

The ERISA Industry Committee

Washington Update

June 2, 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
- Health Update
- Retirement 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/>.

Health



Changes at HHS, White House

- HHS Secretary Kathleen Sebelius will leave
 - Probable successor: Sylvia Mathews Burwell
 - Currently runs OMB
 - Has been approved by Senate Finance; likely to be confirmed by full Senate soon
- Kristie Canegallo is new White House deputy chief of staff to focus on ACA implementation
- Mike Hash, head of HHS health reform effort, also to leave

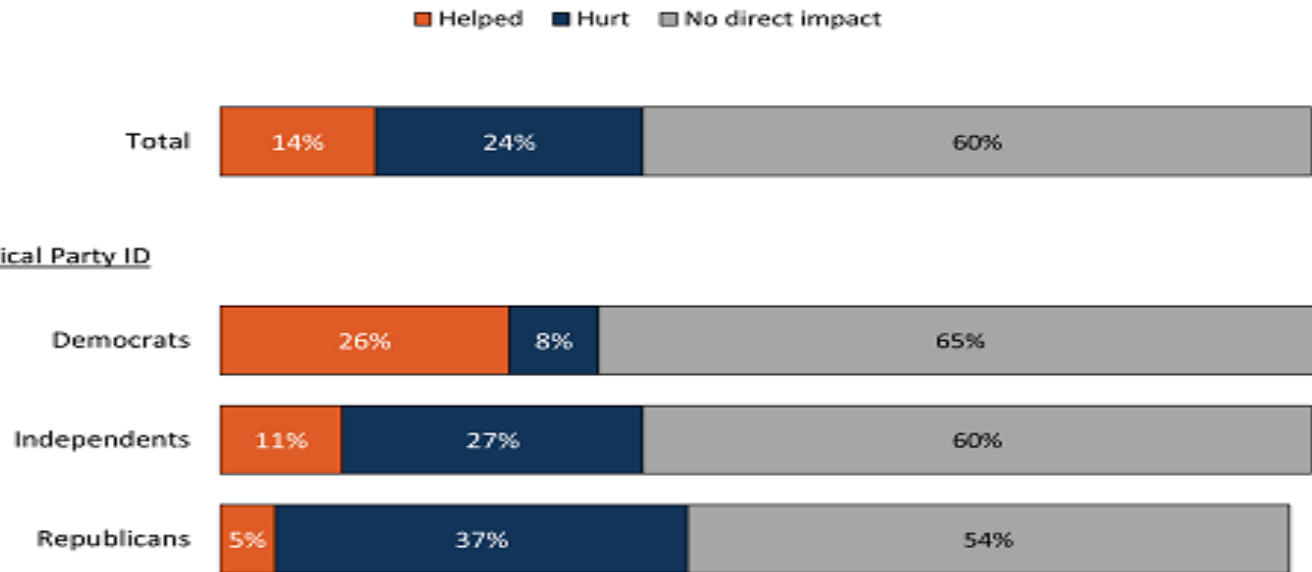
Dumping the ACA employer mandate

- Really???
- No
- But there was an interesting report from the Urban Institute/Robert Wood Johnson Foundation
 - Eliminating mandate would have little effect on coverage
 - Would reduce opposition from employers
 - And would remove labor market distortions
 - But would need to find another \$8B

The ACA: We love it, we love it not...

Most Report No Direct Impact From ACA; Democrats More Likely to Feel Helped, Republicans More Likely to Feel Hurt

So far, would you say the health care law has directly (helped) you and your family, directly (hurt) you and your family, or has it not had a direct impact?



NOTE: Both helped and hurt (VOL.) and Don't know/Refused answers not shown.
SOURCE: Kaiser Family Foundation Health Tracking Poll (conducted May 13-19, 2014)



New IRS Q & A's

- 10 additional explanations about various aspects of the ACA Shared Responsibility rules
- Further emphasis on employer payment plans in separate document
 - Cannot be paired with individual plans in Exchanges or outside
 - Subject to a GINORMOUS penalty because can't comply with ACA market reform rules
 - But they do constitute MEC

EEOC to venture into wellness space

- Semi-annual regulatory agenda threatens possibility of proposed EEOC regulation
 - Central question: does the ADA permit employers to offer rewards under their wellness programs???
- EEOC will also address whether to amend GINA to permit rewards to spouses and other dependents

New ERIC 3-Minute poll on COBRA

- Large segment of ERIC members would like to get rid of COBRA now or within next 3-4 years
- Most companies seem to be resigned to administrative and financial challenge of COBRA

New COBRA poll, cont.

- Possible changes to COBRA (potential “asks”)
 - 3-month open enrollment period in Exchanges after COBRA qualifying event (94% = yes)
 - 3-month open enrollment period in Exchanges after individual experiences loss of COBRA coverage for any reason (84% = yes)
 - Give beneficiaries an incentive to waive COBRA
 - Yes = 36%; no = 39%
 - Cut off COBRA coverage by age 26 (if not earlier)
 - Yes = 71%
 - Exclude the following from COBRA: EAPs, onsite medical clinics, wellness program, Health FSAs

OOP

- New FAQ on ACA OOP limits issued earlier this spring
 - 2015 limits will be \$6600 self-only; \$13,200 family
 - Several examples provided
 - Guidance still needed on reference-based pricing
- Ongoing ERIC discussions on ACA OOP limits
 - What is properly charged to limits?
 - Trying to find a formulation of general principle that will work in all/most complex situations
 - Will include in comment letter addressing reference-based pricing

ERIC Task Forces

- Two ongoing Task Forces
 - Preparing for the Cadillac tax
 - Next call: TBD
 - COBRA in an ACA world
 - Next call: TBD
 - To join: email gyoung@eric.org

Retirement



Retirement – Legislative Update

Congress

Transportation Funding Reauthorization; 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
- PBGC premiums (single employer); multiemployer premiums will increase- but not a revenue raiser



Retirement – Legislative Update

PBGC Premium Increases

- Economic Study
- Hill Briefings – May 14th
- Hill letter/Hill meetings
- FocusOn call on June 12th



Retirement – Legislative Update

Economic Study: Increasing Pension Premiums & the Impact on US Jobs and Economic Growth

- Took into account 2 recent increases on PBGC premiums (MAP-21 & 2013 Budget Deal) and projected 2014 Obama budget premium increase (\$25 billion) (not 2015 budget of \$20 billion) – studied impact on economy & jobs
- Average loss of 42,000 jobs/year over 11 years (peaking with a 67,000 loss of jobs in 2017)
- \$51 billion hit to US economy over 11 years



Retirement – Legislative Update

Hill Briefings (House & Senate) May 14th

- Unveiling of study at House & Senate Briefings – May 14th
- Approximately 80 attendees (total) – House was in recess that week
- Dr. Jeffry Werling (study author); 2 mid-sized manufacturing companies; Mike Pollack (Towers Watson)



Retirement – Legislative Update

- May 13th, letter to all members of Congress with over 70 trades/company signatures opposing further increases to single employer PBGC premiums
- Reference to Study results
- Hill meetings: leadership/Ways & Means, Ed & Workforce; Senate Finance, Senate HELP



Retirement – Legislative Update

PBGC premiums – Misc.

- May 14th press briefing
- May 14th PBGC press release
- June 12th FocusOn call – recap of Hill briefings for ERIC Members: Dr. Jeffrey Werling & Mike Pollack (Towers Watson)



Retirement – Regulatory Update

Treasury Department/IRS

- Notice 2014-37 (allows mid- year amendments to safe harbor 401(k) plans for Windsor issues (under Notice 2014-19)

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



Retirement – Regulatory Update, cont.

Department of Labor

- Disclosure Guide – 408(b) Round II
 - ERIC filed comment letter on information collection request (Focus Groups)
 - ERIC comment letter on disclosure guide (due June 10) comments due June 6th
- Lifetime Income
- Brokerage Window project timeline
- Conflict of Interest - update- DOL/White House meetings



Retirement – Regulatory Update, cont.

Department of Labor

- 408(b)(2) Disclosure Guide – Comment Letter states:
 - Very large plans should be treated differently from small and medium-sized plans
 - The guide requirement should not apply to very large plans
 - The DOL should define large plans for purposes of the guide as those retirement plans having 5,000 or more participants or at least \$100 million in assets



Retirement – Regulatory Update, cont.

PBGC

- Trade association meeting at PBGC on 4062(e) & enforcement issues



Legal



Amicus Brief – Retiree Health Vesting

- M&G newly imposed contributions towards the cost of health benefits on certain collectively bargained retirees
 - Retirees argued that CBA gave them a right to lifetime contribution-free health care benefits
- The CBA was silent regarding the duration of retiree health benefits
- 6th Circuit Court of Appeals held for retirees
 - Has frequently presumed vesting in collectively bargained retiree health cases based on its 1983 *UAW v. Yard-Man, Inc.* decision
- ERIC is filing an amicus brief
 - The Supreme Court’s decision in this case could impact when collectively bargained retiree health benefits are considered to be vested
 - Retiree health benefits should not vest by implication, but rather only by direct agreement and action

Tackett v. M & G Polymers USA, LLC et al., 733 F.3d 589 (6th Cir. 2013)

Amicus Brief - Deference

- Some deferred vested participants received unreduced early retirement benefits for up to 17 years
 - Plan fiduciaries realized that the benefits should have been reduced for early commencement
 - Successfully filed for VCP correction
 - Sought reimbursement of the overpayments from participants
- District Court held the changed interpretation constituted a plan amendment and an anti-cutback violation
 - As the unreduced early retirement benefits had become accrued benefits under the fiduciary's first and long-standing interpretation
- The case is being appealed to the 3rd Circuit Court of Appeals
- ERIC is filing an amicus brief
 - District Court's interpretation of the deference standard is very dangerous if allowed to stand

Cottillion v. United Refining Co., 2013 WL 1419705 (W.D. Pa. Apr. 8, 2013)

Legal Committee Meeting

- May 8th in Washington, DC with experts from the law firms of Miller & Chevalier and Epstein Becker Green
- Panels discussed:
 - ***Benefit Claims: Risks, Traps and Dealing with Litigation*** - Highlighted recent cases in this area, shared their experiences and provided helpful tips about how to handle benefit claims, including the importance of establishing a thorough administrative record and having the case heard in federal court
 - ***The Post-Amara Landscape*** - Explained the complex history of court cases addressing equitable remedies, provided an analysis of current issues, and urged companies to be careful regarding their communications and administration
 - ***Major Cases and Threats at the Supreme Court and the Circuits*** - Analyzed recent cases involving stock drop issues, “excessive” fees, ERISA preemption, and subrogation / reimbursement

Upcoming ERIC calls

- FocusOn call: Recap of Hill Briefing on PBGC Premiums and Study on Economic Impact
 - Thursday, June 12, 2:00 p.m. – 3:00 p.m. EDT
- Washington Update call
 - Monday, July 21, 11:00 a.m. – noon EDT



Upcoming ERIC meetings

- ERIC meeting with Treasury and DOL on *Service Contract Employees* and Shared Responsibility under the ACA
 - Date: TBD
- 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.

For further information

- **Debra Davis**, Vice President, Benefits
 - ddavis@eric.org
 - **Direct dial: 202/627-1925**
- **Kathryn Ricard**, Senior Vice President, Retirement Security
 - kricard@eric.org
 - **Direct dial: 202/627-1930**
- **Gretchen Young**, Senior Vice President, Health Policy
 - gyoung@eric.org
 - **Direct dial: 202/627-1920**
- ERIC main phone: 202/789-1400