

The ERISA Industry Committee

Washington Update

March 2, 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
- Hill Briefing: Dani Kehoe
- Retirement Update
- Health Update
- Legal Update
- Concluding Remarks/Questions

Retirement



Retirement – Legislative Update

Tax Reform

- Senate Finance Committee Working Groups
- Savings & Investment (Mike Crapo R-ID)/(Sherrod Brown D-OH)
- timeline



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

- Senator Hatch SAFE Act
- Part II – multiemployer pension bill
(coalition fractured?)



Retirement – Legislative Update

Review of ERIC 2015 Legislative & Regulatory Priorities

- Legislative issues
- Regulatory issues



Retirement

GAO Report

Participants need better information when offered lump sums that replace their lifetime income benefits

- Findings: information incomplete
- 22 lump sum windows/11 packets of materials
- Eight questions that address key factors



Retirement

DOL Actions:

- Require notification to DOL at time offer window
- Coordinate with IRS/PBGC to clarify guidance on disclosure to participants

Treasury Actions:

- Relative Value Statements
- Lookback interest rates
- Mortality table updates

Retirement – Regulatory Update

Treasury Department/IRS

- Hybrid Plan Regulations (effective 1/1/16);
proposed rules on transition rules
- PEP plan rules



Retirement – Regulatory Update, cont.

Conflict of Interest/Definition of Fiduciary–
re-proposed rule – announcement 2/23/15

- Obama remarks/White House fact sheet
- “Teams” line up on each side of issue
- Congressional activity
- Wall Street vs. Main Street



Retirement – Regulatory Update, cont.

ERIC Definition of Fiduciary Task Force

- Review of FocusOn call – Feb 26th
- Next steps



Retirement – Regulatory Update, cont.

Department of Labor

Issues in the ‘queue’

- Lifetime Income & Benefits Statements
- Brokerage window regulations



Retirement – Regulatory Update, cont.

PBGC

- Multiemployer guidance



Health

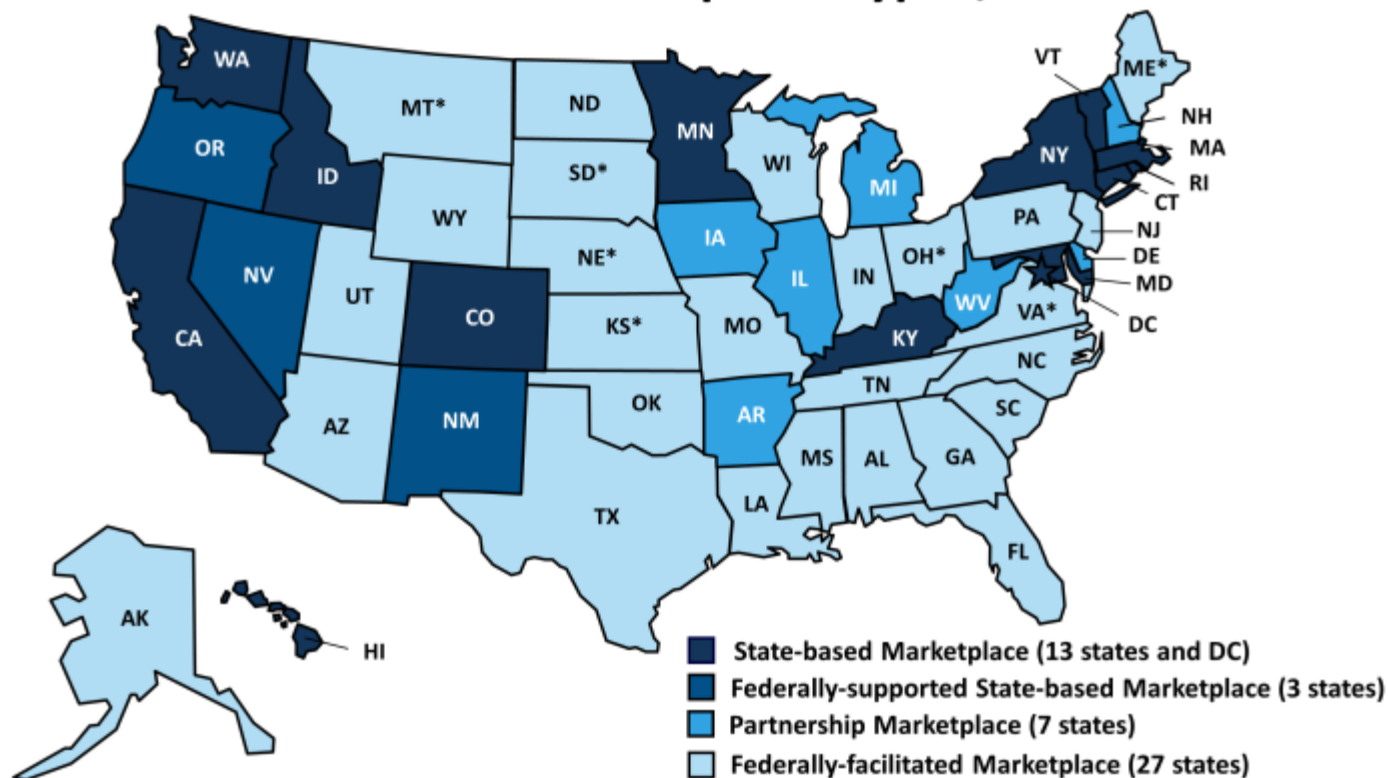


The ACA: never a dull moment!

- *King v. Burwell*: are health care subsidies available for individuals enrolled through federally facilitated Exchanges?
 - SCOTUS oral arguments Wednesday, March 4
 - Decision expected late June, 2015
 - Significant impact if SCOTUS finds that subsidies not available to those in federal Exchanges (27-37 states)
 - Likely death spirals for costs of individual insurance in affected Exchanges
 - HHS: “we don’t have a plan” – but likely to have idea about how to facilitate transformation of current federal Exchanges into state Exchanges

Figure 2

State Health Insurance Marketplace Types, 2015



NOTES: This map displays the marketplace type for the individual market. For most states, the marketplace type is the same for the small business, or SHOP, marketplace; however, MS, NM, and UT operate State-based SHOP Marketplaces.

SOURCE: *State Health Insurance Marketplace Types, 2015*, KFF State Health Facts:

<http://kff.org/health-reform/state-indicator/state-health-insurance-marketplace-types/>.



King v. Burwell, cont.

- Go figure: Americans hate the ACA, but love their subsidies
- Republican concern at potential voter backlash in affected states
 - Looking at potential short-term extension of subsidies/transitional help and other solutions

Republication alternative to the ACA

- Republican search for ACA alternative that would keep some aspects of ACA (ban on pre-existing conditions, coverage of adult children to age 26) but scuttle others
- Hatch-Burr-Upton proposal
 - Repeal key elements of ACA: individual and employer mandates, taxes and fees, Medicaid expansion, rules on essential health benefits and minimum value, most consumer mandates and market reforms
 - Cap on employee exclusion for employer-provided health care
 - Individual capped at \$12,000; \$30,000 for family
 - Indexed at CPI + 1
 - New tax credit for low-income American citizens for buying coverage on individual market
 - Differentiated by age and self/family coverage

Republication alternative to the ACA, cont.

- Hatch-Burr-Upton proposal, cont.
 - States would be eligible to auto-enroll individuals eligible for tax credit who didn't sign up for coverage
 - Medicaid- states given more latitude to use funds
 - Individual on Medicaid could use tax credit instead
 - “Continuous coverage” requirement
 - Other consumer protections
 - No lifetime limits
 - Age banding reduced from 5:1 to 3:1
 - Keep coverage of adult children through age 26
 - Keep guaranteed renewal and anti-rescission

Other Hill Action

- Deadline for fixing Medicare physician payment formula (Sustainable Growth Rate) is March 31
 - Short-term patch likely
 - Policy agreement is in the bag – paying for it is not
 - “cost” of repeal has increased to \$174.5B over 10 years from \$144B last November
 - Could be paired with fix to CHIP, whose funding will run out in September
 - Distinct R vs. D policy differences
 - R would eliminate 23% matching rate for CHIP
 - Also would not require coverage of certain children and would permit states to use waiting periods

Wellness

- Expect introduction of Senate and House bills very soon to “fix” EEOC issues
 - Whether certain wellness programs meet the “voluntary” exception under the ADA
 - Whether spousal incentives violate GINA
- New EEOC proposed regulations also expected “soon”
- Will schedule ERIC FocusOn call as soon as bills are released

ACA Exchange Portrait

- HHS says 11.4M have selected/been renewed in plans in both federal and state Exchanges
 - Should result in about 9.1 paid consumers in 2015
- Open enrollment for 2015 ended February 15
 - Extended to 2/22 for those in the queue
 - Special open enrollment 3/15 – 4/30 for those who filed their 2014 returns and owe a penalty
 - Estimated to be 2 – 4% of tax filers, 3M – 6M people
 - H&R Block: 52% of those receiving subsidies underestimated their income and must repay part of subsidy; average repayment = \$530
- Average tax penalty for no insurance = \$172

New “guidance” on the ACA Cadillac tax

- Notice 2015-16 provides mostly forum for asking for comments; some policy guidance
 - BUT does state that pre-tax employee contributions to HSAs are subject to tax
- Comment areas
 - Definition of “applicable coverage”
 - Determining cost of coverage based on COBRA
 - Average cost based on *similarly situated* employees
 - Those in a particular benefit package (HMO, PPO, high option, etc.)
 - Subject to mandatory disaggregation: self and non-self only options
 - Other potential areas of slicing and dicing

New “guidance” on the ACA Cadillac tax, cont.

- Notice 2015-16 list of comments, etc.
 - Alternatives to COBRA methodology?
 - Health Reimbursement Accounts
 - Determination period for setting cost – before year or after?
 - Applicable dollar limit and adjustments for retirees, high-risk, etc.
 - What color is this dress?
- ERIC will have FocusOn call to discuss our comments on Thursday, March 5
 - See 2/27 memo for list of questions to reflect on
 - Bring Your Actuaries to FocusOn Call Day

Other regulatory developments

- IRS releases final ACA forms and instructions for reporting under IRC 6055 and 6056 for 2014
 - Voluntary only for 2014; mandatory reporting starts for 2015, and forms must be provided in 2016
 - 2015 forms will be released this summer
- FMLA now recognizes same-sex spouses, regardless of state of residence
 - Effective March 27, 2015
- Notice 2015-17 provides additional guidance on Employer Payment Plans for Medicare and Tricare

Health litigation

- SCOTUS declines to review 8th Circuit Court case *Comm'cns Workers v. Windstream Corp.*
 - In keeping with decision last month in *M&G Polymers v. Tackett* , which overturned Yard-Man inference and returned case to 6th Circuit
 - No more “thumb on the scale” in favor of vesting retiree benefits in collective-bargaining agreements

Legal Update



Legal update

- 6th Circuit accepts ERIC amicus brief in *Kelsey Hayes* case
 - 1st post-Tackett case on vesting of retiree health benefits
- Potential ERIC amicus brief in 7th Circuit case:
Pennsylvania Chiropractic Association v. Independence Blue Cross
 - Question of whether a medical provider is a statutory beneficiary under ERISA
- SCOTUS hears oral arguments in *Tibble v. Edison*
 - Dispute over timing of claim over imprudent 401(k) investments
- Join ERIC for upcoming Legal Committee call to discuss
 - Timing TBD

Upcoming ERIC calls

- FocusOn call on New Developments on the ACA Cadillac tax
 - Thursday, March 5 , 2:00 – 3:30 p.m. EST
- Washington Update call
 - Wednesday, April 8, 11:00 a.m. – noon EDT
 - Note new date – not a Monday!



Upcoming ERIC meetings

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

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- Send an email to memberservices@eric.org with your contact information and company name, and indicating which mailing lists you would like to join: health, retirement, legal, or any combination of these.

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