GS-2: Washington Update

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Agenda

- State Legislation and DOL
- Open MEPs
- Highway bill - 5500 filing deadlines
- Multiemployer Pension Reform
- Women’s Pension Protection Act
- Fiduciary Rule
- Announcement 2015-19
- 5500 SUP
- DB Guidance
  - Final 430 Regulations
  - PBGC Final Reportable Events Regs
  - Mortality Tables

State Legislation and DOL
State Activity

- **California**
  - Study with additional authorization required
  - Trustee’s report due at year end
- **Illinois**
  - To be effective in 2017
- **Oregon**
  - Some flexibility in law, but likely auto-IRA
  - To be effective

- All have provisions preventing implementation if ERISA applies
DOL Guidance

- IB 99-1 laid out non-ERISA payroll deduction IRA framework
- California, Illinois and Oregon asking DOL to clarify that auto-enrollment does not make payroll deduction IRAs ERISA plans
- DOL was reluctant to act
- President told DOL to develop guidance facilitating state programs

DOL Guidance

- At OMB – out any day now
- Expect two pieces of guidance
  - Proposed modification to payroll deduction IRA reg providing state program not ERISA IF employer is required to participate
    - Private auto-IRA arrangements would be ERISA
    - Comments and hearing will delay effective date
  - Other guidance, effective immediately, to allow states to offer open MEPS
If DOL Tips the Scales...

If DOL gives states a competitive advantage over private providers, the uneven playing field will lead to

- **less competition,**
- **less innovation,** and
- **worse outcomes** for savers.

Open MEPs
Open MEPs

• Bipartisan proposals to permit open MEPs
  – S 266 - Collins (R-ME) and Nelson (D-FL)
  – HR 506 – Buchanan (R-FL-16) and Kind (D-WI-3)
• Amend ERISA to allow Multiple employer plans where no other common bond
• Direct Treasury to take care of the “one-bad-apple” rule
• No defined responsibility for MEP provider

Open MEPS

• ASPPA’s open MEP proposal* requires a designated service provider:
  – responsible for testing and other required admin,
  – registered with IRS and consents to IRS audits
• Hatch SAFE ACT (S 1270 – 113th)
  – Requires a designated service provider, registered with IRS, to avoid the one-bad-apple rule
• Harkin/Brown USA Accounts (S 1979 – 113th)
  – Required a designated service provider, registered with DOL, for a “pooled plan”

* ASPPA, Proposals to Enhance the Private Retirement System December 2013
5500 Filing Deadlines

Surface Transportation and Veterans Health Care Choice Improvement Act of 2015

• Aka “the Highway Bill”
• IRS directed to modify tax return filing deadlines for partnerships, C corps, certain tax-exempt entities, as well as Form 5500 filers.
  – No direction to DOL on 5500 deadline
• Generally effective for returns for tax years beginning after December 31, 2015.
• Special rule for calendar year C-corps through 2025 not reflected in 5500 deadline.
Highway Bill

• As enacted:
  – Calendar year plans through 2025:
    • Extended C-corp filing deadline September 15
    • IRS extended Form 5500 deadline November 15
    • Current DOL 5500 extended deadline October 15
  – Fiscal year plans (April 30, 2017 example):
    • Extended C-corp deadline Feb 15, 2018
    • IRS extended 5500 deadline March 15, 2018
    • Current DOL 5500 extended deadline February 15, 2018

• Next Highway extension needed by October 29th

Multiemployer Pension Reform
Multiemployer Pension Reform Act of 2014

- MPRA enacted as part of 2014 CROmnibus
- **Signature provision - Plans in “critical and declining” status can apply to “suspend” a portion of the accrued benefits.**
  - Plans that have taken all reasonable measures to avoid insolvency, but are still projected to become insolvent in the current or next 14 years (19 years if #inactive/# active >2 )
- Plan sponsor must show that with benefit suspension will avoid insolvency & not reduce benefits below 110% of the PBGC maximum guarantee level for multiemployer plans (currently a max of $12,870/year for 30 years service).
- No reduction for those age 80+ on the suspension date.
  - Ratably phased out between ages 75 and 80.
  - No suspension of disability benefits permitted

Multiemployer Benefit Suspension

- Suspension must be approved by Secretary of the Treasury in consultation with DOL and PBGC
- Participants must be given an opportunity to vote on the suspension before it is effective.
  - Negative vote ignored if present value of projected required PBGC assistance in excess of $1 billion ("systemically important" plan).
- Proposed guidance has been issued.
- Central States Teamster plan intends to file for suspension of benefits.
Proposed MPRA Modifications

• S 2147 – Pension Accountability Act
  – Portman (R-OH) & Burr (R-NC)
  – Participant votes binding
    • Eliminates “systemically important” exception
  – Unreturned ballots cannot be counted as “yes” votes

• HR 2844 – Keep our Pension Promises Act
  – Kaptur (D-OH) and 26 other Dems
  – S 1631 counterpart – Sanders (I-VT) and 5 Dems
  – No suspension of accrued benefits
  – PBGC takeover of partitioned troubled plan with general revenues (taxpayers) to cover any shortfall

Women’s Pension Protection Act
Women’s Pension Protection Act of 2015 (S 2110)

• Sen. Patty Murray (D-WA) chief sponsor
  – 12 of 14 Dem women Senators are sponsors
• Why?
  – Median retirement income in 2010 59% of men’s
  – DB plans have spousal protections, but most plans are now DC
  – Only 1 in 5 PT workers are eligible for a plan and about 2/3rds of PT workers are women

S 2110 – Spousal Consent

• Plans not subject to J&S (ERISA §205) must obtain spousal consent for distributions
• Exceptions:
  – Minimum required distributions
  – Loan default deemed distributions
  – Hardship distributions
  – < $5,000 not requiring participant consent
  – Benefits paid as QJSA, QPSA or QOSA
  – Total distribution with at least 50% going to spouse’s IRA
  – Direct transfer to another qualified plan, or to an IRA for a beneficiary for whom the spouse had previously provided consent.
S 2110 – Part Time Workers

• 401(k)/403(b) plans must allow long-time part-time workers to contribute
  – 3 consecutive years with at least 500 hours
  – Can be excluded for discrimination testing, 410(b) and top heavy (all or nothing, can’t pick and choose)
  – Vesting service credited for years after the initial 3 years or 1/1/2014 if later credited for years with at least 500 hours
  – Penalty for noncompliance: $10,000 per year per employee

S 2110 – Financial Literacy

• Financial product or service provider must provide a link to the Consumer Finance Protection Bureau “in event of any offer for the sale, exchange, or other transfer of a retirement financial product or service to a consumer”.
• Grants to be provided to community based orgs to improve women’s financial literacy.
Proposed Fiduciary Rule

Fiduciary Rule

• Proposed “Definition of the Term “Fiduciary”; Conflict of Interest Rule – Retirement Investment Advice” issued April 20, 2015
• Comments were due July 21, 2015
• Hearing held August 10-13, 2015
• Additional comments due September 24, 2015
• Final rule effective 60 days after publication
  – Enforcement begins 8 months after publication
• Expect final rule in time to take effect during this administration (April-May 2016?)
Proposed Definition of Fiduciary

• You are a fiduciary if you provide certain types of advice for a fee to a plan, plan fiduciary, plan participant or beneficiary, IRA or IRA holder, including:
  – Recommendations on buying, selling, holding, exchanging securities or other property
  – Recommendations on the management of securities or other property
  – Recommendations on distributions, including rollovers.
  – Appraisal, fairness opinion or similar statement regarding the value of securities or property in connection with a specific transaction

Best Interest Contract Exemption (BICE)

• Exemption for variable comp and third-party payments
• Applies to advisers and their associated financial institutions, affiliates and other related entities
• Applies to advice to “Retirement Investors”:
  – Participant or beneficiary in a self-directed plan or entitled to distribution
  – IRA owner acting on behalf of the IRA
  – Plan sponsor of a non-participant directed plan with <100 participants
Best Interest Contract (BIC) Exemption

• Requirements:
  – Notification to the DOL’s Employee Benefit Security Administration (EBSA) from the financial institution that intend to take advantage of the exemption (Need not identify plan or IRA)
  – Written contract with signatures from investor, adviser and related financial institution
  – Adhere to Impartial Conduct Standards
  – Multiple disclosures in addition to those in the contract
  – Document and data retention relating to the investment recommendations for 6 years, subject to DOL examination

Fiduciary Def’n Carve outs

• Recommendations to “sophisticated” ERISA plan investors:
  – 100 or more participants or at least $100 million in assets
  – Not paid by plan or plan fiduciary for providing investment advice

• Swap and security-based swap transactions between swap dealer and independent plan fiduciary

• Employees of the plan sponsor who receive no compensation for the provision of advice other than normal compensation
More Carve-outs

- **Platform providers** if disclosure to plan fiduciary that provider is not undertaking the provision of advice.
- **Selection and monitoring assistance** if only identifying investment alternatives that meet objective criteria specified by the plan fiduciary or providing objective data and comparison with independent benchmarks.
- **Financial reports and valuations** to an ESOP, a fund holding investments of more than 1 unaffiliated plan, *or solely* for purposes of required reporting and disclosure.

More Carve-outs

- **Investment education** including:
  - Plan information not tailored to a specific participant
  - General financial, investment or retirement information
  - Interactive investment materials to estimate income streams (no specific product identification)
  - Asset allocation models *that do not identify specific investment products or alternatives*
    - *Replaces IB 96-1* that allows “education” to include identification of a specific investment alternative in the context of an allocation model with a disclaimer.
Fiduciary Rule Comment Letters

- Major “asks”:  
  - Special “level to level” rollover exemption  
  - Clarify that the platform carve-out is available to TPAs and others who market the platform (but are not otherwise being compensated for providing investment advice)  
  - Make a simplified BICE available to small self-directed 401(k) plans  
  - Permit specific funds to be mentioned within the education carve out  
  - Extend the 8 month delay in enforcement to 2 years.

Announcement 2015-19
Determination Letter Changes

• Beginning in 2017, the 5-year cycle is eliminated
  – Cycle A filers can file 2/1/16 through 1/31/17
• IDP determination letters will only be available at initial adoption and plan termination.
  – And other limited circumstances TBD
• Remedial amendment period will revert to 1.401(b)-1 (last updated in 2000)
  – Commissioner intends to extend the remedial amendment period to at least December 31, 2016
• Comment letter filed October 1

2015 Form 5500 SUP
Form 5500 Changes

- IRS published proposed Form 5500 changes to be effective for the 2015 plan year in the December 23, 2014 Federal Register
- IRS released new Form 5500 SUP which will be effective for 2015 plan years
- Additional data requirements including
  - Trust information
  - Plan Document questions related to amendment dates, date of determination letter or M&P/VS opinion or advisory letter info;
  - Unrelated Business Taxable Income (UBTI)
  - Tax deductible ESOP dividends
  - 401(k) non-discrimination testing;
  - Coverage and non-discrimination testing
- Paid Preparer information made mandatory!!

5500 SUP

- Comment letter filed February 23, 2015:
  - Delay needed to collect data, program changes
  - Do not publicly disclose preparer information
  - Revise/simplify the proposed form to improve the accuracy of data collected
- June 8, 2015 letter to OMB re IRS statement of data collection costs for SUP greatly understated
  - Follow-up meeting held with OMB
- September 16, 2015 letter to IRS asked that 5500-SUP be voluntary for 2015.
  - Not looking good.
Recent DB Guidance

IRS - Final §430 Regulations

- Proposed in 2008
  - Determination of MRC and quarterly installments
- Final includes
  - Short plan years
  - Plan terminations
  - Standing elections for quarterly installments
- HATFA small plan interest rate tech correction
  - Required for 2014 and ff but elective pre-2014
PBGC - Reportable Events

- Small plan waiver (<100) for most reporting requirements
  - NOT for distributions to a substantial owner
- Well funded plan waivers includes distributions to a substantial owner
  - “well-funded” means no variable premium in the preceding year
- Low-risk of default waivers
- Publicly-traded and reported on Form 8-K
- De minimis waivers (<10%)

Mortality Tables

- Notice 2015-53
  - Updates the tables for 2016; continues use of RPA 2000 table
- Change to new mortality table will be in proposed reg
  - Notice and comment period means out “soon” to be effective in 2017