I. Washington Update

In recent weeks, Congress has seen several bills introduced which, if enacted, may impact state and local governments and the retirement plans they sponsor.

SAFE Retirement Act of 2013 proposes alternative to governmental DB plans

On July 9, 2013, Senate Finance Committee Member Hatch (R-UT) introduced the Secure Annuities for Employees (SAFE) Retirement Act of 2013 [S.1270], which focuses on qualified retirement plans. A summary [PDF, 6 pages, 424KB] produced by Sen. Hatch indicates the bill “takes a three-pronged approach to pension reform.”

1. Public Pension Reform: The bill would establish an alternative to traditional defined benefit plans for state and local government employers funded entirely through individual deferred fixed income annuity contracts.
Under this proposal, public sector employers would purchase annuity contracts on behalf of eligible employees with benefits determined through the annuity contract. As a result, this new plan would never be underfunded.

The bill does not alter the rules under current law for defined contribution plans, including 401(k) plans, 403(b) plans, or 457(b) plans.

2. **Private Sector Pension Reform:** The second part of the bill contains several provisions to reform private sector qualified pension plans. This includes coverage, simplification, and longevity reforms as well as modifications to ERISA requirements. It also further transfers jurisdiction IRA and qualified plan prohibited transaction regulations to the Department of Treasury.

The Act also would create what Hatch calls “an innovative new plan called the Starter 401(k), a retirement savings plan that allows employees to save up to $8,000 per year, more than in an IRA, but does not involve the administrative burden or expense of a traditional 401(k) plan.” The Starter 401(k) is designed for a small or start-up business that is not in a position to contribute to a plan but wants to help its employees save.

3. **Access to Professional Investment Advice:** The legislation restores jurisdiction over the fiduciary rules in the Tax Code affecting 40(k) plans and IRAs to the Treasury Department, removing the Department of Labor from such oversight. In addition, Treasury will consult with the Securities and Exchange Commission in prescribing rules relating to the professional standard of care owed by brokers and investment advisors to IRA investors.

**Retail Investor Protection Act Moves through House Committees**

On June 19, 2013, the House Financial Services Committee marked up and voted on a revised version of a bill proposed by Rep. Ann Wagner (R-MO), the Retail Investor Protection Act (H.R. 2374), by a vote of 44 to 13 – with all Republican and 12 Democratic Members of the Committee voting in favor of the measure. The bill has been referred to the House Education and Workforce Committee.

The legislation would direct the Department of Labor (DOL) to withhold its re-proposal of the definition of fiduciary until after the SEC’s proposal is released. Specifically, the bill states that the DOL “shall not prescribe any regulation under [ERISA] defining the circumstances under which an individual is considered a fiduciary until the date that is 60 days after the [SEC] issues a final rule relating to standards of conduct for brokers and dealers . . .” The Wagner bill also prescribes the preconditions for SEC rulemaking on the issue of fiduciary.
**Lifetime Income Disclosure Act Re-Introduced**

Sens. Isakson (R-GA) and Murphy (D-CT) recently re-introduced the Lifetime Income Disclosure Act (S. 1145). The bill would provide for lifetime income illustrations on 401(k) benefit statements and is cosponsored by Sens. Warren (D-MA), Nelson (D-FL), and Scott (R-SC). It is a companion to similar legislation (H.R. 2171) introduced earlier this year in the House.

The legislation only applies to private sector companies subject to ERISA and would require the current market value balance in defined contribution plans to be shown on participant statements as a monthly lifetime income.

**DOL Extends Lifetime Income Pre-Rule Comment Period**

On Thursday, June 27, 2013, the Department of Labor (DOL) announced an extension to the deadline for comment on its lifetime income disclosure proposal from July 8 to August 7. Earlier this year, the DOL issued an Advance Notice of Proposed Rulemaking (ANPRM) focusing on lifetime income illustrations given to participants in defined contribution pension plans.

The ANPRM requested stakeholder feedback regarding the concept and specific form of the lifetime income illustrations. (See the June Federal Legislative and Regulatory Report for more information on the ANPRM.)

**Senate Leaders Announce Tax Reform Framework**

Via a letter [PDF, 3 pages, 315kB] sent to their colleagues, Senate Finance Committee Chairman Baucus (D-MT) and Ranking Republican Member Hatch (R-UT) announced a new framework to address tax reform. Under this approach, the Committee will start with a “blank slate” that eliminates all current tax expenditures.

Senators must then “formally submit legislative language or detailed proposals for what tax expenditures...should be included in a reformed tax code, as well as other provisions that should be added, repealed, or reformed as part of tax reform” by July 26.

While this method will not force policymakers to single out any current tax incentive for elimination, bipartisan opposition will likely arise from Senators who would rather eliminate expenditures they dislike rather than defend those they support.

**Supreme Court Strikes Down DOMA**

The Supreme Court, in a 5-4 decision, struck down Section III of the Defense of Marriage Act (DOMA) as unconstitutional on the grounds that it violated the Equal Protection Clause of the 14th Amendment. The Court’s decision does not legalize gay marriage
nationally or reaffirm its legality in any of the 12 states or the District of Columbia where it is legal. However, it does require that federal benefits be given to same-sex couples married and living in those states where it is currently legal.

This ruling will likely have a direct impact on the ability of same-sex spouses to defer payment of required minimum distributions under certain conditions, certain provisions related to distributions requiring spousal consent, tax withholding and reporting requirements, as well as a number of other issues related to the provision of employee benefits.

**Proposed Rule on Section 408(b)(2) Disclosures**

On June 25, 2013, the DOL submitted its Guide or Similar Requirement for Section 408(b)(2) Disclosures to the Office of Management and Budget (OMB) for review. This guide pertains to ERISA Section 408(b)(2) regulations that require service providers to supply a “guide” to the fees and services disclosures they must provide to plan sponsors. The DOL had reserved a section in the 408(b)(2) Final Rule for a proposed regulation and had included a sample guide as an appendix.

**References**

**Secure Annuities for Employees (SAFE) Retirement Act of 2013**
S. 1270: www.govtrack.us/congress/bills/113/s1270
Summary: www.hatch.senate.gov/public/_cache/files/730c41a0-4bc6-48ba-aabf-2075b08a853c/SAFE%20Retirement%20Act%20Summary.pdf [6 pages, 424KB]

**Retail Investor Protection Act**
www.govtrack.us/congress/bills/113/hr2374

**Lifetime Income Disclosure Act**
S. 1145: www.govtrack.us/congress/bills/113/s1145
H.R. 2171: www.govtrack.us/congress/bills/113/hr2171/text

**DOL announces extension of comment period on lifetime income illustration proposal**
www.dol.gov/ebsa/newsroom/2013/ebsa062713.html

**Baucus-Hatch letter on “blank slate” tax reform**
www.finance.senate.gov/imo/media/doc/06272013%20Call%20for%20Input%20on%20Tax%20Reform1.pdf [3 pages, 315KB]

**Guide or Similar Requirement for Section 408(b)(2) Disclosures**
www.reginfo.gov/public/do/eAgendaViewRule?pubId=201304&RIN=1210-AB53

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II. National Taxpayer Advocate Identifies Priority Issues for Upcoming Year

In her statutorily mandated mid-year report issued on June 26, 2013, National Taxpayer Advocate Nina E. Olson to Congress expressed particular concern about the impact of budget cuts on the IRS’s ability to meet taxpayer needs, the IRS’s unwillingness to issue full refunds to victims of tax return preparer fraud and shortcomings in IRS procedures for assisting victims of tax-related identity theft.

Areas of Focus for the Taxpayer Advocate Service (TAS)

The report identifies the priority issues on which the Office of the Taxpayer Advocate will focus during the upcoming fiscal year. The report describes numerous challenges facing the IRS, including:

- Relieving the financial harm suffered by victims of tax return preparer fraud
- Conducting adequate oversight of the tax return preparer industry
- Providing effective, timely and taxpayer-centric relief to victims of identity theft
- Utilizing effective and timely collection alternatives to minimize taxpayer burden while reducing the number and dollar amount of balance-due accounts
- Conducting education and outreach to taxpayers about their responsibilities under the Affordable Care Act
- Resolving erroneous revocations of the tax-exempt status of small § 501(c)(3) organizations and failing to provide them with a pre-revocation administrative appeal
- Establishing less draconian and more reasonable “settlement initiatives” for the millions of taxpayers who have legitimate reasons for overseas bank and financial accounts and whose failure to file reports was merely negligent

Olson expresses particular concern about the impact of cuts to the IRS budget on taxpayer services, taxpayer rights and revenue collection. She recommends that Congress provide sufficient funding for the IRS to meet taxpayer needs.

TAS Issues Report on IRS Review of Applicants for Tax Exempt Status

In her special report, Olson analyzes the sources of the problem and makes preliminary recommendations to address them. TAS found that inadequate guidance, inadequate training, inadequate systems, inadequate metrics, insufficient transparency, and management failures all contributed to the problems, along with IRS Exempt Organizations’ (EO) failure to vet its guidance with TAS and EO leadership’s failure to...
acknowledge TAS’s statutory authority, or to instruct EO employees to refer cases to TAS.

The National Taxpayer Advocate will study these issues more closely during the remainder of 2013 and anticipates developing some of these recommendations further in her year-end report to Congress.

**Employee Plans News Continues IRS Focus on 403(b) Plans**

On June 24, 2013, the IRS published its most recent newsletter for sponsors of employee retirement plans. The newsletter provides IRS information about:

- 403(b) Pre-Approved Plan Program
- 403(b) Plans With Operational Failures
- New 403(b) Fix-It Guide

**IRS offices to be closed two more days this year**

The Internal Revenue Service reminded taxpayers that its offices are closed on July 22 and Aug. 30, 2013 “due to the current budget situation, including the sequester.” This means that all IRS offices, including all toll-free hotlines, the Taxpayer Advocate Service and the agency’s nearly 400 taxpayer assistance centers nationwide, are closed on those days.

The IRS noted that taxpayers should continue to file their returns and pay any taxes due as usual. Because none of the furlough days are considered federal holidays, the shutdown will have no impact on any tax-filing deadlines. The IRS will be unable to accept or acknowledge receipt of electronically-filed returns on any day the agency is shut down. Similarly, tax-payment deadlines are also unaffected.

**References**

**Taxpayer Advocate Service Reports**

**Employee Plans News**

**IRS to be Closed May 24, Four Other Days due to Budget and Sequester**
[http://tinyurl.com/a4cpysf](http://tinyurl.com/a4cpysf)
III. Keeping watch

You can find the most recent information on issues affecting governmental defined contribution plans, plan sponsors and plan participants in the Employer page of our plan website, NRSforu.com. In addition, we report guidance on legislative and regulatory activity relevant to government sector plans through:

- **Federal Legislative and Regulatory Report** – distributed monthly and posted in the Plan Sponsor section of NRSforu.com. It’s available online and for download.

- **Plan Sponsor Alerts** – published as needed to announce breaking news.

- **457 Guidebook** – which has been revised to include information about the American Taxpayer Relief Act of 2012, Pension Protection Act of 2006; The Heroes Earnings Assistance and Relief Tax Act of 2008; Worker, Retiree & Employer Recovery Act of 2008; and The Small Business Jobs Act of 2010.

About this report

**Bob Beasley**, CRC, CIC, Communications Consultant, edits this report. Beasley brings 22 years of financial services communications experience to your plan. He helped prepare the four most recent editions of the **457 Guidebook**, edits countless newsletters and plan sponsor communications, and in 2001 authored “What you should know about the Economic Growth and Tax Relief Reconciliation Act of 2001.” He often voices Nationwide’s online presentations and telephone greetings.

Beasley serves on the Education and Communication Committee for the Plan Sponsor Council of America and is a member of the National Association of Government Defined Contribution Administrators.

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