CIEBA

The Committee on Investment of Employee Benefit Assets

BENEFIT HEADLINES
August 2014

Congress

<u>Pension Smoothing – No PBGC Premium Increases</u>: Earlier this month, Congress passed the Highway and Transportation Funding Act of 2014. The bill will keep the highway trust fund solvent through May 2015, and is partially paid for by delaying the widening of the MAP-21 interest rate corridor.

Although the bill extends interest rate smoothing, the highway funding legislation does **<u>not</u>** include another increase in PBGC premiums.

[Click here for a detailed explanation of the bill]

<u>Definition of Cessation of Operations Narrowed</u>: Last month, the Senate HELP Committee unanimously approved a bill that would limit PBGC's broad interpretation of what constitutes a "cessation of operations" under ERISA section 4062(e). Although PBGC recently announced a six-month moratorium on 4062(e) enforcement, the HELP bill strikes a balance that would protect PBGC without unnecessarily disrupting or stopping business transactions that do not pose any risk to the insurance program.

[Click here for a description of S. 2511]

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<u>Upcoming Webinar</u>: CIEBA's next "Lunch & Learn" Webinar will be Tuesday, September 16, from noon to 1:30 pm. Jennifer Eller and David Levine from the Groom Law Group will discuss recent defined contribution plan litigation issues and the upcoming 2014 elections.

ERISA Regulatory Agencies

<u>Treasury Department issues rules on "Qualifying Longevity Annuity Contracts"</u>: QLACs, deferred income annuities that begin no later than age 85 and continue throughout an individual's life, will now be available to 401(k)s plans and IRAs. Under the final rules, a 401(k) or IRA may permit plan participants to use up to 25 percent of their account balance up to $125,000 to purchase a QLAC without violating the age 70½ minimum distribution requirements. In addition, the rules allow a QLAC to provide a "return of premium" death benefit.

[Click here for the Treasury QLAC Regulations]

<u>PBGC Releases 2013 Projections Report</u>: PBGC's most recent report shows that the financial position for the single-employer insurance program has improved dramatically. While PBGC reported a deficit of $27.4 billion for FY 2013, the new report projects that the single-employer deficit will shrink to about $7.6 billion by 2023. This improvement is due largely to changes in market conditions, including strong stock market returns and increases in interest rates during 2013 as well as increases in the single-employer premium rates.

The Projections Report makes it clear that there is absolutely no threat of a taxpayer bailout of the single-employer program. In fact, in the 5,000 scenarios simulated in PBGC's modeling, there were **none** in which PBGC ran out of money within the 10-year projection period.

[Click here for PBGC's FY2013 Projection Report]

Litigation

In a decision that could have significant implications for plan sponsors with ESOPs, 401(k)s, and other plans that invest in employer stock, the U.S. Supreme Court held that ERISA does not create a special "presumption of prudence" for fiduciaries of these plans. Although the Supreme Court rejected the presumption of prudence, the Court clarified the manner in which plan fiduciaries can defend themselves from stock drop lawsuits. Where a stock is publicly traded, the Court held that fiduciaries are generally not expected to recognize whether the market is overvaluing or undervaluing the stock. Further, the Court held that ERISA never requires fiduciaries to act on nonpublic "insider" information in violation of securities laws.

[Click here for a detailed discussion of the Fifth Third Bancorp v. Duddenhoeffer case]