



BENEFITS INSIDER
A Member Exclusive Publication

Volume 127, December 1, 2014 (covering news from November 17-30, 2014)

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 2
 Senate HELP Committee Holds Hearing on EEOC Nominations, Legal Action vs. Wellness Programs 2
 Defined Benefit Plan Measures May Arise in End-of-Year Legislation 3

RECENT REGULATORY ACTIVITY 4
 IRS Issues Guidance on IRA Rollover Limit 4
 Final MEC, Individual Mandate Regulations Address Flex Credits, Wellness Programs 5
 HHS Extends Deadline for Submitting Enrollment Counts for PPACA Transitional Reinsurance Program 6
 EBSA Issues Updated Guidance for Compliance with PPACA, Mental Health Parity Rules 6
 PBGC Reveals Fiscal Year 2014 Deficit; Multiemployer Plan Legislation Possible 7
 Executive Branch Agencies Release Regulatory Agendas; IRS Issues Priority Guidance Plan 7

RECENT JUDICIAL ACTIVITY 15
 Nothing to report this issue 15

RECENT LEGISLATIVE ACTIVITY

Senate HELP Committee Holds Hearing on EEOC Nominations, Legal Action vs. Wellness Programs

On November 13, the U.S. Senate Committee on Health, Education, Labor and Pensions (HELP) held a [hearing](#) on the nominations of P. David Lopez to serve as general counsel and Charlotte Burrows to serve as a commissioner of the Equal Employment Opportunity Commission (EEOC). During the hearing, members of the committee discussed the recent lawsuits over employer wellness programs, with some Senators criticizing the agency for pursuing litigation in cases where no employee has complained of discrimination and before publishing guidance.

In convening the hearing, Committee Chairman Tom Harkin (D-IA) noted the importance of ensuring equal opportunity for American workers and that the EEOC, as the enforcing agency, is in need of strong leadership.

Ranking Republican Member Lamar Alexander (R-TN) said in his opening statement that the EEOC places too much emphasis on high-profile lawsuits and too little on resolving claims, and that there is a lack of transparency on how the EEOC issues guidance to the public and on its activities, generally. He voiced his concerns about lawsuits recently filed against employer wellness programs despite the lack of guidance from the EEOC.

The committee heard formal testimony from both Burrows and Lopez. In her [statement](#), Burrows noted progress that has been made toward equal opportunity for American workers, but that more effort is needed to eliminate discrimination entirely. Lopez, in his [statement](#), said that litigation is used as an enforcement tool as a “last resort” and that the agency seeks approval from the EEOC commissioners before filing lawsuits, consistent with the EEOC’s published guidelines.

During the question-and-answer session, several members of the committee questioned Lopez on the lawsuits filed by the EEOC on employer wellness programs despite the lack of guidance from the agency. The members specifically asked about the recent EEOC effort to obtain a temporary restraining order against Honeywell Inc., which was rejected by the U.S. District Court for the District of Minnesota. Lopez asserted that the Honeywell case differed from the other cases brought by the EEOC, in that the agency did not seek damages or to end the wellness program, but rather to allow the agency a temporary “breathing space” with which to conduct its investigation on whether the program was voluntary.

When asked why the case was not submitted to the commissioners prior to taking legal action, Lopez responded that it was consistent with EEOC regulations to seek temporary relief, unlike the other two previous wellness programs cases against Orion Energy Systems and Flambeau, Inc. Asked how the EEOC should best monitor the publishing of guidance, Burrows responded that it is important to collect input from all stakeholders and allow for public comment. “It’s clear that this is an area where guidance is necessary,” said Burrows. “The maximum amount of input on something like that makes sense to me.”

Votes were not held for the nominations but are expected shortly.

Defined Benefit Plan Measures May Arise in End-of-Year Legislation

With very little time left in the legislative session, lawmakers in the U.S. Senate and House of Representatives are currently prioritizing the items that must be considered before the 113th Congress adjourns.

The current continuing resolution – which funds government operations – expires on December 11 and must be renewed to avoid a possible (but unlikely) government shutdown. Congress is also negotiating a deal to extend certain expiring or expired tax provisions (so-called "tax extenders") and discussing a long-term fix of the Sustainable Growth Rate (SGR) affecting payments to Medicare providers (commonly referred to as the "doc fix").

Additionally, a proposal to address [the position of multiemployer pension plans](#) – most likely a one-year extension of the expiring multiemployer plan funding provisions of the Pension Protection Act of 2006 – will likely be discussed in the next few weeks. The [Expiring Provisions Improvement Reform and Efficiency \(EXPIRE\) Act](#), which includes an extension of the multiemployer funding provisions, among other expiring tax provisions, was approved by the Senate Finance Committee on April 2.

Among the items that could be considered for inclusion on the congressional agenda, whether as part of the measures noted above or as a separate package, are legislative clarifications of pension plan "shutdown" procedures under ERISA Section 4062(e).

Section 4062(e) Issues

Under current law, 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 workers who were plan participants are separated from employment – the employer is required to provide the Pension Benefit Guaranty Corporation (PBGC) with short-term financial guarantees in the form of a bond or escrow amount based on the plan's unfunded termination liability.

Aggressive PBGC enforcement of this provision has given rise to significant compliance challenges and large unexpected liabilities for many companies that engage in normal business transactions, although in July the agency [announced a moratorium on enforcement through the end of 2014](#).

On September 16, the Senate approved [S. 2511](#), a bill to address the problem by:

- Ensuring that there is no 4062(e) event unless there is a substantial shutdown of operations at a facility relative to the size of the *entire* employer.
- Ensuring (subject to certain exceptions) that there is no 4062(e) event unless employees lose their jobs, as opposed to going to work for another employer.
- Significantly reducing the scope of an employer's liability if there is a 4062(e) event.

Normally, the Senate measure would proceed to the full House for consideration. However, House rulemakers have identified a procedural problem with the Senate bill, noting that under the Constitution, tax legislation must originate in the House rather than the Senate. Therefore, the House must pass its own version of the bill, and then send it back to the Senate for its approval.

It remains to be seen whether lawmakers will be able to push the measure through before the end of the year. Also, it is possible that other proposals could be attached to the House bill, which could jeopardize its support in the Senate.

If legislation is not passed before the end of the congressional session, the process will start over and a new bill will need to be reintroduced in 2015.

Frozen Plan Nondiscrimination Issues

There remains need for legislation to address the inadvertent effects of ERISA's nondiscrimination rules on frozen defined benefit plans. The increasingly necessary practice of defined benefit plan sponsors "soft freezing" their plans (closing them to new entrants), and the use of various approaches to assist older employees with the transition to the new system, have created challenges for these employers. Over time, some of these transition approaches can become technically inconsistent with current regulations prohibiting discrimination in favor of highly compensated employees.

In December 2013, the Internal Revenue Service (IRS) provided [temporary relief](#) for 2014 and 2015 from the imposition of certain nondiscrimination rules on defined benefit pension plans that have been closed to new hires. The notice also proposes a number of alternatives for a permanent solution to the problem as well as other possible modifications to the nondiscrimination requirements.

Certain plan sponsor groups feel that the permanent alternatives suggested by IRS are insufficient to fix the problem and continues to advocate for legislation to address the matter, though the Treasury Department has expressed concerns about more comprehensive relief.

Senators [Benjamin Cardin \(D-MD\)](#) and [Rob Portman \(R-OH\)](#) of the U.S. Senate Finance Committee, and Representatives Pat Tiberi (R-OH) and Richard Neal (D-MA) of the U.S. House of Representatives Ways and Means Subcommittee on Select Revenue Measures, have introduced legislation (the [Retirement Security Preservation Act \(S. 2855\)/H.R. 5381](#)) that would affirm that a defined benefit plan does not fail the nondiscrimination rules, or the minimum participation requirement, provided the composition of the closed class of participants in the plan meets certain requirements.

Despite bicameral, bipartisan legislation addressing the problem, it will be very difficult for supporters to succeed in enacting legislation this year given the few days left in the session, the competing priorities and concerns about the legislation's comprehensive approach as raised by the Treasury Department. Once again, if Congress fails to act on these measures before the end of the congressional session, both bills will need to be reintroduced in 2015.

RECENT REGULATORY ACTIVITY

IRS Issues Guidance on IRA Rollover Limit

On November 10, the Internal Revenue Service (IRS) issued [Announcement 2014-32](#), providing further guidance on the application of the Individual Retirement Account (IRA) rollover limit to one 60-day rollover per year beginning in 2015. The guidance clarifies several points, including that traditional IRAs and Roth IRAs are generally aggregated for purposes of the one-per-year rollover rule.

On March 20, the IRS issued [Announcement 2014-15](#) to address the policy change inspired by the recent tax court opinion in *Bobrow v. Commissioner*, which held that the one-rollover-per-year limitation applies on an aggregate basis. Under prior law, IRA owners were allowed one 60-day rollover *per IRA* per year (for example, one rollover of IRA No. 1 in March and another rollover of IRA No. 2 in September). The new rule allows a maximum of one such rollover per one-year period.

Announcement 2014-32 also provides the following guidance:

- A distribution from an IRA *received* at any time during 2014 and rolled over within 60 days to another IRA (even in 2015), will have no impact on any distributions and rollovers during 2015 involving any IRAs that did not make the 2014 distribution or receive the corresponding rollover.
- The one-rollover-per-year limitation does not apply to a rollover to or from a qualified plan (and such a rollover is disregarded in applying the one-rollover-per-year limitation to other rollovers), nor does it apply to trustee-to-trustee transfers from one IRA to another IRA. In fact, the IRS encourages IRA trustees to offer IRA owners requesting a distribution for rollover the option of a trustee-to-trustee transfer from one IRA to another IRA.
- Rollovers from a traditional IRA to a Roth IRA (or “conversions”) are not subject to the one-rollover-per-year limitation and are disregarded in applying the one-rollover-per-year limitation to other rollovers.
- The term “traditional IRA” includes a simplified employee pension described in Internal Revenue Code Section 408(k) and a SIMPLE IRA described in Section 408(p).

The statutory language for Section 529 plans, Health Savings Accounts (HSAs) and educational savings accounts (ESAs) also contain a similar one-rollover-per-year rule. IRS has yet to address whether the *Bobrow* reasoning applies to these other arrangements.

Final MEC, Individual Mandate Regulations Address Flex Credits, Wellness Programs

In [final regulations](#) released on November 21, the Internal Revenue Service (IRS) provided guidance on determining the affordability of coverage under the individual mandate provisions of the Patient Protection and Affordable Care Act (PPACA), including how employer contributions under a Section 125 cafeteria plan should be taken into account.

Under Internal Revenue Code Section 5000A, as added by PPACA, nonexempt individuals must maintain "minimum essential coverage" (MEC) for themselves and any dependents (including coverage under an "eligible employer-sponsored plan") or make a "shared responsibility payment" on their federal income tax return. [Final regulations](#) issued under Section 5000A in August 2013 provided implementation guidance regarding the maintenance of MEC and liability for the shared responsibility payment.

[Proposed regulations](#) issued by the IRS in January (simultaneously with [Notice 2014-10](#)) specifically requested comment on the treatment of employer contributions under a Section 125 cafeteria plan for purposes of the individual mandate to the extent employees may not opt to receive the employer contributions as a taxable benefit, such as cash.

The preamble to the final regulations states that "If an employee may use nontaxable employer contributions to a cafeteria plan to pay for minimum essential coverage and only to pay for medical expenses, then that represents a real reduction in the cost to the employee of purchasing minimum essential coverage. In such a case, it is appropriate to treat the amounts as a reduction in the employee's required contribution." The preamble further states, however, that "if an employee's use of nontaxable employer contributions to a cafeteria plan is not limited to medical expenses, then it cannot be assumed that the employee will use the contribution for purchasing minimum essential coverage" and therefore cannot be taken into account in determining whether the employee's offer of coverage is affordable.

The final regulations also address the treatment of wellness program incentives for purposes of determining an individual's required contribution for coverage under an employer-sponsored plan. The final regulations retain the rules in the proposed regulations that wellness incentives unrelated to tobacco use are treated as unearned and wellness incentives related to tobacco use are treated as earned in determining affordability. According to the preamble to the final regulations, "These rules are consistent with the policies related to tobacco use reflected in the Affordable Care Act, such as allowing issuers to charge higher premiums based on tobacco use."

HHS Extends Deadline for Submitting Enrollment Counts for PPACA Transitional Reinsurance Program

The U.S. Department of Health and Human Services announced late on November 16 that it is extending the deadline for contributing entities to submit their 2014 enrollment counts for transitional reinsurance program contributions until 11:59 p.m. on December 5, 2014. The deadline was originally set for November 15, 2014.

Section 1341 of the PPACA established a transitional reinsurance program (2014 through 2016) intended to stabilize premiums in the individual insurance market. Health insurance issuers and certain self-insured group health plans are assessed a per-enrollee contribution to fund this transitional reinsurance program. The HHS Centers for Medicare and Medicaid Services (CMS) recently released [the form](#) for submitting the TRP annual enrollment count.

The current deadlines for remitting the first (or combined) contribution amount (January 15, 2015) and the second contribution amount (November 15, 2015) remain the same. Additional information on the TRP is available on [the dedicated CMS website](#).

EBSA Issues Updated Guidance for Compliance with PPACA, Mental Health Parity Rules

The Employee Benefit Security Administration (EBSA) of the U.S. Department of Labor (DOL) released an updated version of its [Compliance Assistance Guide – Health Benefits Coverage Under Federal Law](#) on November 19. This document, designed to help sponsors and issuers of health insurance coverage comply with current law, was updated to reflect changes attributable to the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA).

The MHPAEA prohibits large employer and group health plans that provide medical and surgical benefits and mental health or substance use disorder benefits from applying financial requirements or quantitative treatment limitations (such as a limit on the number of outpatient

visits or inpatient days covered) that are more restrictive than the predominant financial requirements or treatment limitations that apply to substantially all medical and surgical benefits. [Final regulations](#), released in November 2013, apply to plan and policy years (for grandfathered and non-grandfathered plans) beginning on and after July 1, 2014 (January 1, 2015, for most calendar year plans).

The guide includes general descriptions of the various health care laws and frequently asked questions, self-compliance tools and tips, charts summarizing the notices a plan must provide and model notices. The November 19 update reflects changes to [the mental health parity portion of the self-compliance tool section](#) and [the mental health parity provisions "questions and answers" section](#).

PBGC Reveals Fiscal Year 2014 Deficit; Multiemployer Plan Legislation Possible

The Pension Benefit Guaranty Corporation (PBGC) released its 2014 Annual Report on November 17, revealing a record total deficit of \$62 billion for the agency.

This total deficit is comprised of the single-employer program deficit of \$19.3 billion (down from \$27.4 billion in 2013) and the multiemployer program deficit of \$42.4 billion (a substantial increase from the \$8.3 billion reported in 2013).

The PBGC report notes that “absent legislative changes, the multiemployer program faces a greater than 50 percent chance of insolvency by 2022; that likelihood reaches 90 percent by 2025.” As has been noted by [the Government Accountability Office](#) and in [congressional hearings](#), the multiemployer pension funding provisions of the Pension Protection Act of 2006 (PPA) are scheduled to expire after 2014 and a substantial minority of multiemployer plans are reportedly in so-called "critical" condition.

Some lawmakers have expressed interest in passing legislation to stave off this so-called multiemployer “pension cliff” before the end of the year, either as stand-alone legislation or as part of a larger package extending expiring tax provisions.

The PBGC annual report credits the substantial improvement in the single-employer program to “an improving economy,” and an additional \$869 million attributable to premium increases enacted in 2012 and 2013.

Executive Branch Agencies Release Regulatory Agendas; IRS Issues Priority Guidance Plan

Key regulatory agencies with jurisdiction over U.S. employee benefits policy recently updated their semiannual agendas with topics that are expected to be the subject of formal guidance during the next year. These agencies include:

- [U.S. Treasury Department \(Treasury\) and Internal Revenue Service \(IRS\)](#)
- [U.S. Department of Labor \(DOL\) and Employee Benefit Security Administration \(EBSA\)](#)
- [Health and Human Services Department \(HHS\) and Centers for Medicare and Medicaid Services \(CMS\)](#)
- [Equal Employment Opportunity Commission \(EEOC\)](#)
- [Pension Benefit Guaranty Corporation \(PBGC\)](#)
- [Securities and Exchange Commission \(SEC\)](#)

Of particular note, on the health side, the EEOC intends to issue regulations in early 2015 addressing wellness programs under the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act of 2008 (GINA). On the retirement side, included in a packed slate of proposed and final regulatory projects is the DOL's ongoing effort to re-define "fiduciary" in the context of providing individualized investment advice – with the SEC proceeding on a similar project on a separate track.

While agencies are not bound by their agendas or the deadlines set, their publication does provide insight regarding the administration's priorities and the amount of activity expected within the next year.

The list categorizes regulatory projects according to whether they are in the proposed rule stage or the final rule stage. Generally, those items slated for "long-term action" do not have a specific timetable for proposal. While the description of each project includes a projected timetable for the issuance of rules or guidance, ***these timelines are estimates and frequently slip.***

Below, we highlight the significant items for employer plan sponsors and service providers.

[Treasury & IRS](#)

The following health care policy items are listed on the Treasury/IRS agenda:

- [Minimum value of employer sponsored coverage](#) [final rule stage, final action scheduled for December 2014]
- Guidance on [employer contributions to health savings accounts \(HSAs\)](#) and the interaction between the section 4980G comparability rules and section 125 nondiscrimination rules in instances where not all of the employer's employees contribute to an HSA through a cafeteria plan. [proposed rule stage, proposed regulations scheduled for June 2015]
- [Cafeteria plan rules](#) (including employee welfare benefit plans allowing employees to choose between taxable benefits and nontaxable benefits) [final rule stage, final action scheduled for December 2014]
 - [Proposed regulations](#) were issued in August 2007.
- [Additional permitted election changes for cafeteria plans](#) [proposed rule stage, proposed regulations scheduled for December 2014]
- [Guidance under tax code Section 125](#) regarding the use of contributions or benefits under a health flexible spending account in a subsequent plan year or period of coverage [proposed rule stage, proposed regulations scheduled for December 2014]
- [Enhancements to existing HIPAA portability regulations](#) (tolling the running of certain time periods in certain circumstances, clarifying the procedures for requesting special enrollment, addressing how the HIPAA portability requirements apply to individuals taking leave under the Family and Medical Leave Act and prescribing how to count the number of employees an employer has) [final rule stage, final action scheduled for December 2014]

- [Proposed regulations](#) were issued in December 2004.
- [Health insurance premium tax credit additional issues](#) to provide additional guidance to taxpayers who enroll in qualified health plans and claim the premium tax credit [proposed rule stage, proposed regulations scheduled for December 2014]
- [Coverage of certain preventive services under the Patient Protection and Affordable Care Act \(PPACA\)](#) implementing section 2713 of the Public Health Service Act (PHS) by providing an alternative process that an eligible organization may use for notification of religious objections related to the provision of contraceptive coverage [final rule stage, final action scheduled for December 2014] and further [coverage of certain preventive services under the PPACA](#) proposing changes to the definition of eligible organizations in light of the Supreme Court decision in *Burwell v. Hobby Lobby Stores, Inc.*, as well as proposing additional steps for the Government to take concerning coverage of contraceptives [proposed rule stage, agency currently analyzing comments]
- [Minimum essential coverage and other rules regarding the shared responsibility payment for individuals](#) [final rule stage, final action scheduled for December 2014]
 - [Final regulations](#) were issued on November 26.

The following retirement and compensation policy items are listed on the Treasury/IRS agenda:

- [Removal of rollover allocation rule from designated Roth regulations](#), possibly addressing the divided distribution issue raised by the safe harbor notice under tax code Section 402(f) [proposed rule stage, agency currently collecting comments]
- [Transition rules relating to the market rate of return requirements for statutory hybrid plans](#), permitting a defined benefit plan with an interest crediting rate that is not permitted under the final hybrid plan regulations to change to an allowable rate that does not violate the anti-cutback rules of tax code Section 411(d)(6) [proposed rule stage, agency currently collecting comments]
- [Reporting and notice requirements for deferred vested benefits under tax code Section 6057](#), formally designating the Form 8955-SSA as the form used to satisfy the relevant reporting requirements of the former "Schedule SSA" [final rule stage, final action scheduled for December 2014] and further [reporting and notice requirements for deferred vested benefits under section 6057](#) provide guidance on the requirement for plan administrators or employers to furnish an individual statement to participants who separate from service with a deferred vested benefit [proposed rule stage, proposed regulations scheduled for December 2014]
- [Modifications to minimum present value requirements for defined benefit plan distributions](#), allowing defined benefit plans to simplify the treatment of certain optional forms of benefit that are paid partly in the form of an annuity and partly in a more accelerated form [final rule stage, final action scheduled for December 2014]
- [Additional rules regarding the determination of plan assets and benefit liabilities for purposes of pension plan funding and benefit restrictions](#) for certain underfunded defined benefit pension plans [proposed rule stage, proposed regulations scheduled for July 2015]

- [Accrual rules for defined benefit plans](#) in cases where plan benefits are determined on the basis of the greater of two or more separate formulas [final rule stage, final action scheduled for June 2015]
 - [Proposed regulations](#) were released in June 2008.
- [Update to minimum present value requirements for defined benefit plan distributions](#) [proposed rule stage, proposed regulations scheduled for December 2014]
- [Application of tax code Section 409A to nonqualified deferred compensation plans](#) [proposed rule stage, proposed regulations scheduled for December 2014] and [further guidance on the application of tax code Section 409A to nonqualified deferred compensation plans](#) [final rule stage, final action scheduled for December 2014]
- [Notice to participants of consequences of failing to defer receipt of qualified retirement plan distributions and expansions of applicable election period and period for notices](#) [final rule stage, final action planned for March 2015]
 - [Proposed regulations](#) were released in January 2009.
- [Certain employee remuneration in excess of \\$1,000,000 under tax code Section 162\(m\)](#) [final rule stage, final action scheduled for December 2014]
 - [Proposed regulations](#) were issued in June 2011.
- [Compensation deferred under eligible deferred compensation plans](#), specifically relating to the definitions of a bona fide severance pay plan [proposed rule stage, proposed regulations scheduled for December 2014]
- [Contributions of an employer under a plan that does not meet the requirements of section 401\(a\) and application of tax code Section 404\(a\)\(5\)](#) [proposed rule stage, proposed regulations scheduled for March 2015]
- [Guidance relating to “eligible combined plans”](#) under tax code Section 414(x) [proposed rule stage, proposed regulations scheduled for December 2014]
- [Guidance on the determination of minimum required contributions](#) for purposes of the funding requirements applicable to single-employer-defined benefit pension plans [final rule stage, final action scheduled for December 2014]
 - [Proposed regulations](#) were issued in April 2008.
- [Temporary guidance on FATCA coordination](#) [final rule stage, interim final rule scheduled for December 2014] and [permanent guidance with respect to FATCA coordination](#) [proposed rule stage, proposed regulations scheduled for December 2014]
- [Guidance on spousal IRAs, SEPs and IRA technical changes](#) [proposed rule stage, proposed regulations scheduled for December 2014]
- [Requirements for employee stock ownership plans](#) to prescribe rules under Code sections relating to employee stock ownership plans, including sections 401(a)(28), 404(k), 409,

4975(d)(3) and 4975(e)(7) and also to update existing regulations relating to ESOPs: section 54.4975-7 and section 54.4975-11 [proposed rule stage, proposed regulations scheduled for June 2015]

In addition to the Fall 2014 regulatory agenda, on November 7 the IRS updated its [First Quarter 2014-2015 Priority Guidance Plan](#), which describes the 317 regulatory projects that the agency “intends to work on actively” during the twelve-month period from July 2014 through June 2015. The guidance plan does not place any deadline on completion of projects.

The plan includes 42 items addressing retirement benefits (Pages 5-8 of the document) and 23 items addressing executive compensation, health care and other benefits, including items related to implementation of the PPACA (Pages 8-10). A number of these items have already been completed, as indicated in the priority plan.

The most notable item in the priority guidance plan that does not appear in the semiannual regulatory agenda is a planned notice under Section 4980I of the tax code, addressing the 40 percent excise tax on high-cost employer-provided coverage, as added by PPACA. It is not clear whether IRS intends to issue guidance by June 2015 or if they will simply be gathering and analyzing data.

Other issues addressed elsewhere in the priority guidance plan include consolidated returns; corporations and their shareholders; excise taxes; exempt organizations; financial institutions and products; gifts, estates and trusts; insurance companies and products; international issues; partnerships; subchapter S corporations; tax accounting; tax administration; tax-exempt bonds and other general tax issues. An appendix also lists additional routine guidance that is published each year.

[DOL & EBSA](#)

The following health care policy items are listed on the DOL/EBSA agenda:

- [Updating of model notices associated with COBRA continuation coverage](#) [proposed rule stage, agency currently analyzing comments]
 - [Proposed regulations](#) were issued on May 7, 2014.

The following health care policy items are considered long term actions and are not anticipated in 2015: [automatic enrollment in health plans](#) under Section 18A of the Fair Labor Standards Act, as added by PPACA, under which employers with more than 200 full-time employees and who offer enrollment in one or more health benefits plans must automatically enroll new full-time employees in one of the plans offered and to continue enrollment of current employees, [fee disclosure for welfare plans](#), setting forth the standards under ERISA Section 408(b)(2) designed to ensure that plan fiduciaries of welfare plans have the information necessary to determine whether an arrangement for services is “reasonable,” and [amendments to the claims procedures](#) under Section 503 of ERISA, designed to strengthen, improve and update [the current minimum requirements](#) for internal claims and appeals processes.

The following retirement and compensation policy items are listed on the DOL/EBSA agenda. Most notably, the agency’s ongoing project “to more broadly define as fiduciaries, employee benefits plans, and IRAs those persons who render investment advice to plans and IRAs for a fee” has been given an expected release date of January 2015. This is a delay from the previous

estimate of August 2014.

- [Conflict of interest rule-investment advice](#) addressing "fiduciary" definition [proposed rule stage, new proposed regulations scheduled for January 2015]
 - DOL/EBSA originally issued [proposed regulations](#) in October 2010 intended to protect recipients of investment advice from conflicts of interest and self-dealing by clarifying ERISA's fiduciary standards with respect to the providers of such advice. The proposal would have greatly expanded the definition of a fiduciary. However, in the face of bipartisan congressional criticism and concerns expressed by plan sponsor groups, DOL subsequently announced that EBSA would withdraw and re-propose the regulations, including a more vigorous cost analysis, amendments to existing prohibited transaction exemptions (PTEs), one new PTE and an update of [DOL Interpretive Bulletin 96-1](#) (which distinguishes investment education from investment advice). The SEC currently has [a related long-term project](#) underway.
- [Pension benefit statements](#), addressing Pension Protection Act (PPA) benefit statement requirements as well as whether and how the individual benefit statement should present a participant's accrued benefits in a defined contribution plan as a lifetime income stream of payments as well as in the form of an individual account balance [proposed rule stage, proposed regulations scheduled for July 2015]
- [Guide or similar requirement for section 408\(b\)\(2\) disclosures](#) [final rule stage, final action scheduled for September 2015]
 - [Proposed regulations](#) were released March 12.
- [Annual pension plan funding notice](#), as required under ERISA, as amended by PPA and the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) [final rule stage, final action scheduled for December 2014]
 - [Proposed regulations](#) were issued in November 2010.
- [Selection of annuity providers – safe harbor for individual account plans](#) [long-term action stage, proposed regulations scheduled for November 2015]
- [Target date disclosure](#) [long-term action stage, final action scheduled for November 2015]
- [Standards for brokerage windows](#) in participant-directed individual account retirement plans [pre-rule stage, formal request for information comment period closed]
 - This project follows on DOL's 2012 issuance of [Field Assistance Bulletin \(FAB\) 2012-02R](#), revised guidance on issues related to participant- and fiduciary-level retirement plan fee disclosure. The FAB resolved a number of concerns with regard to DOL's original position on the treatment of brokerage window investments as "designated investment alternatives" (DIAs) (known as the "Q&A 30" issue, corresponding to the [original issuance](#)).
- [Amendment of the abandoned plan program](#), designed to facilitate the termination of, and distribution of benefits from, individual account pension plans that have been abandoned

by their sponsoring employers [final rule stage, final regulations scheduled for July 2015]

- [Proposed regulations](#) were issued in December 2012. At least one focus of the amendments will be consideration of expanding the scope of individuals who can be “qualified termination administrators,” the only entities authorized to implement the activities necessary to terminate an abandoned plan.
- [Adoption of an amended and restated Voluntary Fiduciary Correction Program \(VFCP\)](#), intended to expand the scope of some transactions currently eligible for correction under VFCP and streamline correction procedures for certain other transactions [final rule stage, interim final regulations scheduled for March 2015]
- [Modernization of the Form 5500 Annual Return/Report of Employee Benefit Plan](#) to “[make] the investment and other information on the Form 5500 more data mineable” [proposed rule stage, proposed regulations scheduled for July 2015] and [revisions to Form 5500 Annual Return/Report of Multiple Employer Plans](#), as required by the Cooperative and Small Employer Charity Pension Flexibility Act (CSEC Act), which created the exemption from the PPA funding rules [final rule stage, agency currently analyzing interim final rule comments]
- [Fiduciary requirements for disclosure in participant-directed individual account plans – timing of annual disclosure](#) amending 29 CFR section 2550.404a-5 by providing plan administrators with flexibility as to when they must furnish annual disclosures to participants and beneficiaries [proposed rule stage, proposed regulations scheduled for December 2014]

HHS & CMS

The following health care policy items are listed on the HHS/CMS agenda:

- [Calendar-year 2016 notice of benefit and payment parameters](#), addressing cost-sharing reductions, advance premium tax credit, reinsurance, and risk adjustment programs (including the transitional reinsurance program fee) under PPACA [proposed rule stage, proposed regulations scheduled for November 2014]
 - [Proposed regulations](#) were issued in November 2014.
- [Guidance relating to Medicare payments to providers of services and suppliers participating in Accountable Care Organizations \(ACOs\)](#) under the Medicare Shared Savings Program [proposed rule stage, proposed regulations scheduled for November 2014]
- [Certification of compliance for health plans](#) under HIPAA [final rule stage, final action scheduled for July 2015]
- [Nondiscrimination under PPACA](#) (listed under the Office for Civil Rights, rather than CMS) [proposed rule stage, proposed regulations planned for April 2015]
- [Coverage of certain preventative services; eligible organizations](#) under section 2713 of the PHS Act requiring coverage without cost sharing of certain preventive health services by non-grandfathered group health plans and health insurance coverage [proposed rule stage, agency currently analyzing comments]

EEOC

The following health care policy items are listed on the EEOC agenda:

- [Amendments to regulations under the Americans with Disabilities Act \(ADA\) to address wellness programs](#), particularly whether, and to what extent, Title I of ADA allows employers to offer financial inducements and/or impose financial penalties as part of wellness programs offered through their health plans, and to address other aspects of wellness programs that may be subject to the ADA's nondiscrimination provisions [proposed rule stage, proposed regulations scheduled for February 2015]
- [Amendments to regulations under the Genetic Information Nondiscrimination Act of 2008 \(GINA\)](#), intended to resolve whether employers may offer inducements to employees' spouses or other family members who answer questions about their current medical conditions on a health risk assessment. Additionally, some technical amendments would correct a typographical error in the rule's discussion of wellness programs [proposed rule stage, proposed regulations scheduled for February 2015]

The EEOC has filed several lawsuits in recent months challenging employer-sponsored wellness programs. These lawsuits have generally alleged that the employer wellness programs violate the ADA and/or GINA by imposing penalties on employees who decline participation in the program. While the EEOC's most request for a temporary restraining order and preliminary injunction was denied at the district court level, there is substantial concern in the employer community that these legal challenges were filed in the absence of formal regulatory guidance from the EEOC on ADA compliance.

PBGC

The following retirement policy items are listed on the PBGC agenda:

- [Reportable events and certain other notification requirements](#) [final rule stage, final action scheduled for May 2015]
- [Cash balance plans; benefit determinations and plan valuations for statutory hybrid plans under PPA](#) [final rule stage, final regulations scheduled for March 2015]
 - [Proposed regulations](#) were issued in October 2011.
- [Missing participants under PPA](#), allowing certain terminating plans not covered by the existing Missing Participants program to participate in that program [proposed rule stage, proposed regulations scheduled for June 2015]
- [Title IV treatment of rollovers from defined contribution plans to defined benefit plans](#), including asset allocation and guarantee limits [final rule stage, final rule scheduled for November 2014]
 - [Proposed regulations](#) were issued on April 1.
- [Benefit payments](#), clarifying and codifying payment and valuation policies [proposed rule stage, proposed regulations scheduled for February 2015]

SEC

The following retirement policy items are listed on the SEC agenda:

- [Pay ratio disclosure](#) under the Dodd-Frank Wall Street Reform and Consumer Protection (Dodd-Frank) Act [final rule stage, final regulations scheduled for October 2015]
 - [Proposed regulations](#) were issued in September 2013.
- [Investment company advertising: target date retirement fund name and marketing](#) [proposed rule stage, proposed regulations scheduled for October 2015]
 - [Proposed regulations](#) were issued in June 2010 and the SEC approved a [set of additional recommendations](#) in April 2013. On April 9, the SEC requested [additional comments](#) on the proposal. (The DOL is also pursuing a [rulemaking project](#) regarding target date funds).
- [Pay for performance rules](#), to comply with Section 14(i) to the Exchange Act, as added by the Dodd Frank financial reform act, requiring issuers to disclose information that shows the relationship between executive compensation actually paid and the financial performance of the issuer [proposed rule stage, proposed regulations scheduled for October 2015]
- [Reporting of proxy votes on executive compensation and other matters](#) to implement section 951 of the Dodd Frank Act by requiring institutional investment managers subject to section 13(f) of the Exchange Act to report how they voted on any shareholder vote on executive compensation or golden parachutes pursuant to sections 14A(a) and (b) of the Exchange Act [final rule stage, final action scheduled for October 2015]
- [Guidance establishing a uniform fiduciary standard of conduct for all broker-dealers and investment advisers when providing personalized investment advice about securities to retail customers](#) [long-term action stage, future action to be determined]
 - SEC issued an [advance notice of proposed rulemaking](#) in March 2013. DOL is proceeding with [a similar regulatory project](#) (see above).

RECENT JUDICIAL ACTIVITY

Nothing to report this issue.