

Publications

DOL Clarifies Lifetime Income Disclosure Requirement

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On July 26, 2021, the Department of Labor (“DOL”) issued a brief set of [Frequently Asked Questions](#) (the “FAQs”) clarifying certain issues related to the interim final rule (the “IFR”) implementing the lifetime income illustration (“LII”) requirement in section 203 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (the “SECURE Act”). The FAQs should clear up any remaining ambiguity about the effective date of the LII requirement. DOL also used the FAQs to signal its intention to issue a final rule, though the timing is still unclear. Plan sponsors and providers may want to proceed cautiously, as the LII disclosure rules could change.

I. Background

Section 203 of the SECURE Act amended the Employee Retirement Income Security Act of 1974 (“ERISA”) to require 401(k) and other defined contribution plans to include an LII annually as part of participant benefit statements. The provision was intended to help participants understand how much income their account could produce in retirement.

On August 18, 2020, DOL issued the IFR implementing the LII requirement. In short, the IFR –

- clarifies the scope of the LII requirements – all ERISA-covered defined contribution plans must provide two annual illustrations (one based on a single-life annuity and the other on a 100% joint and survivor annuity) for both single and married participants;
- sets forth required assumptions for LII calculations for factors such as commencement date and participant age, marital status, interest rate, and mortality tables;
- provides a list of explanations, including model language, that must accompany the LII in the participant disclosure;

- contains special rules for plans that currently offer participants distribution annuities or deferred income annuities; and
- clarifies the limits on fiduciary liability for plan sponsors, fiduciaries, and other persons who use the IFR assumptions and model language in providing the LII.

For a complete summary of the IFR, consult our alert entitled “[DOL Presses Forward with Lifetime Income Disclosure in Defined Contribution Plans](#).”

II. The FAQs

The FAQs summarized below provide a few helpful clarifications of the IFR. However, the FAQs are brief and will not answer all the questions that plan sponsors and recordkeepers might have regarding the LII requirement.

A. Plans Are Not Required to Furnish the First Lifetime Income Illustration Until 2022

While the IFR is effective on September 18, 2021, plans are only required to provide the LII once annually. Therefore, the FAQs clarify that most participant-directed plans can provide the first LII disclosure as late as the second quarterly statement sent to participants in 2022. For most (*i.e.*, calendar year) non-participant-directed individual account plans, the first LII must be provided as part of the 2021 benefit statement, effectively making October 15, 2022, the deadline. DOL’s position is consistent with prior statements and our understanding of the rules, though there has been some confusion.

B. Plans Can Provide Multiple LIIs

The FAQs clarify that plans can provide participants with multiple LIIs. DOL first acknowledges that some plans may have been providing LIIs consistent with the framework in DOL’s 2013 Advanced Notice of Proposed Rulemaking. It then states that those disclosures do not necessarily satisfy the requirements of the IFR, but plans can continue to provide them because the IFR allows for multiple disclosures. This clarification may be helpful for plans that want to deliver various LIIs that, for example, take future contributions or in-plan annuity options into account. However, DOL has not extended the SECURE Act’s fiduciary safe harbor for LIIs to any LIIs other than those meeting the requirements of the IFR.

C. DOL Confirms Its Intention to Issue Final Rule

When DOL issued the IFR, the agency requested comments on a significant number of issues. DOL officials have since stated publicly that they are considering the comments received and working on a final rule. However, many in the retirement industry have expressed concerns about the timing of any final rule as it can take many months to build the IT systems to produce the LII disclosure.

In the FAQs, DOL explicitly confirmed that the agency plans to issue final regulations. However, DOL declined to commit to issuing the final rule before the effective date and instead stated that it will be issued “as soon as practicable.” Although this timing is unlikely to be welcome news to many, DOL did acknowledge the potential need for transition guidance if the final rule has material differences from the IFR.

III. Takeaways

The FAQs address a few key issues that have arisen under the new LII requirement. However, lingering uncertainty as to the timing and contours of the final rule remain – and compliance with the LII scheme promises to be challenging.

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