PIERCE FINANCIAL

Retirement Report

NEWS AND UPDATES FOR PLAN SPONSORS AND FIDUCIARIES OF DEFINED CONTRIBUTION PLANS

Volume XIII | Number IX | September 2015

DOL Regulations, Part II: Who is Not a Fiduciary?

Last month we brought you DOL Regulations, Part I: Who is a Fiduciary? It discussed the DOL's latest attempt at redefining ERISA's definition of "fiduciary" and who the proposed regulation identifies as a fiduciary. Now we will look at who is not a fiduciary.

The Carve-Outs
The DOL carved out seven types of advice that will not cause the person who provides certain types of advice to be treated as a fiduciary. There are a total of seven carve-outs, as follows, each with its own rigorous conditions and requirements:

1. The "Seller's Carve-Out" covers recommendations to (a) plans with more than $100 million in assets and (b) certain plans with more than 100 participants in an arm's-length transaction;
2. Recommendations to enter into a swap or securities-based swap regulated under the Securities Exchange Act swap transactions;
3. Employees of the plan sponsor who provide advice to the plan, so long as the employee does not receive additional compensation for providing the advice;
4. Platform providers are not fiduciaries when they make available to a plan fiduciary a platform of investment alternatives to be selected for a participant-directed individual account plan;
5. Selection and monitoring assistance by identifying investment alternatives that meet objective criteria specified by a plan fiduciary;
6. Financial reports and valuations, including ESOP valuations and information required for reporting and disclosure requirements; and
7. Investment or retirement education.

As mentioned at the outset, the regulations are currently in proposed form. The DOL has requested comments on various provisions of the proposal and will likely hold hearings as well. It is anticipated that the regulation will not be finalized and applicable for a significant amount of time, perhaps not until the beginning of 2017. It is also possible that the guidance in the proposed regulations will be changed before it is issued in final form. At this point in time, it is advisable for plan sponsors to be aware of the proposed changes and how they may affect agreements with existing and new consultants and advisers, as well as current investment education programs. Pierce Financial will keep you informed of changes to the proposal as they become available.

Spotlight on 403(b) Plans

How does your organization stack up? Benchmark your organization's 403(b) retirement program against other non-profit organizations. As you evaluate your current retirement plan design, use the information below to see how your plan compares to your peers'. The chart is based on the results of the 2015 403(b) Plan Survey conducted by the Plan Sponsor Council of America (PSCA). The survey reports on the 2014 plan year experience of 478 403(b) plans and highlights best practices of 403(b) plan sponsors. Mark your answers below and see how your organization stacks up.

403(b) Plan Key Area	Fill in your organization's information below	PSCA's 2015 403(b) Plan Survey Industry Benchmark
PARTICIPANT CONTRIBUTIONS		
What is your participation rate?		Average participation rate among eligible employees: **67.0%**
What are your plan participants deferring on average?		Average percentage of salary deferred: **6.0%**
TYPE OF ORGANIZATION CONTRIBUTION		
Does your organization make contributions? If yes, what kind?		Percentage of plans offering each type: • Matching contributions only: **49.1%** • Non-matching contributions only: **27.5%** • Both matching and non-matching contributions: **19.9%** • No contribution: **3.4%**
MATCHING FORMULA		
If you use a matching contribution, what type of formula does your plan use?		Most common: **Dollar-for-dollar up to 3%** Next most common: **Dollar-for-dollar up to 5%**
INVESTMENT OPTIONS		
How many investment options does your plan offer for participant contributions?		Average number of investment options offered for participant contributions: **29** (Varies by industry from a low of 20 in the "Social/Community Services" category, to a high of 47 in "Other")
For organization contributions?		Average number of investment options offered for organization contributions: **27** (Varies by industry from a low of 20 in the "Associations and Foundations" category, to a high of 44 in "Other")
AUTOMATIC ENROLLMENT		
Does your plan automatically enroll participants in salary deferral contributions?		Plans with automatic enrollment: **16.2%** No automatic enrollment: **83.8%**
If you use automatic enrollment, what is your plan's default deferral percentage?		Plans that use automatic enrollment use default deferral percentages of: • 1%: **6.3%** • 3%: **37.5%** • 5%: **12.5%** • 2%: **23.4%** • 4%: **12.5%** • 6%:**7.8%**
AUTOMATIC ESCALATION		
Does your plan offer automatic escalation over time?		Plans with automatic enrollment that automatically increase default deferrals over time: • Automatic escalation: **22.1%** • Voluntary escalation: **16.2%** • No escalation: **61.8%**

For more information contact Lee Pierce at lee@piercefinancial.org, or 901-271-3720.

The above data are from the following tables in the PSCA 2014 403(b) Plan Survey: Average Participation – Table 23; Average Deferral – Table 26; Type of Organization Contributions – Table 40; Matching Formula – Table 44; Number of Investment Options – Table 54, 55; Automatic Enrollment Offering – Table 78; Automatic Enrollment Default – Table 81; Automatic Escalation – Table 82.

This is an excerpt from an article originally published by The Principal Financial Group®, How Does Your Organization Stack Up?

Forfeited Retirement Plan Funds

Forfeiture dollars are to be allocated annually in accordance with your plan document's direction. Typically forfeitures can be used to pay allowable and reasonable plan expenses and/or to offset employer contributions. If dollars remain they should be allocated back to participants in the year for which they are accrued (again, as directed in the plan document).

The issue with not allocating forfeitures for the year they are accrued (or shortly thereafter), is that they are considered to be the property of the participants existing in the year(s) of accrual. The remedy for carrying multi-year forfeitures is voluntary compliance with the IRS. An attorney should be able to help with the application and direction. Aside from any fees/penalties the IRS may levy, plus the cost of the VCP, there will be the issue of identifying and finding participants in each year affected, so forfeitures can be properly distributed to those that are entitled to them.

The accounts of lost participants may be forfeited after a reasonable effort is made to locate the participant. This must be authorized by the plan document. Such amounts may be added to the plan's forfeiture account and used in the same manner as other forfeitures. However, if the participant reappears the account must be restored.

What constitutes as a reasonable effort to find missing participants depends on the facts and circumstances. Recent DOL guidance on tracking down participants where a plan is terminated indicates the following:

- Notify participant by certified or electronic email (DOL has a model notice);
- Review plan records;
- Contact designated beneficiary;
- Use free online search tools; and
- Size of account may be considered in deciding how much effort is required.

Note that IRS and SSA letter forwarding programs are no longer available.

Employee Communication Strategies for All Seasons

With all the uncertainty in the marketplace, there is likely no better time to provide education to your participants then there is today! Education may consist of the following vehicles: employee meetings, financial wellness programs, webinars, memos, flyers, payroll stuffers, or mailers (just to name a few). We encourage you to utilize a variety of these methods to keep the material fresh and exciting to participants. We also encourage you to focus on more than one education topic throughout the year. For example, one quarter, you may consider mailing participants a piece on the benefits of automatic rebalancing. The next quarter your education focus could be about investing during recessions. The following quarter could be a webinar to tour your service provider's website capabilities. We also encourage you to reach out to your service provider to see what new information and materials they have available for your participants and find out what assistance they may provide. Creating a clear education plan is a great way to keep you on track to meet your goals and objectives.

Communication Corner: Four Tips to Follow in Turbulent Times

This month's employee memo offers participants tips for both up AND down markets.

Call or email Lee Pierce you have questions or need assistance, lee@piercefinancial.org, or 901-271-3720.