INSIDE retirement

Second Quarter 2018

RETIREMENT PLAN NEWS

CAPITOL HILL UPDATE

In second quarter, four bipartisan bills were examined during a hearing held by a subcommittee of the House Education and Workforce Committee. In his opening statement, the committee chair, Rep. Tim Walberg (R-MI), said that changes are needed because "Many ERISA provisions related to retirement plan administration are in desperate need of updating…," and that "… unnecessary federal restrictions stand in the way of lower costs for small businesses and have contributed to compliance uncertainty."

The Increasing Access to a Secure Retirement Act of 2017 would clarify existing rules that provide a fiduciary safe harbor for plan sponsors when selecting and monitoring annuity providers for the plan.

The Retirement Plan Modernization Act would increase the automatic cashout limit for former employees who do not make a distribution election from $5,000 to $7,600 and apply cost-of-living adjustments to this limit in future years.

The Retirement Security for American Workers Act would remove some of the barriers to multiple employer plans (MEPs) and allow unrelated employers to collectively satisfy plan administration requirements through the use of a pooled plan provider.

The Receiving Electronic Statements to Improve Retiree Earnings Act would make retirement plan information more accessible to participants online and lower administrative costs for plan sponsors.

Stakeholders from the retirement plan industry commented on the merits of all four bills at the hearing. The Committee will continue to explore solutions discussed at the hearing as they attempt to move this legislation forward.

DOL UPDATE

The Department of Labor (DOL) has released more guidance on the investment duties of plan fiduciaries under ERISA when considering economically targeted investments (ETIs).

Raffa Retirement Services

ETIs are generally investments or investment strategies that are selected for the collateral benefits the investment provides in addition to the investment return. ETIs typically consider environmental, social and governance (ESG) factors. The DOL has previously addressed issues relating to ETIs used in retirement plans.

In Interpretive Bulletin 1994-01, the DOL confirmed that ERISA does not prevent fiduciaries from investing in ETIs if the ETI has an expected rate of return in proportion with the rates of return of alternative investments with similar risk characteristics and is otherwise an appropriate investment. This is sometimes referred to as the "all things being equal" test.

In Interpretive Bulletin 2008-01, the DOL stated that fiduciary consideration of collateral, noneconomic factors should be rare and carefully documented. The effect of the 2008 guidance was to discourage most plans from including ETIs as an investment alternative.

In Interpretative Bulletin 2015-01, the DOL withdrew its 2008 guidance and re-confirmed the applicability of 1994 guidance, once again taking a more favorable view of ETIs. That guidance reiterated that fiduciaries may not accept lower expected returns or take on greater risks to secure collateral benefits but may take such benefits into account when investments are otherwise equal with respect to their economic and financial characteristics. This guidance also acknowledged that, in some cases, ESG factors may have a direct relationship to the economic and financial value of the plan's investment. In such instances, ESG issues are not merely collateral considerations, but are proper components of the fiduciary's primary analysis of the economic merits of competing investment choices.

In 2018, the DOL released Field Assistance Bulletin 2018-01, pulling back from ETI-favorable 2015 guidance. The 2018 guidance cautions fiduciaries against too readily treating ESG issues as economically relevant to their investment choices. Plan fiduciaries are directed to always put first the economic interests of the plan in providing retirement benefits and focus on financial factors that have a material effect on the return and risk of an investment. The DOL also cautioned plan fiduciaries that when selecting the plan's Qualified Default Investment Alternative (QDIA), favoring the fiduciary's own policy preferences in selecting an ESG-themed QDIA would raise questions about the fiduciary's compliance with ERISA's duty of loyalty.

In the midst of this pendulum swing by the DOL, the Government Accountability Office (GAO) was asked to study the use of ESG factors by U.S. retirement plans and retirement plans in other countries, as well as the DOL's guidance. The GAO found that investors are increasingly incorporating ESG factors into their investments, but ETI use within U.S. retirement plans has been low so far, partly because of unclear regulatory guidance. In its report (GAO-18-398), the GAO recommended that the DOL:

- Clarify whether an ERISA plan may incorporate material ESG factors in investment options designated as a QDIA, and
- Provide more information to assist fiduciaries on how to evaluate available ESG options, such as questions to ask or items to consider

IRS UPDATE

Mid-Year Testing

Third party administrators (TPAs) and recordkeepers will soon be providing mid-year testing results for plans that operate a calendar-year plan. Mid-year testing provides the opportunity to make sure the plan is on track to meet the tax code requirements for the year while there is still time to address any issues.

A service provider's mid-year testing package may include a number of elements, but most will address the plan contribution limits and preliminary nondiscrimination testing.

Salary Deferral Limit – Each participant's salary deferrals (pre-tax and Roth) cannot exceed $18,500 for 2018. Participants age 50 or older may make catch-up contributions up to $6,000 in addition to their salary deferral limit. Catch-up contributions are not included in the annual additions limit.

Annual Additions Limit – The total contributions to each participant's account for 2018, including employee and employer contributions, cannot be more than:

- The amount that participant earned for the year or
- If less, $55,000

Actual Deferral Percentage (ADP) test – This test limits the percentage of compensation the highly compensated employee (HCE) group can defer into the plan based on the deferral rate of the non-highly compensated employee (non-HCE) group.

Actual Contribution Percentage (ACP) test – This test ensures that the employer matching contributions and after-tax employee contributions contributed for HCEs are not disproportionately higher than those for non-HCEs.

If a plan fails any of the nondiscrimination testing at the end of the year or holds an excess contribution, it must be corrected to stay qualified. In addition to costing extra time and effort, correcting excesses can result in taxable distributions to HCEs. And HCEs may be limited as to how much they can contribute to retirement savings unless all employees are actively participating in the 401(k) plan.

If a plan has difficulty passing the nondiscrimination tests each year, plan sponsors may want to:

- Ensure accurate census data is being used so that nondiscrimination testing and plan limits are calculated correctly
- Consider limiting HCE contributions for the remainder of the year to avoid distributions to remove excesses
- Consider whether additional participant education or targeted communications could potentially increase savings levels to help prevent testing failures in future years
- Explore plan design options that can help drive higher participation rates and increase contributions, such as automatic enrollment or a safe harbor 401(k) plan design

INSIDE retirement

Upcoming Plan Deadlines for Calendar-Year Plans

July 31, 2018

Most retirement plans are required to file Form 5500, *Annual Return/Report of Employee Benefit Plan,* and related schedules with the DOL by the last day of the seventh month following the end of the plan year.

Plans must also file Form 8955-SSA, *Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits*, if there are terminated participants with a vested deferred benefit from the plan.

If a plan has 100 or more participants, an independent qualified plan audit (IQPA) must also be obtained and filed with Form 5500.

A 2½ month extension can be obtained by filing Form 5558, *Application of Extension of Time to File Certain Employee Plan Returns*, by the original due date for filing Form 5500 or Form 8955-SSA. Alternatively, if an extension is obtained for the business's federal income tax return, the plan will automatically receive an extension for the Form 5500, without filing Form 5558.

July 2018

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

October 2018

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

This information is provided as a reference tool for your convenience and may not represent a complete list of all events that apply to your plan.

Tracking #1-736700