

Hot Topics for Qualified Retirement Plans

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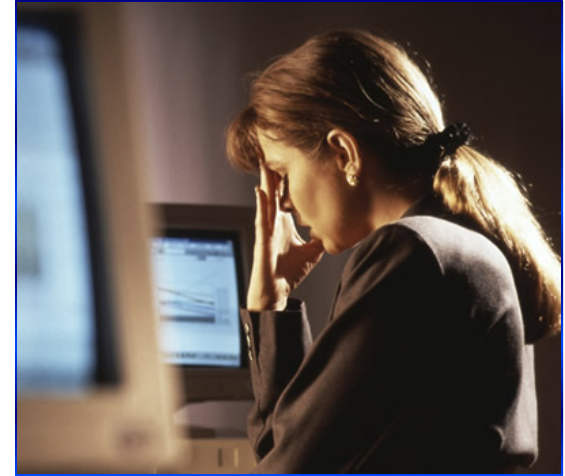
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Hot Topics in DC Plans for 2014

- MyRAs/SAFE etc.
- DOMA/Windsor Guidance
- PPA Restatements
- Safe Harbor Rules Revision
- Roth In-Plan Conversion Update
- 408(b)(2) “Guide” Proposal/404(a) “reset”
- QDIA/Target Date Fund Regulations
- EBA Accounts
- Misc. Changes/Updates/Court Cases



Current Government Proposals

- MyRAs:

- Announced by President Obama in his January 2014 State of the Union Address that it is his intention to introduce a new savings vehicle for employees not covered by a pension plan.

- Basics –

- Voluntary program for those with income of \$191,000 or less
 - Done through payroll deduction OR individual contribution
 - Contributions can be as low as \$25, or \$5 per paycheck, after-tax
 - Annual contributions limited to \$5,500 (or \$6,500 if over age 50)
 - Invested in Treasury securities (same as federal workers' Thrift Savings Plan) with no fees for administration
 - Balances of \$15,000 or accounts open for 30 years moved automatically to a private sector Roth IRA

MyRAs (cont.)

- Basics (cont.)*
 - Can switch to a private sector Roth IRA anytime
 - Contributions can be withdrawn anytime penalty-free; earnings subject to taxes/penalties before age 59 ½
- Why some folks don't like this proposal:
 - Amounts don't add up enough to address the retirement readiness problem
 - No auto enrollment
 - Treasuries may preserve the capital, but the earnings are low

Other Government Proposals

- Secure Annuities for Employee (SAFE) Retirement Act of 2013
 - Proposed by Sen. Oren Hatch
 - Key features:
 - Creates a “Starter 401(k)” Wage Deferral-Only Safe Harbor Plan
 - Eliminates the 10% auto escalation limit
 - Improves availability of Multiple Employer Plans for small employers
 - Includes some key administration provisions such as eliminating the 6-month suspension following hardship withdrawals
- Rep. Camp Tax Reform
- Nelson-Collins Retirement Security Act
- States continue to pass legislation to review feasibility of having a State level retirement/IRA option

DOMA/Windsor

- Understanding Windsor at a high level
 - Section 3 of DOMA stated that the word “marriage” meant only a legal union between one man and one woman as husband and wife, and the word “spouse” refers to a person of the opposite sex who is a husband or wife.
 - Case involved NY state residents who were legally married in Canada. When one spouse died, estate was left to her same-sex spouse who tried to claim the federal estate tax exemption for surviving spouses, but was denied due to DOMA. She argued that DOMA violated the 5th Amendment right to equal protection.

DOMA/Windsor — (cont.)

- Understanding Windsor at a high level
 - In its decision, the Supreme Court noted that the usual tradition of recognizing and accepting state definition of marriage was not consistent with DOMA and that the purpose of DOMA was to disadvantage same-sex couples with no legitimate purpose except to “disparage and injure” those legally married under state law.
 - The decision in Windsor only made Section 3 of DOMA unconstitutional, so Section 2 remains in effect.
 - Section 2 of DOMA provides that states and territories of the U.S. have the right to deny recognition of a same-sex marriage recognized in another state.

DOMA/Windsor — (cont.)

- IRS Revenue Ruling 2013-17
 - IRS released its first piece of guidance on August 29, 2013 with an effective date September 16, 2013.
 - Retroactive applications for voluntary filing of amended tax returns to claim a refund of taxes.
 - Ruling provides that a same-sex couple legally married under the laws of a state, territory, or foreign jurisdiction will be treated as married for federal tax purposes, regardless of where the couple resides.
- DOL Technical Release 2013-04 released September 18, 2013
 - Agreed with the IRS Rev. Ruling so that the terms “marriage” and “spouse” will be read to refer to any individuals, including same-sex couples, who were legally married in a state, territory or foreign jurisdiction that recognizes such marriages, regardless of the couple’s state of domicile.

DOMA/Windsor — (*cont.*)

- IRS Notice 2014-19
 - There are now 3 distinct periods to consider
 - Before June 26, 2013 – Windsor doesn't have to apply
 - June 26 – September 15, 2013 – Plan must apply Windsor, but can choose either state of celebration OR state of residence
 - Post September 15, 2013 – Plan must apply Windsor AND state of celebration rule

DOMA/Windsor — (cont.)

- IRS Notice 2014-19
 - Will a Plan need to be amended by December 31, 2014?
 - Generally Yes, if –
 - Plan to reflect Windsor before June 26, 2013, or
 - Plan document inconsistent with Windsor or Rev. Rul. 2013-17
 - No, if –
 - Applying Windsor on or after June 26, 2013, or
 - Plan document is consistent with Windsor or Rev. Rul. 2013-17, or
 - Plan is Governmental or 403(b) and may have a later deadline
 - Gap period choice is operational only & doesn't need to be in the document (although may be helpful)

Pension Protection Act (PPA)

Restatements for DC Plans

- Rev. Proc. 2007-44 provides for a full restatement of all pre-approved plans every six years.
 - Defined Contribution Plans will be restated between April 2014 through April 2016
 - Individually designed plans still on their 5-year schedule
 - Favorable Determination Letter filings not available anymore for majority of pre-approved plans
 - Cost of restatement should be considered and planned for (may be paid from forfeitures, if permitted in plan)
 - Typically, this is when document and operational errors are discovered

Safe Harbor Regulation Update

- Brief History
 - Final 401(k)/(m) Regulations and original safe harbor rules allowed for safe harbor matching contributions to be suspended midyear, with conditions
 - In 2009, the IRS issued proposed regulations permitting nonelective safe harbor contributions to be suspended midyear only if the employer had a substantial business hardship.
 - The requirements of proving a “substantial business hardship” were burdensome and complicated for many Employers

Safe Harbor Regulation Update (cont.)

- Final Regulations issued November 2013
 - Both Match and Nonelective safe harbor contributions may now be suspended or reduced midyear if either:
 - Employer is operating at an economic loss for the plan year; or
 - The safe harbor notice includes a statement that the employer may stop the safe harbor midyear with 30 days advance notice
 - Effective retroactive to May 19, 2009 for nonelective
 - Effective for plan years beginning after December 31, 2014 for matching
 - Clarified that midyear amendments changing plan provisions only permitted in certain circumstances or when provided through public guidance

Roth In-Plan Conversions

- Original regulations came out in late 2011
- Requirements for original in-plan conversions:
 - Must provide for ongoing Roth 401(k) contributions in the plan Participant has to have a distributable event
 - Plan needs to be amended to provide for this option
- Effective January 2, 2013, Obama signed The American Taxpayer Relief Act of 2012
 - No distributable event is required
 - Does not apply to distributions that aren't eligible for rollover (e.g. required minimum distribution)

Roth In-Plan Conversions (cont.)

- Operational challenges with ‘nondistributable’ amounts
 - Money source restrictions remain valid even after the conversion to Roth
 - For example, if funds were deferrals, may not be distributed before age 59 ½ or upon severance of employment.
 - QNEC funds aren’t available for hardship withdrawals
 - May require employer to limit the money types available for conversion
 - The challenges plus original lack of interest in conversion may make many providers take a ‘wait & see’ approach
 - 5-year clock still applies to nondistributable in-plan Roth rollovers
 - No mandatory or voluntary withholding permitted, so participant needs to pay taxes out of pocket

Fee Disclosure Updates

- 404(a) Participant Fee Disclosure
 - Original deadline for notices was August 30th, but other Participant notices are distributed 30 to 90 days prior to the beginning of the plan year
 - Distribution required to be done within 12 months of each notice
 - DOL issued guidance FAB 2013-02 on July 22, 2013
 - Permits a “reset” for the notice to be distributed no later than 18 months after the 2012 or 2013 notice
 - DOL is also considering the issue of “deadline creep” and may provide additional guidance/flexibility in the future

Fee Disclosure Updates (cont.)

- 408(b)(2) “Guide” - Proposed Regulation
 - Mention of a possible “Guide” from the original regulation
 - Formal proposal from the DOL released in March 2014
 - Would require covered service providers to include a “Guide” with the disclosure if:
 - Disclosure exceeds a certain length (open for comment)
 - Disclosure is contained in multiple documents
 - Disclosure refers to other documents or websites that are hard to locate
 - Proposal effective 12 months after final regulation is published

Fee Disclosure Updates (cont.)

- 408(b)(2) “Guide” Assumptions & Goals
 - Assumes that all providers agreements and contracts are static text (page numbers & section numbers)
 - DOL believes it might be “less burdensome” for providers to distribute disclosure plus “Guide” annually
 - Goal is to allow the plan fiduciary to quickly & easily find “key” items
 - Services Provided
 - Fiduciary status
 - Compensation description
 - Recordkeeping disclosures
 - Fees and expenses related to investment disclosures
 - Comments are due to DOL by June 10, 2014

Target Date Funds/QDIA

- Original QDIA Regulation released October 2007 bringing in target date funds as eligible for QDIA
- Proposed additional rules released November 2010
 - Proposal focused on educating participants regarding how target funds actually work (“to” versus “through”)
 - Clarify point in time that funds become most conservative
 - Proposal included graphical illustration of how fund’s asset allocation will change over time
 - Notice may be required for target date funds regardless of QDIA status
- Final regulations estimated for 2014
- February 2013 DOL published “Target Date Retirement Funds – Tips for ERISA Plan Fiduciaries” www.dol.gov/ebsa

Expense Budget Accounts

- DOL issued Opinion Letter 2013-03A
 - Issued to Principal involving revenue sharing and separate bookkeeping record of revenue received and applied to plan expenses
 - Although inquiry was very fact-sensitive, conclusion made it clear that these arrangements could be plan assets creating a beneficial ownership interest
 - If the agreement created legal property rights, such rights would be an asset of the plan
 - Arrangement is subject to reasonableness and disclosure requirements of 408(b)(2)

Expense Budget Accounts (cont.)

- Bottom line takeaways
 - Expense Budget Account assets are not considered assets of the plan if the plan has no formal claim to the assets
 - Expense Budget Account assets held in the plan are plan assets
 - Expense Budget Account assets set aside outside the recordkeeper's assets or subject to a specific claim by the plan are also plan assets

Misc. Changes/Updates/Court Cases

- IRS Guidance on Rollovers to Qualified Plans
 - Provided simple rules for plan administrators can satisfy due diligence when determining rollover status
 - Plan-to-Plan – Check Form 5500 for absence of Code 3C
 - IRA-to-Plan – If check is made payable to the trustee of the qualified plan from trustee for IRA, then ok
- One IRA Rollover Per Year applied to all of taxpayer's IRAs & not each separate IRA
 - Applied when taxpayer takes actual possession of the funds first and puts them back in within 60 days
 - Effective for January 1, 2015

Misc. Changes/Updates/Court Cases

- Cash Balance Pre-Approved Program announced by IRS January 2014
 - Would allow smaller employers to adopt cash balance plans by reducing costs associated with individually designed plans
 - Cash balance plans already submitted under Cycle C is permitted to withdraw for an FDL
- 403(b) Pre-Approved Program Filing Delayed
 - Delay until April 30, 2015 from current April 30, 2014 deadline
 - Mass submitter providers and practitioner requirements reduced from 30 down to 15 adopters
 - Allows for additional work to be done on 403(b) regulations and procedural requirements

Misc. Changes/Updates/Court Cases

- Headline court cases this past year were about fees
 - Plaintiffs have learned that they must prove that there was a fiduciary breach
 - Revenue sharing is not per se an improper method for paying plan fees, but the arrangement must be properly considered by the fiduciaries
 - The key factor that the cases are hinging on is whether the fiduciary acted prudently and in compliance with the plan procedures
 - This includes complying with any investment policy statement

Pending Regulations

- DOL agenda (Published 5/23/14)*
 - Standards for Brokerage Windows - RFI
 - Investment Advice Conflict of Interest Rule – Proposed Rule
 - Pension Benefit Statements – Proposed Rule
 - Selection of Annuity Providers – Safe Harbor for Individual Account Plans – Proposed Rule
 - Amendment to Abandoned Plan Rules – Final Regulation

* Department of Labor (DOL)

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Pending Regulations – (cont.)

- IRS agenda (Published 4/21/14)*
 - Interim Amendment Procedures under 401(a) & 403(a)
 - Final regulations related to hybrid plans
 - Guidance for late filers of Form 5500 series (Posted 5/9/14)
 - Guidance relating to lifetime income from retirement plans
 - Further Multiple Employer Plan guidance
 - Enhancement of EPCRS for certain corrections

* Internal Revenue Service (IRS)

QUESTIONS?

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