

SECURE ACT Update: Lifetime Income Illustrations

The Setting Every Community Up For Retirement Enhancement Act of 2019 (the "SECURE Act"),¹ made sweeping changes to retirement plan rules. As part of our ongoing efforts to summarize key provisions of the SECURE Act that may impact (or provide opportunities for) employers that sponsor retirement plans (our prior alerts in this series are available [here](#), [here](#), and [here](#)), this alert discusses the new requirements under the SECURE Act for plans to include lifetime income illustrations in benefit statements for individual account plans.

Disclosure Regarding Lifetime Income

Under Section 105 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), plan administrators are required to provide benefit statements to plan participants. For participants who have the right to direct their own investments, statements must be provided at least quarterly while other participants must receive statements on at least an annual basis. Generally, the benefit statements provided to participants for defined contribution plans must include (1) the participant's total accrued benefits (generally his or her total account balance), (2) the vested portion of the account balance or the earliest date on which the account balance will become vested, and (3) the value of each investment to which assets in the participant's account are allocated. Participants who have the right to direct their own investments must receive additional information, including certain plan-related information and investment-related information.

Section 203 of the SECURE Act requires that plan administrators provide participants in individual account plans with benefit plan statements that also include a lifetime income disclosure. The lifetime income disclosure would illustrate the amount of monthly payments the participant would receive if the participant's total accrued benefits (*e.g.*, the participant's account balance) under the plan were used to provide lifetime income through (1) a qualified joint and survivor annuity and (2) a single life annuity. Under the SECURE Act, the lifetime income disclosure must be provided at least once per 12-month period (though participants who direct their own investments must receive quarterly statements, the lifetime income disclosures need only appear in one such statement in a 12-month period).

The underlying philosophy of the updated disclosure requirements is that providing disclosure in terms of monthly payments will allow participants to be better positioned to save for retirement by (1) reminding participants that savings accumulated are meant to translate to a retirement benefit that would last for their entire lives, (2) giving them a sense of how they are doing with respect to their savings and (3) allowing participants to use retirement account statements as a helpful planning tool to compare their projected monthly income amount to their likely expenses during retirement.

The SECURE Act provision mandates that within one year of the enactment of the rule, the Department of Labor ("DOL") must issue an interim final rule reflecting the SECURE Act amendments to ERISA Section 105. On August 18, 2020, the DOL's Employee Benefits Security Administration released interim final rules ("IFR") implementing SECURE Act Section 203, providing administrators with a set of assumptions to use when converting to monthly balances as well as model language that plan administrators may rely on for relief from liability for including the illustrations.

¹ The SECURE Act was passed as Division O of the Further Consolidated Appropriations Act, 2020.

Assumptions underlying the Required Disclosure

The assumptions provided in the IFR are meant to establish a uniform methodology for plan administrators to use to make monthly benefit statements consistent across plans. The assumptions specified include that:

- the annuity commencement date will be as of the date of the benefit statement;
- the age of the participant will be 67 years old, or the actual age of the participant, if older;
- the participant will have a spouse of equal age (regardless of actual marital status or the spouse's actual age);
- the IRS Unisex Mortality Table will be used for monthly income conversion; and
- the 10-year Constant Maturity Treasury interest rates will be used for monthly income conversion.

Limitation on Employer Fiduciary Liability under Model Disclosure Statement

The model language proposed in the IFR is designed to help participants understand the lifetime income illustrations, providing brief, understandable explanations of the assumptions used and, importantly, to clarify for them that the monthly payments are not guaranteed. Plan fiduciaries, plan sponsors, or other persons will have no liability under ERISA solely by reason of the provision of lifetime income stream disclosures to participants that are derived in accordance with the assumptions and guidance under the IFR and that include the explanations contained in the model disclosure. Of additional note is that neither the SECURE Act nor the IFR requires participants to take their benefit as an annuity, nor does either one require defined contribution plans to offer an annuity form of payment.

Effective Date

The DOL is seeking comments on the IFR requirements and methodologies and will take these comments into account in issuing a final rule. The comment period will last for 60 days from September 18, 2020, the date on which the rules were published in the Federal Register. The IFR is applicable to pension benefit statements furnished after the date that is one year from publication in the Federal Register. The DOL states that it intends to issue a final rule prior to the effective date, with an adoption date that is sufficiently in advance of the effective date to minimize compliance burdens.

Comments

The DOL had, as a project on its long-term agenda, the goal of requiring a lifetime income disclosure on pension benefit statements. An Advance Notice of Proposed Rulemaking was released in 2013. The two approaches the DOL has considered in the past for disclosure are a (1) snapshot of what a plan participant's current Section 401(k) balances would give that person at retirement and (2) projection of what a participant's balance would be when he or she reached retirement. In May of 2013, the DOL's Advanced Notice of Proposed Rulemaking presented safe harbors for account balance projections and annuity conversions. Of course, these rules will only apply to ERISA plans, but church plans (because many self-annuitize) will be especially interested in how lifetime income streams are illustrated and how their disclosure materials compare with what the DOL may propose under the legislation.

The IFR has already been subject to criticism for having no projection feature (*e.g.*, it gives an unrealistic picture to participants with an assumption that no earnings or additional contributions to the account will be made). Further, some note that for a participant aged 35 or 40, an assumption of an annuity commencing at age 67 is not helpful or very relevant to such a participant.

Based on the above comments and other comments made, the IFR may be subject to substantial modification, but it would be wise for plan administrators to become aware of these potentially material new disclosure requirements.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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