2017 Retirement Plan Update

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Agenda
1. Legislative Update
2. DOL Update – Fiduciary Regulation
3. IRS Compliance Update
4. SEC Compliance Update
5. Plan Sponsor Risk Top 10 & Case Law Update

Legislative Update
• Tax Reform
  – Republican majority
  – Appears to be bipartisan interest
  – Creating a revenue-neutral bill? Lower individual and business tax rates needs to be offset by eliminating deductions
  – For eliminating deductions, who will be the winners and losers?
  – 1986 tax reform cut retirement plan limits
**Legislative Update**

- **Tax Reform – An Example of things to come?**
  - 2014 Bill: House Ways and Means – Dave Camp (R-MI) Tax Reform Act
    - Reduce tax brackets (10, 25, 35%) and impose new surtax on pre-tax contributions for 35% bracket
    - Freeze indexing of various retirement contribution limits (415, deferral and catch-up)
    - Require all DC plans to have Roth, no more than 50% of contributions can be pre-tax

**Legislative Update**

- **State-based Initiatives**
  - DOL Regulation: auto-enrollment of workers into an IRA; state-sponsored saving programs
  - Applicability of ERISA to these programs
  - Congressional Review Act passed in March 2017: Congress has window to overturn any significant regulation if finalized or made effective after June 13, 2016.
  - President signs law – no ERISA safe harbor for these programs

**Legislative Update**

- **Retirement Security For American Workers Act (H.R.854)**
  - Introduced Feb 3, 2017 – In committee
  - Multiple Employer Plan expansion
  - Change Section 413 of the Code and ERISA
  - MEP for Employers with (1) common interest and (2) Pooled Plan Providers
Legislative Update

- Retirement Security For American Workers Act (H.R.854)
  - PPP is named fiduciary and plan administrator
  - PPP registers with DOL
  - Employer retains fiduciary responsibility for selection and monitoring of PPP; investment management of their portion of Plan (unless delegated by PPP)

DOL - Fiduciary Regulation

- Concerns with current law and response
  - 1975 ERISA definition is too narrow
  - IRC does not define investment advice
  - The existing structure allows for avoidance
  - Retirement accounts – DOL prefers “fiduciary”
  - New fiduciary rule finalized on April 8, 2016
  - Effective date April 10, 2017

DOL Fiduciary Regulation

- New Standard - Recommendation as to:
  - The advisability of acquiring, holding, disposing of, or exchanging, securities or other investment property;
  - The management of securities or other investment property;
  - Rollovers, transfers or distributions from a plan or IRA; and
  - How property should be invested after rolled over, transferred, or distributed from the plan or IRA.
DOL – Fiduciary Regulation

• Key Takeaways
  – Much harder for advisers to avoid “fiduciary”
  – Expanded to apply to IRAs and similar accounts
  – Significant change to how rollovers are handled
  – Duties of prudence and loyalty apply to fiduciaries
  – Compensation models require exemption process
    • Best Interest Contract Prohibited Transaction Exemption

DOL – Fiduciary Regulation

• Status & What’s Next
  – April 7, 2017 – New DOL final regulation on extension of applicability date
  – New Timeline:
    • June 9, 2017: new “fiduciary” definition applicable
    • June 9 – December 31, 2017: Firms using BIC must comply with Impartial Conduct Standards
    • January 1, 2018: Firms relying on BIC must be in full compliance

DOL – Fiduciary Regulation

• Transition: Impartial Conduct Standards
  1. Adhere to best interest standard of care
  2. Receive no more than reasonable compensation
  3. Make no materially misleading statements

For #1 above:
  • Gather information (investments, expenses and services)
  • Evaluate that information in light of participant needs and circumstances
DOL – Fiduciary Regulation
• Future of the Regulation
  – The market is moving to a fiduciary advice model
  – Understand your business and model and review practices for the following:
    • Advice to Plans
    • Advice to Participants
    • Advice to IRAs
    • Recommendations of plan distributions and rollovers

IRS – Compliance Update
• Forfeitures and Safe Harbor Contributions
  – 1/18/2017 Proposed Regulations
  – Prior Rule: forfeitures cannot be used to reduce safe harbor contribution; reallocation could affect top heavy status
  – New Rule: forfeitures can reduce safe harbor
  – IRS allows immediate reliance on Regulation
  – Current documents prohibit this due to IRS LRM language; document amendment is necessary

IRS – Compliance Update
• Hardship Distributions
  – 2017 IRS Internal Exam Memorandum
  – Safe Harbor Hardship – the 6 Reasons (i.e. medical, purchase home, tuition, eviction, funeral, and casualty
  – Rules: Must be (1) an immediate and heavy financial need and (2) necessary to satisfy the need
  – Substantiation for #1: IRS examiners directed to review records to prove the reason for the need and the amount
IRS – Compliance Update

- 403(b) Plan “Prototypes”
- IRS did not allow prototype 403(b) plan documents; thus, no opinion letter regarding tax qualification of “form” of the document
- 2009 – IRS Announces its intent to establish program for pre-approval of 403(b) documents
- Rev Proc 2013-22; 403(b) prototype program
- 2013-2017; document providers draft plans for IRS approval – Opinion letters by 3/31/2017
- Remedial Amendment Period ends 3/31/2020

SEC – Compliance Update

- Money Market Reform
- 2008 financial crisis, NAV drop below $1
- Compliance as of October 14, 2016
- Floating NAV for certain types of MMF – Retail and Institutional MMF
- U.S Government funds – can provide for a stable NAV. So can Retail MMT, but they must impose Liquidity Fees and Redemption Gates

Sponsor – Risk Top 10 List

1. Include Company Stock in Plan
2. Use proprietary mutual funds in own company plan
3. Adopt Investment Policy and never follow or review
4. Fail to quantify total compensation when vendor paid via soft dollars
5. Never Benchmark plan fees
**Sponsor – Risk Top 10 List**

6. Don’t meet regularly to review plan investments and service provider performance
7. Don’t conduct formal RFP’s
8. Fail to capture lower share class costs
9. Fail to document fiduciary decisions
10. Don’t secure fiduciary liability insurance

**Case Law Update**

• “In-house” plan Lawsuits
  – Morgan Stanley, Franklin Templeton, Neuberger Berman, NY Life, etc.
  – Proprietary funds – managed by the sponsor subsidiary
  – Expensive and poor performing
  – Revenue sharing – excessive compensation to affiliate

• University Class Action Lawsuits
  – Yale, NYU, MIT, DUKE, etc.
  – Unreasonable and excessive fees
  – Multiple providers cause duplicative fees

• Imprudent Investment Decisions
  – Walt Disney
  – Investment in the Sequoia Fund (mutual fund)
  – Failure to remove fund from lineup prior to drop in value, largely attributed to Valeant Pharmaceuticals (approx. 30% of fund assets)
  – Dismissed against Disney
**Case Law Update**

- Damber v. LaMettry’s Collision
  - MN Plan; 114 participants and $10m
  - Failure to assess reasonableness of fees
  - Selecting imprudent mutual fund classes when lower institutional share classes
  - Selecting investments that were expensive relative to benchmarks
  - In-house plan fiduciaries failed to have a formal process for evaluating fees and failed to conduct periodic RFPs
  - Case was voluntarily withdrawn

**Post Pension Protection Act**

*We have done great work!*

- **Avg. Participation**  
  - 2005: 70.1%  
  - 2015: 77.1%

- **Automatic Enrollment**  
  - 2005: 17.1%  
  - 2015: 41.1%

- **Automatic Escalation**  
  - 2005: 5.8%  
  - 2015: 16.5%

- **TDF or Asset Allocation**  
  - 2005: 33.0%  
  - 2015: 61.7%

*Source: 2005 and 2015 PLANSPONSOR DC surveys*

**Keep Up the Good Work!**

1. Automatic Enrollment at higher rates
2. Provide a solution for automatic increases
3. Stretch the match %
4. Expand participation through re-enrollment
5. Continue to look for solutions for retirement income (convert plan balance to income)