

DOL Issues FAQs on SECURE Act Lifetime Income Illustrations and Interim Final Rule

Alert

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On July 26, 2021 the Department of Labor's (DOL) Employee Benefits Security Administration [issued a set of four frequently asked questions \(FAQs\)](#) that address the implementation of Section 203 of the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019. Section 203 of the SECURE Act requires 401(k) and other ERISA-covered defined contribution plans to provide an annual lifetime income disclosure in the benefit statements required under Section 105 of the Employee Retirement Income Security Act of 1974 (ERISA).

The FAQs come in response to public comments requesting clarification on an interim final rule published by the DOL on September 18, 2020, which details the assumptions and other factors retirement plans must use to provide lifetime income illustrations in participant benefit statements. The lifetime income illustrations are designed to give plan participants an illustration of how much monthly retirement income they could expect to purchase with their current retirement account balance.

The FAQs seek to address some commenters' requests for clarification with respect to the applicability date of the interim final rule and the method for furnishing benefit statements. Specifically, the FAQs address the following questions:

Q1: For participant-directed plans, what is the effective date of the interim final rule and the earliest statement for which the lifetime income illustrations are required content?

Q1 of the DOL guidance clarifies application of the effective date of the interim final rule to participant-directed plans that issue quarterly benefit statements to participants. The guidance provides that because plans must furnish lifetime income illustrations at least annually, these illustrations are required to be

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provided in a benefit statement for a quarter ending within 12 months after the effective date of the interim final rule. Accordingly, since the effective date of the interim final rule is September 18, 2021, plans that are required to issue quarterly benefit statements under ERISA § 105(a)(1)(A)(i) can incorporate their first lifetime income illustration in any quarterly statement up to the second calendar quarter of 2022 (ending June 30, 2022).

Q2: For non-participant-directed plans, what is the earliest statement for which the lifetime income illustrations are required content?

Q2 of the DOL guidance clarifies application of the effective date of the interim final rule to non-participant-directed plans under which a participant or beneficiary has his or her own account but does not have the right to direct the investment of assets in that account. The guidance provides that such plans must provide lifetime income illustrations on the statement for the first plan year ending on or after September 19, 2021. For most such plans, this will be the statement for the calendar year 2021, which would be furnished no later than October 15, 2022, the last date for timely filing the 5500 for a calendar year plan.

Q3: Our plan's third-party administrator currently projects participants' account balances to normal retirement age, e.g., age 65, based on the framework the DOL published in its Advance Notice of Proposed Rulemaking in 2013. Will that approach fulfill our obligations under the interim final rule?

Q3 of the DOL guidance clarifies that plan sponsors may use the illustrations described in the DOL's 2013 Advance Notice of Proposed Rulemaking to satisfy its obligations under the interim final rule.

Q4: The DOL stated in the preamble to the interim final rule that it intended to adopt a final rule sufficiently in advance of the effective date. Will the final rule provide some transition relief if the final rule is not issued significantly in advance of September 18, 2021?

Q4 of the DOL guidance clarifies that the DOL intends to issue a final rule "as soon as practicable" based on feedback from comments received during the public comment period on the interim final rule and acknowledges concerns about the burdens that could arise if the DOL issues a final rule that differs materially from the interim final rule without transition relief to accommodate changes from the interim final rule.

As noted above, the FAQs confirm that the DOL intends to issue a final rule "as soon as practicable" and in advance of September 18, 2021, the date the interim final rule is set to go into effect. Until then, plan sponsors should review the FAQs guidance and work with their plan's third-party administrator to prepare for the upcoming compliance deadlines under the interim final rule and in anticipation of the DOL's final

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rule on lifetime income illustrations.

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