



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



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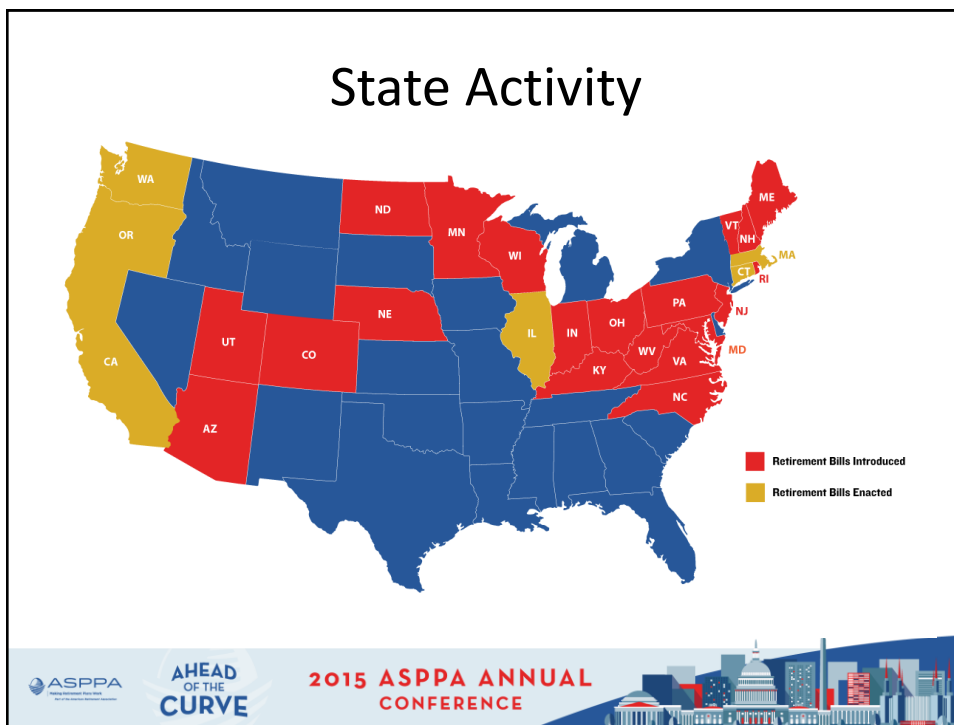
State Legislation and DOL



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State Auto-IRA Laws

- 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



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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.



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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



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Women’s Pension Protection Act



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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



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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.



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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



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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*



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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

