Voya Alert!

August 2020

DOL Releases Interim Final Rule on Lifetime Income Disclosures for Defined Contribution Plans

The Department of Labor (DOL) has announced an Interim Final Rule (IFR) for defined contribution plans subject to the Employee Retirement Income Security Act of 1974 (ERISA) that modifies the pension benefit statement rules to express a participant's account balance as a lifetime income stream equivalent to the total benefits accrued with respect to a participant or beneficiary. Under this new disclosure, added by the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE ACT), equivalent lifetime income stream means the monthly benefit payable, both as a single life annuity and a qualified joint and survivor annuity (QJSA) income stream.

As background, ERISA Section 105 requires retirement plans to provide an employee pension benefit statement at least annually. However, plans subject to ERISA that permit participants to direct their own investments (for example, most Section 401(k) plans) are required to provide employee statements at least quarterly. Under the SECURE Act, and the IFR, the lifetime income disclosure must be provided at least annually "on at least one pension benefit statement during any twelve month period" (e.g., on December 31 quarterly statement, etc.). The accrued benefit used for projecting the lifetime income stream must be based on the account balance on the last day of the employee benefit statement period.

The IFR provides plan sponsors with a set of assumptions to use in preparing the lifetime income projections, as discussed below, as well as model language for sponsors that wish to obtain relief from liability for providing the illustrations. The DOL has also requested comments from interested parties no later than 60 days following the date of publication of the IFR in the *Federal Register*.

Effective Date

The Interim Final Rule is effective one year after the date of publication in the *Federal Register*.

Plans Impacted

The lifetime income disclosure rules, when effective, impact Internal Revenue Code Section 401(k) and 401(a) plans, and Section 403(b) plans that are subject to ERISA.

Sample Grid

The preamble to the Interim Final Rule includes a sample table indicating how the projection "might" be displayed.

Assumptions

The IFR includes required assumptions for all relevant factors impacting the calculation of an equivalent lifetime income stream. However, the DOL has requested public comments no later than 60 days following publication of the IFR in the *Federal Register*, **so some or all of the stated assumptions are subject to change when the final regulations are issued and become effective.** Since the IFR does not address participant lifetime income disclosures if the ERISA plan has more than one vendor, Voya anticipates that the DOL may provide additional clarification following the close of the public comment period.

- **<u>Commencement Date</u>**
  The assumed annuity commencement date is the last day of the benefit statement period. For example, if the projection appears on the December 31, 2022 quarterly statement, then the assumed annuity commencement date is December 31, 2022.
- **<u>Commencement Age</u>**
  For illustration purposes, the DOL has decided to use a standard age of 67 for most participants, regardless of the participant's actual age on the commencement date, to align with the age when most participants will be eligible for full Social Security benefits. However, if the participant is older than age 67, the actual age will be used for the projection. Note that one of the areas in which the DOL has requested comments is whether the

projection should include multiple ages (e.g., age 62 (a common age for many employees to claim Social Security benefits) and age 67, etc.).

- **Marital Status**
  For purposes of calculating the joint and survivor annuity based income stream, the participant is assumed to have a spouse the same age as the participant (even if the participant is not married on the commencement date).
- **Amount of Survivor's Benefit**
  For the QJSA illustration, the IFR requires that the survivor annuity percentage be 100% of the monthly payment.
- **Interest Rate**
  The IFR provides that lifetime income projections must be done assuming an interest rate equal to the 10-year Constant Maturity Treasury (10-year CMT) securities yield rate as of the first business day of the last month of the period to which the benefit statement relates. This is another area for which the DOL has requested comments.
- **Mortality**
  While the DOL considered different approaches here, the IFR uses the Unisex mortality tables under Internal Revenue Code Section 417(e)(3)(B) (as used for lump sum cash-outs for defined benefit plans). This gender neutral mortality table is considered to be administratively simple and would avoid difficulties for plan administrators and record-keepers that do not maintain gender for participants.
- **Insurance Loads**
  The DOL decided to not include the impact of insurance loads into the projection process. The preamble describes "insurance load" as "the extra amount that an insurance company may charge for a product given extra expenses and costs beyond the basic charges" to cover the costs of providing a lifetime income benefit. The DOL was reluctant to include insurance loads in the calculation, in part because insurance loads can vary greatly among products and insurers.
- **Inflation Adjustment**
  The IFR does not include an adjustment for inflation within the projection calculation, and instead requires a fixed nominal stream. This was based on a desire to provide for a simple hypothetical illustration. However, the disclosure will be required to include certain explanations, including language around the fact that purchasing power of such an income stream will decline over time.

In-Plan Annuities
Plans that provide for in-plan annuities through an insurance contract issued by a licensed insurance company will have the option of using the assumptions provided in the IFR or basing the illustrations on the insurance contract's actual terms (with some limitations).

Explanation for Lifetime Income Stream
In accordance with the SECURE Act provisions, the IFR provides that the pension benefit statements must include brief, understandable explanations of the underlying assumptions used for the illustrations. In the DOL's view this requirement is important for several reasons, but mostly to make clear to participants that the projected monthly payments are not guaranteed.

Model Disclosure
The IFR provides a choice of two model disclosures that may be used to satisfy the requirements.

Limitation of Liability
The IFR provides that no plan fiduciary, plan sponsor, or other person, will have any liability under Title I of ERISA with regard to providing lifetime income equivalents as long as the provided assumptions are used, as well as the model language (or language substantially similar to that provided in the regulation).

Voya will continue to follow the developments related to the SECURE Act Lifetime Income Disclosure requirement and the IFR, including the future release of final regulations.

IRS Circular 230 Disclosure

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