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New in '22 for 401(K) Plans – Lifetime Income Disclosures

The Setting Every Community Up for Retirement Enhancement Act of 2019 (the "SECURE" Act) added a new disclosure requirement with which sponsors of ERISA-covered defined contribution plans must comply beginning this year. Specifically, Section 203 of the SECURE Act amended ERISA to require plan sponsors to provide participants with a lifetime income disclosure at least annually. This new disclosure estimates the monthly income that a participant's plan account balance could produce if paid in a qualified joint and survivor annuity or single life annuity stream of payments, rather than in a lump-sum payment. These two income stream illustrations must be included on the benefit statement that participants are otherwise entitled to receive.

The Department of Labor previously issued an interim final rule ("IFR") that identifies the assumptions (i.e., commencement date, age, marital status, mortality, and interest rate) and other factors that must be used to calculate the estimated stream of payments. In addition, the IFR specifies explanations that must be provided to participants about the income illustrations, as well as model language that may be used to fulfill this requirement.

The SECURE Act offers protection from liability to fiduciaries that provide these disclosures in the event that the income illustrations prove to be inaccurate. The IFR addresses the conditions for that relief. To be eligible for the relief, the plan fiduciary or other person providing the illustrations must use the IFR's assumptions and model language (or language substantially similar) in participant benefit statements.

The IFR was issued on September 18, 2020, and became effective on September 18, 2021. In the interim, however, the Department received various requests for

clarification regarding the IFR's applicability date. The Department issued a set of FAQs in response to those requests. The FAQs clarify that for participant-directed plans, the initial lifetime income disclosures may be incorporated into any quarterly statement "up to the second calendar quarter of 2022 (ending June 30, 2022)." For plans under which participants do not direct the investment of their account, the disclosures must be on the statement for the first plan year ending on or after September 19, 2021. For most plans, this will be October 15, 2022.

The Department stated in the FAQs that it intends to issue a final rule as soon as practicable and acknowledged the challenges that plan fiduciaries and the retirement industry would face if the Department issued a final rule that was materially different from the IFR without a transition period to accommodate such changes. However, the Department has not yet issued a final rule. With the applicability date of the IFR quickly approaching, plan fiduciaries and service providers should be ready to implement the lifetime income disclosure requirements pursuant to the IFR.

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