MULTNOMAHGROUP

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2018 Regulatory Update

Under the current administration, the discussion has predominantly focused on the impact of deregulation. The Trump administration brought with it the elimination of the Department of Labor (DOL) fiduciary rule, a shift in agency positioning around socially responsible investing, and congressional action to eliminate the safe harbor for state-run retirement programs for private sector workers.

Most recently, through Executive Order on August 31, 2018, President Trump focused again on retirement – turning to the issue of the coverage gap. This is a theme found throughout this update as the President, Congress, and state governments are all striving to address the coverage gap, which refers to those Americans in the private sector who lack access to a workplace retirement plan.

The President believes the government should be focused on expanding access to retirement plans and to accomplish this, "federal agencies should revise or eliminate rules and regulations that impose unnecessary costs and burdens on businesses, especially small businesses, and that hinder formation of workplace retirement plans," said the Executive Order.

The President called for (1) open multiple employer plans, (2) changes to disclosure requirements and potentially electronically delivery of such notices, and (3) revisions to rules for required minimum distributions. At this point, the Executive Order is merely a directive to the Secretary of the Treasury and the Secretary of Labor to take action, but the regulations have not yet been updated. However, this is strong guidance as to where the agencies are headed next.

The remaining portions of this Regulatory Update will focus on areas where Congress, the agencies, and the courts have taken action during the past year. As the agencies have focused more on deregulation, much of this update concentrates on the courts and Congress, as well as the potential legislation that may be forthcoming. For additional information or to discuss the way in which these changes impact your plan(s) specifically, contact a Multnomah Group consultant.

ERISA Litigation

ERISA litigation has been a topic of conversation for the past decade. There was a spate of cases filed in the mid-2000s, a lull just after the financial crisis, and since 2013, the frequency with which cases related to retirement plans are filed has continually increased.[1] While there are a variety of specific claims, in general, these lawsuits are class action cases brought against the plan sponsor (as opposed to the plan's other service providers), alleging one or more of the following:

1. inappropriate investment choices;
2. excessive fees; and/or
3. self-dealing.[2]

For many years, nearly all cases were won by the plaintiff employees, typically via a settlement. Recently, plan sponsors have been more successful. One might even go so far as to argue that "ultimately, it may be that 401(k) cases end because [plan] sponsors change their practices,"[3] said one of the most prominent attorneys that brings most of the lawsuits. Jerry Schlichter argued that many plan sponsors have changed their practices because of these lawsuits and while that may be true, it hasn't slowed the lawsuits…yet.

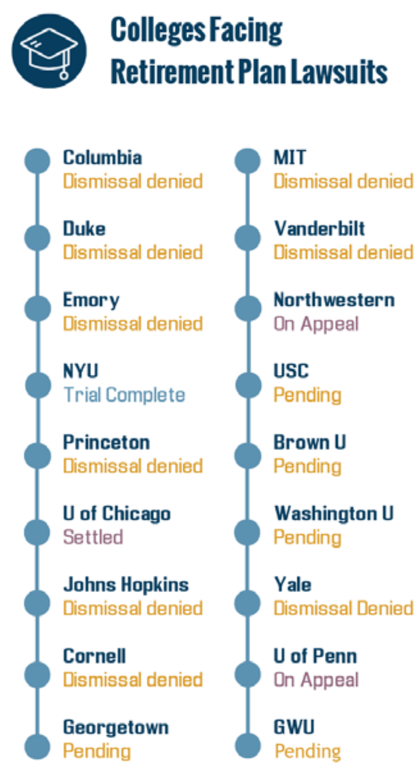
Success for plan sponsors. Across the various types of claims, some plan sponsors have started to see greater success both in the pleading phase and at trial as it relates to retirement plan litigation. For example, in the case of *Johnson v. Delta Air Lines*[4], the plaintiffs filed suit alleging the use of revenue sharing, duplicative investments in the fund menu, and excessive fees because the fiduciaries failed to leverage the size of the plan to get better pricing for participants. In the *Delta* case, the district court dismissed the case for lack of standing. The court stated that the plaintiffs had not suffered any actual harm given that they hadn't shown they were invested in the funds for which they complained, and they had not paid any allegedly excessive fees. Accordingly, the case was dismissed.

Cases against colleges and universities. Success for plan sponsors has not been limited to 401(k) plans. In August 2016, several cases were filed against colleges and universities.[5] Since then, the cases progressed, with a few additional 403(b) suits being filed along the way. While there were some unique differences among the cases, the claims were essentially the same across most of the cases including:

1. multiple recordkeepers resulting in higher fees
2. too many investment options resulting in participant confusion
3. revenue sharing led to excessive fees and kickbacks
4. arguments against the TIAA annuities including TIAA Traditional, CREF annuities, and TIAA Real Estate
5. utilization of actively-managed funds (rather than passively-managed) with no performance benefit but higher fees
6. retail share classes with higher fees were utilized when institutional share classes were available
7. the plan did not engage in a competitive-bidding process for third-party service providers

Since 2016, additional claims and parties were added to a few cases including one new argument that the plan sponsor allowed data sharing with the service provider which in turn lead to cross selling of additional products.[6]

So, what's the status of these cases now? The cases have started working their way through the courts, with *Sacerdote v. New York University*[7] being the first case to go to trial and result in a verdict for the plan sponsors.



Source: Bloomberg Law, Aug. 20, 2018

Action items for plan sponsors. Although some dismissals have been favorable for plan sponsors, and the *New York University* case resulted in a positive outcome for plan sponsors, it is likely too early to say there are definitive findings from these cases. First, some of the cases are on appeal. For example, the *University of Pennsylvania* case was dismissed early on for defendants but is now on appeal. Second, in some of these cases, there are competing outcomes. In the *Emory*[8] case and the *Duke*[9] case, the district court issued an opinion a few days apart but reached significantly different findings. Thus, for plan sponsors, there are general themes that may be learned from the cases, but it may be too early to tell the true outcome of the cases.

In general, plan sponsors can learn the following from these cases – particularly the *New York University* case:

1. ERISA is about a prudent process. The courts are not focused on the outcome, but rather, they are concerned about the process.
2. Documentation is paramount. Being able to provide evidence of the process, the questions raised, and the decisions made years later is critical to showing that a process was followed.
3. Educating committee members is important. Those serving on the committee should understand their role and responsibilities and be able to articulate it years later.

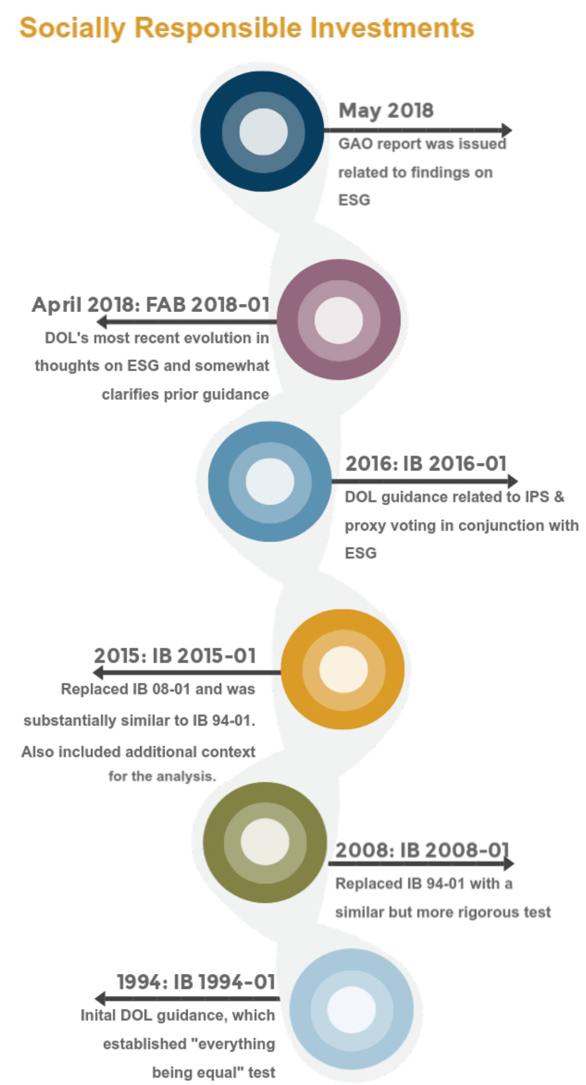
Plan sponsors are encouraged to continue to monitor the 403(b) cases, as they may have helpful guidance for all plans – not just 403(b) plans – given that these plan sponsors seem willing to litigate the cases, resulting in helpful case law and fiduciary best practices for other plan sponsors.

Socially Responsible Investments

Recent activity from the DOL and the Government Accountability Office (GAO) provides guidance and information for plan sponsors that utilize, or are considering utilizing, socially responsible investments within their plan's investment menu. To understand the need for the more recent guidance, it is helpful to understand the history.

Background. The DOL issued initial guidance in 1994 which provided an opportunity for economically targeted investments (ETIs). ETIs is the DOL's terminology for socially responsible investments (SRI) or environmental, social, governance (ESG) investments.

In 2008, the DOL restricted the use of those options, then encouraged their use in 2015 and further encouraged that in 2016, and now in 2018 is seeking to "clarify" its position once again; this time in a way that is viewed as restricting of those investments.



Field Assistance Bulletin 2018-01. On April 23, 2018, the Employee Benefits Security Administration (EBSA) of the DOL issued Field Assistance Bulletin (FAB) 2018-01 to provide guidance to plan fiduciaries with respect to their responsibilities in considering ESG. While the new "guidance" is designed to provide clarity for plan fiduciaries, it is likely to create additional confusion.

The purpose of FAB 2018-01 was to provide guidance to plan fiduciaries regarding two prior Interpretive Bulletins (IBs) from the DOL. IB 2015-01, "Interpretive Bulletin Relating to the Fiduciary Standard Under ERISA in Considering

Economically Targeted Investments," was widely interpreted to provide a basis for plan fiduciaries to incorporate SRI or ESG criteria into their investment selection process. It was interpreted that way because it replaced prior guidance (Interpretive Bulletin 2008-01) that was considered to restrict the use of these criteria. In fact, IB 2015-01 states:

"The Department believes that in the seven years since its publication, IB 2008-01 has unduly discouraged fiduciaries from considering ETIs and ESG factors. In particular, the Department is concerned that the 2008 guidance may be dissuading fiduciaries from (1) pursuing investment strategies that consider environmental, social, and governance factors, even where they are used solely to evaluate the economic benefits of investments and identify economically superior investments, and (2) investing in ETIs even where economically equivalent. Some fiduciaries believe the 2008 guidance sets a higher but unclear standard of compliance for fiduciaries when they are considering ESG factors or ETI investments."

ERISA clearly articulates a fiduciary has a responsibility to act in the best interests of plan participants and their beneficiaries. As it relates to investment decision-making, it means that plan fiduciaries must put the economic interests of participants above any other, ancillary objectives. While that has been consistent since the advent of ERISA, in IB 2015-01, the DOL states that plan fiduciaries can consider ESG criteria as they "…may have a direct relationship to the economic value of the plan's investment."

> ***"What we have now is a game of regulatory ping pong."***

So, what we have now is a game of regulatory ping pong, which the DOL seeks to clarify in its recent guidance. FAB 2018-01 says:

"Fiduciaries must not too readily treat ESG factors as economically relevant to the particular investment choices at issue when making a decision. It does not ineluctably follow from the fact that an investment promotes ESG factors, or that it arguably promotes positive general market trends or industry growth, that the investment is a prudent choice for retirement or other investors."

Take-aways for plan sponsors. So where does the current guidance leave us? Can we use SRI in our plans? FAB 2018-01 does not preclude the selection of these products within an investment menu and in fact, provides some clarity on the ability to include them within a fund menu that offers participants a wide range of investment options. FAB 2018-01 states:

"In the case of an investment platform that allows participants and beneficiaries an opportunity to choose from a broad range of investment alternatives, adding one or more funds to a platform in response to participant requests for an investment alternative that reflects their personal values does not necessarily result in the plan forgoing the placement of one or more other non-ESG themed investment alternatives on the platform. Rather, in such a case, a prudently selected, well managed, and properly diversified ESG-themed investment alternative could be added to the available investment options on a 401(k) plan platform without requiring the plan to remove or forgo adding other non-ESG-themed investment options to the platform."

> ***"…the DOL says it may be reasonable for a plan fiduciary to include an SRI or ESG fund on its platform assuming it is prudently managed because it does not crowd out other non-ESG options."***

In plain English, the DOL says it may be reasonable for a plan fiduciary to include an SRI or ESG fund on its platform assuming it is prudently managed because it does not crowd out other non-ESG options. The DOL makes an exception with respect to a plan's qualified default investment alternative (QDIA). The DOL draws a distinction between offering an SRI/ESG fund as one of many options and actively using it as the default option which is used by the plan fiduciary when a participant otherwise doesn't make an election. In that circumstance, the burden is higher, and the plan fiduciary would need to demonstrate that the SRI/ESG criteria impact the economic considerations of an investment.

GAO report on ESG. Following the issuance of FAB 2018-01, the GAO issued a report in May 2018[10]. In their report, the GAO interviewed asset managers and reviewed retirement plans from other countries to evaluate the status of ESG factors in retirement plans. Based on their research, the GAO issued two recommendations for the assistant secretary of labor for the EBSA:

1. Clarify whether an ERISA plan may incorporate material ESG factors into the investment management for a QDIA.

2. Provide further information to assist fiduciaries in investment management involving ESG factors, including how to evaluate available options, such as questions to ask or items to consider.

So far, the DOL has not responded to either recommendation from the GAO, but plan fiduciaries should stay tuned as additional guidance may be forthcoming in the following months (or years).

Congress Takes Action

As discussed at the outset, there is wide recognition of the "coverage gap" problem. Much of the activity in Congress are attempts to deal with the known challenges of low coverage. There are many different retirement-related proposals floating around in Congress, including but not limited to:

- ✓ Senators Collins (R-ME) and Warner (D-VA) proposed legislation intended to modernize SIMPLE plans. The legislation would increase deductibility language and create a path for employers wishing to convert from a SIMPLE to a traditional 401(k) plan.
- ✓ The Strengthening Financial Security Through Short Term Savings Act would allow employers to auto-enroll employees in short-term taxable savings accounts.
- ✓ The Small Business Employees Retirement Enhancement Act would allow employers to pool into plans administered by external parties.
- ✓ Senator Merkley (D-OR) reintroduced legislation to create American Savings Accounts that would also allow employers without retirement plans to create taxable savings accounts for employees.
- ✓ The Retirement Flexibility Act would seek to allow employers availing themselves of the QACA safe harbor to increase the auto-escalation ceiling to 15% from its current 10%.
- ✓ Senators Portman (R-OH) and Cardin (D-MD) are back with the Protecting Taxpayers Act, which is legislation expanding the Internal Revenue Service (IRS) Employee Plans Compliance Resolution System (EPCRS).
- ✓ Retirement Security Commission Bill which seeks to establish a commission to examine the U.S. retirement system comprehensively. The current private-sector retirement system has largely grown organically from a defined benefit orientation to a defined contribution orientation with periodic tweaks to taxability and deductibility to address the current needs and issues.

Perhaps the most significant piece of legislation to watch is the Retirement Enhancement Savings Act (RESA). Originally introduced in 2016 and since modified, RESA includes a provision calling for Multiple Employer Plans (MEPs) that is substantially similar to that of the Executive Order (discussed on page 1 of this update). In addition, RESA also includes a laundry list of other retirement-related provisions that have bipartisan support (for the most part) including a proposal to require lifetime income estimates at least annually on participants' retirement plan statements; a fiduciary safe harbor for the selection of lifetime income providers for retirement plans; a proposal to allow more time for participants who terminate with an outstanding loan to rollover the loan and pay it off without it being a deemed distribution; as well as other proposals that would affect nondiscrimination rules, the automatic enrollment safe harbor default rate and the treatment of 403(b) custodial accounts upon plan termination.[11]

> ***"Perhaps the most significant piece of legislation to watch is the Retirement Enhancement Savings Act (RESA)."***

Whether RESA passes Congress this year is yet to be seen and may depend on whether it is wrapped into larger initiatives such as a second round of tax reform, but plan sponsors should continue to monitor Congressional action – particularly as it relates to RESA.

Tax Reform

One of the most substantial acts that Congress took this year was passing the Tax Cuts and Jobs Act (TCJA) and the subsequent Bipartisan Budget Act of 2018. Both pieces of legislation impact retirement plans and their participants.

Tax Cuts and Jobs Act. Effective Jan. 1, 2018, there were four provisions of the TCJA that affected plans and their participants:

1. **Plan Loans**: The new rules extend the time period during which the qualified plan loan offset amount of a newly terminated participant, or a participant of a plan that has terminated, may be contributed to an eligible retirement plan as a rollover contribution. This means a participant who has a loan offset will have until his or her tax return due date (including extensions) for the year during which the loan offset

occurred to roll over the taxable amount of the borrowed funds to an IRA or another employer plan to avoid taxation on the rolled over amounts.

2. **Roth recharacterization**: For tax years beginning after Dec. 31, 2017, participants are no longer allowed to recharacterize a previous in-plan Roth conversion. Previously, participants could convert their pre-tax contributions into Roth contributions and pay taxes at the time of the conversion. If the participant later changed his/her mind, s/he had until October 15 of the following year to undo the recharacterization. Now, the participant no longer has this recharacterization option. If s/he converts the pre-tax money into Roth money, s/he may no longer undue this change.

3. **Disaster relief for withdrawals**: Special relief provided to participants who resided in a federally designated disaster area in 2016. If a participant's principal residence was in an area declared a federal disaster area and sustained an economic loss related to the disaster, they might take a withdrawal from their plan which is exempt from the 10% early withdrawal penalty and the 20% mandatory federal tax withholding. Participants may repay the plan over a 3-year period or pay the associated taxes ratably over a 3-year period. Distributions may not exceed $100,000 and must have been taken before Jan. 1, 2018.

4. **Change to a definition of a Safe-Harbor Hardship**: The casualty loss deduction is narrowed under Section 165 of the Code to losses attributable to disasters declared by the President under Section 401 of the Robert. T. Stafford Disaster Relief and Emergency Assistance Act for 401(k) or 403(b) plans due to damage to the participant's primary residence. Under the updated safe-harbor rules, the distribution must be due to one of the six pre-defined "safe-harbor" categories of need. Previously, an expense related to any damage to the employee's principal residence would qualify for this safe harbor. For taxable years between 2018 and 2025, the Act limits this safe harbor to expenses related to damage to the employee's principal residence that is attributable to a disaster declared by the President.

Bipartisan Budget Act of 2018. Subsequent to the TCJA, Congress worked together on bipartisan legislation making additional changes that resulted in further impacts to retirement plans. The Bipartisan Budget Act resulted in three additional changes:

1. **Loans and deferral changes:** The Bipartisan Budget Act eliminated the requirement that a participant exhausts the opportunity to take loans under the plan before receiving a hardship withdrawal. Additionally, the six-month prohibition on contributions to retirement plans after a hardship withdrawal was removed. This allows employees to continue to contribute to the plan while taking a hardship distribution.

2. **Money source changes:** The earnings on the salary deferrals and qualified non-elective contributions, qualified matching contributions, and safe harbor contributions, can now be included in a hardship withdrawal, where they were previously barred. However, this change will not apply to 403(b) plans unless corrective legislation is enacted. Plan sponsors should be on the lookout for additional guidance regarding this provision. The Secretary of the Treasury has up to one year to modify the Treasury Regulations to reflect this change.

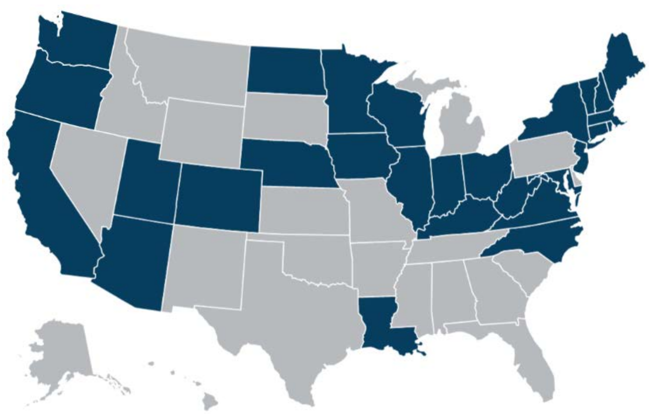
3. **California wildfires:** Also included is the approval of special disaster-related rules on withdrawals for those affected by the California wildfires. Specifically, the Bipartisan Budget Act allows in-service qualified wildfire distributions (i.e., made on or after Oct. 8, 2017 and before Jan. 1, 2019 by an individual whose primary residence is in the disaster area and who sustained an economic loss due to the wildfires) which are exempt from the 10% early withdrawal penalty and the 20% mandatory federal tax withholding. Participants may repay the plan over a 3-year period or pay the associated taxes ratably over a 3-year period. Finally, participant loan availability is increased from the normal 50% of the vested account up to a maximum of $50,000 to 100% of the vested account up to $100,000.

For plan sponsors, these changes may require an amendment to plan documents or loan and hardship policies. As the year ends, start having discussions with the vendor that provides the plan document and/or legal counsel regarding how these changes impact the plan(s) and how to implement any necessary changes.

State Initiatives

The issue of coverage continues to plague the private sector retirement plan marketplace, with small employers electing to not sponsor a retirement benefit program. Compounded by the challenges of complying with ERISA, for small employers the cost of establishing and maintaining a new retirement plan is high relative retail savings solutions like IRAs or taxable savings account.

State programs. In 2012, states began introducing their own plans; according to the Pension Rights Center, 28 states have now introduced or enacted legislation to provide retirement to private sector workers. Generally, the plans include having participants automatically enrolled in state-run Roth Individual Retirement Accounts (IRAs). The states establish a board to either administer the IRA program or to select vendors that may be included in the state-run solution. By utilizing Roth IRAs, employers avoid complications of modifying tax withholding that a qualified retirement plan or pre-tax IRA may incur.



Challenges. The states have run into some challenges. First, advocates for the current private-sector retirement system have pushed against the coverage mandates. In March, the state of Oregon settled a lawsuit with the ERISA Industry Committee (ERIC), which asserted the Oregon program was violative in its requirement that employers who provide an existing retirement plan to their employees certify the existence of their plan to the state. While not impactful to the operation of the OregonSaves plan, it appears to be indicative of the type of legal challenges these new programs may encounter.

Second, states that may wish to proceed with state-run IRA programs do so without any protection from the DOL. In 2017, Congress passed, and the President signed, a Congressional Review Act blocking a DOL rule from the Obama administration creating a safe harbor for state-run programs.

Despite those headwinds, states across the country continue to proceed deliberately with plans to improve small employer coverage and retirement plan preparedness.

Plan Document Changes for 403(b) Plans

The IRS Revenue Procedure 2013–22 set forth the procedures and established a program for issuing opinion and advisory letters for Section 403(b) pre-approved plans (like the program that already exists for 401(k) plans). For 403(b) plans, the IRS is not opening a determination letter program for individually designed plans.

In 2013, the IRS first began receiving applications for pre-approved plans and, in 2017, the IRS began issuing approval letters for prototype and volume submitter 403(b) plans. Throughout the last year, many service providers have started the process of moving plan sponsors to their new pre-approved plan documents. Keep in mind that as a 403(b) plan, the plan sponsor is not required to utilize a pre-approved document, but may find it beneficial as IRS approval means that the IRS has determined that the plan document satisfies the requirements of the Internal Revenue Code.

For those plans that seek to make the transition, the IRS issued Revenue Procedure 2017-18, which says that the last day to restate the plan document is March 31, 2020. The IRS will issue additional guidance in the future with respect to the timing of future amendment periods. For more information, check with your service provider and/or experienced ERISA counsel to determine how the plan document changes apply to your plan.

Updates for Defined Benefit Plans

There were few noteworthy updates for defined benefit plans in 2018. In Oct. 2017, the proposed update to mortality tables was finalized as anticipated.[12] These changes were originally proposed in December 2016 and are used to determine minimum funding requirements and minimums for lump sum distributions.

More recently, the Pension Benefit Guarantee Corporation (PBGC) proposed two minor changes to the Form 5500 to aid their reporting of missed payments.[13] Additionally, the IRS again extended the existing temporary nondiscrimination relief for closed defined benefit plans in anticipation of final amendments to the regulations under Internal Revenue Code Section 401(a)(4).[14]

On the Horizon in the Retirement Plan Marketplace

Student loan repayment programs. At the end of 2016, Americans had $1.31 trillion in student loans outstanding, which increased from $481 billion just 10 years earlier.[15] Student loan debt is an increasing problem, and over the past few years, some employers have started working with service providers to craft a solution for participants. While there are a variety of solutions available, one solution was addressed in a private letter ruling (PLR) from the IRS in August 2018.[16] While a PLR is a written determination issued to a particular employer based on a specific set of facts, this guidance may pave the way for other employers that seek to add similar benefits in the future. Plan sponsors should be on the lookout for additional guidance from the IRS and/or legislation as it relates to this growing concern.

> ***"A 65-year old couple retiring this year will need $280,000 to cover healthcare and medical expenses throughout retirement."***

Health savings accounts. Healthcare costs are on the rise. According to Fidelity, a 65-year old couple retiring this year will need $280,000 to cover health care and medical expenses throughout retirement.[17] As the healthcare marketplace has changed, many employers have started offering a high deductible health plan (HDHP), which is often accompanied by a health savings account (HSA). While there are several benefits of an HSA, one of the benefits is the flexibility that the HSA may be spent on healthcare costs today or in future years to combat the rising costs of health care in retirement. In 2018, initial steps have been taken to make HSAs more attractive than they may already be. In July 2018, the U.S. House of Representatives passed two bills (H.R. 6311 and H.R. 6199) that would make substantial changes to HSAs. Of the many changes included was an increase to the limits on annual HSA contributions. At this time the two bills have passed the House of Representatives and are now at the Senate for further consideration before the end of the year. Employers with an HSA, or considering an HDHP (with an HSA), should monitor future developments in this legislation.

Off the Horizon in the Retirement Plan Marketplace

DOL fiduciary rule. The DOL proposed its first iteration of the fiduciary rule in 2010 and re-proposed the rule in 2015. The final rule was published in 2016 and became partially-effective in 2017. The purpose of the fiduciary rule was to provide greater protection to investors and retirement plans by making more financial professionals ERISA fiduciaries and by expanding the reach of the ERISA standards to IRAs.

After much controversy, media attention, and for some firms, millions of dollars spent to comply, the 5th Circuit vacated the DOL's fiduciary rule in the case of *Chamber of Commerce v. U.S. Department of Labor*.[18]

For plan sponsors, what now? The 5th Circuit's mandate had the effect of eliminating the entire DOL fiduciary rule. The prevailing rules are as they existed prior to June 9, 2017, when the DOL fiduciary rule was partially-implemented. However, there may be some lingering confusion, as the DOL issued guidance which allowed financial professionals to proceed under the DOL fiduciary rule and associated exemptions until further guidance is issued. For plan sponsors, consider the following action items:

- **Identify and review contracts with service providers**. Pay attention to whether the service provider is a fiduciary at both the plan- and participant-level.

- **Review materials provided to participants**. Think about the ways that service providers are monetizing their relationships with the plan and its participants and make sure that materials from service providers to the plan's participants are not supporting cross-selling or further monetization of the relationship.

- **Educate participants**. While not required, plan sponsors may consider educating participants about IRA rollovers. The DOL fiduciary rule gave heightened protection to participants engaging in rollovers; without the rule, financial professionals will not have to undergo such a rigorous analysis to assist participants with a rollover at retirement, for example.

- **Continue to Monitor Rule Changes.** The Securities and Exchange Commission proposed its own rule that is substantially similar to the DOL fiduciary rule, yet very different in that it omits retirement plans from coverage. As the rule progresses, monitor to understand what standard of conduct applies to the financial professionals providing services to the retirement plan(s).

Cryptocurrency. Cryptocurrencies, such as the infamous Bitcoin, meet the definition of currency in that they can be used in exchange for the purpose of acquiring goods and services. For this reason, your participants may have been asking (at least while it was HOT) whether it could be available in the retirement plan's investment line-up. However, given issues related to access, liquidity, and volatility, it may be the rage for individuals and their own investing, but it's *not* the next best thing in retirement plans.

Other Regulatory Priorities. Other regulatory priorities which were once priorities, but have since vanished from the regulators' priorities include:

- overhaul of the Form 5500 (joint project between the DOL, IRS and PBGC)
- requirement to include income projections on participant statements (though this has revived itself through some legislation)
- guide to 408(b)(2) disclosures

While these items may one day resurface, they are off the regulators' priority list for now.

Conclusion

While there is less on the regulatory agenda and certainly less of a budget to move ahead for regulators, much of the action is taking place in the courts and in Congress. To stay up-to-speed with current legislation, how it will impact your plan, and ways to mitigate your risk as a retirement plan sponsor, we look forward to speaking to you further about this Regulatory Update. For additional information about what's described within as well as other best practices for retirement plans, please contact your Multnomah Group consultant.

[1] Jerry Schlichter's fee lawsuits have left an indelible mark on the 401(k) industry (Sep. 2017), InvestmentNews analysis of Groom Law data, available at: http://www.investmentnews.com/article/20170923/FREE/170929980/jerry-schlichters-fee-lawsuits-have-left-an-indelible-mark-on-the.

[2] Center for Retirement Research at Boston College, 401(k) Lawsuits: What are the Causes and Consequences? (May 2018) George Mellman and Geoffrey Sanzenbacher, available at: http://crr.bc.edu/wp-content/uploads/2018/04/IB_18-8.pdf.

[3] Jerry Schlichter of Schlichter Bogard and Denton, 2018 Podcast with Rick Unser, 401kFridays, available at: https://www.401kfridays.com/schlichter1.

[4] Johnson v. Delta Air Lines, Order, available at: https://s3.amazonaws.com/si-interactive/prod/plansponsor-com/wp-content/uploads/2017/12/18142513/JohnsonvDeltaAirLinesDismissal.pdf.

[5] Schlichter Takes Aim at a New Target: 403(b) Plans, available at: http://blog.multnomahgroup.com/forward-thinking/schlichter-takes-aim-at-a-new-target-403b-plans.

[6] Cassell v. Vanderbilt Univ., M.D. Tenn., No. 3:16-cv-02086, order granting in part plaintiff's motion to amend complaint 6/1/18. *See also* Napa-Net, Data Sharing Claim Added to 403(b) Suit, available at: https://www.napa-net.org/news/technical-competence/403b-plans/data-sharing-claim-added-to-403b-suit/.

[7] Sacerdote v. N.Y. Univ., S.D.N.Y., No. 1:16-cv-06284-KBF, Opinion and Order available at: https://www.bloomberglaw.com/public/desktop/document/Sacerdote_et_al_v_New_York_University_Docket_No_116cv06284_SDNY_A/24?1533075430.

[8] Henderson v. Emory University, Order, available at: https://www.bloomberglaw.com/public/desktop/document/Henderson_et_al_v_Emory_University_et_al_Docket_No_116cv02920_ND_/3?1537408141.

[9] Clark v. Duke University, Order, available at: https://s3.amazonaws.com/si-interactive/prod/plansponsor-com/wp-content/uploads/2017/11/16004054/ClarkvDukeUniversityOrder1.pdf.

[10] Government Accountability Office, No.18-398, Retirement Plan Investing: Clear Information on Consideration of Environmental, Social, and Governance Factors Would Be Helpful (May 22, 2018).

[11] *See* PlanAdviser, Tax Reform 2.0, RESA and Senator Hatch's Retirement, available at: https://www.planadviser.com/exclusives/tax-reform-2-0-resa-senator-hatchs-retirement/.

[12] IRS Notice 2017-60, Updated Static Mortality Tables for Defined Benefit Pension Plans for 2018, available at: https://www.irs.gov/pub/irs-drop/n-17-60.pdf.

[13] PBGC, Proposed Submission of Information Collection for OMB Review; Comment Request; Annual Reporting (Form 5500 Series), available at: https://s3.amazonaws.com/public-inspection.federalregister.gov/2018-17850.pdf.

[14] IRS Notice 2018-69, Extension of Temporary Nondiscrimination Relief for Closed Defined Benefit Plans through 2019 available at: https://www.irs.gov/pub/irs-drop/n-18-69.pdf.

[15] Prudential, Student Loan Debt, available at: https://www.prudential.com/media/managed/documents/rp/Prudential-Student-Loan-Brochure-2017.pdf.

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