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Retirement and Pensions Update

Fiscal Cliff Deal Includes Provisions on Charitable Contributions and Roth Roll Overs

As part of the deal reached to avert the fiscal cliff, Congress extended tax-free distributions from individual retirement plan for charitable purposes and provisions related to roll over into Roth plans. The compromise bill extends for two years the provision that permits tax-free distributions to charity from an Individual Retirement Arrangement (IRA) held by someone age 70½ or older of up to \$100,000 per taxpayer, per taxable year. Additionally, the deal allows participants in 401(k)-style retirement plans to roll over assets into Roth individual retirement accounts, allowing them to make after-tax contributions to the plan and all the principal and earnings are tax-free when distributed. Currently, plans may allow participants to convert their pre-tax accounts to Roth accounts, but only with respect to money they have a right to take out of the plan.

PBGC Testifies in Subcommittee Hearing on Multiemployer Plans

At a December 19th House Education and Workforce Subcommittee on Health, Employment Labor and Pensions hearing, Pension Benefit Guaranty Corporation (PBGC) Director Joshua Gotbaum [said](#) changes are needed to the Corporation's multiemployer program. Gotbaum said the PBGC's multiemployer program has not been overhauled in 30 years and without "significant changes," the agency "will eventually end up without the tools and resources to help the plans improve and without the resources to continue to pay benefits for those plans that do fail." Gotbaum also said legislative changes to the PBGC multiemployer program are needed to increase premiums for plans, in addition to addressing plans considered to be "critical" and in need of support to avoid insolvency.

IRS Updates Retirement Plan Rules for Hurricane Sandy Relief

Last month, the IRS released [guidance](#) to update rules on how retirement plans can offer loans and hardship distributions to victims of Hurricane Sandy. Additionally, the IRS issued [Announcement 2012-44](#) to provide answers to frequently asked questions concerning hurricane-

related administrative related and related issues around hardship distributions and withdrawals.

IRS Official Says Due Diligence Key in Setting Interest Rates on Plan Loans

At a December 18th webcast sponsored by the American Society of Pension Professionals and Actuaries, Monika Templeman, Director of Employee Plans at the IRS said interest rates on loans to participants in employer-sponsored retirement plans must meet a standard of “reasonableness;” however, there is no specific safe harbor interest rate for plans. Templeman, also noted that when setting loan interest rate it is important to have due diligence, including looking into “overall what is going on in [the] community.” According to Templeman, “it would be an anomaly rather than the rule” for the IRS to act on this issue.

PBGC Publishes Guidance on 2013 Premium Payments

On December 18th, the PBGC issued [premium payment instructions and forms](#). The agency expects that those who plan to file electronically will be able to submit their premium filings and payments beginning in early January. The 2013 premium payment instructions contain changes from the Moving Ahead for Progress in the 21st Century Act of 2012 (MAP-21) bill which revoked the alternative premium funding target election and added a number of data items.

PBGC Seeking Extension of Administrative Review Information Collection Request

On December 20th, the PBGC issued a [notice](#) outlining its intent to request an extension of its information collection request under the PBGC’s Rules for Administrative Review of Agency Decisions. The notice informed the public of PBGC’s intent and solicits public comment on the collection of information related to rules related to issuance of initial determination and who may file appeals.

BLS Finds Defined Benefit Plans Costlier than Defined Contribution Plans

In a report published December 12th, the Bureau of Labor Statistics (BLS) found that it now costs more for private-sector employers to provide defined benefit plans than defined contribution plans. The report, [Retirement Costs For Defined Benefit Plans Higher Than For Defined Contribution Plans](#), outlined that, based on all workers regardless of plan participation, employers contributed 60 cents per employee hour worked in defined contribution plans compared to 43 cents per employee in defined benefit plans.

ABA Comments on Re-Proposal of Fiduciary Rule

In a [comment letter](#) submitted December 11th, the American Bar Association Section of Taxation said the existing definition of “fiduciary” under the Employee Retirement Income Security Act (ERISA) is a better starting place for re-proposal than the definition withdrawn in 2011. The comment letter also expressed concern that the proposed rule removes three tests to evaluate whether advice should be considered “investment advice” and recommended that the re-proposal should consider advice not delivered on an “individualized basis pursuant to an understanding on the part of the provider that the advice will be a substantial consideration by a plan, a plan fiduciary, or a plan participant in connection with an investment or management decision being made with respect to plan assets” be excluded from investment advice. The ABA also called for the seller’s exception to be expanded to include a service provider looking to “sell a product or service.”

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