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# Retirement plans – 2019 summer recap

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This *FYI Roundup* recaps recent defined benefit and defined contribution retirement plan developments since our February review. Highlights include IRS backing down on prohibiting voluntary retiree cashouts, PBGC tweaks to reporting and disclosure for single and multiemployer plans, SEC finalizing their broker-dealer investment recommendations rule, and several compliance refinements and reminders.

## General interest

Our roundup of general interest items highlights guidance from SEC, IRS, and DOL on compliance duties that range from responsibilities on providing investment recommendations, tax reporting obligations and participant disclosures, to plan document updates. Add to the mix possible legislation addressing closed defined benefit plan relief and enhancements for defined contribution plans.

**SEC final rule for broker-dealers.** The SEC released guidance that represents a major shift in the responsibility of broker-dealers to make investment recommendations in the best interest of retail customers. Although the regulation does not directly impose duties on plan fiduciaries, it does affect broker-dealer conversations with participants about investments — including rollover decisions — and may obligate fiduciaries to keep a watchful eye on those interactions. We report on this in our *FYI* from July 24, 2019.

**IRS tools for keeping plans up-to-date.** IRS provided more tools plan sponsors can use to independently stay in compliance. Our April 24, 2019 *FYI* discusses IRS' update to EPCRS that responds to plan sponsor requests to allow more self-correction options, particularly for participant loan defects, and to allow more situations that can be corrected with plan amendments. The agency also updated its website operational compliance list with new items for 2019. The list is designed to help plans comply with changes in qualification requirements beginning on the effective date of each change. The IRS separately issues an annual list of required amendments. Our March 28, 2019 *FYI* describes the changes and includes a link to the IRS resource.

As noted in our May 6, 2019 *FYI,* IRS will lend a hand with some plan sponsor compliance efforts. Effective September 1, 2019, plan sponsors can ask IRS to review the plan qualification of hybrid plans (such as cash balance plans) and certain merged plans through the IRS determination letter program. This opportunity will last 12 months for hybrid plans and is ongoing for merged plans.

**IRS guidance for reporting it right.** A trio of articles covered less common reporting obligations for employers and plan administrators. Our June 5, 2019 *FYI* reported on an IRS proposal to update elective withholding requirements for retirement plan distributions (other than eligible rollover distributions) sent to payees with foreign addresses. The proposal clarifies that payees can provide U.S. military or diplomatic post office addresses to opt out of withholding, but that a payee who fails to provide a U.S. address cannot opt out of withholding even if the funds are directed to a financial institution in the U.S.

Our April 25, 2019 *FYI* highlighted IRS guidance for sponsors of tax-exempt retirement plans, VEBAs, and SUB plans with an obligation to file IRS Form 990-T to report income separately for each "trade or business" (including those operated through hedge funds and private equity partnerships).

And our February 19, 2019 *FYI* covered IRS guidance on the new excise tax — first effective for compensation earned in 2018 — on certain tax-exempt entities for excess compensation and excess parachute payments.

**DOL busy too.** While mulling over new instructions from the administration (on environmental, social, and governance factors) to look at data on retirement plan investments in the energy sector and to review existing guidance on fiduciary responsibilities for proxy voting as discussed in our *FYI* from April 18, 2019*,* DOL attended to some routine updates to reporting and disclosure requirements.

In our June 26, 2019 *FYI*, we reported on DOL's update of model summary annual reports. Each year, certain welfare and pension benefit plans that are subject to ERISA are required to file a Form 5500 with the DOL. In addition, these plans may be required to furnish a Summary Annual Report (SAR) to each plan participant and beneficiary receiving benefits under the plan (other than beneficiaries under a welfare plan). The SAR provides a summary of the information reported on the Form 5500. And in our June 18, 2019 *FYI*, we reported on DOL final regulations that now require top hat plan statements and notices for apprenticeship and training benefits to be filed electronically. DOL's electronic filing system has been open on a voluntary basis since 2014.

Lastly, in our August 8, 2019 *FYI Alert*, we note that DOL has finalized a prohibited transaction exemption for Retirement Clearinghouse, LLC (RCH) that allows RCH to transfer balances of $5,000 or less from a former employer plan through an IRA to a new employer plan without obtaining the affirmative consent of the participant. Plan sponsors and recordkeepers should expect to hear from RCH about participating in their program now that legal guidance is in place.

**Congress may act as well.** Our May 24, 2019 *Legislate (House Passes SECURE Act – Retirement Legislation Moves Closer to Enactment*) and April 4, 2019 *Legislate* (*Congress Makes Headway on*

*Retirement Legislation)* cover retirement plan legislative proposals that recycle many previous initiatives. With bipartisan approval in both chambers, hopes were high that 2019 would be the year for action. The proposals include coverage and nondiscrimination relief for closed defined benefit plans, enhancements for 401(k) plans, multiple employer pension plans, lifetime income disclosures for defined contribution plans, and more. Unfortunately, what seemed like sweet flowers in the spring has withered due to inaction and politics as usual, thus reducing the odds of success unless these initiatives can be attached to bigger "must pass" legislation later in the year. Our August 7, 2019 *Legislate* covers multiemployer legislation in the House and separate relief for closed pension plans in the Senate along with updates on leadership changes in various agencies.

## Defined benefit developments

A key development for defined benefit plans was IRS' reversal on the ability to offer cashouts to retirees in pay status. PBGC tidied up reporting and disclosure rules for single and multiemployer plans.

**Retiree cashout windows once again viable.** IRS announced that it will not move forward with previously announced changes to the minimum distribution regulations that would have prohibited retiree lump-sum windows. Instead, it will continue to evaluate whether such windows satisfy other qualification requirements — but will not issue PLRs on them. IRS will no longer caveat determination letters to limit the opinion about the windows. See our March 6, 2019 *FYI* for background and identification of various qualification issues that could remain a concern.

**PBGC expands and contracts rules for single employer plans.** Our May 16, 2019 *FYI* explains that PBGC will now require plan sponsor controlled group, financial, and actuarial information with all reportable event and late contribution reports. Updated forms and instructions include a description of their filing portal and alert filers to additional information needed upon request when reporting liquidations or insolvency settlements.

PBGC followed this up with proposed changes to several regulations with an eye to improving reporting on reportable events, section 4010, plan terminations, and premium filing requirements. The changes would ease active participant reduction reporting and would curtail the use of certain spinoff and merger strategies some employers have used to minimize premium obligations. You'll find more details in our July 3, 2019 *FYI.*

**PBGC on multiemployer plans.** In our March 8, 2019 *FYI*, we describe PBGC proposed regulations about allocating liability and determining payments owed by employers withdrawing from multiemployer plans. The proposed regulations reflect revisions adopted by Congress in the Multiemployer Pension Reform Act of 2014 (MPRA).

Our May 8, 2019 *FYI* deals with revised valuation and notice rules for insolvent multiemployer plans. PBGC has updated its regulations to reduce reporting and disclosure requirements for plans that are terminated by mass withdrawal or in critical status and that are, or are expected to be, insolvent. The

final regulations are effective for plan years ending after July 1, 2019 and are substantially the same as what was proposed in 2018.

## Defined contribution developments

Our roundup of issues primarily of interest to sponsors of defined contribution plans covers corrective measures for 403(b) plans, IRS proposed multiple employer plan rules for "one bad apple" dilemmas and a final rule from DOL on sponsorship of these plans, and penalties for flubbing Oregon reporting obligations.

**Part-timers improperly excluded from a 403(b) plan.** Employers that have excluded part-time employees from making deferrals under a 403(b) plan after initial participation in violation of the "once in always in" rule now have the chance to correct both the plan document and operations without penalty. Refer to our April 17, 2019 *FYI* for the skinny on what to do next.

**IRS proposes multiple employer DC plan "one bad apple" fix.** IRS proposed regulations would ease the threat of plan disqualification due to "one bad apple" for multiple employer defined contribution plans that meet documentation, notice, and process steps. As noted in our July 16, 2019 *FYI,* this supplements proposed guidance from DOL in 2018 and efforts on the Hill to expand access to multiple employer plans (see legislative news above). DOL followed shortly after with final regulations and supplementary guidance to relax limits on access to, and reporting requirements for, PEO and association-type defined contribution multiple employer plans. This includes relief for plans that had failed to submit participating employer information on prior Form 5500 filings. Our *FYI* from August 6, 2019 reports on this news.

**Potential Oregon penalties.** You have a plan — but may have to report it to Oregon. Now that OregonSaves — the country's first state-run retirement plan for employers who do not sponsor a qualified retirement plan — is in full swing, effective January 1, 2020, penalties of up to $5,000 per calendar year may be imposed on noncompliant employers. If you have employees in Oregon, see our June 13, 2019 *FYI* about steps you may need to take. Note: the pending bill (SB 165) mentioned at the end of this issue of *FYI* was subsequently approved and signed by the governor.

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