



Lifetime Income Illustration Requirements

DOL outlines requirements to meet the new
SECURE Act provision.

September 2020

KEY POINTS

- The DOL outlines requirements for providing required lifetime income illustrations in pension benefit statements.
 - Liability relief is available for lifetime income illustrations provided in accordance with required assumptions and explanations.
 - Additional illustrations of lifetime income using reasonable alternative assumptions can also be provided.
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On August 18, 2020, the Department of Labor (“DOL”) released an Interim Final Rule (“Rule”) for providing required lifetime income illustrations in pension benefit statements to participants in defined contribution plans subject to the Employee Retirement Income Security Act of 1974 (“ERISA”).

The Rule implements amendments made to ERISA by the Setting Every Community Up for Retirement Enhancement Act of 2019 (“SECURE Act”), which require the provision (on an annual basis) of two illustrations that show participants the amount of estimated monthly payments they could receive if their account balance were used to purchase a single life annuity and a qualified joint and survivor annuity.

At a high level, the Rule:

- Addresses the assumptions that must be used in calculating lifetime income illustrations.

- Provides model disclosure language.
- Addresses plans that offer distributions in the form of an annuity (or the ability to purchase a deferred income annuity).¹
- Provides liability relief for lifetime income illustrations provided in accordance with the Rule.

The Rule will become effective one year from the date of publication in the Federal Register (which is expected to happen soon).

Although the Rule is described as “interim final,” the DOL is seeking comments (due within 60 days of publication) and has announced its intention to provide a final rule reflecting its review of those comments before the effective date.

¹The optional assumptions and disclosures available to plans that offer annuities are beyond the scope of this article.

Background

Section 105 of ERISA requires plan administrators of defined contribution plans to provide participants with periodic pension benefit statements. Benefit statements must be furnished at least annually, unless the plan allows participants to direct their own investments in their individual accounts, in which case benefit statements must be furnished at least quarterly. Benefit statements must indicate a participant's "total benefits accrued" based on the plan's latest information, which for defined contribution plans is the participant's account balance.

The SECURE Act amended Section 105 of ERISA to require participant benefit statements to include, in addition to a participant's account balance, lifetime income illustrations—which must be provided at least once on an annual basis to any participant, beneficiary, or alternate payee who has an account balance under the plan.

General Content Requirements

The Rule requires benefit statements to include the following on an annual basis:

- The beginning and ending dates of the statement period;
- The value of the account balance as of the last day of the statement period;
- The value of such account balance expressed as an equivalent lifetime income stream payable in equal monthly payments for the life of the participant ("single life annuity"), determined in accordance with the assumptions described below; and
- The value of such account balance expressed as an equivalent lifetime income stream payable in equal monthly payments for the joint lives of the participant and spouse ("qualified joint and survivor annuity"), determined in accordance with the assumptions described below.

Required Account Balance Assumptions

The following rules apply in determining a participant's account balance that is used to generate retirement income illustrations.

In short, the account balance:

- Must be as of the last day in the statement period;
- Must assume that the participant's account is 100 percent vested;
- Is required to include the outstanding balance of any participant loan, unless the participant is in default; and
- Cannot take into account future earnings, contributions, or changes in value.

Required Annuity Assumptions

To convert the account balance to a Single Life Annuity and Qualified Joint and Survivor Annuity (QJSA), the Rule requires lifetime income illustrations (i.e., monthly payments) to be based upon all of the following assumptions:

- **Assumed Age:** Payments will begin on the last day of the benefit statement period assuming that the participant is age 67 (or the participant's actual age if older).
- **Assumed Spousal Status:** All participants are assumed to have a spouse of equal age, regardless of a participant's actual marital status or the actual age of a participant's spouse, and the survivor percentage for the QJSA is 100% (i.e., the amount of the annuity payments to the spouse after the participant dies remains the same).
- **Assumed Interest Rate:** A rate of interest equal to the 10-year constant maturity Treasury securities yield rate for the first business day of the last month of the period to which the benefit statement relates.

- **Assumed Mortality:** The annuity calculation must use the participant's mortality based on the applicable mortality table under Internal Revenue Code Section 417(e)(3)(B).

- **Level Payments:** The payments are assumed to be level over the payout period and do not assume any inflation protection.

- **No Fees:** No assumptions are made regarding any insurance company fees that may apply to the purchase, holding of, and/or payments made from the single life annuity or QJSA.

Required Explanations and Model Language

Lifetime income illustrations must include an explanation of the following:

- The commencement date (last day of the statement period) and age assumptions (age 67 or current age if older);
- A single life annuity (i.e., an arrangement providing fixed monthly payments for life with no survivor benefit);
- A qualified joint and 100% survivor annuity, the availability of other survivor percentage annuities, and the impact of choosing a lower survivor percentage;
- The marital status assumptions (i.e., married with a spouse who is the same age);
- The interest rate assumptions (including the "as of" date of the yield being used);
- The mortality assumptions (i.e., gender neutral mortality assumptions regarding how long the participant and a spouse who is assumed to be the same age are expected to live).
- Estimated monthly payments are for illustrative purposes only (i.e., they are not a guarantee);

- Actual monthly payments will depend on numerous factors and may vary substantially from the illustrations;
- Estimated monthly payments are fixed amounts that would not increase for inflation;
- Estimated monthly payments assume that the account balance is 100% vested; and
- The account balance used to provide estimates includes the outstanding balance of any participant loan, unless the participant is in default of repayment on such loan.

Model language is provided for each of the eleven required explanations above. These explanations can be incorporated into existing pension benefit statements. Alternatively, plan administrators may use the Model Benefit Statement Supplement (included in the appendix to the Rule).

Limitations on Liability

The Rule provides liability protection under Title I of ERISA for plan fiduciaries, plan sponsors, and “other person[s]” providing the required lifetime income illustrations, provided that illustrations (1) are derived in accordance with the assumptions described above, and (2) include language “substantially similar in all material respects” to the model language for the required explanations described previously in this article.

Additional Lifetime Income Illustrations

The Rule specifies that additional lifetime income illustrations may be provided on participant benefit statements, “as long as such additional illustrations are clearly explained, presented in a manner that is designed to avoid confusing or misleading participants, and based on reasonable assumptions.”

The Rule does not afford the same liability protections to these additional illustrations that are applicable to the required version.

Open Questions

The Rule leaves some open questions. For example, it is not clear whether a particular quarterly statement must be considered the “annual statement” for purposes of the requirement, and how fast after the effective date the first statement with a required lifetime income illustration must be provided. Also, it is not clear how the account balance should be calculated with respect to plans that have more than one recordkeeper (i.e., multiple vendor 403(b) and 457 plans). We anticipate that these and other questions will be addressed in the final rule.

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