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Lifetime Income Disclosures: A New Requirement for Pension Benefit Statements

Financial security in retirement is the ultimate goal of those who participate in employer-sponsored retirement plans. But while saving for retirement is important, the Department of Labor (DOL) has expressed concern that participants may need more information from their employers to be confident about a positive retirement outcome. Many factors influence retirement readiness. It's not just *whether* we save; it's also how much we save, how we invest our savings, and—among other things—when we retire.

To help participants know whether they're saving enough for retirement, the Employee Retirement Income Security Act of 1974 (ERISA) Section 105(a) requires plan administrators to provide each defined contribution plan participant with an annual pension benefit statement. Participants who have the right to direct their own investments must receive statements at least quarterly. But knowing how much is in your retirement account may not give much insight into whether you'll have enough to retire on.

The DOL attempted to address this concern in 2013 by issuing an advance notice of proposed rulemaking (ANPRM). In the ANPRM, the DOL considered requiring plan administrators to provide up to four lifetime income illustrations in their pension benefit statements. But the DOL never adopted the ANPRM as a final rule.

The Setting Every Community Up for Retirement Enhancement (SECURE) Act—signed into law in December 2019—amended ERISA Sec. 105(a) to require ERISA-covered defined contribution plans (profit sharing plans, 401(k) plans, ERISA 403(b) plans, money purchase pension plans, and target benefit plans) to provide more information to participants. The SECURE Act requires plan administrators of such ERISA-covered plans to disclose (at least annually) an estimated monthly payment that participants could receive in a lifetime income stream that is equivalent to their current accrued benefit. Plan administrators must also provide this disclosure to beneficiaries—such as alternate payees or deceased participants' beneficiaries—who have their own individual account under the plan. Although plan administrators must *disclose* a projected annuitized payment amount, they are not required to actually *offer* annuities as a distribution option.

To implement this new disclosure mandate, the DOL's Employee Benefit Security Administration (EBSA) has posted at its website an interim final rule (IFR), entitled *Pension Benefit Statements-Disclosure Regarding Lifetime Income*. (At the time of this writing, the official version of the IFR had not yet been published in the Federal Register.) The DOL has also issued an accompanying Fact Sheet and a News Release.

New Disclosure Requirements

Plan administrators must meet the following requirements when providing lifetime income disclosures.

Timing Requirements
The IFR will be effective one year after its publication in the Federal Register. This means that the IFR's disclosure requirements will apply to pension benefit statements provided after that date. Plan administrators have been required to include disclosures at least annually. So, depending on the type of plan and on the date of the last disclosure, the *latest* that a disclosure could be made is during late summer 2022.

Monthly Payment Calculation
The disclosure must contain illustrations of projected monthly payout amounts. The IFR contains the following assumptions that plan administrators must rely on when calculating each participant's estimated monthly payment amount.

- **Two types of payouts.** The disclosure must contain two illustrations of converting assets: one to a single life annuity (SLA) and the second to a qualified joint and 100 percent survivor annuity (QJSA). The SLA and QJSA illustrations are designed to show payment amounts for both single and married participants, whether or not they are currently married.
    - The SLA illustration must assume that the annuity will pay a fixed amount each month during the participant's life.
    - The QJSA illustration must show the participant receiving a fixed payment amount each month during the joint lives of the participant and spouse. Once the participant dies, the surviving spouse will continue to receive the same monthly payment amount for life. When calculating the QJSA payment, the plan administrator must assume that each participant has a spouse who is the same age as the participant. This assumption applies even if the participant is not married.
- **Account balance.** Plan administrators must assume that participants will convert their entire account balance to either an SLA or a QJSA. The illustrations assume that participants are 100 percent vested in their accounts and that any outstanding loans that are not in default have been repaid.
- **Payment start date.** Plan administrators should calculate the monthly payments assuming that the participant will begin receiving payments on the last day of the pension benefit statement period (for example, December 31 for a benefit statement covering the fourth quarter).
- **Age when payments start.** Under the IFR, plan administrators must assume that payments start when the participant turns age 67. For most individuals, this is considered full retirement age for Social Security benefits. Plan administrators must use the participant's actual age if the participant is older than age 67.
- **Interest rate.** To calculate the monthly payments, plan administrators must use the 10-year constant maturity Treasury (CMT) securities yield rate as of the first business day of the last month of the statement period. So for a fourth quarter benefit statement with a December 31 commencement date, the December 1 CMT rate would be used. This rate best represents interest rates used in the actual pricing of commercial annuities.
- **Mortality table.** Lifetime annuities offered by ERISA plans must be priced on a gender-neutral basis. To meet this requirement, plan administrators must use the gender-neutral mortality table reflected in Internal Revenue Code Section 417(e)(3)(B).

Specific Rules for In-Plan Annuities
Plan administrators that offer an in-plan annuity distribution option through a licensed insurer—which is designed to allow participants to take out scheduled payments instead of a lump-sum distribution—may use the assumptions contained in the IFR or may use the actual terms of the annuity contract. Plan administrators that use the actual annuity contract terms must still provide illustrations of monthly SLA and QJSA payments, using the IFR assumptions that

- payments will start on the last day of the statement period,
- the participant will start payments at age 67 (or the participant's actual age if older than 67), and
- the participant has a spouse who is the same age.

Plan administrators offering a deferred income annuity (DIA) option, which allows participants to purchase a future income stream of retirement payments, are subject to different disclosure requirements. With this type of annuity, purchases occur during working years, but payments are delayed to a selected retirement age—or possibly later, in the case of a qualifying longevity annuity contract (QLAC). For the portion of an accrued benefit that purchases a DIA, the separate disclosure must

- indicate the payment start date and the participant's age on that date;
- explain the frequency and payment amount as of the start date in current dollars;
- describe any applicable features, such as a survivor benefit or a period certain commitment; and
- state whether the annuity has fixed or variable payments, and if the payment amount could vary (e.g., for inflation), the disclosure must explain how the payments will change.

The plan administrator must use the generally applicable disclosure rule assumptions under the IFR for any portion of a participant's account that is not invested in a DIA.

Model Language Available

The lifetime income disclosure must contain certain explanations about the estimated annuity payments. For example, one of the required explanations is designed to help participants understand that the monthly payment amounts shown in the disclosure are estimates—there is no guarantee that participants will actually receive the estimated amounts. The DOL provides model language to address the required explanations, in the form of 11 separate language inserts, plus 2 standalone supplements that incorporate the 11 language inserts.

To satisfy the IFR rules, plan administrators may choose to incorporate each of the DOL's 11 separate model language inserts into their existing pension benefit statements. Alternatively, plan administrators may use one of the standalone supplements: the *Model Benefit Statement Supplement* or the *Model Benefit Statement Supplement—Plans That Offer Distribution Annuities*.

Plan administrators may also provide their own language to address the needed explanations. To receive liability relief (discussed next), plan administrators using their own language must ensure that it is substantially similar to the DOL's model language. Only minor variations of the model language may be used. And although there is no required format for the explanations, the DOL does require the statements to be written in a manner so as to be understood by the average participant.

Liability Relief

Plan administrators who meet certain requirements will not have any liability for providing monthly payment illustrations that are different from the amount actually received by the participant. To qualify for this relief, plan administrators must

- provide illustrations of estimated SLA and QJSA payment amounts;
- use the IFR's model language (or substantially similar language); and
- use the IFR's required assumptions (i.e., account balance, payment start date, age when payments start, interest rate, and mortality table).

The IFR clarifies that, because deferred income annuity information is not derived in accordance with the assumptions or model language provided, liability relief is not available to plan administrators who provide lifetime income disclosures for DIAs. In addition, liability relief is not available for any additional illustrations provided in the disclosure.

Comment Period

The DOL has provided a comment period that will end 60 days after the IFR is published in the Federal Register. The DOL will consider any comments that it receives before issuing final regulations, which it plans to do before the IFR becomes effective. The DOL specifically requests comments on several topics, including these.

- How will plans that currently provide lifetime income disclosures be affected by these new requirements?
- Is age 67 an appropriate annuity commencement age to use?
- Should a different interest rate or a combination of interest rates be used?
- Should plan administrators incorporate a "term certain or other feature" in the disclosure examples?

Next Steps

Although the IFR's effective date is still a year away, plan administrators should work with their software provider, recordkeeper, or insurance company to ensure that the required assumptions and model language will be incorporated into their lifetime income disclosures by then.

Ascensus will continue to follow new developments as they arise. Visit ascensus.com for the latest information.