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Retirement and Pensions Update

EBSA Second-In-Command Leaves for Private Sector

On November 12th, Michael Davis, Deputy Assistant Labor Secretary and the second-ranking official at the Employee Benefits Security Administration (EBSA), left his post to become Senior Vice President and head of stable value at Prudential Retirement. Davis will oversee Prudential's in-plan and third-party stable value product management and development team.

Fiduciary Re-Proposal Will Not be Ready Until 2013

On November 15th, Phyllis Borzi, Assistant Secretary of Labor for EBSA, corrected the record that, contrary to reports, the re-proposal of a rule to redefine "fiduciary" is not at the OMB for review and will not be ready for OMB approval until 2013. At a meeting of the Worldwide Employee Benefits Network, Borzi said DOL "is not finished" and they are still working on the proposal which includes three components: regulatory language, economic analysis, and prohibited transaction provisions, including prohibited transaction proposals, amendments and exemptions.

DOL Requests Comment on 13 Proposed Collection Requests

On November 26th, EBSA issued a notice requesting comments on 13 proposed extension of information collection requests. The 13 extensions are: Notice of Medical Necessity Criteria under the Mental Health Parity and Addiction Equity Act of 2008; Multiemployer Plan Access to Information; Summary Plan Description Requirements under the Employee Retirement Income Security Act; ERISA Investment Manager Electronic Registration; Employee Benefit Plan Claims Procedure under ERISA; Petition for Finding under Section 3(40) of ERISA; Statutory Exemption for Cross-Trading of Securities; Prohibited Transaction Exemption 80-83, Sale of Securities to Reduce Indebtedness of Party in Interest; PTE 75-1, Security Transactions with Broker-Dealers, Reporting Dealers and Banks; Final Amendment to PTE 84-14 for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers; PTE 88-59, Residential Mortgage Financing Arrangements Involving Employee Benefit Plans; Final Amendment to PTE 96-23 for Plan Asset Transactions Determined by In-House Asset Managers; and PTE 2006-16, Securities Lending by Employee Benefit Plans.

DOL, IRS Find Problems with Hard-to-Value Assets in Multi-Employer Plans

Speaking at a panel at the International Foundation of Employee Benefit Plans, officials from the IRS and DOL both said they are focusing their attention on problems with multi-employer plans, specifically troubles with hard-to-value assets. The IRS said, in addition to hard-to-value assets, the IRS is concerned with issues dealing with plan loans and fraud. DOL continued that problem plans tend to develop a "formulaic, check-the-box mentality" and plan sponsors tend not to examine the experts used for valuation processes. Other weaknesses include over-reliance on work performed by others, inadequate audit review, inadequate sampling, and failure to pursue delinquent participant contributions.

To Surprise of Industry, IRS Extends Deadline for Section 436 Amendment

On November 26th, the IRS issued guidance extending for one year the deadline for plan sponsors of defined benefit retirement plans to adopt plan amendments to implement the Pension Protection Act of 2006 benefit restrictions contained in Internal Revenue Code Section 436. Practitioners generally responded to the extension with surprise. Immediate past President of the American Society of Pension Professionals and Actuaries Robert Richter said industry was not expecting an extension and Stuart Sirkin, Vice President and National Retirement Compliance Deputy Practice Leader at the Segal Co., said many plans have already adopted Section 436 amendments but that some plans are still preparing.

GAO Report Examines Basing PBGC Premiums on Risk Factors

A recent GAO report, commissioned by Senate Health, Education, Labor and Pensions Chairman Tom Harkin (D-IA), found that despite recent increases in premium rates, the PBGC "still faces a substantial deficit from past claims and exposure to risk of losses from future claims that could potentially lead to the agency's insolvency." The report also finds that, as the PBGC is limited by the Dodd-Frank Act in its authority to use credit-rating data to design its premium structure, it could face implementation challenges if it adopts a premium structure based on risk factors. In response to the report's findings Director Joshua Gotbaum said that the PBGC strongly supports GAO's recommendations; however, its findings that "potential objections to implementing premium reform are unfounded."

Report Finds Pennsylvania Pension Funding Gap Puts Services at Risk

A report that was released on November 26th by Pennsylvanian Budget Secretary Charles Zogby has found that the state's $41 billion unfunded pension liability puts key public services—such as public safety, health, education and infrastructure—at risk. Zogby said the gap creates risk of cutting not "'nice to have' government services and programs, but rather the core constitutional responsibilities of state government." In July, Governor Tom Corbett said he plans to introduce pension reform measures to close the gap but has yet to outline what steps the state will take. Zogby's report recommended that Corbett should consider increasing employee contributions, raising the retirement age and moving away from a defined-benefit plan rather than raising taxes or cutting pension payments.

NIRS Report: Defined Benefit Plans Intact After Great Recession

A recent National Institute on Retirement Security report, The Great Recession: Pressured on Public Pensions, Employment Relations and Reforms, found that despite the turmoil created by the Great Recession, most states and municipalities did not abandon the defined benefit pension model. The report continued to say that the public sector would attract different kinds of labor it the model were abandoned, with workers less committed to honing often nontransferable skills required of government employees. Additionally, the report found that if public employers were to stop offering defined benefit plans as a means to attract employees, they would face higher investment and administrative costs, in addition to lower retention rates.

Harvard Report Finds Tax Breaks May Not Spur Retirement Savings

A Harvard study has found that the $100 billion spent on tax breaks to encourage Americans to save for retirement may have little effect on actual savings. Researchers compared American saving patterns to data from Denmark, which has a similar pension system and found that every dollar spent by the Danish government on tax breaks increased savings by only one cent. The findings are particular relevant as Congress begins to debate taxing and spending as part of the fiscal cliff. William G. Gale, a tax expert at the Brookings Institution, said the findings will likely be relevant to the debate over automatic savings systems, which have raised 401(k) participation and contribution rates but may or may not be offset by saving less elsewhere.

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