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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 Smith, employee benefits attorney and Principal of Flexible Benefits Systems, Inc., csmith@fbsi.com.

Articles in this Edition

RECENT LEGISLATIVE ACTIVITY

House Approves Transportation Funding Measure with Pension Funding Stabilization

In a 367-55 vote on July 15, the U.S. House of Representatives approved the Highway and Transportation Funding Act (H.R. 5021), extending funding of highway and transportation projects through May 2015. As a revenue offset, H.R. 5021 includes an extension of the pension plan funding stabilization provisions originally passed as part of the previous transportation bill, the Moving Ahead for Progress in the 21st Century (MAP-21) Act of 2012.

The MAP-21 provision stabilized interest rates for purposes of calculating defined benefit plan funding by constricting the segment rates used to determine funding status within 10 percent of a 25-year average of prior segment rates. The subsequent phase-out of the original MAP-21 stabilization provision – under which the 10 percent corridor is gradually increased to 30 percent – has reduced the effectiveness of the measure.

H.R. 5021 provides for a five-year extension of the MAP-21 provisions, raising $6.4 billion by essentially delaying the phase-out until 2017.

House Highway and Transportation Funding Act (H.R. 5201)		
If the calendar year is:	**The applicable minimum percentage is:**	**The applicable maximum percentage is:**
2012 - 2017	90%	110%
2018	85%	115%
2019	80%	120%
2020	75%	125%
After 2020	70%	130%

In a statement during debate on the House floor, Ways and Means Committee Chairman Dave Camp (R-MI) described the House funding plan and the inclusion of pension funding in that proposal as the only funding package capable of securing bipartisan votes in both the House and Senate.

Prior to final passage, the House defeated a motion to recommit the measure back to the committee level with instructions to amend the bill to provide for a shorter extension. Proponents of this motion argued that a shorter extension would apply more pressure to enact a longer-term fix.

The U.S. Senate Finance Committee has approved a different transportation funding measure, the Preserving America's Transit and Highways (PATH) Act, with a shorter (three-year) extension of the pension funding stabilization provisions.

Senate PATH Act		
If the calendar year is:	**The applicable minimum percentage is:**	**The applicable maximum percentage is:**
2012 - 2015	90%	110%
2016	85%	115%

2017	80%	120%
2018	75%	125%
After 2018	70%	130%

The measure is projected to raise $2.7 billion over ten years.

Late on July 15, however, Senate Majority Leader Harry Reid (D-NV) announced his intention to hold votes on three different approaches: the House-passed bill, the Senate Finance bill and an alternative measure being developed by Senate Environment and Public Works Committee Chair Barbara Boxer (D-CA). The content of the Boxer version of the bill is not yet known. Reid did not provide a timeline for Senate votes.

On July 14, President Obama issued a Statement of Administrative Policy announcing support for passage of the House bill but saying that "Congress should work to pass a long-term authorization bill well before the expiration date set forth in H.R. 5021."

House GOP Lawsuit Against President to Focus on PPACA Employer Mandate Delay

Republicans in the U.S. House of Representatives released additional details of their forthcoming lawsuit against President Obama on July 10, revealing that the suit will center on the delay of the employer "shared responsibility" provisions of the Patient Protection and Affordable Care Act.

As we have previously reported, Republicans are pursuing legal action against the President to protest what they perceive as abuse of executive authority. A formal resolution to authorize the lawsuit will be considered by the House Rules Committee within the next week, with a vote anticipated in the full House before the end of the month.

The resolution charges the president and his administration with failure "to act in a manner consistent with that official's duties under the Constitution and laws of the United States with respect to implementation of (including a failure to implement) any provision of the Patient Protection and Affordable Care Act."

In July 2013, following an informal announcement by the U.S. Treasury Department, the Internal Revenue Service (IRS) issued Notice 2013-45 delaying for one year (until January 2015) the mandatory employer and insurer reporting requirements under sections 6055 and 6056 of PPACA, as well as the associated "employer shared responsibility" penalties under Section 4980H.

Speaker of the House John Boehner described the motivation of the House Republicans in a detailed statement, saying "In 2013, the president changed the health care law without a vote of Congress, effectively creating his own law by literally waiving the employer mandate and the penalties for failing to comply with it. ... No president should have the power to make laws on his or her own."

Interestingly, there is a strong indication that the House GOP leadership agreed to pursue this lawsuit as an alternative to filing formal articles of impeachment against President Obama, which several House Republican members have been urging.

House Approves Legislation to Install Target Date Fund as Default Investment in TSP

On July 14, the U.S. House of Representatives approved a measure that would formally institute a target date fund as the default investment for the federal government's own retirement plan. The Smart Savings Act (H.R.4193) was introduced in the House on March 11 by Oversight Committee Chairman Darrell Issa (R-CA) and ranking member Elijah Cummings (D-MD).

An identical bill, introduced in the Senate on March 12 as S. 2117 by Senators Elizabeth Warren (D-MA) and Rob Portman (R-OH), was as approved the Committee on Homeland Security and Governmental Affairs on June 25, though consideration on the Senate floor has not yet been announced.

The bill would change the default investment fund under the Thrift Savings Plan (TSP), the defined contribution plan for federal government employees. Currently, new federal civilian employees automatically enrolled in the TSP who have not specified where to invest their funds are currently defaulted to the Government Securities Investment (or "G") Fund, a fund designed to produce a rate of return that is higher than inflation while minimizing exposure to credit risk and market price fluctuations.

Under the new legislation, however, such employees would be defaulted into "an age-appropriate target date asset allocation portfolio."

The Federal Retirement Thrift Investment Board approved the plan to seek this legislative change in December 2013, after the Employee Thrift Advisory Council endorsed the idea in November 2013. A news release announcing the introduction of the legislation notes that "While the G Fund is very safe, it is widely viewed by investment professionals as an overly conservative investment, particularly for younger workers, and can leave many unprepared for retirement."

While the measure does not affect private-sector plan sponsors directly, the federal government is often held as an example for the private sector. Many private-sector employers already default employees who are automatically enrolled into their plans into target date funds, though some prefer to default automatically enrolled employees into a more conservative fund, despite the lower return on investment.

Senate Committee Examines Chronic Care

The U.S. Senate Finance Committee held a hearing on July 15 to discuss the challenges faced by chronic illness sufferers and their caregivers. The hearing, Chronic Illness: Addressing Patients' Unmet Needs, examined such issues as poor communication between multiple doctors and hospitals, conflicting medication programs, overreliance on paper medical records and poor support for family caregivers.

At the outset of the hearing, Committee Chairman Ron Wyden (D-OR) called the management of chronic care "the biggest challenge ahead for Medicare and the future of America's health care system." In particular, Wyden noted that "the growing prevalence of chronic disease is also a major driver of rising health care costs that are putting a growing burden on government, business, and family budgets."

The hearing featured testimony from Cheryl DeMars, president and CEO of The Alliance, a Wisconsin-based trade association. DeMars is also the new chair of the National Business Coalition on Health. DeMars urged the federal government to provide:

- Support for employers' use of purchasing power to improve the health of employees.
- Greater access to Medicare data on cost and quality of care.
- Clear guidance with respect to regulations affecting health plans, with flexibility for plan sponsors to innovate.

Also testifying before the panel were Stephanie Dempsey, a sufferer of multiple chronic illnesses; Mary Margaret Lehmann, a caregiver for her Alzheimer's-stricken husband; and Dr. William A. Bornstein, chief quality and medical officer at Emory Healthcare. Providing written testimony, but not appearing in person, was Chet Burrell, president and CEO of CareFirst BlueCross BlueShield. These witnesses all discussed their unique challenges navigating the chronic care health system.

During the question-and-answer period, lawmakers talked about improving incentives for "coordinated care," the organization of patient care between two or more caregivers to facilitate the appropriate delivery of health care services. Earlier this year, Wyden and fellow committee member Johnny Isakson (R-GA) introduced the Better Care, Lower Cost Act (S. 1932), a measure directing the Secretary of Health and Human Services (HHS) to establish an integrated chronic care delivery program that promotes accountability and better care management for chronically ill patient populations and coordinates items and services under Medicare.
Wyden, Isakson and Debbie Stabenow (D-MI) also specifically expressed interest in standalone legislation addressing Alzheimer's disease. In April 2013, Stabenow introduced the Health Outcomes, Planning, and Education for Alzheimer's Act (S. 709), a measure to improve diagnosis, care and outcomes for affected individuals.

RECENT REGULATORY ACTIVITY

PBGC Announces 4062(e) Enforcement Moratorium for Remainder of 2014

On July 8, the Pension Benefit Guaranty Corporation (PBGC) posted a news release announcing a moratorium on the enforcement of ERISA Section 4062(e) through the end of 2014. The PBGC indicated that the moratorium will enable them to target their enforcement efforts on cases where pensions are genuinely at risk and will allow the agency to work with the business community, labor and other stakeholders.

The moratorium applies to both open and new cases. Notably, the news release also makes clear that companies should continue to report events occurring during the moratorium and does not prevent the PBGC from taking enforcement actions after its expiration.

Under Section 4062(e), if an employer with a pension plan shuts down operations at a facility -- and, as a result of that shutdown, more than 20 percent of the employer's employees who are plan participants are separated from employment -- the employer is required to provide the PBGC with short-term financial guarantees in the form of a bond or escrow amount based on the plan's unfunded termination liability.

PBGC has in the last few years become very aggressive in its enforcement of this ERISA provision in many respects, giving rise to significant compliance challenges and large unexpected liabilities for many companies that have engaged in normal and often *de minimis* business transactions (such as the sale of a very small business unit or the consolidation of small operations at different facilities).

Two bills have been introduced to address these issues. Most recently, the USA Retirement Funds Act (S. 1979), sponsored by Senate Health, Education, Labor and Pensions (HELP) Committee Chairman Tom Harkin (D-IA), would impose a two-year moratorium on enforcement of Section 4062(e) to provide an opportunity for the issue to be studied. In 2013, Representative Richard Neal (D-MA) introduced the Retirement Plan Simplification and Enhancement Act of 2013 (H.R. 2117), which would have clarified -- consistent with Congress' original intent -- that Section 4062(e) only applies to major downsizing transactions, not routine business transactions.

IRS Finalizes Rules Governing Longevity Annuity Contracts

The Internal Revenue Service (IRS) finalized the first part of its "lifetime income" regulatory initiative on July 1 with the release of **final rules on longevity annuity contracts**. These final regulations will be effective as of July 2.

The final regulations allow for the purchase of a qualifying longevity annuity contract (QLAC, a deeply deferred annuity that meets certain requirements) in a qualified defined contribution retirement plan or IRA if premium payments for the QLAC do not exceed the lesser of $125,000 or 25 percent of the of the individual's benefit (determined as of the most recent valuation date). The regulations provide an exception to the minimum distribution rules for assets in QLACs.

The original proposed regulations, released with some fanfare as part of a comprehensive guidance packagerelating to lifetime income in February 2012, were intended to encourage employer plan sponsorship of longevity insurance by providing guidance necessary to comply with the required minimum required distribution rules for qualified plans and IRAs under Internal Revenue Code (IRC) Section 401(a)(9). Without an exception to the minimum distribution rules for QLACs, the value of the QLAC would be included in the calculation of minimum distributions from the plan or IRA. This could be a problem since many longevity annuity contracts do not start making payments until age 80 or 85 and minimum distributions are generally required to start when the individual reaches age 70½.

The final regulations: (1) allowed corrections of excess premium payments (in excess of the limits) by distributing the excess by the end of the calendar year following the calendar year in which the excess premiums were paid, and (2) provided an exception to the general rules for certain qualified pre-retirement survivor annuities (part of the QJSA rules).

The final regulations also include several new provisions that may make QLACs more attractive to plan sponsors and their employees, such as allowing return-of-premium provisions, which allow repayments to a beneficiary equal to the amount of premium payments minus all of the benefit payments following the death of the participant (or the participant and beneficiary, if a joint and survivor annuity was selected). The final rule also eliminates the need for an initial disclosure (except for a statement that it is intended to be a QLAC), allowing the initial disclosure to be governed by state law or ERISA.

IRS Withdraws Portion of Decades-Old Proposed Regulations on IRA Rollovers

The Internal Revenue Service **announced on July 10** that it is withdrawing a select provision of a proposed rule related to IRA-to-IRA rollovers.

The original proposed regulations, issued in July 1981, provided that the rollover limitation under Section 408(d)(3)(B) of the Internal Revenue Code is applied on an IRA-by-IRA basis. This rule is reflected in IRS Publication 590, Individual Retirement Arrangements (IRAs).

However, as we have previously reported, a recent tax court opinion in *Bobrow v. Commissioner* held that the limitation applies on an aggregate basis. Pursuant to that decision, the IRS issued Announcement 2014-15, limiting IRA owners to one 60-day rollover per year.

The IRS therefore is withdrawing the portion of its 1981 proposed regulations related to the rollover limitation.

GAO Suggests Revisions to Form 5500

A new report issued on June 5 by the Government Accountability Office (GAO) described problems with the Form 5500 Annual Return/Report of Employee Benefit Plan (Form 5500) and suggests revisions to improve the usefulness, reliability, and comparability of Form 5500 data. The Form 5500 is the annual report that employee benefit plans file with the federal government and the primary source of information for both the federal government and the private sector on retirement plan assets.

The GAO report, Private Pensions: Target Revisions Could Improve Usefulness of Form 5500 Information, was requested by Representative George Miller (D-CA), Ranking Member of the House Committee on Education and the Workforce. The report is based on the results of a GAO online survey of 43 non-government stakeholders and the responses from plan sponsors, service providers, representatives of plan participants and researchers, as well as interviews of agency officials.

The GAO identified three key challenges with Form 5500:

1. Plan asset categories on Schedule H are not representative of current plan investments and provide little insight into the investments, the level of associated risk or the structures of these investments. In particular, the majority of respondents indicated that the "other" plan asset category in the form is too broad because it can include many unrelated types of investments.
2. The form lacks detailed information on plan investments because there is no structured, data-searchable format for attachments to the form and the filing requirements on plan investments is limited for small plans. Stakeholders cannot determine administrative expenses deducted from returns when a plan invests with a registered investment company.
3. The data provided on plan investments is not timely and naming conventions and identification numbers may be inconsistent, making it difficult to collect and accurately match records.

The GAO suggested several revisions to improve the usefulness of Form 5500:

- Clarify Schedule C instructions for direct, eligible indirect and reportable indirect compensation so plan fees are reported more consistently and better align with the 408(b)(2) fee disclosures.

- Simplify and clarify Schedule C service provider codes to increase reporting consistency.
- Revise Schedule H plan asset categories to better match current investment categories and create more transparency into plan investments.
- Revise the Schedule of Assets attachments to a standard searchable format.
- Develop a central repository for Employer Identification Numbers and Plan Numbers for filers and service providers to improve comparability of form data across filings.

Of particular note, the GAO report recommends that Congress consider granting Treasury authority to require 5500 data be filed electronically. This is significant because when the DOL began requiring electronic filing of the Form 5500, Treasury had to remove certain questions and schedules from the form. Treasury has tried to modify rules to get the return information they need but they are currently prohibited from requiring this kind of filing to be made electronically.

The GAO also recommended that the Department of Labor (DOL), the Treasury Department and the Pension Benefit Guaranty Corporation (PBGC) complete advance testing of users' perceptions before proposing major changes to the form for public comment.

PBGC Director Stepping Down

Joshua Gotbaum, director of the Pension Benefit Guaranty Corporation (PBGC) will step down from his position in August. PBGC issued a public statement on July 11 but has not named an interim replacement. The PBGC's Director position is now an administrative office requiring Senate confirmation, meaning that a permanent replacement is unlikely in the near future.

RECENT JUDICIAL ACTIVITY

Nothing To Report This Issue