



CYPEN & CYPEN NEWSLETTER for September 26, 2019

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Never Forget September 11, 2001
and
Always Remember May 2, 2011

1. PANC 2019--HEALTH SAVINGS ACCOUNTS AS A RETIREMENT PLANNING VEHICLE:

Larry Bohrer, vice president, corporate brokerage retirement services at Charles Schwab & Co. Inc., reminded us on Day Two of the 2019 *PLANADVISER* National Conference (PANC) that, unfortunately, each retiree will be facing about \$300,000 in medical expenses. Health care costs are expected to rise 5.5% annually; therefore, upkeep on retirees' health may be their largest expense. These statistics are from the most recent Devenir HSA [Health Savings Account] Market Survey. But, reminiscent of the defined contribution (DC) marketplace in its early years, the growth rate of employees using HSAs is 20% per year, Bohrer said. There's an increasing awareness of the accounts by plan sponsors and participants, he said. "The tax benefits inside an HSA are better than in a

401(k). HSAs have a triple tax benefit and are portable, unlike flexible spending accounts [FSAs]. One of the lesser known benefits of having an HSA is that it lets people reimburse themselves for out-of-pocket medical expenses over an employee's lifetime if receipts are available." Gregory F. Adams, a consultant with Fiduciary Investment Advisors LLC, outlined the generally recommended hierarchy of savings: For starters, one should contribute enough to his DC plan to receive the employer match. If the person has a high-deductible health plan (HDHP), and it's linked to an HSA, his next dollars should go to maxing out the HSA, per his annual IRS savings contribution limit, and after that into the DC plan. Why aren't HSAs seen as a long-term investment tool? "Twenty-two million people have invested funds in their HSA," Adams said. "There's an incredible range of investments, brokerage windows, money markets available, but there is still a huge gap in participant understanding that HSAs can have a long-term strategy." For instance, he said, parents of Millennials don't talk about HSAs. "They still think '401(k) only' when it comes to retirement savings." According to Bohrer, employers can save money by changing to an HDHP health plan, allowing employees the option to save in an HSA. An HSA, he noted, is like an individual retirement plan (IRA) for health care. Many record-keepers are establishing their own platform for the accounts. Others have established partnerships, and some record-keepers simply have HSA data integration. This is all being driven by employers seeing HSAs as a retirement savings account. Interestingly, Adams, who is far down the road with HSA services offered, is getting ahead of regulatory bodies. "HSAs are taking the same path as 401(k) and 403(b) plans took 20 years ago," he observed. "We have lots of vendors in the space, hidden fees, different restrictions, investment funds that are proprietary or not proprietary. We feel that, as HSA assets grow, regulatory bodies such as the IRS and the Department of Labor [DOL] will get more involved. We're looking at RFPs [requests for proposals] for finding the right providers and documenting why we're choosing the vendors we choose. We're performing the due diligence so there are no compliance issues later on." Judy Faust Hartnett, *Planadviser*, September 19, 2019.

2. UNDERSTANDING SOCIAL SECURITY SURVIVORS BENEFITS:

Unfortunately, tragedy can strike without any warning. The loss of the family wage earner can be devastating both emotionally and financially. Social Security helps by providing income for the families of workers who die. Some of the Social Security taxes you pay go toward survivors benefits for workers and their families. The value of the survivors benefits you have under Social Security may even be more than the value of your individual life insurance. When you die, certain members of your family may be eligible for survivors benefits. These include widows and widowers (and divorced widows and widowers), children, and dependent parents.

Here are the people who can get survivors benefits based on your work:

- Your widow or widower may be able to get full benefits at full retirement age. The full retirement age for survivors is age 66 for people born in 1945-1956, with the full retirement age gradually increasing to age 67 for people born in 1962 or later. Your widow or widower can get reduced benefits as early as age 60. If your surviving spouse is disabled, benefits can begin as early as age 50.
- Your widow or widower can get benefits at any age if they take care of your child younger than age 16 or disabled, who is receiving Social Security benefits.
- Your unmarried children, younger than age 18 (or up to age 19 if they're attending elementary or secondary school full time), can also get benefits. Your children can get benefits at any age if they were disabled before age 22. Under certain circumstances, we can also pay benefits to your stepchildren, grandchildren, step-grandchildren, or adopted children.
- Your dependent parents can get benefits if they're age 62 or older. (For your parents to qualify as dependents, you must have provided at least half of their support.)

You can read more our publication [Survivors Benefits](#) for more information. How much your family can get from Social Security depends on your average lifetime earnings. The more you earned, the more their benefits will be. For more information on widows, widowers, and other survivors, visit [our webpage](#). Social Security is with you through life's journey. Be sure to tell friends and family about our Survivors Benefits and how we can help in times of need. Mike Korbey, Deputy Commissioner for Communications, Social Security Administration, September 19, 2019.

3. WHAT SAFE HARBORS ARE AVAILABLE TO RETIREMENT PLAN SPONSORS?

Safe harbor provisions protect employers from liability. That's one good reason to understand them. Safe harbors are widely known as a statute under law providing protection for liable circumstances. There are multiple safe harbors regarding retirement plans that plan sponsors need to know. Plan sponsors can offer safe harbor plan designs to satisfy annual nondiscrimination-testing required for 401(k) plans. Under these rules, employers may make a traditional [match, a qualified non-elective contribution \(QNEC\)](#), or a mix of the two, known as qualified automatic contribution arrangements (QACA). A more recent type of safe harbor, employers who offer [QACAs](#) must make certain matching and non-elective contributions to all participants and must offer 100% vesting after a two-year period. For plan sponsors and fiduciaries, there are safe harbor provisions that shield employers from being penalized for investment mishaps occurred in retirement plans. These guidelines provide better protection for employers against any fiduciary liability, and include section 404(c) safe harbor provisions, qualified default investment alternatives

(QDIAs), and mandatory cash-outs. “Voluntary safe harbor procedures were created in the response to emerging compliance issues that were created due to gray areas under which plan sponsors have to operate,” says Nasrin Mazooji, vice president of Compliance and Regulatory Affairs at Ubiquity Retirement & Savings. “They address and provide further guidance on behalf of the government.”

Section 404(c)

Section 404(c) safe harbors were created to relieve plan sponsors and fiduciaries who offer retirement plans, including 401(k)s and 403(b)s, from liability related to investment menus, plan designs and participant disclosure, says Mazooji. It allows employers to shift responsibility of investment management to the employees. “Participants were directing their investments into 401(k)s and losing money, so they could have theoretically gone back to these plan fiduciaries and place the blame on them,” she adds. “Section 404(c) relieves those plan sponsors and fiduciaries from that kind of liability.” While the [list to qualify for 404\(c\) compliance is intricate](#), general qualifications to meet are offering a broad range of investment options and easing the process of viewing and controlling investments for participants.

QDIAs

Second to this type of safe harbor is the QDIA; also related to retirement plan investments. A QDIA safe harbor protects employers from liability when participant assets are invested in a default fund, says Robin Solomon, partner at Ivins, Phillips & Barker. “A QDIA safe harbor offers protection for fiduciaries with respect to the selection of a default investment in the plan,” she explains. Similar to how Section 404(c) protects plan sponsors from investment losses in an employee’s account--given the participant elects their investments--QDIA’s delegate responsibility to employees as well. Even if a participant fails to make an election and is thus defaulted to an investment alternative, the employee is still accountable for their investment losses, says the Department of Labor (DOL). QDIAs are typically invested based on a participant’s age or risk tolerance, and are typically balanced funds, target-date funds (TDFs) or lifecycle funds. According to Solomon, to qualify for compliance on QDIAs, plan sponsors cannot impose financial penalties or otherwise restrict participants’ ability to transfer money from a QDIA to another investment alternative.

Mandatory Cash-outs

Also known as involuntary distributions, mandatory cash-outs allow those plan sponsors with small account balances in their plans to make distributions or automatically rollover the money into an individual retirement account (IRA). “Sponsors who have small account balances in their plans for terminated employees are paying ongoing administration fees

and are the fiduciary for those accounts for employees who no longer exist in the plan,” Mazooji explains. Employers looking to apply cash-outs will need to ensure certain requirements if they want to avoid liability, too. Plan sponsors must give written notice to terminated employees warning them of the distributions and allow time for these participants to rollover account balances themselves. Should a participant fail to take action, employers can apply mandatory cash-outs on balances less than \$1,000, and automatic rollovers to amounts between \$1,000 and \$5,000, says Mazooji. According to the IRS, if an account balance exceeds \$5,000, plan administrators must obtain a participant’s consent before making a distribution. Consent of a participant’s spouse may also be required, dependent upon the type of distribution.

Timely Elective Deferrals

Another, lesser known safe harbor provision regards submitting elective deferrals in a well-timed matter. While plan sponsors must submit employee contributions every pay period immediately, the Department of Labor offers a seven-day safe harbor for depositing these contributions, however this is only limited to small plans with fewer than 100 participants, says Solomon. Larger plans are allowed submit contributions within 15 business days, however it’s important to know that this is only a ruling, not a safe harbor, she adds. If a plan sponsor can deposit these contributions at any point before the 15 business days, it is required to do so. “If the employer generally can segregate employee contributions within three days, the Labor Department will expect these employee contributions to be deposited within three days every payroll,” Solomon clarifies. Following safe harbor rules protects employers from liability, adding a blanket of relief to those [who may not always](#) have clear understanding of fiduciary guidelines. If a plan sponsor has questions about its plan, or finds an error, it should seek consult with a third-party administrator or an attorney to ensure it is protected, says Mazooji. Taking action and meeting with a professional is a greater solution than risking litigation, anyway. Amanda Umpierrez, *Plansponsor*, September 18, 2019.

4. AVOID PITFALLS PROPERLY TO REPLACING DC INVESTMENTS:

An analysis found monitoring DC plan investment menus and making necessary changes results in better performance, and researchers have followed up with four pitfalls to avoid when making investment changes. “Improving a 401(k)-investment menu by changing out investments isn’t as simple as replacing it with a better-performing fund. 401(k) plan sponsors and advisers should take care to document their justification for changing an investment and conduct a thorough, holistic search for a replacement,” says David Blanchett, head of Retirement Research at Morningstar Investment Management LLC, and Jim Licato, vice president of product management at Morningstar. A [prior analysis](#) by the two of a sample of 3,478 fund replacements across 678 defined contribution (DC)

plans found that the future performance of the replacement fund is better than the fund being replaced at both the future one-year and three-year time periods, and that these differences are statistically significant. The outperformance persists even after controlling for expense ratios, momentum, style exposures, and other metrics commonly used by plan sponsors to evaluate funds such as the star rating and quantitative rating. Licato previously told *PLANSPONSOR*, “We have found, and believe it is very important, for someone to be keeping an eye on retirement plan investments--whether an investment committee or investment adviser--and make necessary changes. We found not doing so is a disservice to participants.” Now, Blanchett and Licato have followed up their research with a warning to DC plan sponsors [to avoid common pitfalls](#) in monitoring and changing funds in the investment menu. They says fixating on random time periods that only include certain parts of a market cycle can lead to ill-informed decisions. It’s common for investment strategies to underperform at different times, so it’s important for plan sponsors and their advisers to understand the nuances of these cycles. For example, they say low-beta funds (funds that hold stocks and are generally less sensitive to market movements) typically underperform during strong markets and seek to minimize loss during weaker markets. Though it may seem appropriate to remove this type of fund during a market upswing, it may seem less sensible when the market turns south. Blanchett and Licato point out that high-performing funds can come with a considerable amount of risk, so swapping out a lagging fund for a top performer may expose participants to a greater--potentially excessive--amount of risk. They suggest, rather than just looking at returns, plan sponsors and advisers may consider other return metrics that adjust for risk (such as the Sharpe or Sortino ratios). A third pitfall to avoid is inaccurately analyzing fees. To ensure fee comparisons are accurate, Blanchett and Licato suggest, for example, plan sponsors and advisers should compare index fund fees to the fees of other index or passive funds, not to the fees of actively managed investments. The apples-to-oranges comparison of active fund fees against passive fund fees could lead to incorrectly removing a fund due to high fees. Plan sponsors and advisers shouldn’t rely too much on a fund’s objective. Blanchett and Licato point out that some funds may move among styles over time, a concept referred to as style drift. “Although it can be time-consuming, a deep dive into a fund’s holdings can help bring to light an investment’s true style and integrity,” they say. Rebecca Moore, *Plansponsor*, September 16, 2019.

5. FLORIDA INSURERS MUST REFUND \$107 MILLION TO CUSTOMERS:

The premiums that some private insurers charged over the past three years were too high, so now they will have to return some of that money--a total of \$1.3 billion--to their customers, according to a new [analysis](#) by the Kaiser Family Foundation. Florida insurers, including health and life insurance companies, are paying \$107 million in rebates. Almost \$21 million of the total is being refunded to individuals and the rest to employers that have

small and large group plans. The refunds are the result of a measure put into place under the Affordable Care Act to limit insurers' profit. Called medical loss ratio, that formula requires private insurance companies to spend at least 80% of their revenues from premiums on claims and quality improvement. They can use the other 20% for administration, marketing and profit. The formula applies to private health and life insurance companies, whether or not they offer Obamacare plans. "When the ACA first went into effect in 2014, insurers had a lot of trouble figuring out how to price these plans ... and a lot of them lost a lot of money," said Rachel Fehr, a research assistant and one of the report's authors at the [Kaiser Family Foundation](#). "But last year is when they started to make real profits and in many cases they were actually more profitable than they ever were before the ACA went into effect, so they have to return some of these profits to consumers in the form of these rebates." Most of the refunds in Florida are paid out by the state's largest insurance company, GuideWell, the parent company of Florida Blue and Health Options. The company is refunding almost \$90 million, \$14.6 million of which is going to people with Florida Blue individual plans. "We began processing checks for distribution in early August. The average amount per recipient is \$33," said Christie Hyde DeNave, a spokeswoman for Florida Blue, referring to rebates to individuals. She said the rebates are "proof of our commitment to address the overall affordability of health care for our members." Other insurers issuing rebates in Florida--to individuals and employers--include United States Life Insurance Company in the City of New York, Connecticut General Life Insurance Company, Aetna Life Insurance Company, Aetna Health Inc Florida, Reliance Standard Life Insurance Company and UnitedHealthCare, according to the Kaiser Family Foundation. Insurers can issue the rebates in the form of a check to consumers or as a credit applied to the premiums. For people with employer coverage, the rebate may be shared between the employer and employee, according to the analysis. By law, the insurers must start issuing the rebates to eligible members by the end of this month. The rebates don't apply to all customers. Florida insurance companies issued the third-largest amount of rebates behind Virginia and Pennsylvania, which are paying \$150 million and \$130 million respectively. In 13 states insurers don't have to issue any refunds. This is not the first time insurers are giving refunds to their customers, although it's the largest amount since 2012. Last year, they refunded more than \$700 million. The analysis found that millions of dollars in rebates from previous years have gone unclaimed, including \$37.5 million by people who had individual plans. Analysts expect that insurers will continue to owe large rebates next year. Naseem S. Miller, Orlando *Sentinel*, September 13, 2019.

6. TAX WITHHOLDING ESTIMATOR HELPS RETIREES; FIGURES TAX ON SOCIAL SECURITY BENEFITS:

The new [Tax Withholding Estimator](#), launched on IRS.gov, includes user-friendly features

designed to help retirees quickly and easily figure the right amount of tax to be taken out of their pension payments. The mobile-friendly estimator replaces the Withholding Calculator. The estimator has features specially tailored to the unique needs of retirees receiving pension payments and Social Security benefits. The new tool offers retirees, as well as employees and self-employed individuals, a more user-friendly way to check their withholding. Whether they receive wages or pension payments, it helps taxpayers estimate if the right amount is being withheld from their income to cover their tax liability. The estimator uses a simple, six-step question-and-answer format using information like marital or filing status, income, withholding, adjustments, deductions and credits.

Special help for retirees

A retiree can use the estimator to enter any pension income or Social Security benefits they or their spouse receive. The tool then automatically calculates the taxable portion and incorporates it into an overall estimate of their projected tax liability and withholding for the year. If a withholding change is needed, the retiree can choose a tax due of close to zero or a refund amount. The estimator will then link to [Form W-4P](#), Withholding Certificate for Pension or Annuity Payments, and give the retiree a specific withholding recommendation based on the option chosen. It also gives instructions on how to fill in each line of the form.

Enhancements for everyone

The enhancements for retirees are just a few of the many new features offered by the Tax Withholding Estimator. Others include:

- Plain language to improve taxpayer understanding.
- Mobile-friendly design.
- A new progress tracker to help taxpayers know how much more information they need to enter.
- The ability to go back and forth through the steps, correct previous entries and skip questions that don't apply.
- Tips and links to help users quickly determine if they qualify for various tax credits and deductions.
- Automatic calculation of taxes on self-employment income.

The IRS urges both pension recipients and wage-earners to do a Paycheck Checkup now and review their withholding for 2019. This is especially important for anyone who faced an unexpected tax bill or penalty when they filed earlier this year. It's also a critical step for those who made withholding adjustments in 2018 or had a major life change, such as marriage, the birth of a child, adoption or buying a home. People most at risk of having too little tax withheld include those who itemized in the past, but now take the increased

standard deduction. They also include households with two wage earners, employees with non-wage sources of income and those with complex tax situations. Also, anyone who changes their withholding in the middle or latter part of this year should do another Paycheck Checkup in January. That will help ensure that they have the right amount of tax withheld for all of 2020. Issue Number: IR-2019-155, IRS Newswire, September 13, 2019.

7. U.S. DEPARTMENT OF LABOR ISSUES THREE NEW WAGE AND HOUR OPINION LETTERS:

The U.S. Department of Labor announced today that it has issued three new opinion letters that address compliance issues related to the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), and the Consumer Credit Protection Act (CCPA). An opinion letter is an official, written opinion by the Department's Wage and Hour Division (WHD) on how a particular law applies in specific circumstances presented by the individual person or entity that requested the letter.

The opinion letters issued today are:

- Addressing whether an employer may delay designating paid leave as FMLA leave due to a collective bargaining agreement;
- Addressing the ordinary meaning of the phrase "not less than one month" for purposes of FLSA section 7(i)'s representative period requirement; and
- Addressing whether employers' contributions to employees' health savings accounts are earnings under the CCPA.

The Department offers a [search function](#) allowing users to search existing opinion letters by keyword, year, topic, and a variety of other filters; and encourages the public [to submit requests for opinion letters](#) to WHD to obtain an opinion or to determine whether existing guidance already addresses their questions. The Division exercises its discretion in determining whether and how it will respond to each request. This release marks the 47th, 48th, and 49th opinion letters issued by WHD during this Administration. WHD's mission is to promote and achieve compliance with labor standards to protect and enhance the welfare of the Nation's workforce. WHD enforces Federal minimum wage, overtime pay, recordkeeping, and child labor requirements of the Fair Labor Standards Act. WHD also enforces the Migrant and Seasonal Agricultural Worker Protection Act, the Employee Polygraph Protection Act, the Family and Medical Leave Act, wage garnishment provisions of the Consumer Credit Protection Act, and a number of employment standards and worker protections as provided in several immigration related statutes. Additionally, WHD administers and enforces the prevailing wage requirements of the Davis Bacon Act and the Service Contract Act and other statutes applicable to Federal contracts for

construction and for the provision of goods and services. The mission of the Department of Labor is to foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights. Emily Weeks, Wage and Hour Division, 19-1626-NAT, U.S. Department of Labor, September 10, 2019.

8. DID YOU KNOW BENJAMIN FRANKLIN SAID THIS?:

He that composes himself is wiser than he that composes a book.

9. PONDERISMS:

Why is it called a TV "set" when you only get one?

10. INSPIRATIONAL QUOTES:

Don't go through life, grow through life. - Eric Butterworth

11. TODAY IN HISTORY:

On this day in 1990, Motion Picture Association of America creates new NC-17 rating.

12. REMEMBER, YOU CAN NEVER OUTLIVE YOUR DEFINED RETIREMENT BENEFIT.

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