

DEPARTMENT OF LABOR ISSUES FAQs CLARIFYING NEW LIFETIME INCOME DISCLOSURE REQUIREMENTS FOR DEFINED CONTRIBUTION RETIREMENT PLANS

Hodgson Russ Employee Benefits Newsletter
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On July 26, 2021, the U.S. Department of Labor issued Temporary Implementation FAQs regarding the new lifetime income illustration (“LII”) requirements for defined contribution retirement plans under Section 203 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (the “SECURE Act”). The DOL previously published an Interim Final Rule (“IFR”) containing a detailed explanation of how plan administrators must implement the LII requirements, including mandatory assumptions for LII calculations and model language. (see our article here).

The FAQs do not amplify the IFR in terms of the substance of the LII requirements, under which all defined contribution retirement plans subject to ERISA must provide annually two illustrations showing the participant’s account balance projected as a single life annuity and a 100% joint and survivor annuity. Rather, the FAQs respond to IFR commenters’ concerns regarding the timeframe for implementation.

First, the FAQs clarify that because the IFR becomes effective September 18, 2021, there are two compliance deadlines for retirement plans to satisfy the annual LII requirement:

- Participant-directed individual account plans that furnish quarterly statements have until the second calendar quarter of 2022 to incorporate the LII.
- For non-participant-directed individual account plans, the LII must be included on the first statement for the plan year ending on or after September 19, 2021. Typically, annual plan year statements for calendar year 2021 would be furnished no later than the last date for filing the plan’s annual return, October 15, 2022.

Of course, plan administrators may choose to implement the annual LII statements at an earlier time that conforms best to the plan’s current benefit statement distribution cycle.

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Next, the FAQs state that plan administrators may continue to issue LII's based on the DOL's 2013 Advance Notice of Proposed Rulemaking, but such illustrations will not conform to the IFR assumptions and model language requirements. Therefore, plan administrators that provide illustrations other than in a manner set forth in the IFR will not have protection against ERISA fiduciary claims that may be brought against them based on the non-conforming lifetime income illustration disclosures.

Finally, the DOL confirms its intention to issue final regulations "as soon as practicable," and in any event before the effective date of September 18, 2021. The DOL indicated that transition guidance might be forthcoming if the final rule contains material changes from the IFR.

<https://www.dol.gov/sites/dolgov/files/EBSA/about-ebbsa/our-activities/resource-center/faqs/temporary-implementing-faqs-lifetime-income-interim-final-rule.pdf>