



**WEB**  
Worldwide Employee  
Benefits Network

***BENEFITS INSIDER***  
***A Member Exclusive Publication***

**Volume 152, January 4, 2016** (covering news from December 17, 2015-January 3, 2016)

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. To inquire about membership with the Council, contact Deanna Johnson at (202) 289-6700 or [djohnson@abcstaff.org](mailto:djohnson@abcstaff.org).

**Articles in this Edition**

**RECENT LEGISLATIVE ACTIVITY** ..... 2  
    House, Senate Approve Spending-Tax Extenders Legislation With ‘Cadillac Tax’ Delay 2  
    Lawmakers Release Legislation to Address Investment Advisor Fiduciary Standard .... 2

**RECENT REGULATORY ACTIVITY** ..... 3  
    IRS Guidance Announces Automatic Extension of Filing Deadlines for ACA Information Reporting ..... 3  
    PBGC Finalizes Rules for Multiemployer Pension Plan Partitions ..... 5  
    DOL Announces New 2015 ERISA Advisory Council Members ..... 5

**RECENT JUDICIAL ACTIVITY** ..... 6  
    Supreme Court Hears Oral Arguments in Case with ERISA Preemption Implications  
    ..... Error! Bookmark not defined.

## RECENT LEGISLATIVE ACTIVITY

### House, Senate Approve Spending-Tax Extenders Legislation With ‘Cadillac Tax’ Delay

Both chambers of Congress approved [spending and tax extenders legislation](#), including a two-year delay of the 40 percent “Cadillac Tax” on employer-sponsored health coverage, before adjourning for the year on December 18. President Obama has signed the legislation into law.

The measure also would make the payment of the 40 percent tax deductible.

The House approved the tax measure (by a vote of 318 to 309) on December 17 and the spending measure (which included the Cadillac Tax delay, by a vote of 316-113) on December 18. The Senate passed a combined measure (by a vote of 65 to 33), also on December 18.

### Lawmakers Release Legislation to Address Investment Advisor Fiduciary Standard

While bipartisan legislators in the U.S. House of Representatives were unable to slow the U.S. Department of Labor’s (DOL) fiduciary definition project as part of year-end spending and tax legislation, they have introduced two measures designed to address concerns with the DOL proposal.

The DOL’s [proposed regulations](#) would broadly expand the definition of “investment advice” by extending fiduciary status to a wider array of advice relationships than is done by the existing rules.

The [Strengthening Access to Valuable Education and Retirement Support \(SAVERS\) Act \(H.R. 4294\)](#), introduced by House Ways and Means Oversight Subcommittee Chairman Peter Roskam (R-IL), would address the issue with regard to the Internal Revenue Code. The [Affordable Retirement Advice Protection \(The ARAP\) Act \(H.R. 4293\)](#), sponsored by House Education and the Workforce Health, Employment, Labor and Pensions Subcommittee Chairman Phil Roe (R-TN), would address the issue with regard to ERISA. The two measures were introduced with the support of Ways and Means Select Revenues Subcommittee Ranking Member Richard Neal (D-MA) and Ways and Means Committee member John Larson (D-CT). Additional cosponsors may be announced soon.

Both measures would require an affirmative vote by Congress before the DOL final rule is permitted to go into effect. If Congress fails to approve the department’s regulatory proposal, a new fiduciary standard would take effect that would:

- Explicitly require advisors to serve in their clients’ best interests.
- Penalize financial professionals who violate the trust of their clients.
- Require advisors to clearly communicate key information to ensure investors are well-informed to make investment choices.

- Ensure that individuals and families saving for retirement have access to advice and investment options to meet their individual needs and circumstances.

The Ways and Means and Education and the Workforce committees are likely to hold hearings on the respective bills in 2016. Passage of the legislation by Congress prior to finalization of the Department of Labor's proposed regulation would be difficult even with bipartisan support. In addition, President Obama has been vocal about his support of the Department's proposed regulation which could be finalized as early as next spring. Nevertheless, the legislation may also function to encourage DOL to be more deliberate and open to changes in its crafting of a final rule.

## RECENT REGULATORY ACTIVITY

### IRS Guidance Announces Automatic Extension of Filing Deadlines for ACA Information Reporting

The Internal Revenue Service (IRS) has issued [new guidance](#) that significantly extends the due dates for 2015 ACA information reporting by insurers, self-insured employers and other reporting entities. The transition relief provided in The guidance applies to the furnishing statements to individuals as well as filing with the IRS as required under Internal Revenue Code sections 6055 and 6056, as added by the Affordable Care Act (ACA).

[Notice 2016-4](#), released on December 28, provides an "automatic" 60-day extension for furnishing Forms 1095-C and 1095-B to employees and an "automatic" 3 month extension for filing these forms with IRS. "Automatic" means that requests do not have to be sent to the IRS. Under the transition relief provided in Notice 2016-4:

- The due date for furnishing the 2015 Form 1095-B and the 2015 Form 1095-C to the insured and/or employees is extended from January 31, 2016, to March 31, 2016.
- The due date for health coverage providers and employers furnishing the 2015 Form 1094-B and the 2015 Form 1094-C to the IRS is extended from February 28, 2016, to May 31, 2016, if not filing electronically.
- The due date for health coverage providers and employers electronically filing the 2015 Form 1094-B and the 2015 Form 1094-C with the IRS is extended from March 31, 2016, to June 30, 2016.

Notice 2016-4 explains that while "The IRS is prepared to accept filings of the information returns on Forms 1094-B, 1095-B, 1094-C, and 1095-C beginning in January 2016, following consultation with stakeholders, however, the Department of the Treasury (Treasury) and the Service have determined that some employers, insurers, and other providers of minimum essential coverage need additional time to adapt and implement systems and procedures to gather, analyze, and report this information." Notwithstanding the extensions provided in this notice, the IRS is encouraging employers and other coverage providers to furnish statements and file the information returns as soon as they are ready.

Notice 2016-4 also explains most individual taxpayers will generally not be affected by this extension and should file their tax returns as they normally would. Nonetheless, some employees (and related individuals) who enrolled in coverage through the Marketplace but did not receive a determination from the Marketplace that the offer of employer-sponsored coverage was not affordable could be affected by the extension if they do not receive their Forms 1095-C before they file their income tax returns. As a result, for 2015 only, individuals who rely upon other information received from employers about their offers of coverage for purposes of determining eligibility for the premium tax credit when filing their income tax returns need not amend their returns once they receive their Forms 1095-C or any corrected Forms 1095-C.

Individuals need not send this information to the IRS when filing their returns but should keep it with their tax records. Similar relief applies with respect to individuals who rely upon information from their employers or other coverage provider with respect to confirming whether they have “minimum essential coverage” for purposes of filing their tax returns.

Notice 2016-4 reiterates that employers or other coverage providers that do not comply with these extended due dates are subject to penalties under tax code sections 6722 or 6721 for failure to timely furnish and file. The guidance states, however, that “employers and other coverage providers that do not meet the extended due dates are still encouraged to furnish and file, and the Service will take such furnishing and filing into consideration when determining whether to abate penalties for reasonable cause.”

As explained in the guidance, the IRS will take into account whether an employer or other coverage provider made reasonable efforts to prepare for reporting the required information to the IRS and furnishing it to employees and covered individuals, such as gathering and transmitting the necessary data to an agent to prepare the data for submission to the IRS, or testing its ability to transmit information to the IRS. In addition, the IRS will take into account the extent to which the employer or other coverage provider is taking steps to ensure that it is able to comply with the reporting requirements for 2016.

Code Section 6056 requires every applicable large employer (generally, an employer that employed on average at least 50 full-time employees or equivalents) to file a return with the IRS that reports the terms and conditions of the health care coverage provided to the employer's full-time employees during the year. This information is reported on Form 1095-B. Section 6055 requires every health insurance issuer, sponsor of a self-insured health plan, government agency that administers government-sponsored health insurance programs and other entities that provide minimum essential coverage to file annual returns reporting certain information for each individual for whom minimum essential coverage (MEC) is provided and to provide a copy of the return to the individual. This information is reported on Form 1095-C. The IRS finalized these reporting forms and instructions earlier this year.

## **PBGC Finalizes Rules for Multiemployer Pension Plan Partitions**

The Pension Benefit Guaranty Corporation (PBGC) has [finalized rules](#) establishing the agency's authority to "partition" certain multiemployer plans, under which a plan can apply to PBGC for financial assistance to fund a portion of their benefit liabilities in order to remain solvent. This final rule is a key element of the Multiemployer Pension Reform Act of 2014 (MPRA), which sought to help multiemployer plans struggling with underfunding.

MPRA was enacted as a part of the [Consolidated and Further Continuing Appropriations Act](#). Before enactment of these reforms, PBGC's partition authority was limited to situations involving bankruptcy by some of a plan's contributing employers. Partitions can relieve plans of some of their financial obligations so they can preserve benefits for participants at levels above the PBGC-guaranteed amounts and continue to pay retirement benefits over the long term, but they also require benefits to be reduced to PBGC guarantee levels.

The new rule, which generally finalizes an [Interim Final Rule \(IFR\)](#) issued on June 17, expands PBGC's authority to approve such partitions for plans that are projected to run out of money within 20 years.

The final rule makes a number of minor changes to the IFR, including clarification regarding the format of certain required reporting information as well as institution of a 14 calendar day period for PBGC's initial review process.

Also of note, one commenter on the IFR suggested that PBGC clarify that the Plan Sponsor and Participant Advocate is "responsible solely for representing the plan's retirees and deferred vested participants," and that the Advocate should be "offered the opportunity to participate in all meetings between the plan sponsor and PBGC." The commenter also noted that the advocate should have adequate accounting, actuarial and legal resources as well as unfettered access to all plan records, actuarial worksheets, and databases.

The PBGC rejected this suggestion, noting that "the Advocate's consultative role in a partition is new" and "PBGC continues to believe that the better approach is to allow that role to evolve on a case-by-case basis."

Congressional lawmakers have already begun to discuss [the "next phase" of multiemployer plan reform](#) which could include additional premium increases for the multiemployer system and options to move to new plan designs.

## **DOL Announces New 2015 ERISA Advisory Council Members**

The U.S. Department of Labor (DOL) has announced five new members appointed to the [ERISA Advisory Council \(EAC\)](#). The EAC is a group of benefits experts established

by Congress and appointed by the DOL to identify emerging benefits issues and advise the Secretary of Labor on health and retirement policy.

The chair and vice chair, respectively, of the EAC for the 2016 term will be Mark E. Schmidtke, shareholder of Ogletree, Deakins, Nash, Smoak & Stewart, and Jennifer Kamp Tretheway, retired managing director of investment program solutions with Northern Trust Asset Management.

The working group topics for 2016 will be released in the spring. The 2015 topics were (1) “lifetime plan participation” (relating to plan distributions and rollovers), and (2) pension plan “de-risking” (where plan sponsors partially or fully discharge their ERISA plan liabilities) and the disclosures given to participants in these events. The 2015 EAC delivered final recommendations to U.S. Secretary of Labor Thomas Perez and Assistant Secretary Phyllis Borzi of the Employee Benefits Security Administration (EBSA) on November 4.

## **RECENT JUDICIAL ACTIVITY**

**Nothing to report in this issue.**