

The ERISA Industry Committee

Washington Update:

May 14, 2012



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
- Health Update
- Retirement Update
- Concluding Remarks/Questions

Review: Budget Control Act of 2011

- \$2.4T in spending cuts >10 years
 - Coupled with comparable increase in debt ceiling
 - Done in two installments
- Part One: \$917B raised by 10-year caps on discretionary federal spending
 - Does not reach entitlement spending
 - Separate caps for security and non-security spending for first two years



Budget Control Act, cont.

- Part Two: debt ceiling increased \$1.2T - \$1.5T
 - Super Committee charged with achieving \$1.5T debt reduction was unable to agree on a package
 - Thus: sequestration
 - \$1.2T in cuts > FY 2013 - FY 2021 go automatically into effect
 - Effective January 2, 2013
 - Cuts divided equally between defense and non-defense



Budget Control Act, cont.

- Exempt from cuts: Medicaid and social security
 - OK to cut Medicare, but not more than 2%, and may only apply to provider payments
 - Medicare cuts expected to approach \$123B
 - Also exempt: CHIP, Part D low-income subsidies, Catastrophic coverage subsidies, ACA premium subsidies



Budget Control Act, cont.

- House passes bill to change sequester priorities, make additional cuts
 - Protects defense against sequester cuts
 - Leaves Medicare 2% cut in place
 - Eliminate parts of the ACA related to health
 - Delete funds from Prevention and Public Health Fund
 - Delete funds to be used to help states set up Exchanges
 - Defund CO-OP plans

Budget Control Act, cont.

- Would add med-mal provisions
 - \$250,000 cap on noneconomic damages
 - three-year statute of limitations;
 - restrict punitive damages to larger of \$250,000 or twice noneconomic damages
 - limit attorney contingency fees; and
 - create a safe harbor from punitive damages for the manufacturers or distributors of medical products in certain instances
- Bill would raise another \$237.8B in deficit reduction
- No future in Senate
 - President has said he would veto



SCOTUS and the ACA: Jes' a-waitin' and a-wonderin'



SCOTUS Task Force

- Getting ERIC ready for the SCOTUS decision
- What if entire ACA is thrown out?
 - List of practical concerns, including
 - Giving back ERRP money
 - Imputed income for plans covering adult children that are not tax dependents
 - Accounting issues – Medicare Part D subsidies
 - Arresting the new claims and review procedures
 - And so forth
 - Policy concerns: cost containment and expansion of access



SCOTUS Task Force, cont.

- What if just the individual mandate is thrown out?
 - Would want to delete ACA provisions with close nexus to mandate
 - Employer mandate
 - Auto enrollment
 - SBCs
 - Did not go “backwards in time” to eliminate 2010 and 2011 rules – hard to justify



Health regulations: SBCs

- DOL/Treasury/HHS publish 14 new FAQs
 - Eases rules on electronic delivery
 - Still some open questions
 - Seems generally no enforcement penalty if working “diligently and in good faith” to comply with rules in first year
 - Lots of minor helpful bits



ACA minimum value

- Concept important because determinant of whether employer owes ACA penalty
 - Employees not eligible for Exchange subsidy if employer coverage affordable and of minimum value
- Notice 2012-31 asks for comments on 3 approaches to defining MV
 - Recognizes that large employers need not provide essential health benefits



ACA minimum value, cont.

- 3 approaches
 - AV or MV calculator: standardized, would reflect claims data of typical self-funded plans
 - Design-based safe harbor checklists: simplified approach similar to that used for Medicare Part D certification
 - Actuarial certification – for plans with “non-standard” features
- HSA/HRA contributions still not given full value



Reporting health coverage under the ACA

- New IRS notices 2012-32 and 2012-33 address reporting and disclosure under IRC 6055 and 6056
- IRC 6055: issuers and self-funded plans must file annual returns reporting info on each individual covered
 - Applies for coverage provided after 12/31/13; thus, first new returns due in 2015



Reporting health coverage under the ACA, cont.

- Annual returns under 6055 must include
 - Name, address, TIN of primary insured and each other individual covered
 - Dates each individual covered during year
 - Whether coverage provided through Exchange and details on any Exchange subsidies provided
 - Anything else Secretary wants
- Must also provide written statement to each individual listed showing above info



Reporting health coverage under the ACA, cont.

- IRC 6056: large employers subject to employer penalty must report info about post-2013 coverage to FTEs
 - Name and EIN of employer
 - Date of filing
 - Certification as to whether employer offers FTEs (and their dependents) opportunity to enroll in minimum essential coverage
 - Length of waiting periods
 - Months during year that coverage is available
 - Monthly premium for lowest-cost option
 - Employer's share of cost of benefits
 - Number of FTEs for each month
 - Name, address, TIN of FTEs and months during which they and dependents were covered
 - Anything else Secretary wants
- Employers must also provide written statement to each FTE by January 31 (of year following information return) that includes employer's name, address, contact info, and coverage info



Verification of access to employer coverage

- New HHS Bulletin asks for comments on short-term and long-term strategy for verifying access to employer coverage
 - Two basic models: template and central database populated by employers
 - Current interim verification: ask for statement by employees; see if existing data contradicts; audit random sample to judge veracity
 - Long-term strategy: hope for the best

Health regulations: W-2 reporting on health care and FAQ on MHP

- Q&A on reporting the cost of health coverage on the W-2
 - Seems to reiterate government's view that must be reported if retiree receives a W-2
- New FAQ on mental health parity
 - Not applicable to retiree-only plans
 - Ok to use carve-out arrangements
 - Nonquantitative limits can't be applied more stringently to mental health benefits than to medical/surgical benefits



Retirement – Legislative Update

“Interest Stabilization” provision update

- House & Senate conferees met for first time on May 8
- Members of Washington DC Business Trade Associations & Interested Individual Companies have formed a Pension Coalition to focus on short and long-term advocacy efforts on funding & PBGC premiums



Retirement – Legislative Update, cont.

- Weekly lobby calls and regular in-person meetings
- Companies interested in participating: contact Kathryn Ricard (kricard@eric.org)
- First priority: letter to Hill in support of interest stabilization provision passed by Senate (S. 1813)
- Over 100 signatories



Retirement – Legislative Update, cont.

- Follow-up on Congressman Richard Neal’s (D-MA) legislation HR 4050 “The Retirement Plan Simplification and Enhancement Act of 2012”
- Business group trade groups are working on carving out the electronic delivery provision and working on a bi-partisan approach to the proposal
- Language changes are under consideration & the groups are discussing application of the provision to healthcare disclosures



Retirement – Legislative Update, cont.

- Meeting with House & Senate staff on May 9 to discuss prospects of stand-alone legislation on e-delivery
- ERIC to coordinate retirement & health policy committee review of issue (FocusOn call to-be-scheduled)



Retirement – Regulatory Update

- ERIC files comment letter on May 3 on Treasury package of guidance on lifetime income
- ERIC to testify at June 1 hearing
- Treasury Final regulations on hybrid plans expected “soon” according to Mark Iwry



Retirement – Regulatory Update, cont.

Department of Labor

- Participant Disclosure FAQs issued May 7th
- Beneficiary statements & lifetime income
- Definition of Fiduciary proposed regulation
- Final Target Date Fund regulations
- Electronic Delivery (not officially on guidance plan)
- DOL comments on limited scope audit at AICPA conference



Upcoming ERIC Priorities

- Joint Retirement & Health project on electronic delivery
 - FocusOn Call
 - Joint Task Force
 - Joint Letter/meetings with regulators
- Washington Representatives Committee



ERIC FocusOn calls

- Completed:
 - SCOTUS Task Force (4/19, 4/26))
 - Health care reform task force (5/10)
- Upcoming
 - Electronic delivery (TBD)
 - PCORI: work and priorities (June, 2012)
 - Health care reform task force (6/7)

Upcoming ERIC calls and meetings

- Next Washington Update call: 6/4/12
- Inaugural Washington Representatives meeting: Monday, June 11
- ERIC Membership and Committee meetings: October 24-25, 2012



To receive ERIC updates

- If you would like to receive your own copy of our emails and notifications of future updates, 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, or both.

For further information

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