



**ML**  
STRATEGIES

**David Leiter**  
[DJLeiter@mlstrategies.com](mailto:DJLeiter@mlstrategies.com)

**Abby Matousek**  
[Amatousek@mlstrategies.com](mailto:Amatousek@mlstrategies.com)

**ML Strategies, LLC**  
701 Pennsylvania Avenue, N.W.  
Washington, DC 20004 USA  
202 296 3622  
202 434 7400 fax  
[www.mlstrategies.com](http://www.mlstrategies.com)

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## **Retirement and Pensions Update**

### **DOL Seeks Extension of VFCP Information Collection Request**

On June 6<sup>th</sup>, the Department of Labor's (DOL) Employee Benefits Security Administration (EBSA) submitted to the OMB a [request for approval](#) of its information collection activities related to the Voluntary Fiduciary Correction Program (VFCP). The current OMB approval of the information collection activities expires on June 30<sup>th</sup>; however, DOL will receive month-to-month approval while the request for extension is under review. VFCP is a voluntary enforcement program that allows plan officials to identify and fully correct certain transactions such as prohibited purchases, sales and exchanges, improper loans, delinquent participant contributions, and improper plan expenses.

### **DOL Finds Abandoned Plans Proposal Would Not be Considered Plan**

In an [ERISA Advisory Opinion](#), the DOL found that a plan consisting only of abandoned retirement plans would not be considered an employee pension benefit plan under ERISA Section 3. The opinion refers to facts and materials submitted by National Retirement Plan Inc., a Minnesota company which sought to combine and to act as plan sponsor and plan administrator of unrelated individual account plans abandoned by their employer sponsors. According to DOL, the proposal does not meet basic requirements for being considered an ERISA-covered plan, including that plans be sponsored by an employer or employee organization and be maintained for the benefit of participants.

### **DOL: Employers Will Not Lose Safe Harbor Status by Offering 403(b), 401(a) Plans**

In a May 25<sup>th</sup> [ERISA Advisory Opinion](#), DOL found that tax-sheltered annuity plan offered under tax code Section 403(b) will not lose its safe harbor status under ERISA if the plan sponsor uses a separate qualified tax code for Section 401(a) plans. The Advisory Opinion responded to a request for guidance on several issues revolving around 403(b) participation, including salary reduction contributions and other considerations in complying with contribution requirements under 401(a). The opinion also lists numerous activities permissible within the ERISA safe harbor.

### **DOL Finds 401(k)s Offered to Unrelated Employers Does Not Qualify as Multiemployer**

An [ERISA Advisory Opinion](#) found that 401(k) plans maintained for employees of a limited purpose corporation that is designed to operate the plan and for employees of unrelated employers is not a single multiple-employer plan under ERISA. To be considered an ERISA multiple-employer plan, the plan must be sponsored by an employer or an employee organization with an “employment based common nexus or other genuine organizational relationship.”

### **GAO Funds Plan Sponsors Do Not Always Understand Fees**

A recent GAO [report](#) has found that many plan sponsors of 401(k) plans do not fully understand the fees associated with their plans and small plans are more likely to face difficulties and thus will pay higher fees as a percentage of plan assets. “Regardless of plan size, many of these fees charged in 401(k) plans are passed along to plan participants, which ultimately results in reduced retirement savings. In this regard, plan sponsors may need to be aware of and closely monitor the fees charged by various service providers to help ensure the fees they and their participants pay are not excessive,” GAO said.

### **Re-Proposed Reportable Events Rule Under Consideration at OMB**

On June 7<sup>th</sup>, the PBGC announced that the OMB is currently reviewing a new version of a reportable events rule that employers will prefer to previous iterations of the proposed rule. The PBGC re-proposed the reportable events rule under Section 4043 of ERISA after having received predominantly negative comments from employers. The PBGC also spoke to upcoming priorities at the agency, including developing a missing-participants program for defined contribution plans and looking into standard terminations.

### **IRS Will Work to Take ‘Mystery’ Out of Examinations**

On June 6<sup>th</sup>, in response to a [report](#) from an IRS advisory panel advocating for more uniformity in the examinations process, an IRS official said the agency will work with the benefits community to demystify examinations. Robert Choi, Director of Employee Plans in IRS’s Tax Exempt and Government Entities Division, said the IRS will endeavor to make clear the process and ensure “that strong internal controls are critical to maintaining a retirement plan that complies with the code and regulations.” As part of this process, the IRS will use the report’s recommendations to develop a checklist for plan sponsors and service providers lacking the financial resources to hire an internal controls expert. The IRS is also exploring how to “incorporate questions from the HR, payroll, and plan administration questionnaires that are currently part of the EP exam audit program into our existing 401(k) questionnaire.”

### **Groups Begin to Question IRS Forfeitures Interpretation**

Following an October 2011 IRS [decision](#) that forfeitures—the benefits that employees cannot take with them when they leave an employer before becoming vested— may not be used to fund mandatory employers contributions to safe harbor Section 401(k) plans, employers are beginning to become disgruntled that the contribution funding option no longer exists. The IRS interpretation of forfeitures conflicts with current employer practice. As restrictions on this funding option will soon begin to appear in new plan documents, employers are asking the IRS to reconsider. A May 8<sup>th</sup> [letter](#) from the American Society of Pension Professionals and Actuaries (ASPPA) asked the IRS to permit the use of forfeitures for safe harbor contributions and qualified matching accounts and to clarify the IRS’s “non-forfeitable” requirement.

### **IRS Holds Hearings on Lifetime Income Options**

On June 1<sup>st</sup>, the IRS held a series of hearings on notices of proposed rulemaking regarding

partial annuity distribution options and longevity annuity contracts. The two public hearings included a morning hearing to discuss modifications to the minimum present value requirements for partial annuity distribution option under defined benefit plans and an afternoon session focusing on the purchase of longevity annuity contracts for tax code Section 401(a), 403(b), and 408 individual retirement annuities and accounts, and 457 eligible governmental plans.

### **PBGC Issued Incorrect Actuarial Estimates in 2010**

A recent Office of Inspector General (OIG) [report](#) found that the PBGC released unrealistic present value of financial assistance payments for multiemployer plans in FY 2010. The report found that the FY 2010 Annual Exposure Report had several errors and inconsistencies in the multi-employer and single-employer sections which occurred because the Policy and Research Analysis Department did not establish a quality control or quality review process to ensure the validity of reported actuarial estimates. The OIG recommended the PBGC take the following actions to correct these issues in the future: develop, document and enforce policies and procedures to ensure the adequate and efficient review of contractor work; develop, implement, and enforce policies to ensure the adequate and efficient review of contractor work performed with the agency's pension insurance modeling system; conduct a strategic review to address the processes involved in creating actuarial reports; and conduct a records management review.

### **Lawmakers Propose Pension Offset to Cover Student Loan Rate Freeze**

On June 8<sup>th</sup>, Senate Democrats announced a plan to modify company pension contribution rules and to increase pension insurance premiums to pay for a one year freeze of the student loan interest rate. Senate Majority Leader Reid described the plan in a [letter](#) to House Speaker John Boehner and Senate Minority Leader Mitch McConnell, saying raising the premiums paid by companies to the PBGC and allowing companies to contribute less to defined benefit retirement plans would create offsets to allow the loan freeze.

### **Supreme Court Will Not Take Up Ruling on Multi Fund Withdrawal Liability**

On May 29<sup>th</sup>, the Supreme Court denied review of a federal appeals court ruling which found two real estate leasing businesses jointly liable for a defunct company's multiemployer pension fund withdrawal liability. The appeals court has found that the two companies and the defunct company were under "common control" at the time the defunct company incurred the withdrawal liability.

### **Report Finds Improvement in Retirement Income Outlook**

In a May [report](#), the Employee Benefit Research Institute (EBRI) found that retirement income adequacy is improving for members of Generation X and Baby Boomers. According to the report, while 44 percent of the surveyed population will not have enough retirement income to cover general expenses and uninsured health care costs, this is an improvement since 2003. "The improvement over the last nine years is largely due to the fact that in 2003, very few 401(k) [plan] sponsors had implemented automatic enrollment (AE) provisions and that the participation rates among the lower-income employees (those most likely to be at risk) were quite low," said EBRI.

### **Low Interest Rates Affecting Retirement Savings**

A recent Wells Fargo-Gallup Investor and Retirement Optimism Index Survey found that the very-low interest rates that have characterized recent years may force Americans to put off retirement. A third of investors who participated in a nationwide survey said they would likely be delaying retirement because interest rates are preventing them from generating enough income in their retirement accounts. While many are working around low interests rates by putting off

retirement, more than one-quarter of pre-retirees and 19 percent of current retirees are taking on more risk and making investments they “might have avoided” otherwise.

### **Speakers Question 401(k) Withdrawals**

At a meeting of the Enrolled Retirement Plan Agent National Conference, speakers weighed participants’ needs to access 401(k) funds early against the desire to ensure retirement security. While giving participants the option of in-service withdrawals on employers’ matching contributions provides access to money if needed but it can also negatively affect the ability to adequately save for retirement. James McKinney of Retirement Strategies Inc. said, for example, “with a loan payment, depending on the situation, that loan payment may usurp the 401(k) deferral, and you only end up contributing to the plan by way of repaying your loan rather than actually putting money toward retirement.”

### **GM Will Offer Salaried Retirees Lump Sum Distribution**

On June 1<sup>st</sup>, General Motors announced it will offer some of its salaried retirees and their beneficiaries the option of receiving lump-sum payments in lieu of monthly pension payments. The option is part of the transfer of pension administration to Prudential Insurance.

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