NATIONAL RETIREMENT SERVICES, INC.

WASHINGTON POST 401(K) ARTICLE CAUSES STIR

The Washington Post presented an article on February 17, 2013 that has been interpreted by some as critical of 401(k) plans. The article is particularly significant in view of the tense budget deliberations currently occupying Congress. It asserts that for the first time since the New Deal, Americans are facing a retirement that will be financially inferior to their parents. Painting a picture of seniors forced to live with their children or other relatives or subsisting on available social services, the article dismisses the 401(k) employee retirement plan as offering tax breaks to the wealthy and available to only half the working population. Brian Graff, head of the American Society of Pension Professionals & Actuaries ("ASPPA") pointed out that the article is founded on a series of persistent myths that "simply do not reflect the reality of America's retirement plan: the 401(k)":

Myth #1: 401(k) Plans Only Benefit the Wealthy

Eighty percent of 401(k) participants earn less than $100,000 per year, and almost 40% earn less than $50,000 per year. More than 70% of workers earning between $30,000 and $50,000 per year save in their 401(k) when one is available.

Myth #2: Only Half of American Workers Have Access to a Retirement Plan

In fact, 8 out of 10 full-time workers are eligible for some kind of workplace retirement plan, usually the 401(k) plan or its cousin the 403(b) plan. The frequently cited "50% argument" includes seasonal and part-time workers that are generally excluded due to ERISA provisions.

Myth #3: 401(k) Plans Have Produced Meager Savings

Academics and the media cite low account balances in many 401(k) plans. They ignore the fact that America's mobile workforce frequently changes jobs and retirement plans, leaving old plan money in that plan or rolling it to an IRA. Upon retirement, many Americans have several retirement accounts available to them representing accumulations from several employers. A recent Employee Benefit Research Institute study found that individuals between ages 55 and 64 with 30 years in the same plan had a $250,000 average account balance.

Myth # 4: 401(k) Tax Incentive is Too Expensive

This argument is based on a cash basis, rather than present value. Income tax on traditional 401(k) contributions is **deferred** until the participant actually receives the money, at which time it is taxed as ordinary income in the year received.

We can only hope that Congressional representatives and their staff will have access to these facts as steps are taken to achieve financial reform. The web site www.savemy401k.com continues to offer valuable information concerning 401(k) plans and provides an easy way to contact individual members of Congress concerning the importance of 401(k) plans in America's future.

PLAN SPONSOR NOT RESPONSIBLE FOR EX-SPOUSE FRAUDULANT ACTIONS

A recent retirement plan case was decided by the Denver U.S. Court of Appeals (Foster v. PPG Industries) that permits a Plan Sponsor to make distributions to a nonparticipant as long as reasonable security measures exist designed to protect the plan from fraudulent distribution claims. Mr. Foster terminated his employment with

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PPG Industries in 1999, electing to keep his vested retirement money in the company's retirement plan. In 2004, Foster divorced his wife and left their shared residence that same year, but failed to advise his former employer of his new address until September 2005. In March 2005, PPG mailed information to Mr. Foster using the address it had on file. The information contained instructions on how to establish a User ID and password so that benefits could be accessed. The former Mrs. Foster received the communication and promptly withdrew the entire account using Foster's Social Security number and the ID and password she had created.

Mr. Foster received a Form 1099-R in January 2006 reporting the distribution. His ex-wife admitted taking the money, but Foster demanded that the plan replace the funds and rescind the 1099-R. The Plan Sponsor refused and Foster sued on the grounds that the Plan Sponsor had no right to forfeit his account.

Both the federal trial court and the appeals court agreed that the plan had properly denied Foster's demand for benefits and that this did not constitute a forfeiture of benefits. The court explained that it was reasonable for the Plan Sponsor to determine that Foster's benefits were properly paid and that reasonable security steps were taken. Foster was obligated to keep the plan advised as to his current residence and had been so advised several times before his move in 2004. It was this failure that created the potential for the fraudulent benefit distribution claim.

This case again illustrates that as long as a retirement Plan Sponsor follows the terms of the plan, including taking reasonable security steps to protect plan participants, the Plan Sponsor is protected from losses due to circumstances beyond its control.

REMINDERS FOR MARCH

- **March 15, 2013** is the deadline for calendar year 401(k) plans to process corrective distributions for failed nondiscrimination tests without being subject to a 10% excise tax. (Certain automatic enrollment plans have until June 30).
- **March 15, 2013** is also the due date for making deductible retirement plan contributions for corporations filing a tax return for the 2012 calendar fiscal year unless a corporate extension is filed.

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