Interim Final Rule Regarding Lifetime Income Illustrations in SECURE Act

September 14, 2020

The Department of Labor's ("DOL") Employee Benefits Security Administration ("EBSA") recently released an interim final rule ("IFR") that provides guidance under the SECURE Act with respect to defined contribution plans. The IFR specifies actuarial assumptions and provides model language to be used in providing lifetime income illustrations to participants with defined contribution plan accounts, as required by the SECURE Act. The IFR will take effect one year after its publication in the Federal Register and will apply to pension benefit statements provided after that date. EBSA has submitted the IFR for public comments, which are due no later than 60 days after its publication in the Federal Register, and the rule is expected to be updated based on the comments.

Model Language and Relief from ERISA Liability

As discussed in our January 9, 2020 Benefit Update, available here, the SECURE Act requires defined contribution plans to provide participants, at least annually, with an estimate of the monthly benefit they would receive if their account balances were converted to an annuity. The SECURE Act also directs the DOL to issue model language that plans can use for this purpose and to specify the assumptions that should be used to calculate estimated monthly benefits.

The IFR requires plan administrators to describe the estimated lifetime income payments to participants to help them be better prepared for retirement and clarifies that the estimates are merely illustrations, not guarantees of benefit amounts. To that end, and consistent with the SECURE Act, the IFR provides model language for the required explanations. The use of the model language or substantially similar language, in conjunction with use of the assumptions described below, provides relief from potential fiduciary liability under ERISA that might be alleged if, for example, the participant's actual benefit at retirement is less than the estimated benefit. Plan administrators should decide whether to incorporate the model language into their current template for benefit statements or include the model language in a single addendum to the benefit statement.

General Regulatory Assumptions

The IFR also provides the assumptions that must be used for calculating the monthly payment illustrations for participants' account balances. These illustrations must be expressed both as a qualified joint and survivor annuity and as a single life annuity and the assumptions are:

- Payments begin as of the last day of the benefit statement period;

- A participant is age 67 or, if older, the participant's actual age, on the assumed start date;

- For the single life annuity illustration, the benefit is expressed as a fixed monthly amount for the participant's life, with no survivor benefit upon the participant's death;

- The qualified joint and survivor annuity illustration assumes that the participant has a spouse who is the same assumed age as the participant (generally age 67, regardless of whether the participant is actually married or the actual age of any spouse) and that the surviving spouse will receive 100% of the participant's monthly benefit for their life after the participant's death;

- The interest rate for converting the account balance to a monthly payment is the 10-year constant maturity Treasury rate (which approximates the rate used by the insurance industry to price immediate annuities) as of the first business day of the last month of the statement period; and

- Life expectancy must be determined using the gender-neutral mortality table under section 417(e)(3)(B) of the Internal Revenue Code.

Special Rules for In-Plan Annuities

For defined contribution plans that provide annuities through insured annuity contracts, plan administrators are permitted to use either the IFR's regulatory assumptions discussed above or, alternatively, to base the lifetime income illustrations on the actual terms of the annuity contract. If the plan administrator chooses the latter, the payment illustrations must assume (1) that payments begin as of the last day of the benefit statement period, (2) that a participant is age 67 or, if older, the participant's actual age, on the assumed start state, and (3) that the participant has a spouse the same assumed age as the participant (or the participant's actual age if older than 67). The IFR includes special disclosure requirements for plans that permit participants to use all or part of their accounts to purchase deferred income annuities while making contributions to their accounts.

Please contact Slevin & Hart for more information about how this interim final rule affects your plan.

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