The ERISA Industry Committee

Washington Update

May 5, 2014

Participation Procedure

- Procedure for audience participation
- Audience will be in a "listen-only" mode
- If you wish to ask a question or make a comment, press *6 on your telephone to "un-mute" your telephone
- After speaking, please press *6 again to re-enter "listen-only" mode

Washington Update Agenda

- Welcoming Remarks
- Hill Briefing: Dani Kehoe
- Retirement Update
- Health Update
- Legal Update
- Concluding Remarks/Questions

ERIC on Social Media

- ERIC is on Twitter and Facebook and has a blog!
- Please follow us (and tell your friends and colleagues).

  https://twitter.com/ERISAIndCmte

  https://www.facebook.com/ERISAIndCmte

  http://erisaindustrycommittee.blogspot.com/

- More information is available at http://www.eric.org/about/eric-social-media/.

Retirement

Retirement – Legislative Update

Congress

Various bills in play (unemployment benefits/minimum wage/transportation trust fund, etc.) that will need “pay fors”; potential retirement savings-related pay fors include:

- Interest stabilization (10% thru 2017; 30% after 2020)
- Pre-pay of flat premiums up to 5 years at current rate
- “stretch IRA” (which applies to employer plans) relating to non-spouse inherited IRAs/401(k)s to be paid out over 5 years (or less)
- Camp executive compensation/nonqualified deferred compensation

Retirement – Legislative Update

- ERIC efforts on educating members of Congress/Hill staff on negative implications of further increases of PBGC premiums
- Meetings on Camp tax reform discussion draft

Retirement – Legislative Update

GAO - Pension Tax Incentives Update

- GAO concluded that the increased deferral limits (due to COLAs) do not appear to have resulted in the creation of new private single-employer retirement plans.
- Also found that the higher limits are predominantly being used by high-earning participants.

Retirement – Regulatory Update

Treasury Department/IRS

Still Waiting on:

- Hybrid Plan Regulations
- Treasury Lifetime Income rules (proposed rules and Revenue Rulings released 2 years ago)
- Potential DB Plan De-Risking rules – update on IRS PLRs in this area
- Do we need a FocusOn call on Notice 2014-19 Windsor Application ????

Retirement – Regulatory Update, cont.

Department of Labor

- Disclosure Guide – 408(b) Round II (ERIC comment letters – yes 2 of them!
- Brokerage Window project?
- Lifetime Income
- Conflict of Interest- update

Retirement- State Issues

Defined Benefit Plan De-Risking

Activities –State Level

- NY S. 6150
- CT House Sub Bill File No. 638 (disclosure)

Retirement- Misc.Issues

ERIC survey on in-house lawyers:

- Interface with Benefit Plan Fiduciary Committee
- Domestic/International Issues

Health

Big news at HHS

- Departure of HHS Secretary Kathleen Sebelius
  - Likely successor: Sylvia Mathews Burwell
    - Currently runs OMB
    - Confirmation hearings in Senate this week
- Others also leaving from both HHS and IRS

State of the Exchanges

- Exceeds expectations
  - >8M have signed up through Exchanges
    - Enrollment ended March 31+
    - No numbers on how many of these have paid
  - 4.8M additional have enrolled in Medicaid and CHIP
  - 65% selected a "silver" plan; 20% bronze; 9% gold; 5% platinum; 2% catastrophic
  - 28% = young adults
  - 54% women; 46% men
- Oregon has folded its cards and opted to join the federal Exchange website

Other interesting factoids

- 15.6 % of Americans uninsured in first quarter of 2014 – lowest level since 2008
- Attitude towards ACA:
  - 46% unfavorable; 38% favorable
  - 35% want ACA repealed; 58% want to fix
- Consumer purchases of health services grew 9.9% in 1st quarter of 2014
  - Highest growth rate since 1980

Health legislation

- House passes “expat” bill 268-150
  - Goal is to exempt expat plans from ACA
  - Criteria for exemption
    - Plan must be expected to be as good as employer’s domestic group health plan that meets MV standard
    - Plan must meet relevant pre-ACA rules under ERISA and the Internal Revenue Code
    - If plan provides dependent care, must do so until age 26

Health legislation, cont.

- "Qualified expats" = individuals expected to be abroad for 180 days in 12 month period
- Future in Senate is unclear
  - Some D's concerned that bill could create loopholes for non-ACA-compliant plans

- "Doc fix" law repeals ACA limit on deductibles for small employer plans
- Will other ACA "fixes" follow???

New COBRA forms

- New Model notices for general notice and election notice
  - Intended to better fit with ACA
    - Reflects that coverage is now available in the Exchanges
    - Also addresses special enrollment periods in Exchanges;
      - COBRA beneficiaries eligible through 7/1/2014
  - Use of models not required, but considered to be good faith compliance until regs finalized

New ERIC poll on All Things OOP

- 60% of ERIC member respondents did not change OOP rules from 2013 to 2014
  - 37% will not change for 2015
    - 48% will increase limits; 15% will decrease
- 2014: evenly split on separate vs. combined OOP limits
  - 2015: 25% separate; 43% combined; 32% ?

OOP, cont.

- Ongoing ERIC discussions on OOP limits
  - What is properly charged to limits?
- New FAQ
  - 2015 limits will be $6600 self-only; $13,200 family
    - Different from HDHP indexation for 2015
  - Balance billing need not be counted toward limit
  - Difference between brand-name and generic need not be counted
  - Reference-based pricing: jury is still out
    - May consider providers using reference-based pricing to be in-network until further guidance is issued

ERIC Task Forces

- Two new Task Forces
  - Preparing for the Cadillac tax
    - First call: Wednesday, May 7
  - COBRA in an ACA world
    - First call: Tuesday, May 13
  - To join: email gyoung@eric.org

ERIC comment letter

- Telemedicine
  - Letter to Federation of State Medical Boards
  - Trying to persuade them that telephonic conversations should be included as part of guidelines for states to use on telemedicine
  - FMSB did not accept this position
    - Appeal to new head of FMSB

Legal

Monitoring & Deference

- Improper revenue sharing and excessive fee claims
  - 9th Circuit ruled for sponsor on these issues
- Retail class shares claim
  - 9th Circuit ruled barred by statute of limitations
- Participants filed cert. petition with Supreme Court
  - Court has asked Solicitor General to brief two issues:
    - Does deference apply to fiduciary claims?
    - Was share class selection a continuing violation and , if so, is statute of limitations tolled?
- If the Supreme Court hears the case, could impact deference provided to fiduciaries and monitoring of plan investments.

Tibble v. Edison International, 729 F.3d 1110 (9th Cir.2013), petition for cert. filed, (U.S. Oct. 30, 2013) (No. 13–550)

Equitable Restitution

- LTD benefits paid as result of car accident
- Participant received other income (no fault insurance payments)
  - LTD plan offset benefit by other payments
- Plan sought repayment of overpaid LTD benefits
  - 2nd Circuit held participant on notice of equitable lien by agreement (over paid amounts held in constructive trust)
- Participant has filed cert. petition with Supreme Court
  - Supreme Court has asked Solicitor General to brief whether tracing funds required for plan to recover (e.g. what if specific funds spent)
- If the Supreme Court hears the case, could impact ability of plans to obtain reimbursements

Thurber v. Aetna Life. Insurance Co., 712 F.3d 654 (2d Cir. 2013), petition for cert. filed, (U.S. Jul. 26, 2013) (No. 13–130)

Upcoming ERIC calls

- FocusOn call: Preparing for the ACA's Cadillac Tax
  - Presented for ERIC by Rich Stover, Buck Consulting
  - Wednesday, May 7, 2:00 p.m. – 3:30 p.m. EDT
- FocusOn call: The Future of COBRA in an ACA World
  - Presented for ERIC by Andy Anderson, Morgan, Lewis & Bockius
  - Tuesday, May 13, 2:00 p.m. – 3:30 p.m. EDT
- Washington Update call
  - Monday, June 2, 11:00 a.m. – noon EDT

Upcoming ERIC meetings

- ERIC Legal Committee meeting
  - Thursday, May 8, 10:00 a.m. – 3:00 p.m. EDT
- ERIC Health and Retirement Committee meetings
  - Wednesday, October 15 (afternoon)
- ERIC General Membership meeting
  - Thursday, October 16 (all day)

ERISA 40TH ANNIVERSARY PARTY

To receive ERIC updates

- If you are an employee of an ERIC member company and would like to receive your own copy of our emails and notifications of future events, please let us know by writing to Adreanne Cooper at ERIC (acooper@eric.org.)
- In this email, please include your contact information or signature block, and please indicate whether you wish to receive information on retirement issues, health issues, legal issues, or all of the above.

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