

July 2021

Department of Labor Provides FAQs on Interim Final Rule on Lifetime Income Disclosures for Defined Contribution Plans

On July 26, 2021, the Department of Labor (DOL) released frequently asked questions in response to public comments received on the DOL's interim final rule extending lifetime income disclosure to defined contribution plans subject to the Employee Retirement Income Security Act (ERISA).

Background

Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE ACT) amended ERISA to provide that defined contribution plans subject to ERISA provide at least annually in a pension benefit statement an illustration of an equivalent lifetime income stream calculated as a monthly benefit payable, both as a single life annuity and a qualified joint and survivor annuity (QJSA). Defined contribution plans in scope are defined contribution 401(a), 401(k) and 403(b) plans, provided that such plans are subject to ERISA.

In September 2020, the DOL released an interim final rule providing plan sponsors with a set of assumptions to use in preparing the lifetime income projections, as well as model language for sponsors that wish to obtain relief from liability for providing the illustrations. Because the DOL guidance was an interim final rule, public comments were also solicited.

The Interim Final Rule provided that it becomes effective on September 18, 2021, one year after the interim final rule's publication in the September 18, 2020 *Federal Register*.

DOL Clarifications on Lifetime Income Disclosure Guidance

In response to the comments received, the DOL has released the following FAQs, especially as they relate to time sensitive issues:

- Date by which annual lifetime income disclosure for participant-directed defined contribution plans must be provided

Participant-directed defined contribution plans are required to provide quarterly pension benefit statements. For such plans, the DOL notes that the first lifetime income disclosure must be provided in only one pension benefit statement within a 12-month period no later than the quarter ending within 12 months after the DOL rule's September 18, 2021 effective date. Accordingly, plans issuing quarterly statements can incorporate their first lifetime illustration on any quarterly statement up to the 2022 second calendar quarter ending June 30, 2022 – i.e., within four calendar quarters following the September 18, 2021 effective date.

According to the DOL, whether a participant-directed defined contribution plan subject to ERISA waits until the second quarter of 2022 to include the first lifetime illustration disclosure "will depend on what makes the most sense for the plan based on its particular circumstances and current distribution cycle for benefit statements."

- Date by which annual lifetime income disclosure for defined contribution plans that are not participant-directed must be provided

Defined contribution plans whose investments are not participant-directed are required to provide annual pension benefit statements. For such plans, the DOL notes that the first lifetime income disclosure must be provided on the annual pension benefit statement for the first plan year ending on or after September 19, 2021. For plans operating on the calendar year, this will be the calendar year 2021 annual pension benefit statement, which would be provided no later than the last date for the plan to file timely the Form 5500 (Annual Return/Annual Report), including extensions, for that plan year (i.e., October 15, 2022).

- Ability to use other ages for lifetime income disclosures

The DOL acknowledges that “many retirement plans have been providing various types of illustrations for several years.” The DOL notes that the ages in the interim final rule must be used for lifetime income disclosures, but that plan administrators may provide participants with additional lifetime income illustrations, including illustrations contemplated by the DOL’s Advanced Notice of Proposed Rulemaking issued in 2013.

- Availability of transitional relief

The preamble to the Interim Final Rule indicated that the DOL intended to issue final guidance in advance of the September 18, 2021 effective date. The DOL reiterates its objective of releasing a final rule “as soon as practicable,” but is also mindful of the burdens and challenges that could arise if the final guidance were to differ materially from the interim final rule without sufficient transition time to accommodate such changes.

Voya continues to monitor these and all regulatory developments impacting retirement plans.

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