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DOL Issues FAQs on Lifetime Income Illustrations | Fiduciary Focus Series

The Department of Labor (DOL) issued "temporary implementing FAQs" on July 26, 2021. The FAQs clarify the DOL's interim final rule ("Interim Rule") issued last year in connection with the SECURE Act's requirement that plan administrators of individual account plans, such as 401(k) and 403(b) plans, provide annual "lifetime income illustrations" to participants as a part of their participant benefit statements. As explained in "DOL Guidance on Lifetime Income Illustrations: Coloring Within the Lines," required "lifetime income illustrations" are intended to help participants understand the lifetime income conversion value of their account balance. The Interim Rule set forth a number of substantive requirements and specific assumptions that must be used in calculating the lifetime income stream to which a participant's account balance would translate and included model language that could be used.

FAQ Clarifications

Timing of Initial Disclosure

Effective on September 18, 2021, the Interim Rule did not address the timing applicable to the first annual disclosure. The FAQs provide welcome clarification on this point:

- With respect to participant-directed individual account plans for which quarterly participant benefit statements are required under ERISA Section 105((a)(1)(A)(i), the first "lifetime income illustration" can be incorporated into any benefit statement up to the second quarter of 2022 (ending June 30, 2022). A delay past that date would circumvent the requirement that "lifetime income illustrations" be included in a pension benefit statement once every 12-month period.
- For nonparticipant directed individual account plans for which participant benefit statements are required under ERISA Section 105((a)(1)(A)(ii) only once each calendar year, the first "lifetime income illustration" should be included on the

pension benefit statement for the first plan year ending on or after September 19, 2021. For most plans, this will be the benefit statement for the calendar year 2021, which must be furnished no later than the last date for the timely filing of the Form 5500 for that plan year (October 15, 2022).

Additional Lifetime Income Illustrations

Additionally, the FAQs clarify that plan administrators can provide lifetime income illustrations in addition to those required by the Interim Rule, including lifetime income illustrations that project income increases to participants' account balances through age 65. This is a helpful clarification since many plan recordkeepers provide lifetime income illustrations based upon projected age 65 account balances, as was contemplated in an earlier proposed version of the rule. The preamble to the Interim Rule makes clear, however, that the limitation of liability that may apply to protect plan sponsors and fiduciaries in connection with providing the required 'lifetime income illustrations" under Interim Rule is unavailable for any additional lifetime income illustrations.

Adoption of the Final Rule

The final point addressed in the FAQs related to the adoption of the final rule. In the preamble to the Interim Rule, DOL stated it would adopt a final rule sufficiently in advance of the effective date, but we are very close to the effective date of the Interim Rule (September 18, 2021). The question posed was whether the final rule would provide transition relief if it were not sufficiently in advance of September 18, 2021. In response, the DOL merely recited its appreciation for difficulties that could arise if the final rule differed materially from the Interim Final Rule without sufficient transition time. It seems that we will have to wait for the final rule to be issued to know more. Stay tuned!

For more information, please contact Sarah Lowe or any other attorney with Frost Brown Todd's Employee Benefits & ERISA practice group.

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