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Agenda

1. Federal Health Care Policy & Group Health Plans
2. Federal retirement policy and retirement programs
3. State challenges to ERISA preemption
4. ERISA litigation update
Federal Health Care Policy & Group Health Plans
Tax Reform/Affordable Care Act Modifications and Regulatory Relief Opportunities

- Impact of Tax Reform on Affordable Care Act
  - Individual mandate
  - Premium subsidies
  - CBO scoring

- Thoughts on timing and joint committee
Health Savings Accounts

- Liberalization of Heath Savings Account rules

  - Proposals from “Repeal and Replace” effort
    - Double HSA contribution limit to MOOP
    - Joint catch-up contributions for seniors
    - Grace period for establishing account
    - Direct primary care arrangements

  - Bipartisan “low-hanging fruit” proposals
    - More flexibility for HDHPs to maintain HSA contribution eligibility
    - Broadening qualified expenses and beneficiaries
    - Streamlining, clarifying, and defining
Employer Mandate & Reporting Requirements

- Employer mandate still enforceable
- 2017 – 1094-C/1095-C forms are published
- IRS issued form letter 226J imposing employer shared responsibility assessments
- Employer trades are considering filing suit due to a number of process deficiencies:
  - Most “exchange notices” to employers were never sent
  - Tax credits were not actually reconciled before being issued
  - IRS never did statutorily required report
  - IRS unable/unwilling to provide month-by-month enrollee affordability data
Plan Consideration Hot Topics

- Mental health parity coverage and litigation trends
- Moral exemptions for preventive services
- Wellness programs
- Fertility benefits
- On-site medical clinics
- Telehealth
Federal Retirement Policy & Retirement Programs
Tax Reform’s Potential Impact on Savings and Retirement

Potential Takeaways

- Repeal of exceptions to $1 million deduction limit for performance-based compensation (transition relief in Senate bill)
- Exclusion of deductions for dependent care, tuition assistance, moving expenses, adoption assistance, commuter benefits (mostly in House bill)

Potential Favorable Changes

- Rollover of plan loan offsets
- Hardship distributions
- In-service distributions
- Non-discrimination rules
Other Legislation

Retirement Enhancement and Savings Act

- Multiple Employer Plan Expansion
- Mandate Annuitized Amount on Retirement Plan Statements
- Remove Cap on Auto Enrollment
- Lifetime Income Fiduciary Protections

Pension Budget Integrity Act

- Remove Budget Gimmick that Encourages Congress to Increase PBGC Premiums
Retirement Plan Updates; Changes

- **ESG Funds/ETIs**
  - Same fiduciary standards as applied to plan investments generally
  - Economically equivalent to other investments
  - Consider updating the investment policy statement to include ESG factors

- **Calculation of bifurcated benefits**
  - Final regulations effective as of the 2017 plan year
  - Review plans for bifurcated benefits; consider amendments for Section 436
  - Consult with plan actuary to determine if amendments needed and if so, when

- **New applicable mortality table under Section 417(e) of the Code**
  - Effective January 1, 2018
  - Affects minimum funding, PBGC premiums, lump sum calculations
  - Review plan documents to identify if amendments required
State Challenges to ERISA Preemption
Current Issues in Preemption Under ERISA

- ERISA’s broad preemptive scope – Section 514
- The challenge to multijurisdictional employers from the proliferation of state & local laws concerning employee benefits
  - ERIC v. Read (Oregon Retirement Savings Board)
- Other current issues worthy of note
ERISA Litigation Update
Current Trends in ERISA Litigation

- **Multiemployer Plans**
  - Audits / Suits over delinquencies / Withdrawal liability

- **Defined Contribution Retirement Plans**
  - 403(b) plan litigation & the Goldilocks paradox

- **Benefit Claim Litigation**
  - Sources of increased litigation
  - Claims procedures & standard of review
    - 29 CFR §2560.503-1
    - Halo v. Yale Health Plan (2d Cir. 2016)

- **Document Disclosure Requests & Statutory Penalties**
Questions?