

TAX ADVISORY

Retirement Plan Update: New DOL Disclosures and Updated IRS Notices



DOL Issues Interim Final Rule on Lifetime Income Disclosures

On August 18, 2020, the Department of Labor (DOL) issued [interim final regulations](#), requiring new information to be included on ERISA-covered defined contribution plan participants' account statements under the Setting Every Community Up for Retirement Enhancement Act of 2019 (the SECURE Act). The guidance only applies to defined contribution plans, such as 401(k) and 403(b) plans, and not defined benefit plans. The SECURE Act updated the requirements for annual participants' account statements in an attempt to help participants better understand how their savings will carry them through retirement.

Timing: The regulation provides a set of assumptions and model language (which, if used, will limit the plan sponsor's fiduciary liability with respect to the disclosures) and requests comments on the requirements. This regulation becomes final one year after the regulation was published and applies to statements furnished after that date, so participants' account statements will have to include this information by late 2021.

Background: ERISA Section 105(a) historically required defined contribution plan administrators to provide statements to participants and beneficiaries at least annually (but quarterly if participants direct their own investments). In 2019, ERISA was amended to require a "lifetime income disclosure" for defined contribution plan statements at least annually. This disclosure is required to show the lifetime income stream equivalent to the participants' total account balances. The lifetime income stream must show monthly payments if a participant's total account balance was paid as a single life annuity and as a qualified joint and survivor annuity.

Plan administrators must use the following assumptions in their calculations, solely for purposes of the required disclosure. (These assumptions do not impact the actual operation of the plan.)



Kathy Odle
Member
Denver, CO
303.299.8116
[Email](#)



Kirsten Stewart
Member
Denver, CO
303.299.8272
[Email](#)



George Tsai
Member
Denver, CO
303.299.8426
[Email](#)

1. Commencement Date: The plan must assume that the annuity will begin on the last day covered by the statement (the "statement period"). If the last day covered by the statement is December 31, 2022, the plan must assume that the benefit will commence on that date for purposes of the disclosure.
2. Age: The plan also must assume that the participant is age 67 on the last day of the statement period, regardless of actual age. However, if the participant is older than age 67, the plan must use the participant's actual age on the last day of the statement period. The DOL explained that it felt that age 67 was the most appropriate for the purposes of the disclosure, because it generally is the full or normal retirement age under Social Security for most workers.
3. Marital Status: The plan must assume that the participant is married and that the participant's spouse is the same age as the participant, regardless of the participant's current marital status.
4. Amount of Survivor Benefit: The plan must assume that the survivor annuity percentage is equal to 100 percent of the monthly payment payable during the joint lives of the participant and spouse.
5. Interest Rate: The regulations require the plan to assume a rate of interest equal to the 10-year constant maturity Treasury securities yield rate for the first business day of the last month of the statement period, but the DOL is soliciting comments on whether this assumption is the best rate to use.
6. Mortality: The plan must use the applicable mortality table under Code Section 417(e)(3)(B) (using unisex mortality assumptions) in effect for the last month of the statement period. The DOL is also requesting comments on the use of these mortality tables.
7. Vesting: The plan is required to assume that participants are 100 percent vested in their accounts.
8. Loans: The plan is required to assume that any loans a participant has taken are not in default and are fully repaid by the time the participant retires.
9. No Insurance Loads: The plan does not need to factor in any additional costs an insurance company may charge for a product. The DOL is requesting comments on whether insurance loads should be factored into the value and cost of the lifetime stream illustrations.
10. No Inflation Adjustment: The plan does not need to include an assumed adjustment to the required lifetime monthly payment illustrations for inflation; however, the DOL has solicited comments regarding this assumption as well.

The DOL also requested comments on whether and how to incorporate term certain, guaranteed minimum withdrawal benefits and other optional riders that may accompany annuities.

The regulations provide model language that may be used to explain the terms and assumptions used in creating the illustrations. Plan administrators can rely on model language to satisfy the required explanations of terms and factors. This language is not required but, if used, will provide relief from liability from "unmet expectations" if participants mistakenly believe that the illustrations on their statements are promises or guarantees, or view the statements as providing investment advice.

Plans that already provide for distributions in the form of annuities are allowed to use the amounts payable under those lifetime income streams as a lifetime income stream equivalent, but they must still show (1) the single life annuity and qualified joint and survivor annuity, (2) that the first payment is made on the last day of the statement period, and (3) that the participant is age 67 (unless older) on that date and has a spouse the same age.

Plans that offer participants the ability to purchase deferred income annuities must disclose on the statements the portion, if any, of a participant's accrued benefit that has been used to purchase a deferred income annuity, and the plan administrator must disclose the amounts payable under the deferred income annuity. For the portion that has not been used to purchase a deferred income annuity, the plan administrator must use the generally applicable disclosure requirements.

Takeaways: During the next 12 months, plan administrators should prepare for this additional disclosure requirement but should also expect commentary about the appropriateness of the assumptions proposed and whether the factors used will provide participants with usable information to determine whether and how their retirement savings will carry them through retirement.

IRS Issues Updated Model Special Tax Notices

On August 6, 2020, the IRS issued [Notice 2020-62](#), which contains updated safe-harbor explanations that can be used to satisfy the tax notice requirements in Code Section 402(f). These requirements generally require plan administrators to provide a written explanation of tax consequences when making eligible rollover distributions from a qualified retirement plan.

The notice modifies the model notices last issued by the IRS in 2018. The 2020 model notices come in two flavors: (1) a form of notice for payments made from a designated Roth account and (2) a different form of notice for payments not made from a designated Roth account. Both forms of notice should be provided if a participant is receiving eligible rollover distributions from both a designated Roth account and an account other than a designated Roth account.

The revised model notices reflect certain changes in law since October 1, 2018, inclusive of the SECURE Act, including an increase in the age for required minimum distributions from age 70-1/2 to age 72 for participants born after June 30, 1949, as well as an exception to the 10 percent early distribution penalty for qualified birth or adoption distributions. The revised model notices have also been updated for readability and contain various other clarifications, including a statement that the 10 percent early distribution penalty does not apply to payments exempted from the penalty by federal legislation related to certain disasters and emergencies, presumably geared toward coronavirus-related distributions (CRDs) authorized under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

Finally, the IRS also clarified in Notice 2020-62 that, although CRDs may generally be recontributed to a retirement plan, a CRD is not considered an eligible rollover distribution for purposes of the notice requirement under Code Section 402(f), and therefore a plan administrator is not required to provide a Section 402(f) tax notice to a CRD recipient.

Takeaway: Moving forward, plan administrators should utilize the updated 2020 model tax notices to satisfy their disclosure requirements under Code Section 402(f).

Questions

If you have any questions about these model notices, the SECURE Act, or employee benefit plans, contact a member of our [Employee Benefits Group](#).

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