On the Regulatory Front

In the wake of the ACA – the White House and Congress put their site on reform to retirement plans and over the last two years many of the initiatives for reform have moved into the spotlight for companies that sponsor a retirement plan (Plan Sponsors) and the service providers that support those plans.

Here is a run-down of some of those issues and where they stand currently.

DOL Conflicts of Interest ("Fiduciary") Rule

- The DOL Conflict-of-Interest rule also known as the "Fiduciary Rule" was passed last year and is scheduled to be enforced April 10, 2017.

- In a nut-shell the rule clarifies who is a "Fiduciary" to a retirement plan, makes IRAs subject to the same Fiduciary rules as employer sponsored plans and specifically prohibits a service-provider from receiving compensation in a manner that could create a conflict-of-interest.

- The rule was largely opposed by Republicans in Congress however it is unlikely Republicans will do immediate and total repeal. The rule generated a considerable amount of media attention last year including a 20 minute segment on the John Oliver show – it will be tough to repeal a law aimed at protecting savers from the financial industry. Also, the financial service companies that were once opponents of the rule have already spent millions to comply and are less adverse to the rule than before. Finally, there simply might not be enough time to do anything about it given the new administrations heavy agenda.

Class Action Lawsuits

- Plan sponsors and service providers continue to face class action lawsuits seeking monetary damages for their breach of fiduciary duty that caused financial loss to plan participants.
- Almost all of the lawsuits are focused on fees and company stock. The concern over fees are if Plan Sponsors are meeting their fiduciary duty to monitor fees, and if Plan Providers are being compensated free of any potential conflicts-of-interest. Most often a conflict-of-interest exists when compensation is received in the form of commissions, 12b-1 or revenue sharing fees.

Tax Reforms Potential Impact

- No doubt tax-reform will be front and center as the new administration takes office. The name of the game in tax-reform is to balance revenue coming or going from the Federal Government. Retirement Plans are impacted because the tax-deductibility of retirement plan contributions is a negative "cost" to the Government.
- The current House blue-print for tax reform provides for a 25% tax rate on income from pass-through entities like many LLC's, S-Corporations and Partnerships. In addition earnings on pass-through income with the plan would receive a 50% exclusion.
- Since distributions from a retirement plan are subject to ordinary income tax rates (probably 33%+), a small business owner would no longer benefit from pre-tax savings into a retirement plan and could be less likely to offer one for employees.

Increase access to workplace retirement plans

The DOL and Congress are very interested in increasing workers access to a workplace retirement plan. Nothing is more effective in getting people to save than simply allowing for payroll deductions. When combined with automatic enrollment we see a significant increase in participation and savings rates.

The challenge remains that many employers do not offer a retirement plan for their workers due to the cost and administrative complexity. Two solutions, one-private and one-public are in motion to increase access to retirement plans:

- State-Auto-IRA Plans
  - In August the DOL issued regulations and guidance to facilitate state-sponsored retirement savings plans.
  - 7 states have already enacted such legislation (California, Connecticut, Illinois, Maryland, New Jersey, Oregon and Washington)
  - Mostly available to employees with fewer than 100 employees, employer participation is voluntary and these are typically set-up as IRAs with much lower maximum annual deferral than what is allowed by employer sponsored 401k plans.
- Pooled Employer Plans
  - Retirement Enhancement Act of 2016 proposed changing the rules pertaining to "multiple employer plans" (MEPs) to allow for open MEPS which would then allow two or more unrelated employers to adopt a pooled employer plan (PEP).
  - The benefits for many smaller companies would be the ability to aggregate purchasing power and streamline plan governance.
  - This particular provision has bi-partisan support so it's widely believed that something will move forward.

As a specialist in Retirement Plan Consulting we know the challenges that businesses face in managing and monitoring their retirement plans. We also know that your employees and their families rely on the retirement plan you offer them to prepare for their financial future. We view ourselves as the glue in this relationship.

We work with our Plan Sponsor clients to make sure <u>you get value</u> out of your retirement plan by helping you strategically design your plans so they align and compliment your business and compensation strategy. We also want <u>you to feel secure</u> with your fiduciary risk, so we share in your risk as a co-fiduciary for investment management and bring a disciplined process to help you monitor and manage your plan investments and fees.

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