Rumblings From the Hill

Robert M. Kaplan, APA, CFP, CPC, QPA, VP,
National Training Consultant, Voya Financial Services

Bob Kaplan is the VP, National Training Consultant for Voya. His responsibilities include web cast and live training for members of the TPA and Financial Services community as well as Voya personnel.

He is currently a Co-Chair of the American Society of Pension Professionals and Actuaries (ASPPA’s) Government Affairs Committee. Bob is a member of ASPPA’s Leadership Counsel.

He previously served as a member of the Board of Managers of the American Institute of Retirement Education (AIRE) as well as the Board of Directors of the National Institute of Pension Administrators (NIPA). In 2009, Bob was presented with NIPA’s Lifetime Achievement Award for his contributions to the retirement plan industry.
Robert M. Kaplan, APA, CFP, CPC, QPA  
Vice President, National Training  
Consultant, Voya Financial Services

Bob is a frequent speaker at industry events.

He has provided testimony before the Treasury department on 401(k) issues and other retirement plan issues. Bob has more than 35 years of experience in retirement plan services, including plan design, administration, sales and consulting.

Bob is also a former high school basketball coach. He is a graduate of the State University at Albany, NY and has a graduate degree from William Paterson University in New Jersey.

Agenda…

I. IRA Issues
II. IRS Issues
III. DoL Issues
IV. White House Initiatives
V. Legislative Possibilities
VI. Questions?
Important Information

This material highlights key issues of legislative initiatives. Currently lawmakers and industry organizations are giving serious attention to a number of bills. Any or all of these proposals could die in committee, change radically or pass after the session ends. This information is provided as guidance. It is not intended to be legal or tax advice.

IRA Issues

• Rollover Guidance – Participant has flexibility to choose how rollovers are allocated when some is after-tax and some is pre-tax (Notice 2014-54)

• This might lead to increased questions about after-tax contributions
  • Articles in financials talks about maxing out then converting to Roth
  • Remember testing is required for after-tax (even in a SH plan)

• See next slide for the new interpretations
Notice 2014-54

- All distributions taken at the same time (disregarding administrative delays) are treated as a single distribution
- If the total is more than the pre-tax amount then all the pre-tax is the direct rollover
- If there is also a 60 day rollover then the pre-tax is first allocated to the direct rollover and the remainder to the 60 day rollover
  - If the total pre-tax is more than both the direct and 60 day rollover then the entire amount is pre-tax (no after tax)
- Implication is that all pre-tax can be rolled and after-tax can be distributed or rolled to a separate IRA and converted to Roth
  - Note: Session Tuesday on Roth Conversions

Is There Room For After-Tax?

- Two scenarios work well for considering an after-tax source
  - ACP testing is passing and the plan does not fully maximize for some
  - Example: Plan has only match and deferral
  - $18,000 deferral and $18,000 match – still room for another $17,000 in after-tax
  - Note that ER should be alerted to the potential of failing the ACP test
Is There Room For After-Tax?

- Two scenarios work well for considering an after-tax source
  - High income people working establishing their own company outside their primary employer (doctors who work for hospitals, consultants, professors) – no rank and file employees
  - Example - $100,000 income
    - $18,000 deferrals
    - $25,000 employer deductible contribution
    - Room for $10,000 in after-tax
  - Note: Session Tuesday on Solo 401(k)s

IRA Issues

- Inherited IRAs no longer protected under Bankruptcy estate
  - Spousal rollover
  - Leave money in plan for protection

- Note: Session Tuesday on Supreme Court Decisions

- Bobrow decision – one 60 day rollover per 12 month period (effective January 1st)
  - No more de facto loans
IRS Initiatives

• Final Regulations to limit amounts in Qualified Longevity Annuity Contracts (QLACs)
  • Will not include premiums as RMDs
  • Lesser of $125,000 or 25% of Account balance

• 5500EZ – amnesty program for one year (ends June 2, 2015)

Social Security Administration

Letter Forwarding Program

• Discontinued
  • Plan Administrators may be able to use Internet searches and locator firms more successfully
  • Small balances left in plans can be a problem later

  • Note: DoL updated its guidance on reasonable searches for lost participants

• Good opportunity to remind Plan Administrator to set procedures to deal with lost participants
DoL Investigations - 2014

- 3928 - Civil Investigations closed
- 161 - Referred for litigation
- 107 - Litigation filed
- Criminal Investigations
  - 85 closed
  - 106 indicted

DoL Investigations - 2014

- $599.7 Million recovered
  - $204.9 million restored
  - $20.2 million in VFCP filings
  - $18.4 million in Abandoned Plan recoveries
  - $356.2 million in Informal complaint resolutions
DoL Initiatives

- Retirement Readiness
    - Show Account Balance (and Vested Account Balance)
    - Assume lifetime payments at NRD began with no additional accumulations of earnings or contributions
    - Project Account Balance:
      - 3% increase in contributions per year
      - 7% earnings per year
      - 3% Inflation
    - Calculate lifetime payments based on Projected Account Balance
  - Expect 2015 release of Proposed Regulation

- QDIA and Target Date funds Proposed Regulations (waiting for Final)
  - Require:
    - Additional Disclosures
    - Clearer labeling of funds
    - Clearer marketing material
    - Funds are not guaranteed and can lose value
DoL Initiatives – Conflict of Interest Regulation

- DoL announced it will reintroduce Conflicted Advice or Investment Manager Fiduciary Regulations

- Would expand who is a fiduciary to those who give recommendations (even if only to one participant)

- Will it include recommendation to roll to an IRA???

- Everyone’s got an opinion on this one
  - White House memo in favor
  - Congressional Committees want assurance that low account balance and income participants will still have access to advice
  - Industry groups…

DoL Initiatives

Other DoL initiatives:

- Service provider Summary or Index – require more detail for 408(b)(2)

- Participant Fee Disclosure – 404(a)(5) window period for providing notices to avoid “deadline creep”

- RFI for Self Directed Brokerage Accounts – want to see if fiduciaries are meeting their obligations of education and information – released in August with industry comments due in November
myRA – Executive Order

Starter savings for those not covered

Voluntary by employer; voluntary by employee

Treasury finalized regulations – effective December 15, 2014

• Treat like a Roth IRA limits
• Lifetime limit of $15,000 – then must move to a Roth IRA
• Only one investment – Treasury G Bond (very little risk but very low return)
• Can withdraw at any time but may be subject to taxes and penalties on earnings
**Well “Stated”**

- Illinois – Auto IRA signed into law
- 24 month review period by a task force to design implementation
- Employers with more than 25 employees who do not offer a private plan must offer a 3% Auto Enroll Roth IRA (of course, participants can alter amount)

  - Many other states looking at state required coverage (Kentucky, Oregon, Maryland, etc)
  - California already has law but has not yet implemented

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**Tax Reform**

- Major tax reform may be put off for a while but what if…the “one off”
- Our best defense – Satisfied participants and reminding Congress about tax deferral vs. tax expenditure
One Item to Watch Closely

- Elimination of lifetime payments to non-spouse beneficiaries (stretch payments from DC plan or IRA)

- Two exceptions:
  - Beneficiary is within 10 years of age
  - Minors until reach age of majority

President’s 2015 Budget (for 2016)

- Expand Coverage
  - Auto IRA for employers with more than 10 ees
  - Allow part time workers (500 hours/3 yrs) to contribute

- Expand 3 year Tax Credits for Small Plan Start Ups (to $1,500 from $500) and ($500 for adding auto enroll)

- Accumulation Cap - $210,000 per year ($3.4 million)

- Eliminate tax break for Employer Stock growth (net unrealized appreciation) – tax on distributions would be ordinary income

- Limit Roth conversions to pre-tax amounts and not after-tax (there goes the 2014-54 info I gave you earlier)
**President’s 2015 Budget (for 2016)**

- Require 70 ½ distributions for Roth IRAs
- Eliminate RMD if your aggregate account value is less than $100,000 (DBs excluded)
- Maximum 28% deductions (if you are in a higher tax bracket you don’t get full deduction)
- 10% additional tax penalty waived for long term unemployment (more than 26 weeks)
- Stretch IRA eliminated for non-spouses
- 60 day rollover allowed for non-spouses (aligns rules)
- DC contribution amounts reported on W-2
- In plan annuities eligible for rollover if plan provision eliminated (allows one to keep annuity)

**2015 Introduced in Congress**

- Collins-Nelson Retirement Security Act of 2015
  - Senate Version (S 266)
- Retirement Security Act of 2015:
  - House Version (HR 557)

- Both bills have similar content and are bipartisan
2015 Introduced in Congress

• Under 500 ees – adopt and “Open MEP” and include the “one bad apple rule”
• Simplify, clarify and consolidate employee notices
• Allow Saver’s Credit for those filing 5500 EZ
• Remove 10% QACA cap; allow match up to 10% and provide a tax credit to businesses with less than 100 ees for extra match

2015 Introduced in Congress

• Automatic IRA Act of 2015
  • HR 506 – Richard Neal D-MA
  • S 245 – Whitehouse – D-RI

• Codify President’s Budget proposal
• Investment to include Treasury Bond (see myRA)
2015 Introduced in Congress

• SEAL Act of 2015
  • Enzi – R-Wy
  • Shrinking Emergency Account Losses

• Additional time to repay loans into IRA after termination with a plan loan
• No suspension after hardship withdrawal
• No credit card loans

2015 Introduced in Congress

• Ann Wagner R-MO
• HR 1090
• Wants to the SEC to finish their definition on the fiduciary rule BEFORE the DoL releases theirs

• Wanna bet!
Secure Annuities For Employee Retirement Act of 2013 – Hatch Bill

- **Title I** – SAFE Plan for State and Local Governments
  - DB plan with a set contribution each year (think Cash Balance)
  - Set payout calculated and promised
  - Assets go out to bid to insurance companies and they are responsible for payouts

- **Title II** – Coverage Improvements
  - Started 401(k) - $8,000 and limited testing/disclosure
  - Increase starter credit from $500 to $5,000
  - Upgrade SIMPLE to SH mid-year
  - Eliminate Auto Increase limit of 10% in QACA
  - Allow first year adoption of plan after YE
  - Increase availability of “Open” MEPs
Safe Title II - Continued

• Reduce interim amendment burden
• Hardships – include earnings, eliminate suspension and loan requirement
• Consolidate employee notices
• Ease use of electronic disclosure
• Allow Life insurance rollover to IRAs
• Authority for IRAs = Treasury only; no DoL

Save ACT (HR 5875) – The Small Businesses Add Value for Employees

• Bipartisan House Bill
• Kind D- WI and Reichert R- Wash

• Very similar to Sen. Hatch’s SAFE Act
Save ACT (HR 5875)

- New SIMPLE 401(k)
  - $10,000 deferral
  - No Employer Contributions
  - Auto Enroll
  - No Loans
  - Very limited hardship withdrawals

Save ACT (HR 5875)

- New Safe Harbor 401(k)
  - Auto enroll at 4%
  - Auto Escalate to 15%
Save ACT (HR 5875)

- Another New Safe Harbor 401(k)
  - Auto Enroll at 6%
  - Auto Escalate 10% (2% per year)
  - Match 100% on first 1%, 50% on next 5% and 25% on next 4%
  - Tax credit for employers (based on compensation of participating employees)

Save ACT (HR 5875)

- Simplify use of “Open” MEPs
- Auto IRA for those without workplace plans
- Enhance SH rules
  - Allow rollovers from other types of plans
  - Allow mid-year terminations
  - No more 25% withdrawal penalty in first two years (10%)
  - Increase deferral limits until reach 401(k) limits
Questions

I will be happy to answer any questions on Legislative and Regulatory proposals.

Thank You.