

Internal Revenue Service

IRS Notice Discusses Impact of Charter Schools on Status as a Governmental Plan

Notice 2015-07, which will be published in the Federal Register on February 9, 2015, discusses how the IRS will treat a State or local retirement system that covers employees of a public charter school under anticipated proposed regulations in accordance with 414(d). <http://www.irs.gov/pub/irs-drop/n-15-07.pdf> No date has been announced for the release of proposed regulations under 414(d), which are expected to provide transition relief. Comments are requested on the contents of the Notice by May 11, 2015.

Background

The definition of governmental plan under 414(d) is “a plan established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing.” When the IRS and the Treasury Department published an Advance Notice of Proposed Rulemaking on November 11, 2011 on the definition of a governmental plan under 414(d), the Notice states that more than 2,000 comments were submitted by the public charter school community.

As explained in the Notice, commenters were concerned that the retirement security of public charter school teachers would be jeopardized if such teachers were considered ineligible for a governmental plan. Public charter schools are available in most states and are generally funded with public revenue.

Guidance under Consideration

Noting the special and unique nature of public charter schools, the government structure of these schools and the mobility of teachers between public charter and traditional schools, a State or local retirement system that covers employees of a public charter school would be a governmental plan within the meaning of 414(d), if certain conditions are met. As set forth in the Notice, the principles would apply regardless of whether the retirement plan is a defined benefit, defined contribution, 403(b), or 457(b) governmental plan.

The conditions included in the Notice that are expected to be included in the future proposed 414(d) regulations are noted below. An example applying these conditions is also included in the Notice.

- (a) The entity is a nonsectarian independent public school that serves a governmental purpose by providing tuition-free elementary or secondary education, or both.
- (b) The entity is established and operated in accordance with a specific State statute authorizing the granting of charters to create independent public schools or authorizing the establishment of independent public schools.
- (c) Participation in the State or local retirement system by the entity’s employees is expressly required or permitted under applicable law.
- (d) Either the entity’s governing board or body is controlled by a State, political subdivision of a State, or agency or instrumentality of a State or of a political subdivision of a State, as explained in the Notice, or other specified criteria are satisfied.
- (e) All financial interests of ownership in the entity are held by a State, political subdivision of a State, or agency or instrumentality of a State or of a political subdivision of a State.

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IRS Explains Unforeseeable Emergency Distributions from 457(b) Plans

In INFO: 2014-0041, which was released December 26, 2014, the IRS responded to a 457(b) plan participant's inquiry to the White House on August 29, 2014. <http://www.irs.gov/pub/irs-wd/14-0041.pdf> When the participant asked for an unforeseeable emergency distribution to pay for his wife's cancer treatments, the plan administrator requested receipts to substantiate the expenses. The participant questioned the necessity to provide such receipts.

457(b) plans may offer distributions to a participant based on an unforeseeable emergency for extraordinary and unforeseeable circumstances resulting from events beyond the control of the participant or his or her beneficiary, including the payment of medical expenses or prescription drug medication. <http://www.irs.gov/Retirement-Plans/Employee-Plans-News-December-17,-2010-Unforeseeable-Emergency-Distributions-from-457%28b%29-Plans> Further, the participant seeking the distribution must show that the emergency expenses could not otherwise be covered by insurance, liquidation of the participant's assets or cessation of deferrals under the plan, as the facts and circumstances of each case determine whether a particular financial hardship meets this standard.

According to the information letter, because section 457(b) plan distributions for these emergencies are not subject to the 10% additional tax for early withdrawals, the regulations require that plan administrators limit the distribution to "the amount reasonably necessary to satisfy the emergency need." Administrators request receipts and similar documentation both to verify that the emergency imposes a severe financial hardship on the participant and to ensure that the distribution is limited to an amount that would reasonably satisfy the participant's need.

IRS News in Brief

Rev. Proc. 2015-6 – The revenue procedure, which is effective February 1, 2015, details the procedures for issuing determination letters on the qualified status of pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans and the status for exemption of any related trusts or custodial accounts under 501(a). http://www.irs.gov/irb/2015-1_IRB/ar12.html#d0e14371

Publication 590 Has Been Split into Two Separate Publications - Publication 590-A covers contributions to traditional IRAs as well as Roth IRAs, along with the rules for rollover and conversion contributions. <http://www.irs.gov/pub/irs-pdf/p590a.pdf> Publication 590-B addresses distributions from traditional IRAs and Roth IRAs, as well as the rules for required minimum distributions and IRA beneficiaries. <http://www.irs.gov/pub/irs-pdf/p590b.pdf>

Qualifying Longevity Annuity Contract Form 1098-Q - Form 1098-Q is submitted to the IRS by the issuer of qualifying longevity annuity contract (QLAC) to report the status of the contract. <http://www.irs.gov/pub/irs-pdf/f1098q.pdf> The value of any QLAC purchased after July 1, 2014 held by a 401(a), 403(b), eligible governmental plan under section 457(b) or IRA (other than a Roth IRA) is not included when calculating the required minimum distribution (RMD) from the plan or IRA.

Department of Labor

2014 Enforcement Results Announced by Department of Labor

A Fact Sheet published by the Employee Benefits Security Administration (EBSA) of the Department of Labor highlights the enforcement activity results for 2014. <http://www.dol.gov/ebsa/newsroom/fsfyagencyresults.html> The Fact Sheet concludes that EBSA's results demonstrate a strong, fair, and effective program that protects the benefits of America's workers and retirees.

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Below is selected information from the Fact Sheet:

EBSA Restores Over \$599.7 Million to Employee Benefit Plans, Participants and Beneficiaries

Through its enforcement of the Employee Retirement Income Security Act (ERISA), in FY 2014, the Employee Benefits Security Administration (EBSA) recovered \$599.7M for direct payment to plans, participants and beneficiaries (discussed below).

Total Monetary Results				
Total Recoveries	Plan Assets Restored/ Participant Benefits Recovered	Voluntary Fiduciary Correction Program	Abandoned Plan Program	Monetary Benefit Recoveries from Informal Complaint Resolution
\$599.7 M	\$204.9 M	\$20.2 M	\$18.4 M	\$356.2 M

Civil Investigation Statistics Demonstrate Success in Targeting

ERISA violators are targeted through voluntary compliance efforts as well as litigation by the Solicitor of Labor. The following information relates to activity in FY 2014.

Civil Investigations				
Civil Investigations Closed	Civil Investigations Closed with Results	Percent Civil Investigations Closed with Results	Civil Investigations Referred for Litigation	Civil Cases with Litigation Filed
3,928	2,541	64.7%	161	107

EBSA Investigations Led to the Indictment of 106 Persons for Crimes Related To Employee Benefit Plans in FY 2014

EBSA, which investigates potential violations of the criminal provisions of ERISA and those provisions of Title 18 of the United States Code that relate to employee benefit plans, conducts most of its criminal investigations with other federal law enforcement agencies under the direction of the United States Attorney for that jurisdiction. As outlined in the Fact Sheet, other investigations are conducted in consultation with the appropriate state or local law enforcement authority.

Criminal Investigations		
Criminal Investigations Closed	Criminal Investigations Closed with Guilty Pleas or Convictions	Number of Individuals Indicted
365	85	106

Abandoned Plan Program

The EBSA Abandoned Plan Program, which facilitates the termination of and distribution of benefits from individual account pension plans that have been abandoned by their sponsoring employers, received 457 applications from Qualified Termination Administrators and closed 538 applications, with 456 plans making distributions of \$18.4 million directly to participants during FY 2014.

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Compliance Assistance Programs Yielded Tremendous Results

The EBSA's Voluntary Fiduciary Correction Program (VFCP) and Delinquent Filer Voluntary Compliance Program (DFVCP) encourage the correction of violations of ERISA by providing significant incentives for fiduciaries and others to self-correct. The following information relates to FY 2014.

Correction Programs	
VFCP Applications Received	DFVCP Filings Received
1,643	25,060

Workers Obtain Financial Restoration through Informal Complaint Resolution

When workers experience a problem with an employee benefit plan, they contact EBSA's Benefits Advisors. According to the Fact Sheet, many of the inquiries were received via EBSA's toll-free number 1-866-444-EBSA (3272) and Web site askebsa.dol.gov.

Inquiry Statistics for FY 2014		
Total Inquiries	Monetary Benefit Recoveries from Informal Complaint Resolution	Investigations Opened from Inquiry Referrals
213,664	\$356.2 M	687

Education and Outreach Events held in FY 2014

EBSA also conducts education and outreach events for workers, employers, plan officials and members of Congress.

Outreach, Education and Assistance for FY 2014				
Dislocated Worker Rapid Response Sessions	Congressional Briefings	Compliance Assistance Activities	Other Participant Assistance and Public Awareness Activities	Total Outreach Events
836	198	353	432	1,819

Extensive Publication and Web Site Usage

EBSA also reaches workers, retirees, employers, plan service providers, and the public through its printed materials in English and Spanish and website www.dol.gov/ebsa

Publications and Website for FY 2014	
Publications Distributed	Website Visitors
538,784	8.78 M

2014 ERISA Advisory Council Final Reports Posted to Web

In January, 2015, the ERISA Advisory Council posted the 2014 reports on *Issues and Considerations Surrounding Facilitating Lifetime Plan Participation* <http://www.dol.gov/ebsa/pdf/2014ACreport2.pdf> and *Outsourcing Employee Benefit Plan Services* <http://www.dol.gov/ebsa/pdf/2014ACreport3.pdf> to its website.

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The report on *Issues and Considerations Surrounding Facilitating Lifetime Plan Participation* examined the shift at retirement from ERISA coverage to other protections. Recognizing that retiring participants tend to move their assets from ERISA plans to IRAs that have different regulations, the project scope was to consider additional tips for fiduciaries who would like to encourage participants to stay in their employer plan, as well as look at marketing that encourages participants to move assets into an IRA.

The Council's recommendations include that the DOL develop educational materials for participants and sponsors on the value of lifetime plan participation and educate plan sponsors on plan features that may encourage such participation. The Council also recommends that sample forms be developed to simplify plan rollovers and facilitate consolidation of retirement assets within a plan. The report states that for plan sponsors who make loans available to participants, DOL should provide information to them about allowing continuation of loan repayments after separation from employment.

In the report on *Outsourcing Employee Benefit Plan Services*, the Council examined whether fiduciaries fully understand their responsibilities when selecting and monitoring third parties, such as actuaries, auditors, plan investment managers and plan administrators.

Recommendations made to the DOL include the following:

- Plan sponsors should be educated on current practices regarding outsourced services and provided with information on contracting practices such as termination rights, indemnification, liability caps, and service level agreements that might assist plan sponsors and other fiduciaries in negotiating service agreements.
- Clarify the legal framework under ERISA for delegating responsibility to service providers.
- Provide additional guidance on the duty to select and monitor service providers in the following ways:
 1. Consolidate prior guidance on a fiduciary's duty to select and monitor service providers.
 2. Provide guidance on frequency and scope of monitoring required.
 3. Identify "questions to ask" and other best practices in selecting and monitoring service providers.
 4. Provide guidance on managing potential conflicts of interest in engaging fiduciary service providers.
 5. Publish clear examination and enforcement priorities and follow up with publication of relevant examination findings.
- Update and provide additional guidance on insurance coverage and ERISA bonding of outsourced service providers.

***Before It's Too Late* Newsletter Published**

On January 20, 2015, Phyllis C. Borzi, Assistant Secretary for the Employee Benefits Security Administration, Department of Labor released the most recent edition of *Before It's Too Late*. <http://www.dol.gov/ebsa/newsletter/2015/20150120.htm>

The first article discussed the role of the Employee Benefits Security Administration to work with participants to recover payments to plans, participants and benefits. Examples of recoveries by 2 of the 125 Benefit Advisors on behalf of participants follow:

- *One example of the success of requests handled by the Benefits Advisors comes from our Miami District Office. Victoria Yuro has been working for EBSA since 1999. In 2014, she received a call from someone who is currently homeless. He receives mail at his local homeless shelter and received a notice from the Social Security*

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- *Administration, so he called EBSA to request assistance understanding it. Yuro researched and determined that he was entitled to a retirement benefit because of his service at a company in previous years. She reached the company but because of privacy laws, the plan administrator needed to talk directly with the participant in order to verify the case.*

Yuro worked with a case manager at the homeless shelter, the plan administrator, and the participant himself, resulting in a determination that the participant was entitled to receive over \$20,000. He has received the money and it has enabled him to open a bank account and to move in to an apartment.

- *Another example comes from our Atlanta Regional Office. Kandie Carter has been a Benefits Advisor since 2005. One day she got a call from someone who had been trying to obtain her 401(k) distribution from a company that was no longer in business. The funds custodian told her the account had been transferred but did not know where. Carter determined that the company had been acquired by another company and contacted the plan administrator.*

The plan administrator confirmed that they did have the previous company's 401(k) plan but did not know how to locate and contact the former plan participants in order to make the distributions. Carter was able to locate and contact 50 plan participants who recovered more than \$900,000.

America Saves Week will be held February 23-28, 2015. <http://www.americasavesweek.org/> As explained on the dedicated website, *America Saves Week* is an annual opportunity for organizations to promote good savings behavior and a chance for individuals to assess their own saving status. In addition, there is a toolkit which provides education and marketing materials. <http://www.americasavesweek.org/about/asw-toolkit>

Finally, there is a link to an archived webcast *Get Prepared to Make Timely Decisions for Your Retirement*. <http://mp163422.cdn.mediaplatform.com/163422/wc/mp/4000/15208/30195/38713/Lobby/default.htm?ref=ProductionTeamEmail> According to the link, EBSA provides information on making the most of an employer-provided retirement plan and checking to ensure that retirement savings are on track. The Social Security Administration and Centers for Medicare and Medicaid Services discussed Social Security and Medicare benefits including factors to consider in deciding when to sign up for these benefits and what they cover. The Administration on Aging addressed elder rights and how to avoid abuse and scams.

Executive Branch

White House Releases Fact Sheet Discussing Potential Tax Code Changes, Including Those Related to Retirement Income

On January 17, 2015, the White House Office of Press Secretary released a *Fact Sheet: A Simpler, Fairer Tax Code That Responsibly Invests in Middle Class Families*.

http://content.govdelivery.com/attachments/USEOPWHPO/2015/01/17/file_attachments/356770/FactSheet.pdf

The section called *Reforming Retirement Tax Incentives and Expanding Savings Opportunities* explains how the President's tax reforms proposals would expand access to employer's retirement savings plans. Specific suggestions include the following:

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- *Automatically enroll Americans without access to a workplace retirement plan in an IRA. Under the proposal, every employer with more than 10 employees that does not currently offer a retirement plan would be required to automatically enroll their workers in an IRA. Auto-IRAs would let workers opt out of saving if they choose but would also let them start saving without sorting through a host of complex options.*
- *Provide tax cuts for auto-IRA adoption, as well as for businesses that choose to offer employer plans or switch to auto-enrollment. To minimize the burden on small businesses, the President's auto-IRA proposal would provide any employer with 100 or fewer employees who offers an auto-IRA a \$3,000 tax credit. The President also proposes to triple the existing "start up" credit, so small employers who newly offer a retirement plan would receive a \$4,500 tax credit – more than enough to offset administrative expenses. And because auto-enrollment is the most effective way to ensure workers with access to a plan participate, small employers who already offer a plan and add auto-enrollment would get an additional \$1,500 tax credit.*
- *Ensure long-term, part-time workers can contribute to their employer's retirement plan. Only 37 percent of part-time workers have access to a workplace retirement plan. That's partly because employers offering retirement plans are allowed to exclude employees who work less than 1,000 hours per year, no matter how long they've worked for the employer. The President proposes to expand access for part-time workers by requiring employers who offer plans to permit employees who have worked for the employer for at least 500 hours per year for 3 years or more to make voluntary contributions to the plan.*
- *Prevent wealthy individuals from using loopholes to accumulate huge amounts of tax-favored retirement benefits. Tax-preferred retirement plans are intended to help working families save for retirement. But loopholes in the tax system have let some wealthy individuals convert tax-preferred retirement accounts into tax shelters, including 300 extraordinarily wealthy individuals who have accumulated more than \$25 million each in IRAs. The President's plan would prohibit contributions to and accruals of additional benefits in tax-preferred retirement plans and IRAs once balances are about \$3.4 million, enough to provide an annual income of \$210,000 in retirement.*

General Accounting Office

General Accounting Office Report Examines Implications of Mandatory Distributions from 401(k) Plans

401(K) Plans: Greater Protections Needed for Forced Transfers and Inactive Accounts GAO-15-73 was published November 21, 2014 and was publicly released December 22, 2014. <http://www.gao.gov/products/GAO-15-73> The report was prompted by the concern that millions of employees change jobs each year, leaving retirement savings behind in their former employers' 401(k) plans.

Plans are permitted to rollover accounts of more than \$1,000 but not over \$5,000 to an IRA on behalf of participants who have not instructed to have them rolled over to a new employer's plan or a pre-existing IRA, or sent directly to them. In the absence of participant instructions, plans can opt to also transfer balances of \$1,000 or less into IRAs. While treated as mandatory distributions under the terms of the plan, the GAO used the concept of "forced transfer" in its report. Specifically, the GAO examined:

1. what happens over time to the savings of participants forced out of their plans,
2. the challenges 401(k) plan participants face keeping track of retirement savings in general, and
3. how other countries address similar challenges of inactive accounts.

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The GAO concluded that some 401(k) plan participants find it difficult to keep track of their savings, particularly when they change jobs, because of challenges with consolidation, communication and information:

1. Individuals who work for more than one company often accrue multiple accounts over their careers may find it difficult to rollover savings from a former employer's plan to a subsequent plan.
2. Since companies can be restructured and plans are terminated or merged and renamed, individuals find it challenging to maintain communication with a former employer's plan.
3. Individuals have trouble tracking down information since it may be held by different plans, service providers and government agencies.

In addition, the GAO faulted the DOL of the investment guidance related to the "forced-transfer" IRA safe harbor regulations, which limit providers to holding the funds in money market funds, certificates of deposit, or assets with similarly low investment risk typically deemed appropriate for holding money for a short term. The GAO also expressed concern that fees depleted account balances.

The DOL and the Social Security Administration objected to the following recommendations made by the GAO.

- Congress should consider amending current law to permit alternative default destinations for plans to use when transferring participant accounts out of plans.
- Congress should repeal a provision that allows plans to disregard rollovers when identifying balances eligible for transfer to an IRA.
- DOL should convene a taskforce to explore the possibility of establishing a national pension registry.

Illinois Legislation

Illinois Secure Choice Savings Program Act Signed into Law

The Secure Choice Savings Program, which was signed into law by Illinois Governor Pat Quinn on January 4, 2015, requires all businesses in operation for at least two years and that have at least 25 employees to offer workers an individual retirement savings option by June 1, 2017. <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=098-1150> The law is effective June 1, 2015, which is when appointments will be made to the seven-member Illinois Secure Choice Savings Board tasked with choosing a private firm to manage the funds.

According to an article in the January 4, 2015 edition of the *Chicago Tribune*, state officials indicated that 2.5 million private-sector Illinois employees do not have access to a work-sponsored retirement savings plan. <http://www.chicagotribune.com/news/local/politics/ct-quinn-retirement-benefits-met-20150104-story.html> The law will not require a match or employer contributions.

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It is important to note that the law stipulates under Section 95 that there may be federal considerations, such as how the IRS and Department of Labor treat the program that may prevent its implementation. Note the following:

The Board shall request in writing an opinion or ruling from the appropriate entity with jurisdiction over the federal Employee Retirement Income Security Act regarding the applicability of the federal Employee Retirement Income Security Act to the Program. The Board may not implement the Program if the IRA arrangements offered under the Program fail to qualify for the favorable federal income tax treatment ordinarily accorded to IRAs under the Internal Revenue Code or if it is determined that the Program is an employee benefit plan and State or employer liability is established under the federal Employee Retirement Income Security Act.

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