

The ERISA Industry Committee

Washington Update
September 16, 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
- Hill Briefing: James Brandell, *Dykema*
- Retirement Update
- Health Update
- Telehealth Update
- Concluding Remarks/Questions

Retirement



Retirement – Legislative Update

Passage of the “Surface Transportation and Veterans Health Care Choice Improvement Act of 2015” (July 30th with a July 31st deadline to fund the federal highway trust fund)

- Included extension of section 420 as pay-for (excess pension funding of defined benefit plans to pay for retiree health care and retiree life insurance premiums) through 2025
- Creation of Section 420 Task Force (call to be scheduled soon) to discuss other uses for Section 420



Retirement – Legislative Update

- Senate Finance Committee & Senate HELP Committee approve Tom Reeder as next Executive Director – Pension Benefit Guaranty Corporation
- Full Senate to take up confirmation
- No opposition expected



Retirement – Regulatory Update

Treasury Department/Internal Revenue Service

- Hybrid Plan Regulations (effective 1/1/16); proposed rules on transition rules – extension announcement?
- PEP plan rules
- No timeframe on mortality tables
- Rules on frozen defined benefit plans & nondiscrimination testing update



Retirement – Regulatory Update

Announcement 2015-19 Revisions to Employee Plans Determination Letter Program

- Effective 1/1/17 – elimination of 5-year staggered DL remedial amendment cycles for individually designed plans
- Scope of DL program limited to initial plan qualification & termination



Retirement – Regulatory Update

- Treasury/IRS commit to provide model amendments for statutory changes
- No longer require plan amendments for provisions N/A to plan
- Expand ability of plan sponsor to document qualification requirements through incorporation by reference



Retirement – Regulatory Update

- ERIC discussed issue on July 21st FocusOn call on limitations on lump sum distributions for participants in pay status
- ERIC drafting comment letter for circulation this week
- Comments due October 1st



Retirement – Regulatory Update

- Final Regulations on Minimum Required Contributions for DB plans & Excise Tax for Failure to Comply – effective 1/1/16
- How minimum required contributions are calculated
- When quarterly installments are required
- Use of credit balances on quarterly payments (use of formula election to satisfy quarterly election using credit balances vs old rule of specific dollar election – more flexible)
- “Reserved” section for mergers & spinoffs



Retirement – Regulatory Update, cont.

Notice 2015-49: Bans Lump Sum Windows to Participants in Pay Status

- Notice states IRS is planning to amend rules to section 401(a)(9) to limit such transactions
- Effective July 9, 2015
- ERIC drafting comment letter in response



Retirement – Regulatory Update, cont.

Department of Labor

Definition of Fiduciary Proposed Rule (released 04/16)

- ERIC comment letter submitted July 21st
- Hearing: Monday August 10th – Thursday August 13th
- Follow up comments to DOL due September 24th



Retirement – Regulatory Update, cont.

Department of Labor

Definition of Fiduciary Rule, cont.

- DOL Hearing Highlights:
- As expected the individual panels included a mix of witnesses who both supported and opposed the rule
- Tim Hauser attended each day of the hearing and was on every panel except one; Phyllis Borzi attended in the audience
- Supporters: expressed the need for the changes in the rule to “protect” participants and plans from advisors making investment recommendations for self-interested purposes.

Retirement – Regulatory Update

- Best interest standard: support was universal for a “best interest standard” – but “devil is in the details
- Concern with rule’s impact on annuities (particularly commission-based sale issue)
- Changes to IB 96-1: many groups (even those who support the rule) expressed concern that the limitations on definition of education was too broad and would limit education efforts in retirement plans
- Opposition to rule: criticisms included that the rule is overly broad, expensive to implement (particularly the BICE exemption); and particularly harmful to small employers



Retirement – Regulatory Update

Of note to ERIC members:

- Tim Hauser and other DOL representatives indicated that it was not the intent of the rule to cover conversations of HR/other employees (not intended to be advice)
- The term “call to action” was utilized during the hearing as a clarification/definition of the term “recommendation”
- HSAs – discussion that the current “limited involvement” standard would apply – but rule would cover actual advice of third party to participant
- IB 96-1 changes: “we heard you” but....
- No real commitment to transition time



Retirement – Regulatory Update, cont.

Department of Labor

Other Issues in the ‘queue’

- Lifetime Income & Benefits Statements
- Brokerage window regulations
- Rules implementing White House initiative on state plans for participants not covered by an employer plan



Retirement – Regulatory Update, cont.

Employee Expenses Charged to Trust Survey

- just over 70% of responses - their company does not charge employee expenses to the plan trust.
- Of the remaining almost 30%, the results show that the most common expenses charged to the plan trust are base pay, 401(k) employer match, travel, meals during travel and conferences and training
- Survey results circulated late July



Retirement – Regulatory Update, cont.

PBGC

Final Regulations on Reportable Events

- Low-default risk safe harbor
- Well-funded plan waiver
- Public company waiver

Effective 1/1/16

Reactions? Thoughts?



Retirement – Regulatory Update, cont.

PBGC issues proposed rules on section 4010 reporting

- Change reporting requirement for plans that miss contribution of more than \$1 million
- Require use of section 4044 assumption; eliminates option to use minimum contribution assumptions (form of payment assumptions)
- Comments due September 24



Health



Upcoming Congressional activity

- Repeal Obamacare?
 - Efforts seem to be losing steam
- Support remains for:
 - Repeal of ACA medical device excise tax
 - Repeal of ACA 40% excise tax
 - » Majority in House support at least one of the two repeal bills
 - Change to funding for second and third years of transitional risk reinsurance fee

ACA OOP limit

- Out-of-pocket limits on cost-sharing for any individual in family coverage in group health plans, self-funded or insured, cannot exceed self-only ACA OOP limit
 - 2015 limits: \$6600 self-only, \$13,200 family
 - 2016 limits: \$6850 self-only, \$13,700 family
 - Effective date of new policy: PYBOOA 1/1/16

ACA OOP limit, cont.

- ERIC has sent letters to the tri-agencies and the Hill to complain bitterly
 - No statutory justification for “clarification”
 - “Clarification” did not follow APA
 - Should immediately withdraw rule
- ERIC has met four times with the agencies and Administration on this
 - Also worked with many in Congress to seek support for our efforts
- Collaborated with NCB toward same goal

HHS says **NO**

- OOP policy will not change
- FAQ from May reflect policy that must be followed starting with 2016 plan year
- HHS justification
 - Applying the self-only limit in family coverage “helps remedy the difficulty a consumer could face in paying up to \$13,700” in out-of-pocket charges
 - Also “prevents consumers from being penalized for purchasing family coverage rather than self-only coverage”
 - Regulations as social policy???

HHS proposed rule on nondiscrimination

- Key areas
 - Discrimination on basis of gender identity
 - Communication with individuals of limited English proficiency
- LOTS of new and challenging rules
- Major question: does this apply to self-funded plans of large employers???
 - Potentially would seem to apply to self-funded plans with TPAs that operate plans on the Exchanges

Major upcoming regulatory guidance

- ACA 40% excise tax from Treasury
 - Proposed regulation will not be issued until comments assimilated on both Notices #1 and #2
- Guidance on Genetic Information Nondiscrimination Act (GINA) from EEOC
 - Currently waiting for clearance from OMB

ACA 40% excise tax

- ERIC comment letter circulated among members; please send me your comments by Monday, 9/21
 - Main points:
 - Taxable period of assessment should be plan year, not calendar year
 - All relevant details of tax (threshold, adjustments, etc.) should be known well before beginning of year
 - Plan sponsors should always be able to assume responsibility for paying excise tax
- Poll circulated on onsite medical clinics; please submit comments by Wednesday, 9/23

Form 5500 deadline extended

- Normal due date: 7 months after end of plan year; July 31 for calendar year plans
 - Extended due date is October 15 if Form 5558 is filed
- Change: Treasury directed to modify automatic extension to 3½ months following end of plan year: November 15 for calendar year plans
 - Applicable starting with 2016 plan years

The Dread HHS Health Plan Identifiers (HPIDs)

- HIPAA created HPIDs
 - HHS asks whether policy change warranted on using HPIDs in health plan enumeration and in electronic health care transactions
- ERIC comment letter: eliminate HPID use by large employers
 - HPID rules are no longer necessary
 - HPID enumeration structure does not work for employer-sponsored group health plans
 - Our plans should be exempt from certification rules if they do not perform standard transactions

New ACA court case, sigh...

- *U.S. House of Representatives v. Burwell* – yet another opportunity for SCOTUS to weigh in on the ACA!
 - Case questions Administration’s use of funds to pay for cost-sharing subsidies for lower-income plan participants in Exchanges
 - U.S. District Court for D.C. found that House has standing to pursue case; no decision on merits
 - Lots of language in the ruling indicating that Administration’s funding of subsidies not justified under ACA
 - Still a LONG way from this point to the SCOTUS

Request for support for ERIC *amicus* filing in two cases

- *Fulgham v. Embarq*
 - Petition to SCOTUS to overturn decision of 10th Circuit; split in circuits
 - Question centers on applicability of six-year standard for reviewing fiduciary actions: standard of “repose”
- *Gobeille v. Liberty Mutual*
 - Case concerns Vermont state law requiring reporting by all health plans, including self-funded
 - 2nd Circuit overruled District Court and agreed that ERISA preempted the Vermont reporting law

Telehealth – Federal Legislative Update

– TeleMed Act

- Permits licensed Medicare practitioners to provide services to Medicare beneficiaries in a different state without having to obtain a license for the state where the patient is located.

– Medicare Telehealth Parity Act of 2015

- Requires incremental changes in Medicare coverage to enhance access to care for Medicare beneficiaries.



Telehealth – Snapshot of State Regulatory Action

- Idaho
 - New rules from Board of Medicine address
 - Requirements for establishing a patient-provider relationship
 - Maintaining the community standard of care
 - ERIC written comments encouraged the Board to embrace telehealth through adopting flexible, inclusive regulations
- North Dakota Board of Medicine
 - Should post proposed telehealth rules soon
 - Will probably include restrictions on how to establish a patient-provider relationship using telehealth and prescribing authority



Telehealth – State Regulatory Action (Cont.)

- Colorado Medical Board
 - Recently enacted telehealth policies
 - Generally favorable towards telehealth
 - ERIC written comments
- Alabama
 - State Board of Medical Examiners reversed course and suspended all telehealth rules in late August
 - New rulemaking expected to begin in the near future
- Mississippi Board of Medical Licensure
 - Suspended rules this summer due to failure to provide economic impact statement when issuing telehealth rules
 - New economic impact statement is expected in the next few days
 - Possible comment period to follow



Telehealth Summit & Task Force

- **The ERIC Telehealth Summit**
 - **Thursday, October 15, 2015 from 3:00 p.m. to 7:00 p.m. in Washington, D.C. - immediately following ERIC Fall Meeting**
 - To learn more about the Summit, please contact Allie Wils
- Interested in learning more about telehealth?
 - Contact Allie Wils to become part of ERIC's Telehealth Task Force



Upcoming ERIC calls

- Section 420 Task Force call
 - Monday, September 28, 2:00 p.m. – 3:00 p.m. ET
- Telehealth Task Force call
 - Tuesday, September 29, 4:00 p.m. – 5:00 p.m. ET
- Washington Update call
 - Monday, October 5, 11:00 a.m. – noon ET
- *Third Thursday* call of ERIC Health Policy Committee
 - Thursday, October 22, 4:00 p.m. – 5:00 p.m. ET
- FocusOn call: Rethinking COBRA
 - Date: early November; exact date TBD



Upcoming ERIC meetings

- Government Relations Strategy meeting
 - Monday, September 28, 3:30 – 4:30 p.m. ET
 - Location: ERIC offices, Washington D.C.
- ERIC General Membership and Committee meetings
 - October 14 and 15, 2015
 - Location: Washington, D.C.
- ERIC Telehealth Summit
 - October 15, 2015, immediately after ERIC General Membership meeting

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

- **Annette Guarisco Fildes**, CEO and President
 - aguariscofildes@eric.org
 - Direct dial: 202/627-1910
- **Kathryn Ricard**, Senior Vice President, Retirement Security
 - kricard@eric.org
 - **Direct dial: 202/627-1930**
- **Allison Wils**, Director, Health Policy
 - awils@eric.org
 - **Direct dial: 202/627-1925**
- **Gretchen Young**, Senior Vice President, Health Policy
 - gyoung@eric.org
 - **Direct dial: 202/627-1920**
- ERIC main phone: 202/789-1400