



Washington Update Colorado Public Plan Coalition

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Agenda

- » 457(b) Legislative Priorities
- » House Ways and Means
Committee Tax Reform Proposals
- » IRS Guidance:
- » One IRA Rollover Per Year
- » Rollovers into Retirement Plans
- » In-Plan Roth Transfers
- » Defense of Marriage Act
- » DOL Guidance Agenda:
- » Brokerage Windows
- » Guaranteed Lifetime Income Options
- » DOL Fee Disclosure “Guide”



457(b) Legislative Priorities

- » Urging Congress not to eliminate or diminish the current tax treatment of employer-provided retirement plans and retirement savings.
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- » “National Save for Retirement Week” Resolution
 - » Support from Phyllis Borzi at DOL for increased retirement readiness awareness nationally – potential Presidential Proclamation for NS4RW.

457(b) Legislative Priorities

- » Elimination of the “first day of the month” rule – general support for this long standing technical correction.

- » Elimination of Required Minimum Distribution (RMD) for Roth 401(k), 403(b) and 457(b) accounts.
 - Argued the fairness position since RMDs do not currently apply to Roth IRAs.
 - BUT, Chairman Camp’s tax reform proposal would do the opposite and require RMDs from Roth IRAs during the owner’s lifetime.

457(b) Legislative Priorities

- » Allow Rollovers of Roth IRAs into 401(k), 403(b) and governmental 457(b) Roth accounts.
- » Permit Non-Spousal Beneficiaries to Roll Assets to 457(b) Plans – Legislative counsel shared some technical issues concerning deceased participant and beneficiary recordkeeping for this to be allowed.
- » Increase Eligibility for Low Income Savers Tax Credit – some discussion of making this a refundable credit, but probably won't happen this year.
- » Maintain exemption from the 10% early withdrawal penalty tax – this exemption for governmental 457(b) plans is constantly under threat.
 - Chairman Camp's tax reform proposals would repeal of the 10% penalty tax exemption for 457(b) plans.

Chairman Camp's Tax Reform Proposals

- » Retirement plan proposals would change the way individuals save by limiting the amount of pre-tax money that can be deferred.
 - Pre-tax elective deferral limits to §§401(k), 403(b), and 457(b) plans would be reduced to \$8,750.
 - After-tax Roth contribution limits would remain at \$17,500 frozen until 2024.
 - Coordination limit reinstated between 457(b) and 401(k), 403(b), etc.
 - 457(b) contributions would count toward the 415 limit.
 - Certain other annual limits on contributions to DC plans and benefits under DB plans would be frozen at 2014 levels until 2024.
 - Special catch-up contributions to 457(b) and 403(b) eliminated.
 - Tax-exempt 457(b) plan eliminated.

Chairman Camp's Tax Reform Proposals

- » IRA proposals would dramatically impact contributions:
 - Traditional IRAs would be completely eliminated – rollovers only.
 - Roth IRA contribution limits frozen at 2014 levels until 2024 (\$5,500 with an additional \$1,000 for individuals age 50 and above).
 - Income limitations on Roth IRAs contributions would be eliminated to allow high-income taxpayers to contribute to Roth IRAs.
 - Roth IRA owners must take RMDs during their lifetime.
 - No Roth IRA contributions after age 70 ½.
 - No longer permitted to re-characterize Roth IRA contributions or conversions.

Chairman Camp's Tax Reform Proposals

- » Distributions from retirement plans would be changed significantly.
 - In-service withdrawals – rules would be aligned so that participants in a 457(b) and DB or money purchase pension can take in-service withdrawals at age 59 ½.
 - 10% premature withdrawal penalty would apply to 457(b) plans.
 - Distributions to non-spouse beneficiaries, with limited exceptions, would be forced out under the five year rule – no life expectancy payouts.
 - NQDC plans must meet the same 457(f) rules as governments and tax-exempts so 409A would be repealed as unnecessary.
 - Change to taxation of employer stock .
 - No new SEPs or SIMPLE 401(k) plans.

- » Distributions from IRAs would be changed significantly.
 - No exemption from the 10% premature withdrawal penalty tax for educational expenses or first time homeowners.



Recent IRS Guidance



Announcement 2014-15 – One 60-day IRA Rollover/Year

- » IRS allows a 60-day rollover to an IRA once in a 12-month period.
- » IRS has applied the rule to IRAs on an account-by-account basis.
- » Recent Tax Court decision in *Bobrow v Commissioner* has shut down the separate IRA rollover strategy.
- » IRS Announcement 2014-15 – Prop. Regs. and Pub. 590 will be updated and a new Prop. Reg. will be issued to apply the 1 IRA rollover per year rule on an IRA-aggregated basis – Traditional, Roth and Simple IRAs = One.
- » Effective date - January 1, 2015
- » Note: Trustee-to-trustee IRA rollovers still allowed at any time.

Announcement 2014-15 – One 60-day IRA Rollover/Year

- » Example:
- » An individual withdraws the balance from IRA-1 in May of 2014 and rolls it over into IRA-3 within 60 days.
- » In August of 2014, he or she withdraws the balance from IRA-2 and rolls it over into IRA-4 within 60 days.
- » No previous rollovers were made.
- » Neither withdrawal will be taxed because IRA-1 and IRA-2 are treated separately for purposes of the 1-year waiting period.
- » If, however, an individual makes these two rollovers in 2015 or a later year when all IRAs will be treated as one when applying the 1-year waiting period, only the withdrawal from the first IRA would be tax-free.
- » The withdrawal from the second IRA would be taxed and also could be hit with a 10% early withdrawal penalty.

Announcement 2014-15 – One 60-day IRA Rollover/Year

- » The rollover of the second withdrawal into an IRA, to the extent it exceeded any allowable regular contribution to an IRA for 2015, would be treated as an excess contribution subject to a 6% tax unless timely withdrawn.

- » Important Note: The following types of rollovers are not counted for purposes of the 1-year waiting period:
 - Rollovers from IRAs into employer-sponsored retirement plans.
 - Conversions of regular IRAs to Roth IRAs.
 - Trustee-to-trustee transfers (sometimes called direct rollovers) between traditional IRAs, or between Roth IRAs.

- » Tax-free transfers made directly from one financial institution to another can be made any time and are not reported on the individual's tax return.

IRS Guidance on Rollovers into Retirement Accounts

- » Revenue Ruling 2014-9:
- » This ruling offers two new safe harbor procedures that allow a plan administrator to reasonably conclude that a rollover into the plan is a valid rollover contribution.
- » The new safe harbors are simpler than the procedures described in prior guidance.

IRS Guidance on Rollovers into Retirement Accounts

- » Designed to eliminate need for the two plans to communicate (with the individual as go-between), and to expedite rollover process by eliminating requirement for supporting paperwork from the transferring plan.



- » The ruling also introduces an easy way for a receiving plan to confirm the sending plan's tax qualified status by checking the sending plan's Form 5500 on the Department of Labor's (DOL) website.

IRS Guidance on Rollovers into Retirement Accounts

- » Example of Rollover from Prior Employer's Plan:

- » Employee A requests a distribution of her vested account balance in Plan 1 and directs that it be paid to Plan 2 in the form of a direct rollover.
- » The trustee for Plan 1 issues a check payable to the trustee for Plan 2 "for the benefit of Employee A."
- » Employee A delivers the check, which identifies Plan 1 as the source of the funds, to the plan administrator for Plan 2 and certifies that the distribution from Plan 1 does not include after-tax contributions or amounts attributable to designated Roth contributions.
- » The plan administrator for Plan 2 accesses the DOL database which identifies Plan 1 as a qualified plan. Absent any evidence to the contrary, Plan 2's administrator may reasonably conclude that the rollover contribution by Employee A from Plan 1 is valid.

IRS Guidance on Rollovers into Retirement Accounts

- » Example of Rollover from an IRA:

- » Employee A requests a direct rollover distribution from her IRA account to her employer's plan.
- » The IRA trustee issues a check payable to the trustee of the employer's plan "for the benefit of Employee A."
- » Employee A delivers the check, which identifies "IRA of Employee A" as the source of the funds, to the plan administrator.
- » Employee A certifies the IRA distribution does not include after-tax amounts and that she will not have attained age 70 ½ by the end of the year.
- » Absent any evidence to the contrary, the plan administrator may reasonably conclude that the IRA rollover contribution by Employee A is valid.

IRS Guidance on Rollovers into Retirement Accounts

- » Remedy if Rollover Discovered to be Invalid:
- » If the plan administrator later determines that the amount rolled over from a prior employer's plan or the employee's IRA is an invalid rollover contribution, the amount rolled over plus any attributable earnings must be distributed to Employee A within a reasonable time after the determination.

In-Plan Roth Rollovers

- » Plan must first allow Roth contributions.
- » Many plan began offering Roth accounts so participants are familiar with Roth rules prior to adopting in-plan rollovers.
- » Prior to 2013, in-plan Roth rollovers were only available for amounts eligible for distribution as an eligible rollover distribution.
- » A distribution from the pre-tax account could be used to pay the tax due in year amounts rolled over.
- » American Taxpayer Relief Act (ATRA) expanded in-plan Roth transfer options as of 1/1/13.
- » Nondistributable pre-tax assets may be transferred into plan's Roth account at any time.
- » IRS Notice 2013-74 issued 12/11/13 provides guidance on in-plan rollovers and transfers.

In-Plan Rollovers of Otherwise Nondistributable Amounts

- » Distribution restrictions continue to apply.
- » Amount rolled over (and applicable earnings) remain subject to the distribution restrictions that applied to the amount before the rollover.
- » Generally 457(b) participants may not take a distribution from Roth account until severance from service of attainment of age 70 ½.
- » No §402(f) notice required:
 - In-plan Roth rollovers of nondistributable amounts are treated as an eligible rollover.
- » No tax withholding allowed:
 - No part of in-plan rollover may be withheld for voluntary withholding.
 - Nondistributable plan assets may not be used to pay the taxes due on the in-plan Roth rollover.
 - (Employee may need to increase his wage withholding or make estimated tax payments to avoid an under-payment penalty.)

Defense of Marriage Act (DOMA)

- » The Supreme Court's decision in Windsor on June 26, 2013 ruled that it is unconstitutional to define marriage for federal purposes as a legal union between one man and one woman.
- » IRS issued Revenue Ruling 2013-17, effective Sept. 16, 2013, which states that for federal income tax purposes, the term "spouse" includes a same-sex spouse if the couple was lawfully married under state law.
- » Thus, individuals are treated as married if they were married in a state (or foreign country) whose laws recognized the marriage, known as the "state of celebration" rule, even if the couple is domiciled in a state that does not recognize same-sex marriage.
- »
- » IRS it intended to issue guidance on unanswered questions dealing with retroactive application of Windsor and due date for plan amendments.

Defense of Marriage Act (DOMA)

- » Clarification of Compliance Dates:

- » Pursuant to Notice 2014-19, qualified retirement plans must apply the Windsor decision as of June 26, 2013.

- » A plan will not be disqualified if, prior to the September 16, 2013 issuance of Revenue Ruling 2013-17, a plan sponsor recognized a participant's same-sex marriage only if the participant was domiciled in a state that recognized same-sex marriage.

- » Example: if a plan made a distribution or made a loan prior to June 26, 2013 but should have required spousal consent, the plan will not be disqualified. After September 16, 2013 a plan sponsor must recognize a participant's same-sex marriage regardless of the laws of the state where the couple resides.

Defense of Marriage Act (DOMA)

- » No Retroactive Application Required for Qualification Purposes:
- » Plan sponsors may elect to apply the Windsor decision prior to June 26, 2013 to certain plan provisions, but are not required to do so.
- » Retroactive application brings administrative complexity that may make it difficult if not impossible to administer, such as making a same-sex spouse the beneficiary of a death benefit of an account balance that has already been paid to the participant's estate.
- » Applying any plan provision retroactively would require a plan amendment.

Defense of Marriage Act (DOMA)

- » Plan Amendment Deadline:
- » No amendment is required if plan defines “spouse”:
 - Without a distinction between a same-sex spouse and an opposite sex spouse, or
 - In reference to federal law.

- » Plan Document required if plan:
 - Defines a marital relationship by reference to section 3 of DOMA ,
 - Is otherwise inconsistent with outcome of Windsor, or
 - Plan sponsor chooses to apply Windsor retroactively, prior to July 26, 2013.
- » Amendment Deadline is December 31, 2014.
- » Governmental plan amendments must be adopted before close of first regular legislative session of legislative body with authority to amend the plan that ends after December 31, 2014.
- » NOTE: Most governmental plan documents will not require amendment.
 - Clients using the Great-West Financial model plan documents will not need to amend.



DOL Guidance Agenda



DOL Taking on Brokerage Windows

- » In FAB 2012-02 (Q&A's on participant disclosure rule) DOL first suggested that plans might have fiduciary duty to treat the investments that participants select through a brokerage windows as designated investment alternatives (DIAs).
- » Plans and service providers (with Congressional allies) objected and caused DOL to retreat - DOL said might revisit brokerage window issues.
- » New regulatory project, beginning with an RFI this Spring to determine “whether and to what extent” DOL should issue “guidance and safeguards” for brokerage windows.
- » Appears to be very broad inquiry going beyond disclosure to set new standards for fiduciaries.

Lifetime Income Projections on Participant Statements

- » DOL “pre-rule” proposal would require plans to provide lifetime income projections on DC plan benefit statements:
 - Could use any reasonable estimate or safe harbor.
 - Safe harbor projects current balance out to retirement age using 3% annual participant contribution increase, 7% rate of return, 3% inflation rate.
 - Safe harbor calculates annuity on projected balance based on 10-year treasury rate and mortality tables.
- » Next step—proposed regulation was scheduled for August.
- » Likely to be a mandate in proposal.
- » Methodology issues significant—current balance vs. projected retirement balance, annuity-only calculation, impact on current planning tool and education efforts.

DOL Fee Disclosure Guide

- » 408b-2 “Guide” to Current Disclosure—March proposal had June 9th comment deadline – it is not a final rule:
- » DOL provided a sample disclosure guide in 2012 when the final 408(b)(2) disclosure rules were published but did not mandate the use of a guide.
- » The proposed guide would be a short (probably one or two page) index to the fee disclosure documents.
- » The DOL says guide’s purpose is to assist plan sponsors in finding information that ERISA requires them to assess in evaluating both:
 - the reasonableness of the compensation to be paid for plan services ,and
 - potential conflicts of interest that may affect the performance of those services.

DOL Fee Disclosure Guide

- » A guide would be required as part of the initial 408(b)(2) disclosures if that disclosure either cross-references other documents, such as a prospectus or service agreement, or exceeds a specified number of pages.
- » DOL is seeking comment on the # of pages that should trigger the guide.
- » A guide would not be required in circumstances where all required disclosures are contained in a single document that does not exceed the page count.
- » If a guide is required, it must be a separate document.
- » Not clear whether DOL intends to require a guide for initial disclosures provided only after a final rule becomes effective, or whether must provide a guide to plan fiduciaries who already received their initial disclosure.



DOL Fee Disclosure Guide

- » What the Guide Must Contain:

- » The guide must identify the document being referenced and a page number, or other sufficiently specific locator, such as a section number, where the relevant information can be found.

- »

- » If the disclosure is provided electronically, a link to the page or section (not just to the document generally) could be used in place of a descriptive reference.

- » In either case, the standard is that the locator method must enable the plan fiduciary to quickly and easily find the relevant information.



DOL Fee Disclosure Guide

- » The guide must provide locator information for all principal disclosure elements, which include:
 - » A description of services to be provided.
 - » A statement concerning status as a fiduciary or Registered Investment Advisor.
 - » A description of all direct and indirect compensation, compensation paid among related parties, compensation for termination of the agreement, and compensation for recordkeeping services.
 - » Investment-related compensation—a description of shareholder fees and annual operating expenses.
 - » The name and contact information for the person or entity to contact with questions.

Thank you!

Questions?

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