



BENEFITS INSIDER
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WEB's **Benefits Insider** is a bi-monthly member exclusive publication providing the latest developments from Washington, DC, on matters of interest to employee benefits professionals. The content of this newsletter is being provided through a partnership with the American Benefits Council, a premier benefits advocacy organization, which provides its core content, and is edited by Christopher M. Smith, Employee Benefits attorney and Principal of Flexible Benefits Systems, Inc., csmith@fbsi.com.

Articles in this Edition

RECENT LEGISLATIVE ACTIVITY 2

Little Progress on Budget, Tax Negotiations So Far2

RECENT REGULATORY ACTIVITY 2

CMS Announces PPACA Transitional Reinsurance Fee Amount for 20152

Frozen Plan Nondiscrimination Update: Portman, Cardin Weigh In with IRS.....3

RECENT JUDICIAL ACTIVITY – NO ACTIVITY TO REPORT THIS PERIOD

RECENT LEGISLATIVE ACTIVITY

Little Progress on Budget, Tax Negotiations So Far

Over the past two weeks, budget conferees have continued to negotiate a compromise agreement on a 2014 budget resolution, perhaps including a pathway forward on tax reform, but little progress has been reported thus far.

As we have previously reported, these negotiations bear close scrutiny because the tax incentives supporting these plans, such as the exclusion of employer-paid health care premium contributions and deferrals of tax on contributions to retirement plans, represent foregone federal tax revenue. While proposals remain conceptual in nature, complex in practice and unpopular in many corners, any need to raise federal revenue is likely to address benefit plans in some way.

RECENT REGULATORY ACTIVITY

CMS Announces PPACA Transitional Reinsurance Fee Amount for 2015

The U.S. Department of Health and Human Services (HHS) Centers for Medicare and Medicaid Services (CMS) has set the health plan transitional reinsurance program (TRP) fee at \$44 for the 2015, according to [proposed regulations](#) released on November 25.

Under Section 1341 of the Patient Protection and Affordable Care Act (PPACA), during the first three years that state health insurance exchanges are operational (2014 through 2016), health insurance issuers and plan administrators (on behalf of self-insured group health plans) will be assessed a per-enrollee fee to finance a three-year transitional reinsurance program. The contribution rate for 2014 is \$63 per covered life for the year.

The proposed regulations would also exclude "self-insured, self-administered plans" from the requirement to make TRP contributions for the 2015 and 2016 years. This exclusion would apply to self-insured plans that do not use a third-party administrator for "their core administrative processing functions - adjudicating, adjusting, and settling claims (including the management of appeals), and processing and communicating enrollment information to plan participants and beneficiaries." Based upon a preliminary review of the proposed rule, it appears that the vast majority of self-insured plans will be unable to qualify for the exemption as proposed because of their use of third party claims administrators.

Finally, the proposed rule sets forth a new schedule for the collection of the fee in two phases each year, with the actual reinsurance component of the fee due at the beginning of the following calendar year (i.e., in early 2015 for the 2014 fee) with the component of the fee attributable to the recollection of Early Retiree Reinsurance Program expenditures due at the end of the following calendar year (i.e., in late 2015 for the 2014 fee).

In a related development, Representatives Pat Tiberi (R-OH) and Daniel Lipinski (D-IL) recently introduced [a bill \(H.R. 3489\) that would repeal the TRP fee](#) and authorize Congress to appropriate funds from the U.S. Treasury to make the reinsurance payments. The measure is supported by both employer and labor groups and while its prospects for passage are unclear, the bill may focus attention on finding alternative funding mechanisms.

Frozen Plan Nondiscrimination Update: Portman, Cardin Weigh In with IRS

The U.S. Treasury Department and Internal Revenue Service (IRS) continue to weigh the issuance of short-term guidance and/or proposed rulemaking with regard to the effect of certain nondiscrimination rules on frozen and converted defined benefit pension plans.

The increasingly necessary practice of defined benefit plan sponsors closing their plans to new entrants or converting them into a different type, such as a hybrid plan, has created new challenges for employers. These plan sponsors have used various approaches to assist older employees with the transition to the new system, such as grandfathering existing participants. However, over time, some of these transition approaches can become technically inconsistent with current regulations prohibiting discrimination in favor of highly compensated employees. Consequently, IRS guidance is necessary to permit their continued use. In some cases, employers have already been compelled to change important benefits on a prospective basis and participants could experience much broader adverse effects in the coming years if this problem is not corrected.

On November 21, U.S. Senators Ben Cardin (D-MD) and Rob Portman (R-OH) sent [a letter to Treasury Secretary Jacob Lew](#), urging the Treasury Department to quickly "implement a practical, non-regulatory solution to this issue."

The IRS recently added the issue to their policy agenda and has an open guidance project underway. However, it remains uncertain whether such guidance would be sufficiently responsive to employer concerns.

RECENT JUDICIAL ACTIVITY

No activity to report this period.