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# DOL Issues Guidance on Lifetime Income Disclosure for Defined Contribution Plans

By John Lucas

If you have a really good memory you might recall that way back at the end of last year Congress actually passed a significant retirement bill called the Setting Every Community Up for Retirement Enhancement Act (the "SECURE Act"). We prepared a brief article about the impact the SECURE Act would have on defined contribution accounts that you can find *here*.

COVID-19 and the employee benefit issues it has created seems to have overshadowed the SECURE Act, but the folks at DOL apparently remembered that they had been given a task. Section 203 of the SECURE Act amended ERISA to require that individual account balance plans add lifetime income disclosure to at least one participant account statement a year and the DOL was given until December 20, 2020, to provide plan sponsors with guidance on how these disclosures should be provided. The DOL has now released this *guidance* in the form of an interim final rule (IFR) along with a helpful fact sheet.

## Let's Assume

The lifetime income disclosure illustrations are meant to provide participants with some idea of what their account balance would provide as a stream of income at retirement. The IFR provides plan sponsors with a set of assumptions and rules that must be used to prepare illustrations and comply with the disclosure requirements. These include:

- The calculation will use a point-in-time current value of the participant's account balance and does not assume future earnings.
- It is assumed the participant would commence the lifetime income stream on the last day of the benefit statement period after the participant has attained age 67 (Normal Social Security Retirement Age for most individuals). If the participant is already over age 67 his/her actual age should be used.
- The lifetime income illustrations must be provided in the form of a single life annuity based on the participant's age and as a 100% qualified joint and survivor annuity presuming that the joint annuitant that is the same age as the participant.
- Monthly payment illustration calculations will project forward using the current 10-year constant maturity Treasury rate (10-year CMT) as of the first business day of the last month of the statement period.
- Assumed mortality for purposes of the calculation must be based on the gender neutral mortality table in section 417(e)(3)(B) of the Code – the mortality table used to determine lump sum cash-outs for defined benefit plans.
- Plans that offer in-plan distribution annuities have the option to use the terms of the plan's insurance contracts in lieu of the IFR assumptions. *For clarification purposes it is important to note that nothing in the lifetime income disclosure rules require that plans offer annuities or lifetime income options.*
- Plans must use model language provided in the IFR to explain the life-time income illustrations to participants.

## Sweet Relief

The concept of lifetime income disclosure has been under consideration by Congress and federal regulators for many years and one concern has always been what would happen if the actual results a participant experiences is not as good as these projections. The IFR addresses this concern by providing that if plan sponsors and other fiduciaries follow the IFR's assumption and use the model language to comply with the lifetime income disclosure rules those fiduciaries will not be liable if monthly payments fall short of the projections.

## Something to Keep in Mind

Plan sponsors and participants should keep in mind that the product obtained as a function of complying with these lifetime income disclosure rules is going to yield something quite different than the results that would be achieved through an interactive projection of a participant's account.  Many retirement plan vendors and financial planners will utilize projection tools that take into account future contributions and earnings as well as attempting to anticipate potential market fluctuations and interest rate changes rather than simply basing a projection on a static period of time. While a participant may find the figures that would be generated by this lifetime income disclosure useful as a year over year comparative tool the participant should also explore other planning tools for more complete and robust retirement projection.

## Timing & Effective Date

This IFR was publicly released on August 18, 2020, and it is expected to be published in the Federal Register very soon. Interested parties have been given 60 days to comment on what the DOL has set forth. The idea is that the DOL will take the comments it receives and make any adjustments it feels are merited to the guidance and then issue final regulations that will supersede the IFR. The guidance in the IFR will be effective one year after publication in the Federal Register.

If you have any questions regarding these topics and updates, please contact John Lucas at *john.lucas@findley.com*.