Re: **Pension Benefit Statement Project** (RIN 1210-AB20)

Dear Sir or Madam:

Schwab Retirement Plan Services, Inc. and Schwab Retirement Plan Services Company¹ (collectively, "Schwab") appreciate the opportunity to comment on the Department of Labor's ("Department") Advance Notice of Rulemaking regarding proposed revisions with respect to regulations governing pension benefit statements of defined contributions plans ("Proposed Revisions")².

The Proposed Revisions would make extensive changes to defined contribution plan benefit statements required under Section 105 of ERISA, centering on the provision of information related to lifetime income streams. The proposed regulations under consideration would generally require that a participant's accrued benefits: (i) in addition to being expressed as an account balance, be expressed as an estimated lifetime stream of benefits based on such balance and (ii) for participants who have not yet reached normal retirement age, be projected to the participant's retirement date and then converted to and expressed as an estimated lifetime stream of payments, assuming retirement at normal retirement age. The regulation would also require that both income streams (e.g. the one based on current account balance and the one based on projected account balance): (i) be presented as estimated monthly payments based on the expected mortality of the participant and (ii) if the participant has a spouse, be based on the joint lives of the

¹ Schwab Retirement Plan Services, Inc. and Schwab Retirement Plan Services Company provide retirement and benefit plan recordkeeping and related services with respect to approximately 1300 retirement and benefit plans and 1.4 million participants. Trust and custody services are provided by Charles Schwab Bank. Schwab Retirement Plan Services, Inc., Schwab Retirement Plan Services Company and Charles Schwab Bank are subsidiaries of The Charles Schwab Corporation. The Charles Schwab Corporation (Nasdaq: SCHW), is a leading provider of financial services, with more than 300 offices and 9.0 million active client brokerage accounts, 910,000 banking accounts and \$2.05 trillion in client assets as of June 30, 2013. Through its operating subsidiaries, the Corporation provides a full range of securities brokerage, banking, money management and financial advisory services to individual investors and independent investment advisors.

² 78 Fed.Reg. 26727 (May 8, 2013).

participant and the spouse. The pension benefit statements would be required to contain an “understandable” explanation of the assumptions behind the lifetime income stream illustrations and a statement that projections and lifetime income stream illustrations are estimates and not guarantees. The Proposed Revisions also would require that the illustrations be based on only reasonable assumptions and would provide safe harbors under which certain specific assumptions would be deemed so reasonable.

Schwab supports the Department’s goal with respect to the need for lifetime income information

As noted in the First Part of the Proposed Revision, the Department has proposed these changes because:

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.³

...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. 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 calculators⁴.

Schwab has long been an advocate of providing participants with the information and tools critical to an understanding of their ability to reach their retirement goals. Schwab’s position is that regardless of whether a participant is close to or far from retirement, it is important to develop a retirement savings and investment goal and to establish a plan to reach that goal. To such end, Schwab has invested significantly in a service⁵ aimed at helping participants understand where they stand in realizing their projected retirement objectives. Under this service, participants receive information regarding the projected shortfall (if any) between the projected monthly income that they can expect to receive based on current savings rates and the projected monthly income they may need in retirement. This service is provided where authorized by the plan sponsor and is based on individual participant data. Participants are referred to a website for information concerning the calculations and assumptions and are advised as to the manner in which

³ 78 Fed. Reg. 26728.

⁴ 78 Fed. Reg. 26728.

⁵ This service is entitled “My Retirement Progress™”, with data and estimated projections formulated by an independent third party.

they can input additional data or update their current information. The goal, consistent with the public policy communicated by the Department, is for participants to take action—to develop a savings and investment program to enhance their “Retirement Progress” and diminish the gap between what they are projected to receive in retirement and replacement income they may need during retirement.

We therefore support and applaud the DOL’s initiative in this regard. Schwab agrees with the Department that enhanced disclosure and the issuance of safe harbor relief to fiduciaries providing lifetime income stream information is critical to help participants understand what they will need for a financially secure retirement, and make changes in their saving and investment plan to mitigate income shortfalls. However, we feel that for the reasons expressed below, the DOL should consider several modifications to the Proposed Revisions in order to better accomplish this very important goal.

Specific Issues under Proposed Revisions

Complexity of Information

Schwab is concerned that the information proposed for inclusion in participant benefit statements under the Proposed Revisions will be too complex and confusing to participants. The Proposed Revisions would require the provision of at least four illustrations, with additional illustrations for married participants, as well as the assumptions underlying each of these illustrations. For all participants, the illustrations must provide: (i) the participant’s current account balance; (ii) the participant’s current account balance as a monthly lifetime income stream based on a single life annuity; (iii) the participant’s projected account balance, taking into account additional contributions and investment returns to normal retirement age; and (iv) the projected account balance as a monthly lifetime income stream. For married participants, each of these illustrations must be provided based on a joint and survivor benefit calculation. Disclosure would then be required of the assumptions underlying each of the illustrations.

Participants are already provided with detailed, complicated information regarding their plan fees, benefits, features and options. We have found that information “overload” frequently can lead to inertia, the exact opposite of the desired result in this context, where the goal is to trigger participant action to improve savings for retirement. Although illustrations and the assumptions underlying the illustrations may be useful information, our concern is that the importance of such information will be lost if it is too complicated and communicated in a statement containing other important account information.

The joint and survivor annuity requirements of the Proposed Revisions provide an example of information that may be confusing to participants. The Proposed Revisions would apply to defined contribution plan benefit statements. However, most defined contribution plans⁶ do not provide for a joint and survivor form of benefit as the normal form of benefit. Joint and survivor annuity content in the benefit statement could therefore lead to confusion and create an implication that such a form of benefit is in fact

⁶ Other than money purchase and target benefit pension plans

available to married participants under the terms of their defined contribution plan, creating dissatisfaction at the time of distribution and the potential for improper or inaccurate distribution planning.

Schwab suggests that instead of requiring this complex information, the benefit statements include concise indicia of the participant's retirement readiness. This could be in the form of a numeric score, percentage figure, graph, chart or other simple format that a participant can easily and quickly understand. The information could contain a link to a website for more detailed information as to how the retirement readiness or progress score was calculated as well as the steps that participants can adopt to improve their score. This approach is based on customized participant data and provides participants with a projected monthly income need. The information would be easily understandable by participants and relevant to their own personal retirement situation by indicating the projected retirement income gap based on their own unique circumstances. It would therefore more directly and positively impact participant savings and retirement behavior than the provision of the detailed and complicated illustrations and assumptions as described under the Proposed Revisions.

Delivery of Information

Although the Department did not directly raise this issue for consideration, Schwab recommends that if the benefit statement requirements are promulgated as described under the Proposed Revisions, the Department clarify that paper delivery of participant benefit statements is not required, and that electronic delivery is acceptable, consistent with existing electronic disclosure standards promulgated by the Department of Treasury and the Internal Revenue Service for participant notices and elections⁷. The Department provided valuable and pragmatic guidance by providing for electronic disclosure standards as good faith compliance under Field Assistance Bulletin 2006-03. Formalization of these standards through Department amendment of the electronic disclosure rules⁸ is extremely important in this context. Use of electronic and website forms of delivery reduce costs, ultimately benefiting plans and participants. Furthermore, participants that have access to retirement readiness information through electronic means such as websites are able to immediately react to such information, and can quickly and efficiently modify their savings and retirement assumptions as well as their plan savings rate. Such participants, as compared to those passively receiving paper statements, are likely to be more engaged in taking control of their retirement future.

Fiduciary Liability Issues

Schwab appreciates the Department's attention to concerns about participant lawsuits. Our experience is that some plan sponsors who do not authorize the provision of retirement readiness information and services to their plan participants do so out of apprehension with respect to potential fiduciary liability. Expanded disclosures do not typically resolve these concerns for such plan sponsors.

⁷ 29 CFR §1.401(a)-21.

⁸ 29 CFR § 2520.104b-1(c).

We suggest that there are two measures which would serve to mitigate this risk and improve plan sponsor acceptance of these types of services and information. First, the Department should clarify that the provision of participant retirement readiness tools, information and services, including plan savings contribution recommendations, even where customized based on individual participant data, does not constitute the rendering of investment advice under ERISA Section 3(21)(A)(ii) and 29 CFR 2510.3-21(c). This should be addressed through an amendment to Interpretive Bulletin 96-1⁹.

Second, where a regulatory safe harbor is available, plan sponsors typically elect to structure plan features to rely on these safe harbors. They appreciate and value the regulatory certainty and potential insulation from liability provided through conformity with such safe harbors. The Department has provided safe harbor protection in a number of important contexts, including participant investment direction, qualified default investment alternatives, investment mapping and the selection of annuity providers¹⁰.

The Proposed Regulations provide a general rule under which projections would need to be based on reasonable assumptions taking into account generally accepted investment theories. A projection would not be reasonable unless it is expressed in current dollars and it takes into account future contribution and investment returns.

The safe harbor proposed by the Department under the Proposed Revisions on the other hand would be more prescriptive, setting forth a specific set of assumptions—that contributions continue to normal retirement age at the current annual dollar amount, investment returns are 7 percent per year, and a discount rate of 3% per year is imposed for purposes of establishing the value of projected account balances in current dollars.

The Department states that “the general rule would permit a broad array of current projection practices to continue”... “while the safe harbor would offer certainty for those plan administrators who seek that result or who do not currently provide projections...the safe harbor would be an option and not a regulatory requirement.”¹¹

Schwab believes that because most plan sponsors will desire the certainty of the safe harbor, this approach could cause unintended consequences. Plan sponsors will likely desire to modify their retirement readiness projections consistent with the safe harbor protections. However, we are not aware of current retirement readiness services which reflect the safe harbor assumptions specified under the Proposed Revision’s safe harbor, so the projections currently provided to participants are likely to be inconsistent with the safe harbor parameters. As most plan sponsors will elect to use the safe harbor factors, the inconsistency in projections is likely to lead to participant confusion over which set of illustrations and projections they should rely upon, dissatisfaction with their plan sponsor,

⁹ 61 Fed. Reg. 29586 (June 11, 1996).

¹⁰ 57 Fed. Reg. 46932 (October 13, 1992); 72 Fed. Reg. 60452 (October 24, 2007); 29 U.S.C. §1104(c)(4)(A); 73 Fed. Reg. 58447 (October 7, 2008).

¹¹ 78 Fed. Reg. 26731.

and potential plan sponsor liability with respect to retirement calculations provided prior to issuance of and inconsistent with that provided under the safe harbor provisions.

Also, the implementation of the narrow safe harbor is likely to have a serious and detrimental impact upon the defined contribution plan industry's significant investment in alternative retirement readiness solutions. After having already developed approaches to address the retirement readiness dilemma, service providers will be required to respond to plan sponsor demand for projections consistent with the same harbor and develop the infrastructure to support the narrow Department safe harbor approach. For certain service providers, retirement readiness projections and savings recommendations are bundled with asset allocation or advisory services. Those services do not reflect the Department's safe harbor factors in their retirement income projections, so the ultimate result of the safe harbor under the Proposed Revisions, if adopted, could be a decrease in asset allocation or advisory services, with again, a detrimental impact upon participant savings and investment for retirement.

To accomplish the important public policy goal communicated by the Department, Schwab recommends a different safe harbor approach. First, a safe harbor should be provided which includes as a safe harbor option, but is not limited to, the lifetime income illustrations described by the Department under the Proposed Revision. Other retirement readiness measures, such as services which show projected shortfall in retirement savings, should be afforded safe harbor protection.

Second, any such safe harbor should not be limited to the specific contribution, investment return and discount rates described in the Proposed Rule's safe harbor. Instead, the general rule (that projections be based on reasonable assumptions taking into account generally accepted investment theories) should be adopted as the safe harbor approach. This is consistent with other safe harbors extended by the Department, such as under Section 404(c), where the Department provides flexibility through general parameters rather than imposing narrow, delineated requirements.

Regulatory Framework

Schwab appreciates the Department's comment that a regulatory requirement may not be necessary to address participant retirement readiness:

...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 illustrations¹².

Schwab's view is that a regulatory mandate would be precipitous and is not necessary at the current time. As demonstrated by the thoughtful comments made by a variety of

¹² 78 Fed. Reg. 26737.

financial institutions, providers and industry groups in response to the Proposed Revision, the industry has already voluntarily adopted numerous, well thought out yet varied approaches to address retirement readiness concerns. We suggest that use of these solutions will be broadened, and plan sponsors will more readily approve the provision of retirement readiness solutions to their plan participants, upon the Department's adoption of additional fiduciary safeguards as described above.

The Department should only consider formal regulatory action after it has issued such additional fiduciary protection and has subsequently determined based on actual data that insufficient information, tools and services are available for participants to make informed retirement readiness decisions. Additional regulatory requirements should be the final approach and adopted only if other measures prove unsatisfactory.

Schwab Proposal

Schwab supports the Department's goal of ensuring that participants have access to information and tools necessary to make informed retirement planning decisions. We believe that the Department's action in this regard should recognize the wide variety of mechanisms available in the retirement plan industry to accomplish this goal, as well as the importance of providing fiduciary protection to plan sponsors that authorize the provision of such retirement readiness services to their participants. However, we respectfully suggest that a regulatory requirement is not yet necessary, and also suggest requiring the specific illustrations and assumptions described under the Proposed Revisions is not the best vehicle to reach these goals.

Instead, Schwab believes that meaningful measures to help participants better prepare for retirement under their defined contribution plan should include the following factors:

- Amendment of IB 96-1 to specifically provide that retirement readiness services, tools, projections, illustrations and hypotheticals constitute investment education, not investment advice under ERISA
- The provision of a safe harbor that affords fiduciary protection for offering retirement readiness services that meet certain general criteria and recognizes various alternatives currently available in the defined contribution market, rather one that is limited to the specific factors described under Proposed Revisions
- If a requirement is imposed that benefit statements include certain retirement distribution information and projections, amendment of 29 CFR § 2520.104b-1(c) to clarify that electronic delivery is an acceptable method of distribution.

Conclusion

Again, Schwab appreciates the opportunity to comment on the ANPRM issued by the Department regarding lifetime income illustrations in benefit statements. We welcome the opportunity to work with the Department on this important initiative. Should you have any questions about this letter, please contact the undersigned at (330) 908-4512 or at gail.mayland@schwab.com.

Sincerely,



Gail B. Mayland
Vice President and Associate General Counsel
CHARLES SCHWAB & CO., INC.

cc: The Honorable Phyllis C. Borzi, Assistant Secretary, U.S. Department of Labor
Mr. Alan Lebowitz, Deputy Assistant Secretary for Program Operations, U.S.
Department of Labor
Mr. Joe Canary, Director, Office of Regulations and Interpretations, U.S. Department
of Labor