

CURRENT DEVELOPMENTS

Association of Employee Benefit Planners of New Orleans

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Retirement Update:

1. **Final Regulations Under ERISA Section 408(b)(2), released February 2, 2012.**

- Changes to Interim Final Rule include:
 - Exclusion of certain annuity contracts and custodial accounts described in Section 403(b) from the types of plans covered by the final rule
 - Increased “indirect compensation” information a covered service provider (“CSP”) must disclose to the plan fiduciary, to include a description of the arrangement between the payer and CSP
 - Provision for the disclosure of changes to investment-related information, which must be updated at least annually
 - Conform the investment related disclosures for covered plans' designated investment alternatives to the requirements of DOL's participant-level disclosure regulation
- The final rules are effective July 1, 2012
- Effective date for participant-level fee disclosures is now Aug. 30, 2012
- Regs: www.tinyurl.com/6prpswt
- Fact sheet can be found at:<http://www.dol.gov/ebsa/newsroom/fs408b2finalreg.html>

2. **DOL Technical Release 2011-03R, issued December 8, 2011 - Participant-Level Fee Disclosures.**

- The revised technical release clarifies that continuous access websites are acceptable under certain circumstances
- It also clarifies that investment-related information may be furnished as part of, or in conjunction with, a pension benefit statement, either electronically or in paper form

3. **Rev. Rul. 2012-5:** The Social Security taxable wage base for 2012 is \$110,100.

4. **DOL Final Rule on Procedures for Filing and Processing Prohibited Transaction Exemptions** (DOL Regulation Sections 2570.30 through 2570.52).

- Significant updates include:
 - A requirement that applicants provide interested persons with a brief objective summary of complex transactions
 - Guidance on the amount of compensation that may be received by a fiduciary or an appraiser when paid by a related party (or affiliate) to the exemption transaction
 - Clarification of the content of specialized statements, as needed, from “qualified independent fiduciaries,” “qualified independent appraisers” and other relevant experts
 - A description of the current standards for obtaining retroactive exemptions

5. Notice 2012-6 Regarding Puerto Rico Plans, issued December 21, 2011.

- Extends the general deadline to December 31, 2012, for dual-qualified plans to make transfers to Puerto Rico-only plan trusts
- Extends the deadline to continue to pool assets with U.S.-qualified plans in group and master trusts described in Rev. Rul. 81-100 (81-100 group trusts) until further notice

6. IRS Announcement 2011-82, issued December 16, 2011 - Notice Regarding Changes to Determination Letter Program.

- Significant changes include:
 - Elimination of coverage and nondiscrimination demonstrations
 - Acceptance of Form 5300 from pre-approved plans only if the sponsor has modified the terms of specimen plan

7. Notice 2011-97, issued December 13, 2011 - Cumulative List of Changes in Plan Qualification Requirements.

- New items include: extension of the deadline for amendments under Code section 411(a)(13) (other than section 411(a)(13)(A)) (hybrid plans), provisions regarding participation in group trusts, readily tradable employer securities and funding rules for multiemployer plans

8. Revised IRS Form 5300 (Revised April 2011) and 8717 (Revised November 2011) effective for submissions on or after February 1, 2012.

Health and Welfare Update:

9. Notice 2012-9, issued January 3, 2012. Clarification of Prior Guidance On Form W-2 Reporting Requirements under PPACA

- Small employer exception contained in prior IRS guidance continues to apply
- The value of an employer-funded FSA is reported only if the amount of the FSA for the plan year exceeds the salary reduction elected by the employee
- To the extent an employer offers a benefit that includes otherwise reportable coverage as only an incidental part of the benefit, the employer is not required to report either the reportable or nonreportable portion of the benefit
- Reporting requirement does not apply to excess reimbursements under a self-funded plan that fails certain discrimination requirements, or premium payments made on behalf of a 2% shareholder-employee of an S corporation who is required to include such payments in gross income
- Modifies the application of the reporting requirement if a composite rate is used with respect to the premium charged to active participants, but not the premium charged under COBRA

10. HHS Essential Health Benefits Bulletin, issued December 16, 2011.

- HHS proposes that essential health benefits be defined by states using a benchmark approach that would give each state the flexibility to select a plan that reflects the scope of services offered by a "typical employer plan" within that state.
- States would be able to choose one of the following benchmark health insurance plans:

- Any of the three largest small group health plans in the state by enrollment (default option absent state election)
 - Any of the three largest state employee health benefit plans by enrollment
 - Any of the three largest Federal employees health plan options by enrollment; or
 - The largest insured commercial non-Medicaid HMO in the state
 - The proposed benchmark approach would be applicable for 2014 and 2015, subject to reassessment for 2016 and following
 - States would be required to select their benchmark plan in the third quarter of the year two years prior to the coverage year (between 9/1/12 and 12/31/12 for 2014)
- 11. MEWAs: DOL Notice of Proposed Rulemaking, issued December 6, 2012.** The EBSA released two proposed rules regarding multiple employer welfare arrangements (MEWAs).
- Proposed Reporting Rules
 - Require MEWAs that provide medical benefits but are not group health plans to register with the Secretary of Labor prior to operating in a state
 - Modify M-1 to require additional custodial and financial information
 - Document compliance with Form 5500 filing
 - Eliminate Form 5500 filing exception for plans that are insured, self insured, or a combination of both, with fewer than 100 participants
 - Proposed Enforcement Rules
 - Establish procedures for the Secretary of Labor to issue ex parte cease and desist orders and summary seizure orders to alleged fraudulent or insolvent MEWAs without the need to obtain a prior restraining order and preliminary injunction
 - The 2011 Form M-1 is now available for online filing
- 12. HHS Final Guidance on Medical Loss Ratio (MLR) Rebates, issued December 7, 2011.** The final regulations address certain technical changes in calculating and reporting MLRs and method for distribution of rebates to enrollees. Particularly, the rules:
- Direct insurers to provide rebates to group policyholders (i.e., generally the employer) rather than the individual policyholder or subscriber
 - Address certain tax issues
 - Require issuers to provide notice of rebates to enrollees and the group policyholder
 - The first rebates are due August 1, 2012
- 13. Medicare: 2012 Deadlines for Creditable Coverage Notice and Part D Subsidy Reconciliation.**
- Deadline to Submit Creditable Coverage Disclosures to the Center for Medicare and Medicaid Services (CMS) is March 1, 2012
 - Plan sponsors that applied for the Medicare Part D Retiree Drug Subsidy must file a reconciliation with CMS no later than 15 months after the end of the plan year (April 2, 2012, for the plan year ending December 31, 2010)
- 14. IRS Released Revised Form 8941 for Small Business Health Care Tax Credit.**
- 15. DOL Issues Proposed Rule Changes for the Family Medical Leave Act.** On January 30, 2012, the U.S. Department of Labor announced proposed changes to Family and Medical Leave Act regulations in three specific areas:

- Extends the entitlement of military caregiver leave to family members of veterans for up to five years after the veteran leaves the military
 - Extends qualifying exigency leave to employees whose family members serve in the regular armed forces
 - Makes benefits more accessible to flight crew employees by adding a special hours of service eligibility requirement for them
 - Guidance on the manner in which employers calculate increments of FMLA leave
- 16. HHS HIPAA Audit Pilot Program.** First, a small number of audits will be performed to test the audit protocols and make any necessary adjustments. Second phase will be implemented using revised protocols and is expected to be completed by the end of 2012. The pilot program will focus on covered entities of all sizes, including health care providers and health plans. It is expected that audits will have a very short turnaround. HHS will not disclose or publish the results and may take action if serious compliance issues are identified.
- 17. Muhammad v. Ford Motor Co., 2012 WL 95298 (E.D. Mich., Jan. 12, 2012)**
- A plan participant's disregard of health plan requests to verify dependent eligibility was a proper basis for cancellation of coverage for his dependents and garnishment of wages to recoup benefit overpayments
 - The plan made repeated requests to the participant to substantiate eligibility of his alleged dependents. After inconsistent tax forms raised questions about his spouse's status, the plan insisted on certified copies from the IRS. The participant never sent IRS-certified forms. Therefore, the court ruled that the plan's decision to disenroll her was reasonable.
- 18. Milgram v. The Orthopedic Associates Defined Contribution Pension Plan, No. 10-1862 (2d Cir. Nov. 29, 2011)**
- Plaintiff sued plan for erroneous payments made to his ex-wife under a QDRO
 - The appeals court upheld the district court's determination that ERISA Section 206(d)(1)(anti-alienation provision) does not prevent pension plan assets from being used to satisfy a judicial judgment against the plan itself
 - Plaintiff was entitled to his full account balance from the plan even though the plan had not yet received the money back from the ex-wife

General:

- 19. Form 5500.** The DOL, IRS and the PBGC jointly released advance informational copies of the 2011 Form 5500 annual return/report and related instructions available at <http://www.dol.gov/ebsa/5500main.html>

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