

THE ERISA INDUSTRY COMMITTEE

Washington Update Call

October 5, 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, please press *6 on your telephone to “un-mute” your telephone.
- After speaking, please press *6 again to re-enter “listen-only” mode.

ERIC's 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 Call Agenda

- Welcoming Remarks
- Hill Briefing: James Brandell, *Dykema*
- Health Update
- Retirement Update
- Telehealth Update
- Concluding Remarks & Questions

HEALTH



Congress Tackles the ACA

- Repeal Obamacare?
 - Efforts seem to be running on empty
- Reconciliation bills moving through the House
 - Would dismember the ACA
 - » Repeal individual mandate
 - » Repeal employer mandate
 - » Repeal 40% excise tax
 - » Repeal medical device tax
 - » Repeal the IPAB
 - » Repeal auto-enrollment
 - President does not seem to share enthusiasm for this

Congress Tackles the ACA, Cont.

- Support remains for more limited changes:
 - Repeal of 40% excise tax
 - Repeal of medical device excise tax
 - Revise definition of full-time employee to 40 hours/week, rather than 30
 - Change to funding for second and third years of transitional risk reinsurance program
 - Smaller Changes:
 - » Definition of small employer
 - » Religious exemption for Christian Scientists
 - » Permit use of FSAs, HSAs, and HRAs to pay for OTC drugs

Hill Action on 40% Excise Tax

- Two **House** bills would repeal the excise tax
 - HR 2050 by Rep. Joe Courtney (D-CT) has support of 137 D's, 15 R's
 - HR 879 by Rep. Frank Guinta (R-NH) has support of 98 R's
 - » This bill would also repeal W-2 reporting for cost of employer-provided health care
 - Majority in House support at least one of the two repeal bills
- Two **Senate** bills would also repeal the tax
 - S 2045 by Sens. Dean Heller (R-NV) and Martin Heinrich (D-NM) – support of 14R's, 1 D
 - » Almost the same as HR 2050
 - S 2075 by Sen. Sherrod Brown (D-OH) and co-sponsored by 11 D's and Bernie Sanders
- Big Question: How to pay for repeal?
 - 10-year cost = \$91B

Hill Action on 40% Excise Tax, Cont.

- More bills on the horizon – emphasize modify rather than repeal
- Big issues:
 - Actuarial value rather than threshold
 - Indexation to accommodate rise in medical prices
 - Exclude HSA and FSA contributions from excise tax
 - Exclude retiree health from calculation

ACA 40% Excise Tax

- ERIC comment letter filed on 9/30
 - Main Points:
 - » Plan sponsors should always be able to assume responsibility for paying excise tax
 - » Taxable period of assessment should be plan year, not calendar year
 - » All relevant details of tax (threshold, adjustments, etc.) should be known well before the beginning of the year
- In the process of analyzing ERIC poll on onsite medical clinics; will discuss at FocusOn call on October 28

Retiree Health: U.S. District Courts in 6th Circuit Spring into Action

- *Kelsey v. Hayes*
 - Retirees in class action suit granted free health insurance for life
 - First to apply SCOTUS decision in *M&G Polymers v. Tackett*
 - » No special presumptions or inferences; must apply ordinary contract principles
- *Reese v. CNH America*
 - Retiree rights to employer-paid health benefits do not outlive CBA; no vested right

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
- ERIC will write a comment letter to say that rules should **NOT** apply to self-funded plans
 - FocusOn Call to discuss on Wednesday, October 7

Recent Sub-Regulatory Guidance

- IRS: Notice 2015-68 on 6055 reporting
 - Use of truncated TINs of plan sponsors
 - Electronic statements for ex-pats
 - How to handle coverage by more than one plan
- HHS FAQ: Exchange reporting – notices in 2016 to employers whose employees are receiving subsidies
 - HHS will notify subset of employers – those whose employees provide addresses
 - Big Question: How are HHS and IRS processes coordinated for purposes of employer shared responsibility penalty?

RETIREMENT



Retirement: Legislative Update

- Meetings on Frozen Plans and Nondiscrimination testing
- Treasury/Hill Staff Meeting
- Next Steps



Retirement: Legislative Update

Task Force on Section 420

- Conference call held on Monday, September 28
- Summary of ideas discussed
- Next Steps



Retirement: Regulatory Update

Treasury Department/IRS

- Hybrid Plan Regulations (effective on 01/01/16); proposed rules on transition rules – extension announcement?
- PEP plan rules
- No time frame on mortality tables
- Rules on frozen defined benefit plans and nondiscrimination testing update



Retirement: Regulatory Update

Announcement 2015-19 Revisions to Employee Plans Determination Letter Program

- Effective 01/01/17 – elimination of 5-year staggered DL remedial amendment cycles for individually-designed plans
- Scope of DL program limited to initial plan qualification and termination



Retirement: Regulatory Update

ERIC Comment Letter Submitted 10/01/15

- Keep DL program for large plans (15,000 participants measured on a control group basis OR more than \$500 million in assets)
- Increase user fees (need statutory change)
- Continue 5-year staggered schedule for IRS workload purposes



Retirement: Regulatory Update

Alternate Proposals

- Third-party certification program (tax opinions) – using IRS White Paper as source
- Certain significant changes in plan as starting new plan
- Extend extended remedial amendment period for statutory changes
- Operational reliance for discretionary amendments
- Expedited DL process for merger/acquisition/spin-off



Retirement: Regulatory Update

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 a comment letter in response



Retirement: Regulatory Update

Department of Labor: Definition of Fiduciary Proposed Rule (released on 04/16/15)

- ERIC comment letter submitted on July 21
- Hearing: Monday, August 10 – Thursday, August 13
- Supplemental comments due to DOL on September 24



Retirement: Regulatory Update

Department of Labor: Definition of Fiduciary Proposed Rule, Cont.

- ERIC Supplemental Letter
 - Investment education carve-out should not prohibit reference to specific plan investments
 - Clarify application of rule to conversations among co-workers
 - Narrow the definition of “recommendation”
 - Employers with limited involvement in an HAS should not be fiduciaries under the rule



Retirement: Regulatory Update

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

ERIC Survey on Overpayments Out of Retirement Plans

- Member-requested survey
- Survey closes today @ noon
- Results to be circulated this week



Retirement: Regulatory Update

PBGC – FY 2014 Projection Report

- Single employer plan outlook continues to improve - \$4.9 billion deficit projected for 2014
- Improvements v. FY 2013 Report - \$7.6 billion deficit projected for 2023
- Focus on stability of multi-employer program – insolvency projection delayed for 3 years



TELEHEALTH



Telehealth: Federal Update

- MedPAC expected to move on telehealth
 - MedPAC intends to discuss telehealth at their October 8 – 9 meeting
 - Likely the first step towards a MedPAC recommendation to Congress in their March Report



Telehealth: State Update

- North Dakota Board of Medicine
 - Recently posted proposed rules
 - » Address how to establish a patient-provider relationship using telehealth and prescribing authority
 - » ERIC will submit a comment letter
- Arkansas State Medical Board
 - Starting to change direction in favor of more beneficial telehealth policies
 - » Expecting revised proposed rules and a hearing to discuss



Telehealth: State Update, Cont.

- Idaho Board of Medicine
 - Recently closed comment period on proposed rules
 - » ERIC submitted a comment letter
- Louisiana State Board of Medical Examiners
 - Submitted final report to the legislature regarding the Board's final proposed telehealth rules
 - » Rules set to become effective on October 20, 2015



Telehealth: State Update, Cont.

- Massachusetts
 - Legislature recently held hearings on two telehealth bills
 - Growing coalition in the state to push 2016 telehealth legislation
- Maine
 - Legislature requested meeting with telehealth experts to explore options and opportunities

Telehealth Summit & Task Force

- **ERIC Telehealth Summit**

- **Thursday, October 15** from **3pm to 7pm** in **Washington, DC**
(immediately follows ERIC's 2015 Fall Committee & Membership Meetings)
- To learn more about the Summit, please contact Allie Wils

- **Interested in learning more about telehealth?**

- Contact Allie Wils to become a member of ERIC's Telehealth Task Force



Upcoming ERIC Calls

- Discussion of HHS Nondiscrimination Rules
 - Wednesday, October 7 from 2pm to 3:30pm (ET)
- Third Thursday Call of ERIC's Health Policy Committee
 - Thursday, October 22 from 2pm to 3:30pm (ET)
- Discussion of Onsite Medical Clinics
 - Wednesday, October 28 from 2pm to 3:30pm (ET)
- Washington Update Call
 - Monday, November 2 from 11am to 12pm (ET)
- FocusOn Call: Rethinking COBRA
 - Early November (exact date TBD)



Upcoming ERIC Meetings

- Government Relations Strategy Meeting
 - Monday, October 19 from 3pm to 4pm (ET)
 - Location: ERIC's Offices in Washington, DC
- Fall 2015 Committee & Membership Meetings
 - Wednesday, October 14 and Thursday, October 15
 - Location: Covington & Burling in Washington, DC
- ERIC's Inaugural Telehealth Summit
 - Thursday, October 15
 - Location: Covington & Burling in Washington, DC

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