

MEMO# 32686

August 19, 2020

DOL Releases Lifetime Income Disclosure Interim Final Rule

[32686]

August 19, 2020 TO: ICI Members
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: DOL Releases Lifetime Income Disclosure Interim Final Rule

On August 18, 2020, the Department of Labor (DOL) unveiled an interim final rule (IFR)[\[1\]](#) implementing Section 203 of the Setting Every Community Up for Retirement Enhancement Act (the SECURE Act).[\[2\]](#) Section 203 requires ERISA-covered defined contribution plans to include lifetime income stream estimates on participant benefit statements at least once every 12 months, setting forth the lifetime income stream equivalent of the participant's total account balance under the plan, calculated as both a single life annuity (SLA) and a qualified joint and survivor annuity (QJSA).

The IFR is accompanied by a news release[\[3\]](#) and a fact sheet.[\[4\]](#) As directed by the legislation, the IFR prescribes the assumptions to be used in calculating the lifetime income estimates and provides a model lifetime income disclosure.[\[5\]](#) As discussed below, the preamble to the IFR requests comments on various aspects of the rule.

Assumptions

The IFR specifies the following assumptions that plan administrators must use to calculate the monthly payment illustrations of participants' account balances as SLAs and QJSAs:

- Commencement date: Plan administrators must calculate monthly payment illustrations as if the payments begin on the last day of the benefit statement period.
- Age: Plan administrators must assume that a participant is age 67 on the assumed commencement, which is the Social Security full retirement age for most workers, or the participant's actual age, if older than 67.
- Spousal and survivor benefits:
 - The SLA illustration is calculated as a fixed monthly amount for the life of the participant, with no survivor benefit after the participant's death.
 - For the QJSA illustration, plan administrators must use a Qualified Joint and 100% Survivor Annuity, which will pay a fixed monthly amount for the life of the participant, and the same fixed monthly amount to the surviving spouse after

the participant's death. Plan administrators must assume that all participants have a spouse of equal age, regardless of a participant's actual marital status or the actual age of any spouse.

- Interest rate: Plan administrators must use the 10-year constant maturity Treasury rate (10-year CMT) as of the first business day of the last month of the statement period to calculate the monthly payments. The 10-year CMT approximates the rate used by the insurance industry to price immediate annuities.
- Mortality: Plan administrators must use the gender-neutral mortality table in section 417(e)(3)(B) of the Internal Revenue Code, which is the mortality table generally used to determine lump sum cash-outs from defined benefit plans.
- Plan loans: The account balance includes the outstanding balance of any participant loan, unless the participant is in default of repayment on such loan.

The preamble to the IFR includes an example illustration using these assumptions and requests comment on the specific assumptions selected by DOL. The preamble notes that DOL determined not to include in the calculation assumptions regarding (1) insurance loads,[\[6\]](#) (2) inflation adjustments,[\[7\]](#) or (3) terms certain or other features that may be offered as part of guaranteed income products. The preamble requests comment on whether DOL should incorporate these factors into the required illustrations. We note that the IFR does not contemplate the use of projected account balances that take into account projections of future contributions and earnings.

Model explanation/disclosure

The IFR requires plan administrators to provide participants with explanations about the estimated lifetime income payments, to help participants understand how the plan administrator calculated the estimated monthly payments and that these estimates are illustrative only and are not guarantees. The IFR lists the following required explanations, along with model language for each explanation:

- An explanation of the commencement date and age assumptions.
- An explanation of a single life annuity.
- An explanation of a qualified joint and 100% survivor annuity, the availability of other survivor percentage annuities, and the impact of choosing a lower survivor percentage.
- An explanation of the marital status assumptions.
- An explanation of the interest rate assumptions.
- An explanation of the mortality assumptions.
- An explanation that the monthly payment amounts are illustrations only.
- An explanation that the actual monthly payments that may be purchased with the account balance will depend on numerous factors and may vary substantially from the illustrations.
- An explanation that the estimated monthly payment amounts are fixed amounts that would not increase for inflation.
- An explanation that the estimated monthly payment amounts are based on total benefits accrued, regardless of whether such benefits are nonforfeitable.

- An explanation that the account balance includes the outstanding balance of any participant loan, unless the participant is in default of repayment on such loan.

In addition to providing model language for each of the required explanations, the IFR includes appendices with two Model Benefit Statement Supplements (one model is for plans offering in-plan distribution annuities as described below). Plan administrators may choose to use the applicable Model Benefit Statement or separately integrate the model language, as discrete inserts, into their existing pension benefit statements. The preamble requests comment on the required explanations and the model language regarding each explanation.

Special rules for plans with annuities

The IFR includes special rules for plans that offer in-plan distribution annuities through a contract with a licensed insurer. Such plans may either use the IFR's specified assumptions or base the lifetime income illustrations on the actual terms of the plan's insurance contract, subject to certain limitations. If a plan administrator opts to base the illustrations on the terms of the insurance contract, the plan administrator still must provide monthly payment illustrations under both SLA and a QJSA scenarios and assume that: (1) payments commence on the last day of the statement period, (2) the participant is age 67 (unless older) on such date, and (3) the participant has a spouse the same age. The IFR sets forth a separate set of required explanations, with model language, for plans that use the insurance contract terms.

For plans that allow participants to purchase deferred income annuities (DIAs), the IFR specifies specific required disclosures with respect to the portion of a participant's account used to purchase such a DIA, and requires that any portion of a participant's account not invested in a DIA must be converted into a SLA and QJSA pursuant to the rule's otherwise-applicable assumptions and requirements.

ERISA liability relief

In accordance with the SECURE Act, the IFR provides that no plan fiduciary, plan sponsor, or other person will be liable under ERISA for providing a lifetime income illustration that satisfies the requirements of the IFR. To qualify for the liability relief, the plan administrator must derive the lifetime income equivalents (*i.e.*, the SLA and QJSA) using the assumptions set forth in the IFR and must use the IFR's model language, or language substantially similar to the model language, in participants' benefit statements.

Use of additional illustrations

Notably, paragraph (g) of the IFR clarifies that plan administrators are not prohibited from including other lifetime income stream illustrations on benefit statements, in addition to the illustrations mandated by the rule. Specifically, paragraph (g) reads as follows:

"Nothing in this section precludes a plan administrator from including lifetime income stream illustrations on the benefit statement in addition to the illustrations described in paragraphs (b)(3) and (4) of this section, as long as such additional illustrations are clearly explained, presented in a manner that is designed to avoid confusing or misleading participants, and based on reasonable assumptions."

The preamble states, however, that these other illustrations do not qualify for the liability relief. With respect to other types of illustrations, the preamble acknowledges that many

plans and providers have been providing income stream estimates in various forms long before the SECURE Act's requirement, many of which were developed using sophisticated methodologies and are tailored to individual participants. The preamble indicates that:

“[t]he Department does not want to undermine these best practices or inhibit innovation in this area. The Department encourages the continuation of these practices. At the same time, the Department is unable to extend the relief in paragraph (f) of the IFR to all of these practices. Comments, however, are solicited on whether the Department, either separately or in conjunction with the adoption of a final rule, should issue guidance clarifying the circumstances under which the provision of additional illustrations described in this paragraph may constitute the rendering of ‘investment advice’ or may, instead, constitute the rendering of ‘investment education’ under ERISA. Such guidance could assist plan sponsors, service providers, participants, and beneficiaries in ensuring that activities designed to educate and assist participants and beneficiaries in making informed decisions do not cause persons engaged in such activities to become fiduciaries with respect to a plan by virtue of providing ‘investment advice’ to plan participants and beneficiaries for a fee or other compensation.”^[8]

Effective date and comments

Comments on the IFR are due no later than 60 days after publication in the Federal Register. The IFR will be effective one year after its publication in the *Federal Register* and shall be applicable to pension benefit statements furnished after such date. The preamble indicates that DOL intends to issue a final rule sufficiently in advance of the IFR effective date, after reviewing the public comments received on the IFR. A final rule would supersede the IFR.

Elena Barone Chism
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endnotes

^[1] At this time, the IFR has not been published in the *Federal Register*. An advance copy is available here:

<https://www.dol.gov/sites/dolgov/files/ebsa/temporary-postings/pension-benefit-statements-lifetime-income-illustrations.pdf>.

^[2] See ICI Memorandum No. 32118, dated December 20, 2019. Available here:

https://www.ici.org/my_ici/memorandum/memo32118.

^[3] The news release is available here:

<https://www.dol.gov/newsroom/releases/ebsa/ebsa20200818>.

^[4] The fact sheet is available here:

<https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/pension-benefit-statements-lifetime-income-illustrations>.

^[5] The IFR amends 29 CFR part 2520 by adding new § 2520.105-3, Lifetime Income

Disclosure for Individual Account Plans.

[6] According to the preamble, “the term ‘insurance load’ describes the difference between the market price of lifetime income and the price of actuarially fair lifetime income.” See p. 17.

[7] The IFR requires a fixed nominal annuitized income stream, rather than an income stream that would start as a lower amount and increase with inflation.

[8] See preamble, p. 39.

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