



April 2010
In This Issue

Page 1 – New DOL Rules

Page 1 – 401k Proposal could rock pension advice business

Page 2 – Small business owners tap 401k's

Page 2 – Affect of Recession: Retirement

Page 3 – Middle Boomers Behind on Savings

Page 3 – Probate: Mysteries and Realities

Page 4 – EBP Contact Info

DOL Rules to Enhance Retirement Advice and Transparency Announced

The U.S. Department of Labor announced two new rules designed to enhance retirement security and transparency for the millions of workers covered by 401k, pension and other retirement arrangements. During the past year, the Middle Class Task Force has focused on solutions to the challenges facing America's middle class — including retirement security and the need for high-quality jobs for middle class workers. The report details the year's work of the task force, and it includes a proposed rule on investment advice. The department also is announcing the publication of a final rule on multiemployer plan transparency.

"A secure retirement is essential to workers and the nation's economy. Along with Social Security and personal savings, secure retirement allows Americans to remain in the middle class when their working days are done. And, the money in the retirement system brings tremendous pools of investment capital, creating jobs and expanding our economy," said U.S. Deputy Secretary of Labor Seth Harris. "These rules will strengthen America's private retirement system by ensuring workers get good, objective information. When that happens, workers make the kind of decisions that are good for their families and the nation as the whole."

The first of the two rules would ensure workers receive unbiased advice about how to invest in their individual retirement accounts or 401k plans. If the rule is adopted, it would put in place safeguards preventing investment advisors from slanting their advice for their own financial benefit. Investment advisors also would be required to disclose their fees, and computer models used to offer advice would have to be certified as objective and unbiased. The department estimates that 2 million workers and 13 million IRA holders would

DOL Rules Cont'd. . .

benefit from this rule to the tune of \$6 billion.

The second rule announced today establishes new guidelines on the disclosure of funding and other financial information to workers participating in multiemployer retirement plans — those collectively bargained by unions and groups of employers. It will ensure transparency by guaranteeing workers can better monitor the financial condition and day-to-day operations of their retirement investments. The rule will go into effect in April 2010.

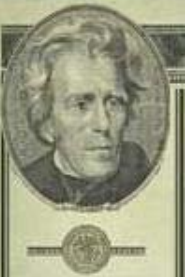
Labor Dept.'s 401(k) proposal could rock pension advice business

The Labor Department today released proposed regulations that prohibit financial advisers giving advice to 401(k) plans, or their employer or the employer's affiliates, from receiving extra compensation because the plan sponsors bought a product recommended by the adviser.

"They can't take advantage of the exemption if anyone in that chain gets compensated [from the advice provided,]" Assistant Labor Secretary Phyllis Borzi said today in a conference call discussing the proposed rules.

The proposed regulations will make it more difficult for advisers affiliated with broker-dealers and insurance companies to provide advice to plan participants, industry observers said. The rules also may pose huge challenges for actively managed funds in the retirement space.

Many advisers had hoped that affiliates of the adviser's employer would be exempt from the rules. "We are disappointed the Department of Labor decided to move in this direction after having withdrawn the previous final regulations and class exemption," Elizabeth Varley, managing director of government affairs of the Securities Industry and Financial Markets Association, said in a statement.



Pension Advice Cont'd. . .

"The proposed regulation, if approved, will do little to expand Americans' access to investment advice."

The proposal would apply to advisers who recommend target date funds, Ms. Borzi said. One of the major criticisms of target date funds, she noted, is that they often are made up of the investment managers' proprietary portfolios.

Under the proposal, if an adviser recommends a fund to plan participants, and the adviser's compensation is affected directly or indirectly by that recommendation, it is considered a prohibited transaction.

The proposed rules also allow for the use of independent computer modeling for advice. The factors the model can take into account, however, caused some observers to wonder if it would create an uneven playing field in favor of index funds.

Elizabeth Varley: The proposal would not expand access to advice. Specifically, the rules suggest that while computer modeling can take into account factors like fees and expenses, it may not make sense to take into account historical performance when generating advice.

"If you aren't using historical performance, you are removing one of the primary justifications for fees for actively managed funds," said Bradford P. Campbell, an attorney at Schiff Hardin LLP, who used to work at the Labor Department's Employee Benefits Security Administration.

Observers predict that the fund industry will weigh in heavily on this issue during the comment period since it could have huge effects on actively managed funds.

"It means that actively managed funds in the retirement marketplace would very much be in question and could lose market share," said Ryan Alfred, co-founder and president of BrightScope Inc., which rates 401(k) plans.

When asked about this issue on the conference call today, Ms. Borzi said she welcomed comment on this question of historical performance. "There is a difference in opinion as to what extent historical returns are a predictor of future performance," she said. "If people have

Pension Advice Cont'd. . .

concerns with how we have structured the regulation and want to address some of the questions, we urge everyone to participate in the discussion."

A Fifth of Small-Business Owners Tap into 401(k)s

The recession has taken a toll on small-business owners' retirement savings and personal health, according to a new survey. ---

A press release from management consultant George S. May International said 20% of respondents to its survey reported tapping into their 401(k)s for living expenses. Forty-one percent said they have not taken a salary in order to keep their businesses going.

More than a quarter of respondents (27%) indicated they do not have the financial resources to weather the next quarter. Eighty percent of the respondents give their business a nine-month lifespan if economic conditions do not improve, 16% said three months, and 4% reported six months of survival.

In addition, the survey of 713 small-business owners across the United States found that 52% said they've experienced negative health effects—both physically and mentally—due to the recession.

Recession Affects Employee Retirement

More than half (52%) of respondents to a Towers Watson survey said the percentage of their employees working past their desired retirement age is higher than it was before the financial crisis. ---

Nearly one-third (31%) said they expect that percentage will be even higher next year, according to a press release.

In addition, 30% of companies reported employees have, on average, reduced their contributions to 401(k) plans from pre-financial crisis levels, and 51% have seen an increase in employees' hardship withdrawals from pre-financial crisis levels. Almost half (48%) of U.S. respondents said employees had shifted 401(k) plan allocations out of equities; however, 37% expect employees to shift back toward equities a year from now, the survey found.



Recession Cont'd. . .

Thirty-two percent of companies reported that their employees' cost of health care coverage is higher now than it was before the financial crisis, and 38% indicated they think it will be even higher a year from now.

While 28% of employers expect that, a year from now, they will put more emphasis on ensuring benefits provide a desired level of security for employees, the survey found much larger numbers of respondents expect to increase their focus on controlling and reducing benefit costs (53%) and managing the risk and volatility of those costs (49%).

The survey, based on responses from 118 mostly large employers in the United States and 459 employers globally, was conducted in early January.

MetLife Finds "Middle" Boomers Behind on Savings Goals

A new study from the MetLife Mature Market Institute contends that although Baby Boomers are typically treated as one big generation, they actually comprise three different demographic groups.

The MetLife Study of Boomers in the Middle focused on individuals now 52 to 58 years old and found that from a business and financial standpoint, the Middle Boomers looking forward to retirement (setting their sights on age 65), have a high net worth (\$100,000 or more, excluding their home value) and are currently in their peak earning years. On the other hand, according to a press release, more than half (54%) say they are behind on their retirement savings goals and many who have delayed retirement have been affected by the economy.

Most respondents indicate they will rely on Social Security for their retirement income (42% of it, on average). A majority own their own homes, which are worth an average of \$273,000, and have an average of six financial products, the press release said.

One-third of the Middle Boomers expect to receive an inheritance from their parents of an average \$181,000, slightly less than the Oldest Boomers and behind the Youngest Boomers who expect \$208,000.

Middle Boomers Cont'd. . .

Middle Boomers report they have experienced a shift in their life priorities in the past five to ten years - concentrating more on family, financial security, personal well-being, and wellness.

Other characteristics of Middle Boomers MetLife found include:

Turning age 50 was no big deal for the majority of Middle Boomers and they will not consider themselves "old" until age 75. That's older than the age selected by the Youngest Boomers (age 71), but younger than age 78, selected by the Oldest Boomers.

Seventy-one percent of this group are married or in domestic partnerships. Husbands are generally two years older than wives. Twelve percent are divorced or separated, 4% are widowed, and 13% have never been married. Those who are divorced have the most concerns about retirement and income.

Like the Oldest and Youngest Boomers, the middle group report they are healthy, with more than half (56%) saying their health is very good to excellent. Looking ahead, though, 26% of those who are healthy say their biggest retirement concern will be affordable health care.

Two-thirds of the Middle Boomers report having at least one parent still living, and half still have children living at home. About half also have grandchildren. Seventy-two percent have been providing financial assistance and support to their children and grandchildren, averaging about \$38,000 over the past five years. They are not yet empty nesters like the Older Boomers. Fourteen percent are providing care to older parents.

The survey was conducted by GfK Customer Research North America on behalf of the MetLife Mature Market Institute in late November/early December 2009 among 1,000 respondents born between 1952 and 1958.

Probate: Mysteries and Realities

The idea of having your will or estate go through "probate" conjures up visions of money that should have gone to your heirs being peeled off and divided up for the state's administrative services in seeing to your last wishes. In addition,



Probate Cont'd. . .

the process of probating a will or estate can be a lengthy one, particularly trying for a spouse or children who have to wait until it is finished to gain clear title to a home or access to bank accounts.

Consequently, attorneys and financial planners often encourage people to structure their estates in ways that will avoid probate. That may or may not be beneficial, given that probate court systems in many states have been restructured in recent years, and there are only certain types of assets that aren't required to be probated.

What is probate and how does it work? There are actually two facets to the process commonly referred to as "probate". When a person dies, his/her will must go through a formal process of being finalized. The probate court, depending on the state, determines that the will is your last statement confirming the disposition of your estate and officially appoints the person or business that you have already chosen to administer the will (your executor). In cases where a person dies intestate (without a will), the state court may appoint an estate executor, generally an attorney or agency that specializes in such matters.

In addition to the formalities, the term probate is also applied to the whole process of gathering and paying any final bills and taxes that are filed against the estate, as well as distributing the remaining assets to the heirs. The executor is supervised, or at least reports to the court, and may come under close scrutiny by the will's beneficiaries. Because the executor performs a number of tasks that can be technically difficult and time consuming, he/she is also entitled to be paid a reasonable amount for services rendered. The actual amount of compensation may be provided for in the will, or could be a percentage

Probate Cont'd. . .

established by the particular state's probate laws. In either case, it does constitute a certain portion of a person's net assets that subtracts from the amount eventually dispensed to the heir(s).

There are certain assets that are exempt from probate. Those include life insurance or retirement plans that pass to a specific, previously named beneficiary, and real estate held jointly by the deceased and the beneficiary. In addition, bank accounts or brokerage accounts that are jointly held and which specify the right of survivorship do not have to be probated.

A living trust, which passes property to your heirs prior to your death, is often marketed as a way to avoid probate. However, that assertion may not be entirely true. It is only rarely that some part of a living trust does not have to go through probate, despite the original intentions. Any property that has not been transferred to others prior to your death is generally willed to the trust itself, and then transferred to the heirs via a trustee who very probably charges fees, after he or she pays any outstanding taxes from the estate. It is the very process of settling those same taxes and administrative details that can delay and extend the process of probate. Thus, depending on the state where the property is being dispersed and the extent of the estate, the actual time frame and cost of probate can potentially be less than those involved in the distribution of a living trust.

Probate, therefore, is generally a necessary court procedure through which a person's final will is confirmed and the proceeds from it are distributed. Because states have been working toward simplifying the procedures involved in probate, it is not something that must necessarily be avoided at all costs.

Executive Benefit Plans, Inc.

Since 1983

1186 Route 56 East - Suite 1188

Apollo, PA 15613

Phone: 800-622-2411

info@benefitplans.com • www.benefitplans.com

In the State of California d.b.a

Executive Pension & Insurance Services

CA License No.: 0G40481

This newsletter is offered as a service of Executive Benefit Plans, Inc. (EBP) and contains general information only, unless otherwise stated. Nothing in these pages shall be deemed to constitute financial or other professional advice in any way. We encourage you to consult a financial, tax, or legal adviser if you require professional advice.