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Retirement and Pensions Update

House Ways and Means Continues To Pressure Treasury on Delphi Pensions

On October 3rd, House Ways and Means Chairman Dave Camp (R-MI) issued a [news release](#) with the Committee's timeline of requests to the Treasury on documents and communications relating to the decision to terminate the pension plans of salaried retirees at the auto parts manufacturer Delphi. The Committee is investigating the Delphi pension termination and has issued several requests to the Treasury and PBGC on these issues. The news release says a review of documents received so far suggest that the options of GM taking on responsibility of the pensions and the option of termination were both discussed.

OIG Finds EBSA Should Improve Oversight of Benefit Plan Audits

In a September 28th [report](#), the Office of the Inspector General found that EBSA should improve the quality of employee benefit plan audits and its oversight of independent qualified public accountants (IQPAs), who perform audits. The OIG identified the use of limited scope audits and a growth in the asset value of plans as the main weaknesses of EBSA's oversight. Limited scope audits mean the auditor does not need to audit plan asset information if the assets are held by specific financial institutions. The percentage of plans electing to use this type of audit has grown to 70 percent in 2010. The OIG recommended that EBSA use its authority to clarify and strengthen the limited scope audit regulations, make better use of enforcement tools, and improve audit quality reviews. In response to these recommendations Phyllis Borzi, Assistant Secretary for EBSA, said EBSA has advocated for a repeal of the limited scope audit exemption and that EBSA will examine the authority it has to clarify and strengthen these audits.

Multiple Employer Plans Require Additional Coordination

According to an October 4th GAO report, ERISA, regulated by DOL, and the tax code, regulated by the IRS, have discrepancies when dealing with multiple employer plans (MEPs). DOL's definition of an MEP is not as concrete as the IRS's definition and the two have different filing requirements. In May, DOL issued two advisory opinions on MEPs which stated that abandoned, unrelated plans were not a single plan and that plans for limited-purpose corporation

employees were not single MEPs. The GAO [report](#) recommends better coordination between the IRS and the Department of Labor and encourages DOL to collect more up-to-date information on plans.

CRS Releases Report on Pension Funding and MAP-21

On October 3rd, the Congressional Research Service (CRS) released a report titled “Pension Benefit Guaranty Corporation (PBGC) and Defined Benefit Pension Plan Funding Issues.” The report addresses pension proposals of the 112th Congress and the [Moving Ahead for Progress in the 21st Century Act](#) (MAP-21), which tackles issues like the use of excess defined benefit pension plan assets and PBGC governance. The report finds MAP-21 increased the single-employer flat-rate premium from \$42 per participant in 2013 to \$49 per participant in 2014. Multiple-employer plan premiums increased by \$2 per participant in 2013. The report notes that under the [Employee Retirement Income Security Act](#), employers are required to fund pension benefits earned by plan participants each year.

IRS Updates Weighted Average Rates, Yield Curves

On October 5th, the IRS released [Notice 2012-64](#) with the October corporate bond weighted average interest rate and permissible ranges of rates. The notice also gives guidance on the corporate bond monthly yield curve and the interest rate of the 30-year Treasury securities and the 30-year Treasury weighted average rate. The rates encompass changes from MAP-21.

Survey Finds Employee Participation in Defined Contribution Plans is Up

According to the U.S. Defined Contribution Sponsor Survey [Report](#) released October 4th, automatic enrollment features have resulted in a large increase in employee participation in defined contribution plans. The survey, administered by Towers Watson, found that 56 percent of surveyed companies reported a defined contribution participation rate of 80 percent or higher—compared to 50 percent reporting these participation rates in 2010. The report also found shaky confidence in ability to retire on the part of both employers and employees. Only 22 percent of respondents affirmed a belief that employees make informed retirement decisions and only 42 percent of employee respondents felt their resources would last past 25 years of retirement.

Pension Funding Deficit Decreased in September

On October 2nd, [Mercer](#), a benefits consulting firm, issued a [press release](#) indicating U.S. corporate pension plans had a modest recovery in September. The aggregate deficit in pension plans decreased \$38 billion, or 6 percent, in September in part due to U.S. and international equity markets rising 3% and discount rates remaining flat for the month. The release indicates that time is running out for major market moves that will significantly reduce pension deficits for the calendar year.

Supreme Court Will Not Hear ERISA Preemption Case

On October 9th, the U.S. Supreme Court will not hear a case addressing whether ERISA preempts four employees’ claim that their employer breached an oral promise that they could retire early. The Pennsylvania Supreme Court [ruled](#) that ERISA Section 514 preempted the employees’ claim. The petition for a writ of certiorari requested the Supreme Court consider whether the Pennsylvania high court was mistaken in holding that ERISA preempted the petitioners’ state law claim for breach or oral contract.

New York Accountants Urge Congress to Waive Early Withdrawal Penalties

On September 26th, the New York State Society of Certified Public Accountants [wrote](#) to

Senator Charles Schumer (D-NY) urging Congress to temporarily waive penalties for taxpayers who make early withdrawals from retirement accounts. The letter states: “We believe that in the interest of fairness and equity that Congress should consider enacting a number of targeted, short-term exceptions to the 10 percent additional tax that would address some of the more serious scenarios faced by taxpayers as a result of the economic crisis.”

Pension Fund’s Attempt to Inspect Lennar Corp Fails

On October 5th the Delaware Chancery Court has [ruled](#) that Lennar Corp., a homebuilding company, does not need to open its records in the case *Louisiana Municipal Police Employees’ Retirement System v. Lennar Corp.* The plaintiff, a pension fund, sought to investigate possible overtime issues after the company was identified in a Wall Street Journal [article](#) as the subject of a national investigation. The court ruled that the pension fund did not have sufficient evidence beyond the news article and former lawsuits to investigate the company as past lawsuits concerning overtime payment have been resolved. The court felt the evidence presented was speculative and did not address current issues.

Rhode Island Proposed Pension Restructuring Plan

On October 7th, Rhode Island Treasurer Gina Raimondo said that \$4 billion in funds are being saved in the state through a restructuring of pensions for state employees. Parts of these savings come from suspension of annual increases that help pensions keep up with inflation. The plan is being met with strong opposition from employees and labor leaders who say that promises have been broken. In total, states must find \$1.4 trillion to meet pension obligations. While other states like [Kentucky](#) and [California](#) have restructured their plans, Rhode Island’s plan is said to have the most dramatic changes to date.

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