The ERISA Industry Committee

Washington Update

February 4, 2015

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
- Introduction of Annette Guarisco Fildes
  - ERIC's new President and CEO
- Hill Briefing: Dani Kehoe
- Health Update
- Retirement Update
- Concluding Remarks/Questions

Health

Health on the Hill

- Congressional focus
  - Big ACA bills
    - Repeal ACA
    - Still waiting for: GOP alternative to the ACA
  - Targeted ACA bills
    - Change definition of FTE from 30 to 40 hours/week
    - Repeal employer mandate
    - Repeal medical device tax
    - Exempt certain employees from mandate
    - Repeal auto-enrollment and drive stake through its heart
  - Wellness (Helpful memo)
    - Hearings
    - Legislation

Health on the Hill, cont.

- Congress enacts (and president signs) FY 2015 spending bill
  - No major changes to ACA
    - Limits extra funding for Risk Corridor program, but does not affect TRRP
    - Reduces budget for Independent Payment Advisory Board
    - Exempts expat plans from ACA market reforms – and other helpful changes
- Helpful memo

President's FY 2016 Budget

- No big announcements on health
  - Continued funding for ACA
  - Supports Medicare delivery system reform goals
- Highlights
  - 28% limit on tax deductions and exclusions for wealthy
    - Includes employee exclusion for employer-provided health care
  - Funding for Precision Medicine initiative
  - Permit IRS to prospectively reclassify workers who are currently "misclassified"
    - No penalties for employer provided they voluntarily seek reclassification before IRS audit
  - Eliminate dependent care FSAs
  - Increase tobacco taxes to pay for CHIP funding through 2019

President's FY 2016 Budget, cont.

- Highlights, cont.
  - Rein in drug costs
    - Give HHS Secretary ability to negotiate drug prices in Medicare Part D
    - Close coverage gap for brand-name drugs in Part D by 2017 through additional discounts from drug companies
    - Align Medicare & Medicaid payment policies for low-income beneficiaries
    - Reduce exclusivity period for brand-name drugs from 12 years to 7

Medicare: Concrete Goals for Delivery Reform

- Announcement in late January by HHS Secretary Burwell to move Medicare payments away from fee-for-service and towards paying on basis of value and care coordination
  - Sets measurable goals for 2016 and 2018 to mark transition from fee for service to value-based and population-based payments
  - Creation of “Health Care Payment Learning and Action Network” to foster collaboration with stakeholders

M&G Polymers v. Tackett

- Inference of 1983 *Yard-Man* case (and follow-on cases) overturned by SCOTUS
  - No more "thumb on the scale" in favor of vesting retiree benefits in collective-bargaining agreements
    - But SCOTUS did not clearly delineate role of extrinsic evidence
      - Ginsberg concurring opinion states that this evidence must always be considered
  - *M&G Polymers* returned to 6th Circuit for decision under ordinary principles of contract law

ACA Compliance: Where Do We Stand Now?

- Employer shared responsibility penalty kicks in for large (>99 employees) employers in 2015
  - Delayed until 2016 for small employers (under 5’ 2”)
  - 4980H(a) penalty threshold for 2015 is 70% rather than 95%; 4980H(b) penalty not affected
  - Collection of data for reporting must start in 2015
    - Forms (released summer of 2015) will be filed in 2016
- Key issues
  - Counting employees
    - Getting handle on contingent employees, etc.

ACA Compliance, cont.

- Key issues, cont.
  - Establishing systems and reporting counts
    - Which vendors will do this?
- Looming Cadillac tax
  - Preparing employees for 2018
  - Union negotiations
  - Piecemeal guidance/appeals for input from IRS/Treasury should start soon
- Upcoming guidance
  - Probably lots of implementing FAQ
  - Hope that auto enrollment will never see light of day

ACA Compliance: Looking Over Our Shoulders

- Changes to Summary of Benefits and Coverage (SBC) (Helpful memo)
  - Some modifications of 2012 final regs
  - Supposed “Streamlining”: new templates, instructions, more words in glossary, etc.; 4 pages down to 2 ½
  - New “coverage fact label” for simple foot fracture with ER visit
  - Offers helpful rules on who must get SBC: “no” generally to expat plans, MA plans, EAPs that are excepted benefits, HSAs; HRAs are often “yes’

Retirement

Retirement – Legislative Update

Consolidated and Further Continuing Appropriations Act 2015

- Modification to ERISA Section 4062(e) cessation of operations
- Multiemployer provisions (we expect a follow-up pension bill to “fix” various multiemployer issues with potential for provisions impacting single-employers)

Retirement – Legislative Update

- 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

Review of ERIC 2015 Legislative & Regulatory Priorities

Save the date for

Thursday February 12th

2pm – 3:30pm ET

Retirement – Obama Administration

FY 2016 Budget

Tax Proposals-Retirement

- Impose cap on accumulations in retirement accounts (401(k)s & IRAs) – approx. $3.4 million (under "loophole closers")
- Lower hours threshold for part-time workers to 500 for at least 3 years

Retirement – Obama Administration

- Simplify MRD rules (exclude individuals with less than $100,000)
- Limit tax rate for itemized deductions/exclusions (including retirement plan contributions) to 28% (impact individuals > $200,000; households > $250,000)

Retirement – Obama Administration

- Eliminate dividend deduction for ESOPs – publicly traded
- W-2 reporting employer contributions to retirement plans
- Worker classification

Retirement – Obama Administration

PBGC

- Give PBGC Board (Commerce/Treasury/DOL) authority to set variable rate premiums for single employers and multiemployers (5th year included in budget proposal)

Retirement – Obama Administration

DOL

- $6.5 million of DOL budget to “better support State efforts” to create automatic retirement accounts for workers without access to a plan; waiver authority
- ERISA preemption

Retirement – Regulatory Update

Treasury Department/IRS

- Hybrid Plan Regulations (effective 1/1/16); proposed rules on transition rules (ERIC submitted comment letter 12/18/14)
- ERIC testified at IRS hearing on proposed transition rules – January 9, 2015

Retirement – Regulatory Update, cont.

Department of Labor

Issues in the ‘queue”

- Lifetime Income & Benefits Statements
- Brokerage window regulations
- Conflict of Interest/Definition of Fiduciary– re-proposed rule scheduled to go to OMB soon

Retirement – Regulatory Update, cont.

ERIC Definition of Fiduciary Task Force

Save the date for

FocusOn call

Thursday February 26, 2015

2:00pm – 3:30pm ET

Retirement – Regulatory Update, cont.

PBGC

- PBGC revises 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; revised version published January 2015

Retirement – Regulatory Update, cont.

- Terminology: eligible to offered (ERIC recommendation)
- Reference to person (ERIC recommendation)
- Timeframe extended to 60 days (ERIC recommendation)
- Errors/resubmissions – no need to resubmit (ERIC recommendation)

Retirement – Regulatory Update, cont.

- Collection request time between initial and subsequent collections – 18 months vs. 12 months (PBGC held firm to original collection request time period)

Retirement – Misc.

State Activities

Recent state activity concerning government-run retirement programs for private sector workers without access to workplace plan

- State treasurers eyeing contribution inflow to state accounts
- Plan under ERISA? Preemption questions

Retirement – Misc., cont.

- State sponsored IRA plan (most common)
- Illinois SB 2758 (passed in Dec & signed by outgoing "D" governor in January)
- Employers with 25 or more employees that do not offer a retirement plan, to offer a state-run retirement plan for its employees
- After tax contributions/no employer match

Retirement – Misc., cont.

- SB 2758 requires state to request in writing an opinion or ruling by DOL on applicability of ERISA. May not implement program if it is determined that the program is an employee benefit plan & state liability is assigned under ERISA.

Retirement – Misc., cont.

- Since 2012, CA, CT, VT, & WVA have passed legislation to study feasibility & costs associated with state-run retirement programs for private sector employees
- MD, MN, OR are studying how to increase retirement savings in their states

Upcoming ERIC calls

- FocusOn call on 2015 Legislative & Regulatory Priorities: Retirement
  - Thursday, February 12, 2:00- 3:30 p.m. EST
- FocusOn Call on DOL Definition of Fiduciary Regulation
  - Thursday, February 26, 2:00 – 3:30 p.m. EST
- Washington Update call
  - Monday, March 2, 11:00 a.m. – noon EST

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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