



ACI Advisors Corner

What to Expect in the Coming Months

By Pat Byrnes

March 2, 2010

As Washington begins to thaw and the beloved cherry blossoms begin to bloom we will begin to see retirement plans take on a bigger focus by our government. Here is a brief outline of what we might expect.

Congress—Been Busy behind the scenes

- ***Fee Disclosure***: Several Bills in play. Both at participant level and plan level. No exceptions for bundled providers. Thus, no more claims that “it’s free”. Probable categories: Recordkeeping, Commissions, Mutual fund fees, and others.
- ***Participant level investment advice***: Rob Andrews Bill -- See the DOL re-proposed regs. below)
- Potential ***elimination of cross-testing*** which may settle with full vesting for NHCEs **or** the reallocation of NHCE forfeitures among remaining NHCEs. Lloyd Doggett, TX.
- ***Everything is on the table*** including: carve-outs under IRC Sec. 410(b), dollar for dollar increases in minimum qualified plan contribution for any compensation paid over \$1M to any employee (including non qualified plan benefits)
- Hearings on ***Lifetime Income*** ideas—see DOL Request For Information (RFI) below
- ***Target Date Maturity Funds***: hearings now and potential legislation
- ***Defined Benefit funding relief***: has been battered around for months. Several bills in House and Senate
- The ***relevance of employer sponsored plans***: will there be a social option? I think not, but likely the basis for changes to current system. The Time Magazine article was very “social option” oriented.
- A 50/50 chance that qualified plans will be allowed to have ***Roth Conversions*** in 2010 with taxes paid over two years beginning in 2011. IRAs have this benefit. This is a parity issue.

DOL/EBSA—Red hot and rearing to go – probably quicker results than Congress

- ***Participant Level Investment Advice***—will publish, in the Federal Register, the re-proposal of the withdrawn regulations on ***March 2, 2010***. Focused only on the statutory prohibited transaction exemption under PPA. Clarifies “that the fee-leveling requirements do not permit investment advisers (including its employees) to receive compensation from affiliates on the basis of their recommendations.” This element will be controversial. Comments due by ***May 5, 2010***.
- Request for Information (RFI) regarding ***Lifetime Income Options*** for Participants and Beneficiaries in Retirement Plans – released on ***February 2, 2010***. Comments must be submitted by ***May 3, 2010***. ***Thirty-nine questions*** including QDIA and target date maturity funds.
- ***Participant Level fee disclosure*** on benefit statements: Same goal as Congress, different approach.
- ***Reasonable Contract*** “final or re-proposed” regulations requiring written agreements between ***covered service providers*** and ***responsible plan fiduciaries***. DOL scheduled to release regs. by ***May 30, 2010*** to the Office of Management & Budget (OMB) which clears all regulations. Rules will likely require the disclosure of ALL: services that will be provided, direct and indirect compensation, conflicts of interest, and the disclosure of fiduciary status. May be harsher on bundled providers than the proposed regulations. Failure to comply, as stated in the proposed regs., causes an automatic prohibited transaction resulting in ***ALL service provider compensation being restored to the plan*** and the ***Plan Sponsor paying an excise tax to the government***. Ouch!
- After 36 years, DOL wants to ***re-define the term “fiduciary.”*** Stay tuned. Will this result in more or fewer fiduciaries? Simpler vs. more expensive? Would you like to bet on the outcome?
- ***EFAST2***: Except for 5500EZ forms, virtually all 5500 filings including delinquent forms and non filers ***must file electronically*** for 2009 (limited exception for some 2008 returns). “Credential Sharing” not allowed. Thus the employer must actually push the buttons to send the forms. This will be a hassle for plan sponsors both small and large. It takes about 10 minutes each for the form preparer and the Plan Sponsor to obtain the individual credentials; and another 10 minutes to actually file the returns. The good news is you know instantly if the form is accepted or rejected, and a scan of the return will eventually be available on a DOL website within 24 hours of the forms filing. The DOL is extremely responsive and helpful on the EFAST2 phone line and on the delinquent filer line as well.
- ***New Schedule C to 5500 forms for 2009***: for large plans (over 100). Providers will have to provide more information on plan level fees and expenses.

IRS—Education and enforcement will increase

- ***DC required EGTRRA*** plan restatements on prototypes and volume submitter plan documents program ***closes on April 30, 2010***. It's a mad scramble to get the stragglers in. Failure to restate is a plan qualification issue that can be resolved by going through the IRS non-amender program
- ***DB document program may open as of March 31, 2010*** or shortly thereafter.
- Look for some of your lucky clients to receive a “**401(k) Questionnaire**” from the IRS's Employee Plans Compliance Unit (EPCU) in coming weeks. This is essentially an in-depth review of how selected plans operate. The information gleaned will be used to then develop targeted audit programs. If the “questionnaire” reveals deficiencies in the plans examined, they will be taken into the Audit Closing Agreement Program (Audit CAP).

So there is a lot going on in Washington. Don't forget to smell the cherry blossoms along the way.

We will continue to update you and our clients as more information is released...And remember...you heard it here!