


Legislative and Regulatory Update:
What's New In Retirement Plans

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Agenda

- Payroll Tax Opportunity
- Definition of Fiduciary
- Fee Disclosure
 - Government (Form 5500)
 - Plan Sponsor (408(b)(2))
 - Participant Level (404(a))
- Roth Conversion
- Benefit Adequacy



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Payroll Tax Opportunity

- Tax Relief, Unemployment Insurance Reauthorization and Job Creation act of 2010
- December 17, 2010
- Lowers Employee portion of SS Tax from 6.2% to 4.2%
- 2011 only
- Up to \$106,800




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Definition of Fiduciary

Definition of Fiduciary


- DoL released Proposed Regulations on October 21st which update the definition of Fiduciary
 - Effective 180 Days after the Final Regulations are published
 - Requested comments on how to handle the situation in which an advisor suggests taking a distribution when a distributable event has been reached – Capturing rollovers



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Definition of Fiduciary

- Fiduciary:
 - Provides investment advice for a fee
 - Does NOT have to be on a regular basis
 - A person who represents to be performing functions is a fiduciary even if does not meet definition



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Definition of Fiduciary

- **Fiduciary:**
 - i. Provides advice or appraisal concerning value of securities or property
 - ii. Recommends investing, purchasing, holding or selling securities
 - iii. Provides advice or recommendations to a plan, a plan fiduciary, plan participant or beneficiary
 - iv. Is an investment advisor (1940 Act) or is defined as a fiduciary or any of the above

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Definition of Fiduciary

- **Not a Fiduciary:**
 - i. Provides investment education and materials
 - ii. Marketing a platform - if disclose in writing that the person is NOT providing impartial advice
 - iii. Provides general financial information to assist fiduciary in selection

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Fee Disclosure

Fee Disclosure - Government Reporting

- **Government – Schedule C of Form 5500**
 - Effective since 2009 Plan Year
 - Applies only to large plans (> 100)
 - Fees paid (\$5,000+) to "service providers" must be reported
 - Direct and Indirect compensation both need to be reported
 - Implication: No more hidden fees
 - Electronic Filing - Information is public a day or two after the filing is submitted

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Fee Disclosure - Plan Sponsor Reporting

- **Plan Sponsor – Interim Final Regulations under 408(b)(2)**
 - Service providers must give in writing a list of services and fees at the point of sale and at renewal of contract
 - This applies when a service provider receives direct or indirect compensation from both new and existing plans
 - When offering multiple services, a breakdown of each is needed
 - Shifts burden from Plan Sponsor to Service Provider for responsibility
- **Effective April 1, 2012**

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408(b)(2) Fee Disclosure Regulations

- **No contract is required, BUT written disclosure is required**
- **Applies to all contracts and services as of effective date (April 1, 2012)**
 - Even if already in place
 - Even if not up for renewal
- **Applies to Pension Plans**
 - Not welfare plans
 - Some parts apply only to participant directed ERISA plans (403(b) and 401(k))
 - Not IRAs, SEPs or SIMPLE IRAs

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408(b)(2) Fee Disclosure Regulations

- Applies to covered service providers (next slide)
- Can ignore if anticipated fees are less than \$1,000 for the year
- Applies to affiliate or subcontractor of the service provider
- Good faith errors are not a problem if
 - Corrected within 30 days of discovering the errors
- Updated information - 60 days prior

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408(b)(2) - Covered Service Providers

- **Fiduciary Services**
 - Performed directly to the plan as a fiduciary
 - Investment adviser registered under 1940 Act
 - Fiduciary to an investment product or contract that holds plan assets that the plan has a direct investment in
- Recordkeeping or brokerage services to a participant directed plan
- Other services for “indirect” compensation
 - Banking, consulting, custodial, investment advisory, recordkeeping, third party administration or other (actuarial, accounting, legal), etc.

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Participant Fee Disclosure

- DOL final Regulations under ERISA makes it a fiduciary duty to:
 - Periodically disclose certain fee and expense information to participants and beneficiaries
- Plan administrator must disclose:
 - General plan related information and
 - Detailed investment related information
- Generally effective for plan years beginning on or after May 31, 2012

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Plan Related Disclosures

- General plan information, such as:
 - Investment instructions including any limitations and restrictions
 - Voting, tender rights
 - Identification of investment alternatives and investment managers
 - Description of brokerage windows and similar arrangements
- Plan administrative expenses that may be charged to participant accounts
 - Legal, accounting, recordkeeping, etc., and
 - Basis on which they will be allocated (e.g., pro-rata, per capita)
- Plan administrative expenses that are actually charged to participant accounts in dollars
 - Any related services must be detailed

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Plan Related Disclosures (cont'd)

- Individual participant and beneficiary expenses that may be charged to participant accounts, such as:
 - Qualified Domestic Relations Orders
 - Loans
 - Investment advice
 - Front/back end loads
 - Commissions
- Individual participant and beneficiary expenses actually charged to participant accounts, in dollars, and description of related services

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Plan Related Disclosures

Time and Form of Disclosures

- Date participant is eligible to direct investments for the first time and annually thereafter
- Quarterly statement of amounts actually charged to participant accounts during preceding quarter
- Any changes to required disclosures must be reported
 - 30 days but not more than 90 days from effective date of change
 - Unforeseeable events beyond plan administrator's control
 - As soon as reasonably practicable
- May report on SPD or benefit statement if frequency requirement is met

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Investment Related Disclosures

- Based on latest information available to plan
- Identifying information for investment alternatives including type and category (e.g., money market, balanced fund, etc.)
- Performance data for investments that are not fixed
 - Return for 1, 5 and 10 calendar year periods
 - Broad-based benchmark data
- Performance data for investments that are fixed or have stated return
 - Term of investment
 - Annual fixed rate

Investment Related Disclosures (cont'd)

- Fees and expenses for investments that are not fixed
 - Shareholder-type fees charged against participant accounts (e.g., commissions, sales loads, redemption fees)
 - Description of restrictions or limitations on purchase, transfer or withdrawal
 - Total annual operating expenses (i.e., expense ratio) and for a one-year period expressed as a dollar amount for \$1,000 investment.
- Fees and expenses for fixed investments
 - Term of investment
 - Information regarding shareholder-type fees that may apply to purchase, transfer or withdrawal

Investment Related Disclosures (cont'd)

- Internet Web site address providing access to more detailed information regarding investment alternatives:

www.dol.gov/ebsa/participantfeerulemodelchart.doc
- Glossary of investment related terms

Investment Related Disclosures
Time and Form of Disclosures

- **Date participant is eligible to direct investments for the first time and**
 - Annually thereafter
- **Comparative Format required for presentation of all investment related information**
 - Use of DoL provided model chart deemed to meet this requirement



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Roth Conversions

Roth Conversions


- Created Roth 457(b) option as of January 1, 2011
- 2010 law change allows conversion of pre-tax deferrals to Roth inside of the 401(k) or 403(b) plan
 - Must have Roth deferral option
 - Must have a distributable event



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Roth Conversions – Tax Issues

- No 10% penalty on conversions if under age 59½
- May not de-convert or recharacterize back to pre-tax
- No 20% withholding
- Special "tax spread over 2 years" rule was only for 2010
 - Taxes accelerated if distribution taken before all tax recognized



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Benefit Adequacy



Schwab
"THE GOOD NEWS IS YOU CAN RETIRE AT 65. THE BAD NEWS IS THAT IT'S 2065."

Benefit Adequacy – The Dilemma

The concern is twofold:

- Will employees have enough money when they retire? → **Accumulation phase**
- Will they withdraw it responsibly, so that they do not exhaust their 401(k) accounts or IRAs before they die? → **Distribution phase**

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Benefit Adequacy – The Solution

➤ The key elements of the accumulation phase are:

- participation
- funding (deferrals)
- participant investing: QDIAs

➤ The key elements of retirement income for life are:

- an adequate amount
- a lifetime guarantee



Benefit Adequacy - Emerging Solutions

The marketplace has introduced a number of proposed solutions to these problems.

- Annuities
- Managed payout mutual funds
- Managed accounts
- Guaranteed withdrawal benefits (GMWBs) and other combined insurance/investment products

Each “solution” has its own advantages and disadvantages.

Summary

- *Payroll Tax Opportunity* – 3 more months to save
- *Definition of Fiduciary* – Know who is a fiduciary among service providers
- *Fee Disclosure* – Coordinate with vendors, establish reasonable costs
- *Roth Conversions* – For large plans
- *Benefit Adequacy* – Focus on income

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