

### **SECURE Act Update: Lifetime Income Illustrations Implementing FAQs**

The Setting Every Community Up For Retirement Enhancement Act of 2019 (the "SECURE Act")<sup>1</sup> made sweeping changes to retirement plan rules. 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. On August 18, 2020 the Department of Labor (the "DOL") released interim final rules ("IFR") implementing SECURE Act 203, which we previously discussed in our prior alert available [here](#). This alert discusses the additional guidance, available [here](#), issued by the DOL on July 26, 2021 (the "FAQs") providing further clarification on the IFR, which will become effective on September 18, 2021.

The FAQs provide some additional detail on the earliest statement on which the lifetime income illustrations are required content:

- For participant-directed individual account plans that furnish quarterly benefit statements, plans must first comply with the IFR and incorporate the lifetime income illustration on a benefit statement for a quarter ending within 12 months after the effective date, which would be no later than the second quarter of 2022, *i.e.*, no later than **June 30, 2022**. The illustrations may not be provided in a later quarterly statement because the ending date of the third calendar quarter in 2022 is September 30, 2022, which falls outside of the requirement that the illustrations be included on a statement within the first 12 months after the effective date of the IFR.
- For non-participant directed individual account plans, lifetime income illustrations must be on the statement for the first plan year ending on or after September 19, 2021. For calendar year plans, this means the first illustration must be provided in a benefit statement furnished to participants on or before the date on which the Form 5500 Annual Return/Report for the plan year ending December 31, 2021 is actually filed (or, if earlier, the deadline by which the Form 5500 for the 2021 plan year is due to be filed, which could be as late as October 15, 2022 if the plan had filed for an extension).<sup>2</sup> However, this date may differ for certain non-calendar year plans as the timing and latest deadline to file the Form 5500 (including extensions) on would fall on different dates.

The FAQs also indicate that the DOL intends to adopt a final rule as soon as possible and will consider plan administrators' concerns about needing sufficient transition time to accommodate any changes that materially differ from the IFR. Some of these concerns include that the illustrations rely on a "static" assumption, which accounts for no further growth or contributions and arguably provides an unrealistic and unhelpful picture for younger participants. If the DOL is responsive to these concerns and there are significant differences in the final rule, it is possible that the timelines described in the FAQs may be further revised by the DOL.

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

<sup>2</sup> See Field Assistance Bulletin 2007-03 (Oct. 12, 2007), which permits non-participant directed individual account plans to be treated as acting in good faith compliance with ERISA Section 105(a)(1)(A)(ii) if benefit statements are furnished to participants on or before the date on which the Form 5500 Annual Return/Report is filed by the plan (but not later than the deadline, including extensions, to file the Form 5500) for the plan year to which the benefit statements relate.

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