

Benefits Alert

APRIL 2020

SECURE Act: Interim final rule

The Department of Labor's Employee Benefits Security Administration (EBSA) has published an interim final rule (IFR) describing calculation methodology and model language to "obtain relief from liability" in the presentation of "Lifetime Income Illustrations" applicable to ERISA-covered defined contribution (individual account) plans, the intent of which is likely a regulatory safe harbor.

The IFR includes several assumptions, a few of which are described below, that plan administrators and providers of lifetime income models and illustrations can use to adhere to the lifetime income disclosure requirement of Section 203 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) at least once every 12 months.

EBSA has stated that public comments will be accepted for 60 days after the IFR is published in the Federal Register. The resulting final regulation will have an effective date one year subsequent to its publication in the Federal Register.

The illustrations and content must be "written in a manner calculated to be understood by the average plan participant" and contain:

- The beginning and ending dates of the statement period
- The value of the account balance as of the last day of the statement period, which is then expressed as an equivalent lifetime income stream payable in equal monthly payments for:
 - The life of the participant (single life annuity [SLA])
 - The joint lives of the participant and spouse (qualified joint and survivor annuity [QJSA])

Some assumptions that can be used to obtain relief from liability for the monthly payment illustrations are:

- Annuity start date: The last day of the benefit statement period.
- Age on annuity start date: Age 67 or actual age greater than 67.
- Marital status and survivor benefit for QJSA: A same-age spouse (regardless of actual marital status or actual age of any spouse), and survivor annuity percentage of 100%.
- Interest rate: The 10-year constant maturity Treasury securities rate.
- Mortality: Unisex mortality described in Internal Revenue Code (IRC) Section 417(e) for defined benefit pension plans.
- Plan loans: Account balance includes outstanding loan balances not in default.

The IFR provides model language that can be used to explain the lifetime income illustrations that purportedly will meet the “understood by the average plan participant” standard. Examples are:

- §2520.105-3(d)(7)(ii): "The estimated monthly payments in this statement are for illustrative purposes only; they are not a guarantee."
- §2520.105-3(d)(8)(ii): "...If you decide to purchase an annuity, the actual payments you receive will depend on a number of factors and may vary substantially from the estimated monthly payments in this statement.... The estimated monthly payments in this statement are the same whether you are male or female.... However, the same amount paid for an annuity available outside of an employer’s plan may provide a larger monthly payment for males than for females since females are expected to live longer."

The IFR indicates that, although use of the model language is required to obtain relief from liability, plan administrators will have flexibility under the IFR as to how they incorporate the model language.

Plan administrators and their providers may wish to review their current lifetime income stream models against the calculation methodology and model language in the IFR to assess whether making provisions to “obtain relief from liability” is desired or necessary.

Your Milliman consultant is available to discuss the IFR with you as a way to comply with the lifetime income disclosure requirements of the SECURE Act.



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