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

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
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

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
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

• 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

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

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

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
### 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

### 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.

### 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
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

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-end and back-end loads
  - Commissions

- Individual participant and beneficiary expenses actually charged to participant accounts, in dollars, and description of related services

Plan Related 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
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

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
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

Benefit Adequacy
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**

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

“If we take a late retirement and an early death, we’ll just speak fry.”
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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