

The ERISA Industry Committee

Washington Update

December 8, 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>



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<http://erisaindustrycommittee.blogspot.com/>

- More information is available at

<http://www.eric.org/about/eric-social-media/>.

Retirement



Retirement – Legislative Update

LAME DUCK PRIORITIES

HR 5771 Extenders Bill

- Extends for one year (thru 12/31/14 – in general) various expiring tax provisions (in 2013 and/or 2014)
- Research Credit
- Various Energy Tax Incentives
- Extends Multiemployer rules thru 2015 (related to shortfall funding method; amortization of shortfalls)



Retirement – Legislative Update

- S 2511 Manager’s Amendment to amend ERISA section 4062(e) (Harkin)
- HR 5381 (Tiberi): nondiscrimination testing & frozen DB plans
- S. 2855 (Portman & Cardin) The Retirement Security Preservation Security Act: nondiscrimination testing & frozen DB plans



Retirement – Legislative Update

Committee Updates

Impact on Tax Reform

- Staff changes on Ways & Means
- Incoming Senate Finance Committee Chairman Hatch (R-UT) approach to tax incentives for retirement savings/IRA balances (Hatch letter)



Retirement – Legislative Update

- HR 5773 extends amortization periods & funding rules for PPA for multiemployer plans thru 12/31/15 (introduced by Rep. Crowley (D-NY) on December 1, 2014)



Retirement – Regulatory Update

Treasury Department/IRS

- Hybrid Plan Regulations (effective 1/1/16); proposed rules on transition rules (comments due 12/18/14)
- ERIC to circulate draft letter
- IRS hearing on proposed transition rules – January 9, 2015



Retirement – Regulatory Update, cont.

Department of Labor

- RFI on Brokerage Windows – ERIC filed comment letter on 11/19/14)
- Large plans offer variety of investment options to meet diverse needs of plan participants
- Additional disclosure for limited number of investments in brokerage window would be confusing



Retirement – Regulatory Update, cont.

- DOL should not impose additional fiduciary requirements on plan that include brokerage windows in addition to other designated investment alternatives
- Large plans might increase number of core investments, which could overwhelm participants

Retirement – Regulatory Update, cont.

- DOL could provide safe harbor to plans with 3 designated investment options & brokerage window stating no fiduciary oversight of brokerage window investments
- DOL should support effort of plans & fiduciaries that strive to comply with intent and requirements of ERISA

Retirement – Regulatory Update, cont.

Department of Labor Issues in the ‘queue’

- Lifetime Income & Benefits Statements
- Conflict of Interest – DOL says coming out in January 2015

Retirement – Regulatory Update, cont.

PBGC

- PBGC information collection activity relating to “actions taken to cash out or annuitize benefits for certain former employees” - Revision of 2015 filing procedures & instructions
- ERIC filed comment letter on 11/24/14
- Letter provided supporting statistics & arguments for de-risking strategies



Retirement – Regulatory Update, cont.

- PBGC should support companies that strive to maintain defined benefit plans
- PBGC needs to clarify information it is seeking to collect
- Timeframes for collections should be consistent

Retirement – Regulatory Update, cont.

- More time between lump sum window/annuity purchases & data collection
- Clarify labels used in 2015 Instructions

Health



Wellness

- Senate HELP hearings on EEOC nominees General Counsel David Lopez and Charlotte Burrows (to be a Commissioner)
 - Fiery affair, large emphasis on Honeywell action
 - Both nominees eventually approved by full Senate
 - Message sent, and (hopefully) received by EEOC
- Next steps of ERIC Wellness Task Force
- Upswing in media interest in efficacy of wellness programs

HHS rules for 2016

- TRRP
 - 2016 fees = \$27/covered life
 - Attachment points for payment of fees to insurers
 - 2015: 50% reimbursement of claims >\$45,000 and < \$250,000
 - 2016: 50% of claims >\$90,000 and < \$250,000
 - Self-insured expat plans not subject to TRRP for 2015 and 2016
 - Employers with multiple group health plans need only report aggregate number of covered lives
- Cost-sharing limits for 2016
 - \$6850 for self-only
 - \$13,700 for family
- Open enrollment periods for Exchanges will be 10/1 – 12/15 for years after 2016

HHS rules for 2016, cont.

- HHS notice also addressed new rules for Exchange plans
 - Network adequacy
 - Benchmark selection
 - Prescription drug coverage
 - Drug exceptions process for formularies
 - Mail order
 - Pediatric benefits
 - Habilitative services

TRRP TRRP TRRP TRRP TRRP

- Transitional Risk Reinsurance Program
 - Deadline for submitting enrollment counts extended from 11/17 to last Friday (12/5)
 - Payment deadlines for 2014 unchanged (1/15/2015 and 11/15/2015)
 - HHS eases burden of figuring out individuals for whom Medicare is primary
 - New DOL FAQ: TRRP fees are permissible expense of plan
 - Fees also deductible by self-funded plans as “ordinary and necessary” business expense

TRRP payment schedule

TRRP payment schedule for 2014-2016				
Benefit Year	Enrollment count	Unified payment	Split payments	
2014				
Due date	12/5/14	1/15/2015	1/15/2015	11/16/2015
Amount		\$63 per covered life	\$52.50 per covered life	\$10.50 per covered life
2015				
Due date	11/15/15	1/15/2016	1/15/2016	11/15/2016
Amount		\$44 per covered life	\$33.00 per covered life	\$11.00 per covered life
2016				
Due date	11/15/16	1/16/2017	1/16/2017	11/15/2017
Amount		\$27 per covered life	\$21.60 per covered life	\$5.40 per covered life

Affordability, Part 1

- Affordability percentage for use in determining individual eligibility for Exchange tax subsidy and potential employer shared responsibility penalty
 - Originally 9.5% in ACA
 - 2015: 9.56%
 - 2016: 9.66%
- “Hard-wired” into employer shared responsibility safe harbor rules – W-2, rate of pay, federal poverty level
 - Safe harbors would need to be amended to reflect higher amount

Affordability, Part 2

- Difference between affordability for individual mandate purposes (8%) and eligibility for subsidy/employer penalty purposes (9.5%)
- Final regulations on Minimum Essential Coverage (MEC) applicable to individual mandate/8% rule ONLY but may hold clues for 9.5% rule
 - Effective starting in 2015

Highlights of new MEC final regulation

- Wellness program incentives
 - Incentives unrelated to smoking treated as *unearned*
 - Incentives related to smoking treated as *earned*
- Health Flex contributions reduce required contribution if:
 - May not be taken as taxable benefit;
 - May not be used to pay for MEC; and
 - May be used only to pay for medical care

Highlights of new MEC final regulation, cont.

- Health Reimbursement Arrangements (HRAs)
 - New contributions to HRA count only if HRA would have been integrated with primary plan
 - HRA and primary plan must be offered by same employer
 - Contributions count only if required under terms of plan or otherwise determinable within a reasonable time before employee must decide whether to enroll
 - Contributions count toward affordability (and not Minimum Value) if employee may use contributions to pay premiums for primary plan only or also to pay cost-sharing or benefits not covered by primary plan
 - If available for cost-sharing only, then does not count for affordability

Key issues raised by reg

- Health flex contributions that can be used to pay for non-health or taxable benefits *won't* reduce cost to employee when analyzing affordability
- “Cash-out” options could also be affected
 - Could be deemed to increase employee cost of coverage; makes “affordability” less likely
 - What all does this encompass???
- Need for transition relief?
 - Other suggestions?

Legal



Deference

- Supreme Court asked to hear issue of fiduciary deference for non-benefit claims in *Tussey v. ABB*
- 8th Circuit Court of Appeals held that deference should not be limited to benefits claims
- Solicitor's Office recommended that Court hear case
- Supreme Court recently denied cert
 - Court had previously declined to hear deference issue in *Tibble v. Edison International*

Tussey v. ABB, Inc., No. 12-2056 (8th Cir. Mar. 19, 2014)

Retiree Health

- Certain collectively bargained retirees sued when company required them to contribute towards the cost of health benefits
- Sixth Circuit Court of Appeals
 - Held that collective bargaining agreement indicated that the parties intended to vest the benefits
 - Has taken a position for many years in favor of presumed vesting in collectively bargained retiree health cases
- At oral arguments, the parties and justices agreed that ordinary contract principles apply
 - But seemed to disagree on what the principles are
- ERIC (with other associations) filed an amicus brief with Supreme Court

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

Stock Drop

- Variation on *Fifth Third Bancorp v. Dudenhoeffer*
- Sixth Circuit Court of Appeals ruled that participants suing over a stock drop in a 401(k) plan must show:
 - Price drop in shares was caused by the disclosure of damaging information to the market
 - Such information was previously known to fiduciaries
 - The fiduciaries failed to disclose the information at an earlier time
- Court focused on what the fiduciary knew and when they knew it
- Supreme Court declined to hear the case

Metyk v. KeyCorp, ___ F.3d ___ (6th Cir. 2014)

Upcoming ERIC calls

- ERIC FocusOn Call on De-Risking and Defined Benefit Plans
 - Monday, 12/8/14, 4:00 p.m. – 5:30 p.m. ET
- Benefits Litigation Update Conference Call
 - Wednesday, 12/10, 2:00 p.m. – 3:30 p.m. ET
- Washington Update call
 - Monday, 2/2/15, 11:00 a.m. – noon ET



Upcoming ERIC meetings

- ERIC Health and Retirement Committee meetings
 - Wednesday, April 15, 2015 (afternoon)
- ERIC General Membership meeting
 - Thursday, April 16, 2015 (all day)

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 any combination of the above.

For further information

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