Washington Offers Beach Reads for Your Summer Getaway

Pending legislation, updated guidance, and Supreme Court rulings, oh my!

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Generally, the summer months are a time for rest and relaxation. As work tends to slow down, people have a chance to enjoy some much-needed time off from the stresses of their day-to-day routines. Fortunately (or unfortunately), the Department of Labor, Internal Revenue Service, and Supreme Court have given us enough beach reading to last the entire summer. Indeed, the first half of 2015 can be characterized as a whirlwind of activity. Here is a recap of some of the major developments out of Washington so far this year:

The Re-Proposed Fiduciary Rule

This April, the DOL issued widely anticipated re-proposed rules for defining fiduciary status under ERISA for providers of investment advice for a fee. The rules would substantially modify existing rules for determining whether a party provides investment advice for a fee or other compensation that would make it a fiduciary of the employee benefit plan to which the advice relates. The proposal would create two new prohibited transaction class exemptions, as well as amend several existing class exemptions that are particularly relevant to broker-dealers and other investment advice fiduciaries.

PSCA members are hard at work discussing the rule and preparing comments to the proposal. For a detailed look at the re-proposed rules, see the Compliance article, "DOL Proposed Fiduciary Rule", on page 2 of this issue of *Defined Contribution Insights.*

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IRS Updates EPCRS

Recently, the IRS issued important updates to EPCRS. Contained in Revenue Procedures 2015-27 and 2015-28, the guidance provides welcomed clarification and flexibility for the correction of overpayment and elective deferral errors.

On the whole, the EPCRS changes are quite helpful. They not only provide more flexibility in structuring corrections, but they also relieve some of the burdens inherent in certain previously required correction methods.

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Supreme Court Issues *Tibble* Decision

As we know, ERISA's fiduciary duty of prudence imposes a continuing duty to monitor plan investment options and to remove any imprudent ones. This May, the Supreme Court unanimously held that an ERISA plan participant may allege a fiduciary breach of this continuing duty to properly monitor a plan's investments as long as the alleged breach occurs within six years of the suit.

In remanding the case to the Ninth Circuit for a determination of whether a breach of the continuing duty had been properly alleged, the Supreme Court declined to describe exactly what is required by this duty other than by pointing to analogous trust law, as well as ERISA's basic requirement that a fiduciary discharges his duties "with the care, skill, prudence, and diligence" that a prudent person "acting in a like capacity and familiar with such matters" would use.

While the ramifications of the Tibble decision remain to be seen, many suspect it will result in increased litigation over the prudence of fiduciaries' investment-monitoring responsibilities.

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