

The ERISA Industry Committee

Washington Update

May 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

ERIC Antitrust Policy

As a reminder, all ERIC meetings and activities are to be conducted in full compliance with the ERIC Antitrust Policy. The antitrust laws prohibit competitors from agreeing on prices to be charged or otherwise taking steps that harm free and fair competition among them. While ERIC's primary mission and activities are entirely consistent with the antitrust laws, if you have any concerns about a particular topic or discussion, please raise it with ERIC staff.

Washington Update Agenda

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

Health



Health Legislation: Doc “fix”

- HR 2, the “Doc fix”, approved by Congress, signed into law by president
- Main elements
 - Move to MIPS payment system to recognize value and quality
 - Extend CHIP for 2 years
 - Promote interoperability of EHRs
- HR 2 passed with only partial “pay-fors”, but new budget resolution completes payment

Congressional budget

- Unified budget resolution passes House, Senate approval expected this week
 - Non-binding “blueprint” guides spending for FY 2016, starting October 1
 - Cuts spending by \$5.3T >9 years
 - Medicare cut \$430B
 - Permits use of “reconciliation” process to repeal ACA or “fix” ACA in event of anti-ACA *King v. Burwell* SCOTUS decision in June
 - Does not make major changes to either Medicare or Medicaid

Hill action on Cadillac tax

- Two House bills would repeal Cadillac tax
 - HR 2050 by Rep. Joe Courtney (D-CT) has support of 67 D's, 3 R's
 - HR 879 by Rep. Frank Guinta (R-NH) has support of 28 R's
 - This bill would also repeal W-2 reporting for cost of employer-provided health care
 - ERIC two-pronged strategy
 - Actively working to repeal Cadillac tax in Congress
 - Actively working to improve tax with regulators

Wellness

- EEOC has finally released proposed regulation on application of ADA to wellness programs
- Good news (at least potentially)
 - Hopefully new regulation will spell end of EEOC attacks on mainstream wellness programs
 - Incentives in form of penalties are OK
 - Regulation makes some attempt to square EEOC rules with Tri-Agency ACA guidance on wellness
 - Applies only to wellness programs that are part of a group health plan
 - But asks for comments on extending rules to others as well
- Key ambiguity: how is limit calculated where more than just employee is eligible for reward?
 - Is 30% applied to cost of self-only or family coverage?

Wellness, cont.

- Bad news (at least potentially)
 - Coordination with ACA guidance is incomplete
 - 30% rule does not appear to be increasable if Tri-Agencies lift their ceiling
 - “Gateway” plans may not be permitted
 - 30% ceiling will also apply to some *participatory* wellness programs, not just those based on achieving a certain health outcome
 - Tobacco cessation programs subject to 30% limit, not 50%
 - But does not apply to all programs, just those implicating ADA
 - Implications for ACA “affordability”
 - New notice requirement
- EEOC rules on GINA and spouses still to come
- ERIC will file comment letter; expect draft in a week or so

Telemedicine

- Very important issue for ERIC members
 - ERIC will serve as a “clearinghouse plus” for state legislative actions
 - Have drafted and circulated ERIC “Statement of Principles” for use in this effort
 - Please send me your contact info if you would like to join this Telemedicine Task Force/Clearinghouse
 - Inaugural in-person meeting: Wednesday, May 13, 10:00 a.m. – 3:00 p.m. in Washington, D.C.

Under construction

- ERIC 3-Minute poll on Wellness
 - Please complete by noon on Wednesday, May 6
- Draft comment letter to Treasury on ACA 40% excise tax has been circulated
 - Please send me your comments by COB Friday, May 8
- Coming soon to a telephone near you: *Third Thursday* calls of ERIC Health Policy Committee
 - Join us on the Third Thursday of every month for a wide-ranging discussion of health benefits issues
 - First call: Thursday, May 21, 4:00 p.m. – 5:00 p.m.



Retirement



Retirement – Legislative Update

Tax Reform

- Senate Finance Committee Working Groups
- Savings & Investment (Mike Crapo R-ID)/(Sherrod Brown D-OH)
- Over 1,400 comments submitted -due April 15th
- ERIC filed comments & circulated to members
- ERIC met with working group to discuss employer perspective on retirement savings & tax reform



Retirement – Legislative Update

Representative Crowley (D-NY) to introduce retirement legislation

- “US Account”: federal gov’t would contribute \$500 upon birth of a child as “seed money”/parents could contribute up to \$2000 after tax –used for college or rolled to Roth IRA
- MyRAs- invest in US savings bonds for workers who do not have employer-sponsored retirement
- “Save Ups”: a universal pension account similar to the federal Thrift Savings Plan & provide employees with limited number of low-fee index funds; help for small businesses



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 – Regulatory Update

Treasury Department/IRS

- Member discussion on discussion of modification of Determination Letter Program for individually designed plans at Retirement Policy Committee (4/15/15)
- Discussion of changes to EPCRS program for overpayments/errors in auto-enrollment programs



Retirement – Regulatory Update, cont.

- Hybrid Plan Regulations (effective 1/1/16);
proposed rules on transition rules
- Final rule this year.
- PEP plan rules
- No timeframe on mortality tables



Retirement – Regulatory Update, cont.

Department of Labor

Definition of Fiduciary/Conflict of Interest Rule- released April 16th

- Expanded Definition of Fiduciary for purposes of providing investment advice under ERISA: one who receives compensation for advising a plan, fiduciary, participant, beneficiary, IRA, or IRA owner about investment matters
- Investment matters include: investment advice, including rollover & distribution recommendations, investment management advice, appraisal, or recommendation to party to give investment advice/investment management advice or appraisal



Retirement – Regulatory Update, cont.

Department of Labor

Definition of Fiduciary Rule, cont.

- One providing such advice in exchange for compensation is a fiduciary and is required to provide advice in the client's best interests IF:
 - He/she represents that he/she is acting as a fiduciary under ERISA or
 - Provides advice under an agreement/arrangement or understanding that the advice is “individualized or specifically directed” for consideration in making plan asset management or investment management decisions.
 - Fee= compensation from any source including brokerage commissions, insurance sales commissions, mutual fund commissions (direct compensation and to compensation to affiliates of advisor)



Retirement – Regulatory Update, cont.

Department of Labor

Definition of Fiduciary Rule, cont.

Carve-outs:

- Seller's exception- makes clear is selling and not advising
- Offers/recommendations to plan fiduciaries to enter into swap deals
- Advice of employee of plan sponsor (with no additional pay)
- Marketing platform of investment vehicles
- Investment education (no specific fund recommendations may be included)- supersedes Interpretive Bulletin 96-1
- Appraisals for ESOPs



Retirement – Regulatory Update, cont.

Department of Labor

Definition of Fiduciary Rule, cont.

- Class exemptions:
 - “best interest contract”- allows continuation of compensation arrangements for advisors as long as follow clients “best interest”, admit to being fiduciary, provides new private right of
 - Query regarding exemption for advice to invest in lowest fee products in product class



Retirement – Regulatory Update, cont.

Department of Labor

Definition of Fiduciary Rule, cont.

- Comments due 75 days after publication: July 6th
- Hearing to be scheduled (most likely in August)
- FocusOn call on Monday May 11th - 2pm – 3:30pm
- ERIC to submit comments



Retirement – Regulatory Update, cont.

Department of Labor

Definition of Fiduciary Rule, cont.

- Joint letter requesting extension to 120 days
- Secretary Perez's statements 75 days are enough
- SEC Chair Mary Jo White comments – SEC to work on fiduciary rule: complicated & slow process
- Hill briefings/press briefings/other process for business briefings

Retirement – Regulatory Update, cont.

Department of Labor

Definition of Fiduciary Rule, cont.

- Preamble to Rule on HSAs: DOL solicits specific comment as to whether it is appropriate to cover and treat these plans similar to how rule will treat IRAs (for purposes of carve-outs & coverage)
- Discussion on FocusOn call on May 11th

Retirement – Regulatory Update, cont.

Department of Labor

Other Issues in the ‘queue’

- Lifetime Income & Benefits Statements
- Brokerage window regulations



Retirement – Regulatory Update, cont.

ERISA Advisory Council

- De-risking transactions (disclosure/model forms for plans)
- FocusOn call to on May 14th at 2pm ET to discuss ERIC member input on participant disclosures
- Model disclosures?



Retirement – Regulatory Update, cont. PBGC

- working on rules under new section 4062(e) legislation
- Working on multiemployer rules
- Reportable events regulation- to be issued this year!



Retirement – Misc.

Consumer Financial Protection Bureau

- Consumer education – older Americans
- Protecting from financial exploitation
- Resource for HR offices?

Upcoming ERIC calls

- FocusOn call on DOL Re-Proposed Rule on Definition of Fiduciary
 - Monday May 11, 2:00 p.m. EDT
- FocusOn call on De-Risking & Participant Disclosures
 - Thursday May 14, 2:00 p.m. EDT
- *Third Thursday* calls of ERIC Health Policy Committee
 - Thursday, May 21, 4:00 p.m. – 5:00 p.m. EDT
- Washington Update call
 - Monday, June 1, 11:00 a.m. – noon EDT



Upcoming ERIC meetings

- Inaugural in-person meeting of the ERIC Telemedicine Task Force
 - Wednesday, May 13, 2015, 10 a.m. – 3 p.m.
 - Location: ERIC offices, Washington D.C.
- ERIC General Membership and Committee meetings
 - October 14 and 15, 2015

To receive ERIC updates

- If you were forwarded this email from another person *in your company* but would like to receive your own copy of our emails in the future, please let us know by going to the ERIC website (www.eric.org) and clicking on “Register New User” in the upper-right hand corner, OR
- 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.

For further information

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