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SEPTEMBER 4, 2012

## Retirement and Pensions Update

### **PBGC Offers Guidance on MAP-21 Rate Changes**

On August 29<sup>th</sup>, the Pension Benefit Guaranty Council (PBGC) released [guidance](#) on how the recently enacted MAP-21 legislation, which gives defined benefit plan sponsors flexibility in near-term plan contributions, will affect PBGC premiums. The guidance clarifies that calculation of variable-rate premiums will be unaffected regardless of whether plan sponsors avail themselves of interest rate stabilization provisions. The guidance also says that MAP-21 increases the flat and variable premium rates and caps variable rate premium. This guidance supersedes any “inconsistent guidance” in the PBGC’s 2012 premium instructions—which will be reflected in the 2013 instructions.

### **PBGC Requests OMB Extend Info Collection on QDRO Booklet Revisions**

On August 23<sup>rd</sup>, the PBGC issued a [notice](#) requesting an extension of an information collection request for a booklet on qualified domestic relations orders (QDROs). The booklet contains information on benefit options that the PBGC offers on QDROs, modeled orders and child support. The booklet also clarifies rules on when payments to an alternate payee may begin. PBGC is planning several revisions to the booklet, including changing the description of agency procedures for informal review of a draft domestic relations order.

### **Industry Speaks Out on Brokerage Window Pros and Cons**

Amidst concerns over DOL’s brokerage window Field Assistance Bulletins, plan fiduciaries are speaking out on the pros and cons of brokerage windows. In an August 16<sup>th</sup> interview SIFMA managing director Lisa Bleier said brokerage windows allow plan fiduciaries to give participants maximum flexibility in choosing investment options and are often the only way for employers to attain the fullest possible participation in its 401(k) plan. However, the downside to brokerage windows is that employees sometimes make investment choices fiduciaries would avoid. While a relatively small percentage of defined contribution plans have brokerage windows and the decision to offer them is generally based on participant demand.

### **Brokerage Window-Only Plans Will Likely be Heavily Influenced by Election Results**

In an interview, Bradford Campbell, a benefits attorney and former DOL assistant secretary, said DOL officials will address concerns associated with brokerage windows if President Obama wins a second term; however, the issue will likely go away if Mitt Romney wins in November.

### **Witnesses Urge ERISA Advisory Council to Not Require Affirmative Beneficiary Designations**

At an August 29<sup>th</sup> ERISA Advisory Council hearing, participants urged DOL to avoid one-size-fits-all regulation that would burden administrators with an affirmative duty to contact participants who undergo significant life events regarding changes to beneficiary designations. Practitioners present at the hearing told DOL that a rule requiring a plan administrator to actively reach out is unnecessary as most plans already encourage employees to update beneficiary choice and burdensome to plan administrators. Witnesses agreed on the importance of up-to-date beneficiary designations and outlined the standards already in place to ensure these designations are updated as necessary.

### **ERISA Advisory Council Hears from Industry on Lifetime Income and Income Replacement**

At the August 30<sup>th</sup> meeting of the ERISA Advisory Council, flexibility of 401(k) plan distributions was underscored as a valuable tool to meet plan participants' unique needs. Jason Scott, managing director of Financial Engines Retiree Research Center, told the Council that the common defined benefit model is not necessarily the right way to approach the issue of lifetime income, saying the "real power of the 401(k) plan is its flexibility." Participants at the meeting agreed that plan sponsors tend to look for lifetime income solutions that are "fully vetted and approved and very easy," which are not always the best for retirees. Some suggestions to the Council in the area of lifetime income included: encouraging plan sponsors to offer in-plan lifetime income assistance; providing clear guidance that "prudent retirement help includes consideration of the broader picture" (including Social Security); and considering solutions that lower the plan sponsor's fiduciary risk.

### **Insurance Experts Should be the Judges of Annuity Providers**

Witnesses told the ERISA Advisory Council on August 30<sup>th</sup> that the DOL should allow plan sponsors to defer to state insurance regulators' determinations of an annuity provider's long-term financial viability and ability to satisfy fiduciary duty. Cynthia Mallett, Vice President of Corporate Benefit Funding at MetLife told the Council that the requirement to assess annuity providers' financial viability leaves the "entire retirement community at a loss" as it should not be expected that plan sponsors have stronger reviews than state insurance regulators. Participants said that the fiduciary responsibility involved in selecting an annuity provider "is one, if not the biggest, issue for plan sponsors" offering lifetime income options.

### **American Benefits Council Speaks Out Against 401(k) Credit Insurance Legislation**

At an August 28<sup>th</sup> meeting of the ERISA Advisory Council, Diann Howland, Vice President of Legislative Affairs at the American Benefits Council, spoke in opposition to the Retirement Savings Security Act of 2011 (H.R. 3656), introduced by Representative Pete Sessions (R-TX). The legislation would promote an insurance product that repays some 401(k) plan loans in the event a participant defaults due to death or disability and would require plan sponsors to automatically enroll plan participants. The American Benefits Council is concerned that the automatic enrollment aspect in terms of costs of the product and the fact that the legislation waives the ERISA fiduciary responsibility. Howland cited concern that the bill continues to garner cosponsors—current cosponsors include Representatives Bruce Braley (D-IA), Ruben Hinjosa (D-TX), Tom Latham (R-IA), Charles Rangel (D-NY) and Pat Tiberi (R-OH).

### **IRS Examining Regulatory Progress on Lifetime Income Guidance**

On August 28<sup>th</sup>, the IRS held a phone forum to discuss a package of guidance and proposed rules on lifetime income options. The guidance, issued in February, is intended to encourage the use of lifetime income options such as fixed and longevity annuities. The package includes:

- REG-110980-10, addressing partial annuity distribution options under defined benefit pension plans;
- REG-115809-11, on qualified longevity annuity contracts (QLACs);
- Rev. Rul. 2012-3, on how qualified joint and survivor annuity and the qualified pre-retirement survivor annuity rules apply when an annuity is purchased under a profit-sharing plan; and
- Rev. Rul. 2012-4, on rolling over amounts from a defined contribution plan to a defined benefit plan to obtain an additional annuity.

### **IRS Cancels hearing on Anti-Cutback Exemption**

The IRS has announced that a hearing scheduled for August 24<sup>th</sup> has been cancelled. The hearing would have considered proposed regulations that would provide a limited exemption to anti-cutback rules for pension plans, allowing single-employer plan sponsors that are in a bankruptcy proceeding to amend its pension plan to eliminate a lump-sum distribution option if it met certain conditions.

### **American's Nearing Retirement Face Challenges**

Americans approaching retirement age are faced with new challenges as a result of the financial crisis. The almost-retired “suffered disproportionately” according to a recent [New York Times article](#), experiencing falling home prices in addition to lower incomes. The article cites a report from Sentier Research which found that household income for Americans age 55 to 64 fell by almost 10 percent in today’s dollars from three years ago.

### **Workers Show Confidence in Ability to Retire Despite Inadequate Savings**

A recent [study](#), *Baby Boomers and Generation Xers: Are They on Track to Reach Their Retirement Goals?*, conducted by the Insured Retirement Institute found that, although the majority of Baby Boomers and Gen Xers are confident they will have enough money to retire comfortably, many have not calculated what their needs will be and have not saved appropriately. While the report found that “there are large groups of people who just do not have realistic expectations,” the results show that those taking important steps—such as consulting financial advisors, calculating savings or buying annuities—are the most confident in their ability to retire.

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