

Retirement Plan Administrators: Are You Ready to Comply with the New Lifetime Income Disclosure Requirement for Benefit Statements?

by Kenneth F. Ginder on August 20, 2021

Lifetime Income Disclosure Requirement. The Setting Every Community Up for Retirement Enhancement Act of 2019 (the “SECURE Act”), enacted December 20, 2019, added a new annual disclosure requirement for benefit statements to participants and beneficiaries. The new disclosure requirement applies to all ERISA-covered defined contribution plans (e.g., 401(k) and 403(b) plans), regardless of whether annuities are offered under the plan.

The lifetime income disclosure must provide two illustrations showing the monthly amount a participant or beneficiary would receive if his or her account balance was used to provide (i) a single life annuity and (ii) a joint and survivor annuity. The SECURE Act directed the Department of Labor (“DOL”) to issue a model lifetime income disclosure and assumptions that a plan administrator can use (e.g., interest rate, mortality table, and commencement date assumptions) to convert a participant’s or beneficiary’s account balance to a single life annuity or joint and survivor annuity. Significantly, the SECURE Act provides that no plan fiduciary, plan sponsor, or other person will be liable under ERISA solely by reason of providing lifetime income illustrations derived from using the DOL’s assumptions and that include the explanations contained in the DOL’s model lifetime income disclosure. For example, if the lifetime income illustrations use the DOL’s assumptions and include the DOL’s model explanations, a fiduciary will not be liable under ERISA if actual payments in retirement are less than those shown in the illustrations.

The DOL published regulations containing the model disclosure and assumptions in September 2020. The regulations are effective September 18, 2021 and apply to benefit statements furnished after that date. With the effective date fast approaching, there has been some confusion as to when the lifetime income disclosure must first appear on benefit statements.

Compliance Deadlines. On July 26, 2021, The DOL issued further guidance, in the form of FAQs, regarding when the first lifetime income disclosure must be made.

The FAQs provide that plans required to issue benefit statements quarterly^[1] must first comply with the disclosure requirement “on a benefit statement for a quarter ending within 12 months after [September 18, 2021].” This means that a calendar year plan that issues statements quarterly must include its first lifetime income disclosure in a benefit statement no later than the benefit statement for the quarter ending June 30, 2022. In other words,

the first lifetime income disclosure must be included in either the September 30, 2021, December 31, 2021, March 31, 2022, or June 30, 2022 statement. Thereafter, the disclosure must be made at least annually (*i.e.*, a lifetime income disclosure is required to be included in only one benefit statement during any one 12-month period).

The FAQs provide that plans required to issue benefit statements annually^[2] must first comply with the disclosure requirement “on the statement for the first plan year ending on or after September 19, 2021.” This means that a calendar year plan that issues statements annually must start including the lifetime income disclosure in the statement for the plan year ending December 31, 2021, which would be furnished no later than the last day for timely filing the plan’s 2021 Form 5500 (October 15, 2022).

Next Steps. Plan administrators will likely rely on their recordkeeper or third-party administrator (hereafter the “recordkeeper”) to both calculate the annuity amounts for each participant and beneficiary and draft the lifetime income disclosure. Assuming that is the case, we recommend that plan administrators follow a prudent process of oversight to ensure that this new and important disclosure requirement is satisfied. As part of that oversight process, we recommend that plan administrators confirm:

- the recordkeeper will calculate the annuity amounts for each participant using the assumptions set forth in the DOL regulations;
- the recordkeeper will use the DOL’s model language (or substantially similar language) in drafting the lifetime income disclosure;
- the recordkeeper will distribute the disclosure timely;
- the recordkeeper has everything needed to calculate the annuity amounts, draft the disclosure, and distribute the disclosure (*e.g.*, it has participant ages where necessary); and
- whether service agreement amendments are necessary or desirable.

We offer these additional considerations for plan administrators. Because many recordkeepers are developing new systems to implement the new disclosure requirement, we recommend contacting your recordkeeper as soon as possible and, of course, documenting the oversight process in writing. Also, prudent oversight is not only advisable under ERISA’s fiduciary standards, but will also help ensure compliance with the disclosure requirement and that plan sponsors and other fiduciaries will not be liable under ERISA if actual monthly payments in retirement fall short of the illustrations provided prior to retirement.



Please contact a member of Verrill's Employee Benefits & Executive Compensation Group if you have any questions about the new lifetime income disclosure for defined contribution plan benefit statements.

[1] Plans that allow participant-directed investments are required to issue statements quarterly.

[2] Plans that do not allow participant-directed investments are required to issue statements annually.



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