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## **DOL Sets Second Calendar Quarter of 2022 as Compliance Date for Lifetime Income Illustrations**



**The Employee Benefits Security Administration (EBSA) of the Department of Labor (DOL) issued on July 26, 2021 [Frequently Asked Questions](#) which indicate participant-directed plans must**

**provide lifetime income illustrations on quarterly statements by the second calendar quarter of 2022. Details from the Frequently Asked Questions are below.**

## **Background**

The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) amended the Employee Retirement Security Act of 1974 (ERISA) to add two lifetime income illustrations, furnished at least annually, to pension benefit statements for individual account plans. Under the SECURE Act, Congress directed the DOL to do three things:

- First, issue an [interim final rule \(IFR\)](#) explaining how to calculate the lifetime income illustrations – specifically laying out the assumptions and other factors that plan administrators must use for calculating the estimated lifetime income stream that could be provided by the account balance.
- Second, issue model language that explains the illustrations and assumptions.

- And third, issue the IFR, assumptions, and model language within 12 months of enactment of the SECURE Act (which was enacted on December 20, 2019). In compliance with its SECURE Act directives, the DOL published an IFR on September 18, 2020.

The DOL solicited public comments on the IFR and received 36 unique public comment submissions. A number of commenters requested clarification with respect to the applicability date of the IFR and the method for furnishing benefit statements, in some cases requesting transition relief to ensure affected parties have sufficient time to effectively implement the requirements of the IFR. The following questions and answers address some of the commenters' questions about the IFR on these time-sensitive issues.

## **Frequently Asked Questions**

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

Section 105(a)(2)(B)(iii) of ERISA provides that participant-directed individual account plans that furnish quarterly benefit statements under ERISA § 105(a)(1)(A)(i) must include the lifetime income illustrations on only one pension benefit statement in any 12-month period. Accordingly, because plans must furnish the lifetime income illustrations at least annually, plans that issue quarterly statements must first comply with the IFR on a benefit statement for a quarter ending within 12 months after the 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. Plans that must issue quarterly statements under ERISA § 105(a)(1)(A)(i) can incorporate their first lifetime illustration on any quarterly statement up to the second calendar quarter of 2022 (ending June 30, 2022). The

flexibility offered by ERISA § 105(a)(2)(B)(iii), however, would not permit a delay beyond the second calendar quarter of 2022, because the ending date of the third calendar quarter, September 30, 2022, would be after the expiration of the 12-month period in 1 ERISA § 105(a)(2)(B)(iii). Whether any individual plan will delay including the first illustration to the fullest extent permitted under ERISA § 105(a)(2)(B)(iii) will depend on what makes the most sense for the plan based on its particular circumstances and current distribution cycle for benefit statements.

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

For 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 lifetime income illustrations must be 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 calendar year 2021, which would be furnished no later than the last date for timely filing of the annual return for that year for a calendar year plan (Oct. 15, 2022). See Field Assistance Bulletin 2007-03 (Oct. 12, 2007) for timing requirements for statements for plans subject to ERISA section 105(a)(1)(A)(ii).

**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 IFR?**

Although the SECURE Act requires plan administrators to provide participants with lifetime income illustrations that differ from the illustrations proposed in the DOL's 2013 ANPRM, the DOL's rule specifically allows for additional lifetime income illustrations. This permission was based on

the DOL's recognition that many retirement plans have been providing various types of illustrations for several years, including in some cases illustrations of the type contemplated by the ANPRM.

**Q4: The DOL stated in the preamble to the IFR 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?**



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 IFR. The DOL appreciates the commenters' concerns about the burdens and challenges that could arise if the DOL issues a final rule that differs materially from the IFR without sufficient transition time for plan administrators to accommodate any changes from the IFR.



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## Who We Are

Torrillo & Associates, LLC specializes in employee benefit plan audits including 401k audits, 403b audits, pension plan audits, and other retirement plan audits. We are licensed in 10 states including Pennsylvania, New Jersey, Delaware, New York and Florida. We are also able to practice in additional states that have passed firm mobility.

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