

DEPARTMENT OF LABOR ISSUES INTERIM FINAL RULE IMPLEMENTING NEW LIFETIME INCOME DISCLOSURE REQUIREMENTS FOR DEFINED CONTRIBUTION RETIREMENT PLANS

Hodgson Russ Employee Benefits Newsletter
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Pursuant to the SECURE Act (Setting Every Community Up for Retirement Enhancement Act), the Department of Labor on August 18 issued an interim final rule (“IFR”) providing a model disclosure and other guidance regarding the new requirement that defined contribution retirement plans provide annual benefit statements that include an illustration of the lifetime income stream a participant’s account balance would provide at retirement.

Under prior law, defined contribution retirement plans that allow participants to direct their investments were required to provide benefit statements at least quarterly, but were not required to provide information about the lifetime income stream that the participant’s account might produce. The IFR provides detailed explanations regarding how defined contribution retirement plans must provide the lifetime income illustrations, the assumptions upon which the illustrations must be based, and model language designed to explain the illustrations in terms accessible to an average plan participant. Plan administrators that provide the illustrations and model disclosures in the manner set forth in the IFR have protection against ERISA fiduciary claims that may be brought against them based on the lifetime income illustration disclosures.

The IFR is applicable to all types of ERISA-covered defined contribution retirement plans, such as 401(k) and 403(b) plans, whether or not the plan provides annuities or similar lifetime income distribution options. The DOL has determined that the annual lifetime income illustrations (“LII”) will include two estimates based on a single life annuity, and a 100% qualified joint and survivor annuity. The LIIs are based on the participant’s current account balance and are intended to show the lifetime stream of income they would be paid at age 67. The following table demonstrates what the DOL envisions a participant might receive:

Account Balance as of [DATE]	Monthly Payment at 67 (Single Life Annuity)	Monthly Payment at 67 (Qualified Joint and 100% Survivor Annuity)
\$125,000	\$645/month for life of participant.	\$533/month for life of participant. \$533/month for life of participant’s surviving spouse.

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The IFR sets forth the assumptions upon which the LII's must be based, including:

- The participant's account balance is 100% vested;
- Any outstanding plan loan is not in default and has been fully repaid;
- The estimated payments begin on the last day of the statement period;
- The participant is age 67;
- The participant's spouse is the same age as the participant for purposes of calculating the QJSA survivor annuity;
- The estimated monthly payments are based on an interest rate equal to the 10-year constant maturity U.S. Treasury securities yield rate;
- Mortality assumptions are based on the IRS gender neutral mortality tables in Code Section 417(e)(3)(B); and
- No adjustments are made for inflation.

The IFR includes model language designed to explain the single life annuity and 100% QJSA illustrations so that they may be understood by an average plan participant. Plan administrators are permitted to incorporate eleven distinct model statements into their existing benefit statements, or may adopt the Model Benefit Statement Supplement which is included as an appendix to the IFR. Plan administrators must ensure that language "substantially similar in all material respects" to that set forth in the IFR are included in their benefit statement. In particular, participants are to be cautioned that the LII outcomes are not guaranteed, and that the participant's actual payments at retirement may vary substantially from the illustrations.

Plan administrators are shielded from liability under ERISA for furnishing the LII in a manner consistent with the IFR.

While the DOL has invited and is reviewing comments, the IFR will become effective September 18, 2021 and will apply to retirement plan statements furnished after that date.