

## NEWS ALERT

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### EMPLOYEE BENEFITS



## DOL Issues FAQs on Lifetime Income Disclosures for Defined Contribution Plans

By Melanie N. Aska and Erek M. Sharp | August 4, 2021

On July 26, 2021, the U.S. Department of Labor’s (DOL) Employee Benefits Security Administration (EBSA) issued Temporary Implementing [Frequently Asked Questions](#) (FAQs) on the Interim Final Rule (IFR) which the EBSA had published on September 18, 2020 implementing the SECURE Act’s requirement that ERISA-subject defined contribution retirement plans—such as 401(k) and 403(b) plans—must provide new “lifetime income illustrations” on participants’ benefit statements. The IFR requires those benefit statements to express a participant’s current account balance in two different income stream illustrations—both as a single life annuity (for the participant only) and as a qualified joint and survivor annuity (for the participant and his or her surviving spouse). These two income stream illustrations are intended to help participants better understand how the amount of money they have saved so far under the plan converts into an estimated monthly payment for the rest of their lives and how this affects their retirement planning.

**Background.** The Pension Protection Act of 2006 (PPA 2006) amended ERISA to require ERISA-subject defined contribution retirement plans—such as 401(k) and 403(b) plans—to furnish benefit statements (1) at least once each calendar quarter to participants in plans that permitted participants to direct the investment of the assets in their plan accounts (“participant-directed plans”), (2) at least once each calendar year to participants in plans that did not permit participants to direct their investments (“non-participant-directed plans”), and (3) upon a participant’s written request. Previously, ERISA had required defined contribution retirement plans to furnish benefit statements only in response to participants’ written requests.

PPA 2006 required each such benefit statement to disclose to the participant (1) his or her total account balance, (2) the vested portion of his or her account balance (or the earliest date on which his or her account balance would become vested), (3) the value of each investment to which assets in his or her account had been allocated, including the value of any investment in employer securities, and in addition, in the case of a participant-directed plan, (4) an explanation of any limitations or restrictions on the participant’s right to direct the investments of assets in his or her plan account, and (5) an explanation of the importance, for the participant’s long-term retirement security, of a well-balanced and diversified investment portfolio, including a statement of the risk that holding more than 20% in the security of one entity (such as employer securities) may not be adequately diversified. Years later, the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act, enacted on December 20, 2019) added a sixth item of required content for benefit statements furnished by participant-directed plans: a “lifetime income disclosure”, which must be included in at least one of the quarterly benefit statements that such plans furnish during any 12-month period.

The SECURE Act's required "lifetime income disclosure" must illustrate the "lifetime income stream equivalent" of the participant's total account balance, that is, the amount of monthly payments the participant would receive if his or her total account balance were used to provide "lifetime income streams", based on certain assumptions specified by the DOL. The "lifetime income streams" are a qualified joint and survivor annuity (for the participant and his or her surviving spouse) and a single life annuity (for the participant only).

The SECURE Act directed the DOL to issue, within one year after the Act's enactment date (that is, by December 20, 2020), (1) an interim final rule (IFR) explaining how to calculate the lifetime income stream illustrations, (2) assumptions that participant-directed plans may use to convert a participant's total account balance into lifetime income stream equivalents (that is, the qualified joint and survivor annuity and the single life annuity), and (3) a model lifetime income disclosure. The SECURE Act provided that the new lifetime income disclosure requirement would apply to benefit statements furnished more than 12 months after the latest date on which the DOL issued these three pieces of required guidance. On September 18, 2020, the DOL issued the IFR, which included all three pieces of required guidance. The IFR explained that all such guidance would become effective on September 18, 2021 and would apply to benefit statements furnished after that date.

**DOL's Temporary Implementing FAQs.** The DOL had solicited public comments on the IFR. A number of commenters requested clarification about the IFR's effective date and the method for furnishing benefit statements, in some cases requesting transition relief to ensure that affected parties would have sufficient time to effectively implement the IFR's requirements. The DOL issued its Temporary Implementing FAQs to address some of the commenters' questions about the IFR on these "time sensitive issues", as follows:

- ***Plans Do Not Have to Furnish Their First Lifetime Income Illustrations Until 2022.*** The FAQs clarify that participant-directed and non-participant-directed defined contribution retirement plans do *not* have to furnish their first benefit statements containing SECURE Act-required lifetime income illustrations until the applicable deadlines in 2022, as explained below:
  - ***Deadline for Participant-Directed Plans.*** As noted above, participant-directed plans that furnish quarterly benefit statements must include the SECURE Act-required lifetime income illustrations on only one benefit statement in any 12-month period. Accordingly, the FAQs explain that because defined contribution plans must furnish the lifetime income illustrations at least annually, participant-directed plans that issue quarterly statements must first comply with the IFR on a benefit statement for a quarter ending within 12 months after the IFR's effective date. Here's how that works: The IFR was published in the Federal Register on September 18, 2020 and becomes effective September 18, 2021. Participant-directed plans that must issue quarterly statements can incorporate their first SECURE Act-required lifetime income illustrations on any quarterly statement up to the second calendar quarter of 2022 (ending June 30, 2022). Such plans must *not* delay beyond the second calendar quarter of 2022, because the ending date of the third calendar quarter of 2022, September 30, 2022, would be after the last day (September 18, 2021) of the twelfth month after the IFR's September 18, 2021 effective date.
  - ***Deadline for Non-Participant-Directed Plans.*** The FAQs also clarify that non-participant-directed plans must include the SECURE Act-required lifetime income illustrations on their annual benefit statements for the first plan year ending on or after September 19, 2021. For most such plans, this will be the benefit statement for calendar year 2021, which would have to be furnished no later than the last date for timely filing of the annual return/report (Form 5500 or Form 5500-SF, as applicable) for that year for a calendar year plan, that is, no later than October 15, 2022.
- ***Some Plans Are Already Providing Lifetime Income Illustrations, Based on Previous DOL Guidance.*** The FAQs acknowledge that, for several years, some defined contribution retirement plans have been furnishing benefit statements that include lifetime income illustrations, including in some cases illustrations of the type that the DOL proposed in its 2013 Advanced Notice of Proposed Rulemaking (ANPM). The FAQs state that those lifetime income illustrations do not necessarily meet the SECURE Act's requirements, as set forth in the IFR. And, although the IFR allows plans to include lifetime income illustrations in their benefit statements in addition to the lifetime income illustrations that are required by the SECURE Act, the SECURE Act's safe harbor from fiduciary liability (found in

ERISA Section 105(a)(2)(D)(iv)) applies *only* to lifetime income illustrations that meet the SECURE Act's requirements.

- ***DOL Final Regulations and Transition Relief.*** In the Preamble to the IFR, the DOL stated that it intended to adopt final regulations sufficiently in advance of the IFR's September 18, 2021 effective date "in order to minimize compliance burdens". The DOL repeated that intention in the FAQs but did not expressly promise that it would adopt final regulations before September 18, 2021 or that those final regulations would provide any transition relief if the final rules were not issued significantly in advance of September 18, 2021.

*If you have any questions about the DOL's Temporary Implementing FAQs or how they might affect your business, please contact Melanie N. Aska, Counsel, at 617-457-4131 or [maska@murthalaw.com](mailto:maska@murthalaw.com) or Ereka M. Sharp, Partner, at 203-772-7772 or [esharp@murthalaw.com](mailto:esharp@murthalaw.com).*

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