LEGISLATIVE AND REGULATORY UPDATE

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LOUISVILLE EMPLOYEE BENEFITS COUNCIL
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IRS releases 'chief counsel advice' on timing of tax deductions for some bonuses: Annual incentives that can be forfeited to an employer after the close of the year in which the services generating the incentives were performed can't be deducted in that earlier year, according to an IRS "chief counsel advice" memorandum. This is the case even if the amount forfeited represents only a *de minimis* portion of the incentives accrued for book purposes at the earlier year's end.

Memoranda aren't binding on the IRS or other taxpayers, but they often represent the IRS's current views. This one seems to closely follow Rev. Rul. 2011-29, which is binding on the IRS and other taxpayers, and implies that the IRS is not inclined to entertain exceptions from that 2011 ruling.

All-events test for accrual-basis taxpayer deductions. Under many annual bonus arrangements, an employer pays bonuses for services rendered by employees in one year (Year 1) on a date occurring during the first 2 ½ months of the next year (Year 2). To receive payment, employees sometimes must remain employed until the Year 2 date on which the bonuses are paid. In this situation, an employer that is an accrual-basis taxpayer can take a Year 1 deduction if certain "all-events test" conditions described in Code Section 461 are met – including that the "fact of the liability" for the bonuses be established by Year 1.

Rev. Rul. 2011-29 methodology for bonus pool arrangements. The 2011 ruling explains how an accrual-basis taxpayer can satisfy the all-events test – and take a Year 1 deduction – in the type of arrangement described above. Besides defining and communicating plan terms and conditions and fixing the year-end deductible minimum through a formula or corporate action by the end of Year 1, the employer must provide for reallocating – to other bonus-eligible employees – all amounts forfeited by individuals in Year 2 for terminating their employment before the payment date.

New memorandum facts – close, but not good enough. The arrangement described in the recent memorandum seems similar to the one in the 2011 ruling except that forfeited incentives reverted to the taxpayer instead of being reallocated to other employees. This feature prompted the IRS to conclude that, under the all-events test, a Year 1 deduction was impermissible even if the amounts were small.

ACA rules proposed on wellness, essential health benefits, insurance markets and more: New Affordable Care Act (ACA) guidance addresses nondiscriminatory wellness programs, essential health benefits, insurance market rules and accreditation entities for public health insurance exchange plans. Today's releases signal the end of the pre-election pause in issuing new regulations. More guidance is expected on other topics essential for ACA implementation, including employer shared-responsibility regulations and reinsurance fee amounts. **Fact sheet on proposed essential health benefits rule (Health Care.gov, 20 Nov 2012); Fact sheet on proposed wellness program rule (HealthCare.gov, 20 Nov 2012);Full text of wellness program study (DOL, 20 Jul 2012); Fact sheet on proposed insurance rate-setting rule (HealthCare.gov, 20 Nov 2012) »**

IRS postpones deadline for adopting pension benefit restriction amendments to 2013: Most pension plan sponsors now have until the end of the 2013 plan year to adopt amendments implementing Code Section 436 funding-based benefit restrictions, thanks to a one-year IRS delay announced Nov. 21. However, Cycle C filers must adopt amendments before submitting filings. Plans with delayed Section 436 effective dates (PBGC settlement, eligible charity and cooperative plans) generally don't need amendments until the end of the first plan year Section 436 applies or, if later, the employer's tax-return due date (with extensions) for the tax year in which that plan year begins. **Full text of Notice 2012-70 (IRS, 21 Nov 2012)**

401(k) hardship withdrawals and other relief for Hurricane Sandy victims: Recent IRS guidance relaxes some of the restrictions that otherwise might prevent Hurricane Sandy victims from tapping into their retirement savings during this crisis. Until Feb. 1, 2013, 401(k), 403(b) and other eligible plans may permit hardship withdrawals for food, shelter and other storm-related needs, without suspending contributions for six months. The relief also eases documentation requirements, loan procedures and some amendment deadlines. Answers to some frequently asked questions about the scope of relief for hardship withdrawals and plan loans follows. A concluding section lists other Sandy-related relief available to employee benefit plans and their participants.

Hardship withdrawal and loan procedures eased

IRS Announcement 2012-44 lets 401(k) plan sponsors relax hardship withdrawal and loan procedures for employees and their close relatives who have a principal home or workplace in a Hurricane Sandy disaster area. The relief allows eligible participants “to access their money more quickly with a minimum of red tape,” according to an IRS press release. The relief is optional; plan sponsors may choose to take advantage of all of it, some of it or none at all.

What types of plans can offer hardship withdrawals?

The relief covers 401(a), 401(k), 403(a), 403(b) and governmental 457(b) plans, but only to the extent existing law would permit hardship withdrawals if the plan contained the proper enabling language. So, for example, 401(k) plans cannot make hardship distributions from qualified nonelective or matching contribution (QNEC or QMAC) accounts or from earnings on elective contributions. As a result, 401(k) plans that are designed to be exempt from ADP/ACP testing cannot make hardship distributions from accounts holding an employer’s “safe harbor” nonelective or matching contributions. Also, nothing in this relief would allow hardship withdrawals from defined benefit or money purchase pension plans, unless they hold separate accounts for employee contributions or rollover amounts.

Who is eligible to take hardship withdrawals under this relief?

Plan participants may qualify for relief if they (or their close relatives) lived or worked in a covered disaster area struck by Hurricane Sandy. The affected region includes certain counties and tribal nations in Connecticut, New Jersey, New York and Rhode Island listed on the IRS's Hurricane Sandy page. Specifically, the relief applies to participants who, on Oct. 26, had:

- A principal residence in a covered disaster area
- A place of employment in a covered disaster area
- A dependent, spouse, parent or child (or other lineal ascendant or descendant) with a principal residence or job in a covered disaster area

To qualify for relief, the participant must request and receive a hardship withdrawal between Oct. 26, 2012, and Feb. 1, 2013.

> *Example.* Mary lives and works in California, where she participates in a 401(k) plan. If the plan so permits, Mary may request a hardship withdrawal to assist her children who live or work in a Sandy disaster area, provided the money will be used for storm-related needs. The distribution must occur no later than Feb. 1, 2013.

How are substantiation requirements streamlined?

Plan sponsors may permit withdrawals for any "hardship resulting from Hurricane Sandy," not just the specific needs listed in IRS regulations. For example, Sandy victims may need money for food, clothing, shelter or transportation. Unless a plan administrator knows of facts to the contrary, it may rely on participants' representations as to the need for and amount of a hardship withdrawal. As a best practice, administrators may want to ask participants to sign (or e-sign) these representations and save written receipts (to be furnished to the administrator on request).

Plan administrators must make a good-faith diligent effort to comply with hardship withdrawal requirements but will not be faulted for failing to follow every procedure set out in the plan document. As soon as practicable, plan administrators must make a reasonable attempt to assemble any forgone documentation (for example, a death certificate). The plan's normal spousal consent rules (if any) continue to apply.

The Department of Labor (DOL) has confirmed that fiduciaries will not violate ERISA merely because they comply with the IRS relief provisions.

Must plans suspend participants' future contributions after hardship distributions?

No. If a plan ordinarily bars participants from making contributions for at least six months after a hardship withdrawal, the plan sponsor may waive that condition for Sandy victims. However, the IRS apparently has not waived the requirement that participants seeking a hardship withdrawal first obtain all other withdrawals and nontaxable loans currently available under the plan and all other plans maintained by the employer.

Does the relief cover plan loans?

Yes. The streamlined procedural requirements described above apply to loans taken before Feb. 1, 2013, as long as the loan administrator makes a reasonable attempt to assemble the documentation later. All loans must satisfy the usual requirements of Code Section 72(p). For employers that want to adopt new plan loan programs for Sandy victims, the IRS relief makes it possible to implement such programs immediately and draft plan amendments later (see below).

As for outstanding participant loans, several IRS news releases targeted to specific counties give participants more time – generally until Feb. 1, 2013 – to make plan loan repayments. In the short term, this should help prevent defaults.

Are plan amendments necessary?

If a plan is permitted by law to make hardship withdrawals or loans but lacks enabling language, the employer can amend the plan document at a later date to include the necessary provisions. The amendment deadline is the last day of the 2013 plan year (Dec. 31, 2013, for calendar-year plans).

If plan terms already authorize hardship withdrawals but include a six-month suspension of contributions or other provisions inconsistent with the Sandy relief, the guidance doesn't say whether plan amendments are necessary and, if so, when they are due. Normally, discretionary amendments to a qualified plan must be adopted by the last day of the plan year in which they take effect. So a calendar-year plan that offers hardship withdrawals to Sandy victims in 2012 might have to be amended by Dec. 31, 2012. But it's unclear whether the IRS will enforce the usual deadline, given the amendment relief for plans lacking hardship withdrawal provisions. Similar issues arise if a plan sponsor wants to liberalize existing loan provisions, for example, by increasing the number of outstanding loans a participant may have.

Has the tax treatment of hardship withdrawals and loans changed?

No. Announcement 2012-44 does not change the tax treatment of plan loans or withdrawals. Hardship withdrawals are taxable (unless attributable to after-tax sources), ineligible for rollover and generally subject to the 10% penalty tax on premature withdrawals. (Although Congress enacted tax relief and doubled loan limits for Hurricane Katrina victims in 2005, it's uncertain whether similar legislation will pass now.)

Other benefit-related relief granted to Sandy victims

The IRS, DOL and PBGC have issued Sandy-related guidance on a variety of other benefit-related issues, including the items discussed below.

Delayed deposits

DOL will not sanction employers, payroll services or other service providers merely because of a temporary delay in forwarding loan repayments or participant contributions to retirement plans. However, the responsible parties must act reasonably, prudently and in participants' interest to comply as soon as practical.

Blackout periods

Administrators normally must give 30 days' notice when participants in an ERISA-covered 401(k), 403(b) or other individual account plan are temporarily suspended from directing investments, obtaining loans or making withdrawals during a blackout period. Advance notice isn't required for blackouts triggered by a natural disaster, as long as a plan fiduciary determines in writing that events beyond the administrator's control prevented timely notice. For Sandy-related blackout periods, DOL won't allege a violation of the notice requirements merely because a fiduciary didn't make the required written determination.

PBGC premiums

PBGC premiums due between Oct. 26, 2012, and Feb. 1, 2013, will be treated as timely for penalty purposes if paid by Feb. 1. PBGC will charge interest but waive penalties (see the PBGC's disaster relief page).

ERISA-covered health plans

DOL has advised group health plan administrators to make "reasonable accommodations to prevent the loss of benefits" by Sandy victims who have trouble making timely benefit claims or COBRA elections. DOL also is taking a flexible enforcement approach toward plans facing their own Sandy-related compliance challenges, such as reviewing claims or sending disclosures within established timeframes.

Donated leave time

Employees may elect to forgo vacation, sick or personal leave in exchange for employer contributions to charitable organizations helping Sandy victims. Payments made by employers before Jan. 1, 2014, are excludable from the donating employees' gross income and FICA wages, according to IRS Notice 2012-69. Employers (not employees) may claim a tax deduction for these payments.

Employer-provided disaster relief

Employers can offer "qualified disaster relief payments" on a tax-free basis to eligible Hurricane Sandy victims under Section 139 and long-standing IRS guidance (Rev. Rul. 2003-12). In general, employees may exclude from gross income any employer payments or reimbursements for reasonable temporary lodging expenses incurred as a result of a presidentially declared disaster, if the expenses aren't reimbursed by insurance or other means. Similar rules apply to other disaster-related personal, family and living expenses, such as medical, transportation and funeral expenses.

Relief for tax filings and other time-sensitive acts

In targeted announcements for specific regions struck by Sandy, the IRS and PBGC have postponed deadlines for various government filings (including Form 5500), notices, payments, rollovers and other "time-sensitive" acts (described in Treas. Reg. § 301.7508A-1(c)(1) and Rev. Proc. 2007-56). Most deadlines are extended to Feb. 1, 2013. As agencies continue to monitor the situation, other administrative issues may be identified. Up-to-date information on disaster relief can be found on these agency websites: IRS disaster relief; DOL disaster relief; PBGC disaster relief. In addition to federal efforts, several state tax authorities have granted Sandy-related relief.

Agencies issue rules on reinsurance fees and multistate exchange plans: Proposed Affordable Care Act rules issued Nov. 30 detail features of the temporary reinsurance fee and related programs. HHS estimates the fee will run approximately $63 per enrollee for the first full year of the three-year program. The fee would not apply to several types of employer health benefits, including health savings accounts (HSAs), flexible spending arrangements (FSAs), and stand-alone vision or dental plans. Other proposed rules from OPM address the multistate plans that will be offered along with qualified health plans on health insurance exchanges. **Full text of HHS proposed rule on the temporary reinsurance fee and related programs (30 Nov 2012); Fact sheet on proposed rule (CMS, 30 Nov 2012); Full text of OPM proposed rule for multistate plans on health insurance exchanges insurance exchanges (30 Nov 2012); Fact sheet on proposed rule (OPM, 30 Nov 2012)**

IRS regulations exempt most workplace pay and benefits from 3.8% tax on investment income: Newly proposed IRS regulations and Q&As address the new 3.8% tax imposed on higher-income individuals' "net investment income" starting Jan. 1. The tax under Code Section 1411 applies to taxpayers with income exceeding certain thresholds – $200,000 for unmarried individuals, $250,000 for married couples, $125,000 if married filing separately – who receive interest, dividends, capital gains or other investment income. But the regulations exempt most income derived from a trade or business, *including the trade or business of being an employee*, as well as amounts subject to self-employment tax. So most employment-based and director compensation apparently will be exempt.

Qualified plan distributions. In the case of IRAs and tax-favored retirement plans – such as pension, 401(k), 403(b) or 457(b) plans – the tax won't apply to distributions or amounts treated as such (including Roth IRA conversions, defaulted loans and refunds of excess deferrals).

Nonqualified deferred compensation (NQDC). The tax won't apply to amounts treated as employee wages under Section 3401's income tax withholding rules – such as NQDC payments – or amounts taxable under Sections 409A, 457(f) or 457A or the constructive receipt doctrine.

Equity pay. Although the proposed regulations are silent on equity pay, it's likely the tax won't apply to compensation income, such as amounts received when a stock option is exercised, restricted stock vests or dividends are paid on unvested awards. But net investment income might include dividends on vested stock (and on unvested stock after a Section 83(b) election) and proceeds from the ultimate sale of shares.

Health or education savings accounts. Distributions from Section 529 tuition plans, Coverdell accounts, Archer medical savings accounts and health savings accounts will be exempt from this tax.

Effective date. The tax takes effect Jan. 1, 2013. The regulations generally won't apply until 2014, although taxpayers may rely on the proposed regulations now. Comments are due March 5, 2013, and a hearing is scheduled for April 2.

Medicare tax. A separate set of IRS regulations addresses employers' duty to withhold an additional 0.9% Medicare tax from high earners starting Jan. 1.

Employer may reduce overtime by changing employees' workweek: Adopting a new workweek to curb payroll costs -- or for any other reason -- does not violate the Fair Labor Standards Act (FLSA), as long as the employer intends the change to be permanent and follows required procedural steps, the 8th US Circuit Court of Appeals has held ***(Abshire v. Redland Energy Servs. LLC, 10/10/12)***. Though FLSA regulations bar altering workweeks to avoid the law's overtime requirements, the same rules permit permanent workweek changes. Like other courts, the 8th Circuit decided that adopting a new workweek to cut overtime doesn't evade the FLSA, as long as the change is permanent

IRS releases 2012 cumulative list for Cycle C retirement plans: The IRS has issued its 2012 cumulative list of changes for qualified retirement plans, which serves as a guide to help Cycle C filers prepare determination letter applications to submit starting Feb. 1, 2013. Among the new items on the list are changes relating to funding-based benefit restrictions, rollovers to defined benefit plans, deferred annuities in defined contribution plans, and transfers of excess pension assets to retiree health and life insurance accounts.

Cycle C filing period opens Feb. 1, 2013

Notice 2012-76 updates the IRS's list of requirements for individually designed defined benefit (DB) and defined contribution (DC) plans filing for determination letters during Cycle C (Feb. 1, 2013, to Jan. 31, 2014). Cycle C filers include single-employer plans if the employer's EIN ends with 3 or 8. Sponsors of governmental plans seeking determination letters may elect to file during either Cycle C or Cycle E.

Besides Cycle C filers, the 2012 cumulative list also will be used by sponsors of volume submitter and master and prototype plans seeking preapproval of DB documents for the second six-year remedial amendment cycle.

Scope of IRS review

With several exceptions, the IRS's review of Cycle C filings won't consider any guidance issued or laws enacted after Oct. 1, 2012; any qualification requirements first effective in 2014 or later; or any statutory provisions taking effect in 2013 but not addressed in the list. Highlighted below are other important points about the scope of the IRS's review.

Funding-based benefit restrictions. DB plan sponsors filing for Cycle C letters before 2013 plan year-end must first adopt amendments reflecting funding-based benefit restrictions under Code Section 436. The IRS apparently will review the content of these amendments during Cycle C.

Cash balance and other hybrid plans. Given the postponement of hybrid plan amendment deadlines, the IRS's review of Cycle C filings generally will *not* consider the 2010 final hybrid plan regulations (except for certain lump-sum whipsaw provisions). However, if a Cycle C plan has been amended to satisfy those regulations, the IRS will review the plan for compliance with provisions of the 2010 final regulations that took effect for plan years beginning in 2011 (accelerated vesting, preservation-of-capital rule, no wearaway on conversion and alternative standard on age discrimination).

Eliminating DB lump sums in bankruptcy. The IRS will review bankrupt employers' amendments eliminating lump sum options, as permitted by recent regulations if certain conditions are met (see article in November 2012 LEBC Update).

DC-to-DB rollovers. Provisions allowing employees to roll over DC plan savings to purchase annuities from the employer's DB plan will undergo IRS review.

DC plan deferred annuities. The IRS will consider spousal protection provisions in 401(k) and other profit sharing plans offering deferred annuities.

Section 420 transfers. The IRS review will encompass MAP-21 provisions relating to Section 420 transfers of excess pension assets to retiree health and life insurance accounts.

Governmental plans. The IRS will review governmental plan amendments regarding military service and, if applicable, group trust participation and waiver of 2009 DC plan minimum distributions. Governmental pension plans prohibiting in-service distributions before age 62 don't have to specify any "normal retirement age."

Terminating plans. Terminating plans must reflect all law changes in effect at the time of termination

Draft Form 5300 signals changes to retirement plans' determination letter filings: The IRS has released a draft Form 5300 with instructions, dated February 2013, for sponsors of qualified retirement plans to use when requesting determination letters. The final version might be ready when Cycle C opens Feb. 1. Filers may want to take a "sneak peek" now because the form is organized quite differently from the April 2011 version in use today

Major revisions. The draft form eliminates Schedule Q demonstrations regarding coverage and nondiscrimination requirements, consistent with IRS guidance that took effect last February. The draft also reflects significant changes for preapproved plans that took effect May 1.

Other items to note. Filers may find other changes to certain line items particularly noteworthy:

- *Amendments (lines 3l, 3m and 3n)*. A new table on Form 5300 would require filers to list plan amendments, classify them as "discretionary" or "interim" (legally required), and specify the type of tax return the employer files (such as Form 1120) and its due date.

- *Normal retirement age (line 5b(2))*. If a nongovernmental plan's normal retirement age is below 62, filers would have to certify that this age reasonably represents the typical retirement age for the relevant industry.

- *401(k) plans (line 10)*. 401(k) plan filers would have to indicate whether the plan meets the traditional ADP safe harbor using matching or nonelective contributions, satisfies the ACP safe harbor, and contains a qualified or eligible automatic contribution arrangement (QACA or EACA).

- *Compliance issues (line 19)*. Filers would have to provide agency contact information for compliance issues currently pending before (or recently resolved by) regulatory agencies. However, specifying the issues involved in pending matters is not required.

- Other notable changes concern multiple-employer plans (line 3g), hybrid plans (line 5a), foreign plan sponsors (line 6a(2)), and Section 401(h) health benefits (lines 6g and 6h).

Proposed ACA wellness guidance builds on current HIPAA rules: Proposed regulations addressing employer wellness program provisions of the Affordable Care Act would expand the rewards available to some program participants. The maximum reward would rise from 20% to 30% of the coverage cost for "health-contingent" wellness programs that aren't smoking-related and up to 50% of the coverage cost for programs that reduce or prevent tobacco use. The proposed guidance retains most of the existing standards for nondiscriminatory wellness programs, with minor clarifications in programs requiring a particular health outcome. Once finalized, the rules are slated to apply for plan years beginning on or after Jan. 1, 2014.

CMS issues 2013 Medicare premium, deductible and coinsurance amounts: The Centers for Medicare and Medicaid Services has announced the 2013 beneficiary premiums, deductibles and other cost-sharing amounts for Medicare Parts A and B. The standard Part B monthly premium will increase to $104.90 in 2013, up from $99.90 in 2012. The income-adjusted monthly Part B and Part D premiums for higher-income beneficiaries for 2013 also are available. Nearly all indexed amounts will increase for 2013, except for Part A and some Part D premiums.

Medicare beneficiary cost-sharing requirements

Medicare beneficiaries are subject to various cost-sharing requirements, including monthly premiums, daily coinsurance for certain benefits and annual deductibles. These amounts are adjusted annually. The Centers for Medicare and Medicaid Services (CMS) has released the 2013 amounts for Medicare Parts A and B, as well as the 2013 Part D income-based premiums. For 2013, most indexed amounts will increase; however, Part A premiums will decrease and certain Part D premiums will remain at 2012 levels.

Part A – Hospital insurance

Medicare Part A beneficiaries are subject to a deductible for inpatient hospital stays. If hospitalized more than 60 days, beneficiaries also must pay daily coinsurance, which varies depending on the duration of the stay. Beneficiaries who receive services in a skilled nursing facility are subject to separate daily coinsurance.

Although most individuals qualify for premium-free Part A coverage, those who haven't had enough quarters of Medicare covered employment must pay monthly premiums. The Part A premium depends on how many covered quarters a beneficiary has and whether Medicare enrollment is due to age (such as seniors age 65 and older) or disability. The following table shows the Part A deductibles, coinsurance amounts and premiums for 2012 and 2013. (For details on how these amounts are calculated, see CMS's notices on the Part A premium for uninsured enrollees and the Part A deductible and coinsurance amounts.).

Part A – Hospital insurance		
Component	**2013**	**2012**
Hospital inpatient deductible	$1,184	$1,156
Hospital daily coinsurance		
▪ Days 61-90	296	289
▪ Lifetime reserve days	592	578
Skilled nursing facility daily coinsurance	148	144.50
Monthly premium		
▪ Seniors with fewer than 30 covered quarters and certain people with disabilities under 65	441	451
▪ Seniors with 30-39 covered quarters and people with disabilities who have 30 or more covered quarters	243	248

Part B – Medical insurance

Medicare beneficiaries with Part B coverage pay monthly premiums and an annual deductible. People in higher-income brackets pay higher premiums – on a graduated scale – depending on their annual income.

Part B premium and deductible amounts. Most beneficiaries will pay the Medicare Part B standard premium, which will increase to $104.90 in 2013, up from $99.90 in 2012. The table below lists the Part B deductibles and monthly premiums for 2012 and 2013, including the income-adjusted premiums for higher-income beneficiaries. (For details on how these amounts are calculated, see CMS's notice on the Part B premium and deductible.)

Part B – Medical insurance[1]					
2013			2012		
Annual income	Monthly premium	Annual deductible	Annual income	Monthly premium	Annual deductible
$0 ≤ $85,000[2]	$104.90	$147.00	$0 ≤ $85,000[2]	$99.90	$140.00
> 85,000 ≤ 107,000	146.90		> 85,000 ≤ 107,000	139.90	
> 107,000 ≤ 160,000	209.80		> 107,000 ≤ 160,000	199.80	
> 160,000 ≤ 214,000	272.70		> 160,000 ≤ 214,000	259.70	
> 214,000	335.70		> 214,000	319.70	

Part D – Outpatient prescription drug coverage

As mandated by the health care reform law, the Part D program for outpatient prescription drugs will charge higher premiums to higher-income enrollees in 2013. The usual monthly premium is paid to the plan; the added amount (or "adjustment") for higher-income beneficiaries will be deducted from an enrollee's Social Security benefits and paid to Medicare. The table below lists the graduated monthly premium adjustments for different annual income tiers.

Part D – Prescription drug coverage[1]			
2013		2012	
Annual income	Monthly premium adjustment	Annual income	Monthly premium adjustment
$0 ≤ $85,000[2]	$0	$0 ≤ $85,000[2]	$0
> 85,000 ≤ 107,000	11.60	> 85,000 ≤ 107,000	11.60
> 107,000 ≤ 160,000	29.90	> 107,000 ≤ 160,000	29.90
> 160,000 ≤ 214,000	48.30	> 160,000 ≤ 214,000	48
> 214,000	66.60	> 214,000	66.40

[1] Table does not reflect income-based premium adjustments for individuals filing joint tax returns or for married individuals living with spouse at any time during the taxable year but filing separate returns.
[2] Income bracket for most unmarried beneficiaries filing individual returns

Full text of CMS notice on Part A premium for uninsured enrollees (21 Nov 2012); Full text of CMS notice on Part A deductible and coinsurance amounts (21 Nov 2012); Full text of CMS notice on Part B premium and deductible (21 Nov 2012) »

Reinstatement under USERRA permits job termination, appeals court says: Terminating rather than reinstating an employee after military service does not violate the Uniformed Services Employment and Reemployment Rights Act (USERRA), the 8th US Circuit Court of Appeals has ruled ***(Milhauser v. Minco Prods., Inc., 12/5/12)***. The case arose when an employee with poor job performance returned from military leave, only to learn a reduction in force (RIF) was eliminating his job that day. Finding no USERRA violation, the 8th Circuit said the RIF placed the employee in the position he would have been had he not taken military leave.

PBGC posts 2013 premium payment instructions and illustrative forms: PBGC has released 2013 premium payment instructions for pension plan administrators, but the agency's My Plan Administration Account system won't accept e-filings until early January. The 2013 forms and instructions reflect MAP-21 changes to flat- and variable-rate premiums and let plans revoke elections to use the alternative method made at least five years ago. Filers must now name a contact; give the plan's effective date; and break down the premium funding target by participant status (active, terminated vested, or receiving payments) and any premium credit by current or prior year. **Full text of 2013 premium payment instructions (PBGC, 19 Dec 2012) »**

IRS proposes rules for employer shared responsibility penalties under health reform: The health reform law imposes a financial penalty, starting with 2014, on large employers for their full-time employees who have been certified as receiving taxpayer-subsidized coverage on a health insurance exchange unless the employer offered the employee health coverage that is both affordable and provides minimum value. The proposal would penalize employers that don't offer full-time employees coverage for their children, but not for 2014 if the employer begins during that year to take steps toward doing so.

Congress expands 401(k) in-plan Roth conversion opportunity: Fiscal cliff legislation (HR 8) passed by Congress expands the in-plan Roth conversion option to amounts not yet eligible for distribution. The new opportunity applies to 401(k), 403(b) and governmental 457(b) plans with Roth features, effective immediately. So, for example, a plan may now permit active employees of any age to convert pretax 401(k) accounts to Roth accounts. Sponsors presumably retain leeway to decide which (if any) accounts to make eligible for conversion, subject to any applicable amendment deadlines, nondiscrimination requirements and recordkeeping constraints.

IRS updates retirement plan correction program, expands 403(b) component: The IRS has updated its retirement plan correction program, known as the Employee Plans Compliance Resolution System. **Revenue Procedure 2013-12** has dozens of changes for defined benefit and defined contribution plans, including new provisions coordinating corrections with funding-based benefit restrictions and a ban on using forfeiture accounts to fix a 401(k) plan's ADP test failure. A wider range of 403(b) plan defects is eligible for correction, but the IRS hasn't yet opened any 403(b) preapproval or determination letter programs. The changes generally take effect April 1 but may be applied now.

Latest ruling in *CIGNA v. Amara* awards generous remedy for flawed SPD: In the latest chapter of the *CIGNA v. Amara* saga, a federal court has granted generous relief to ERISA plan participants harmed by misleading communications (*Amara v. CIGNA Corp.*, (D. Conn. Dec. 20, 2012)). The case sparked a landmark 2011 US Supreme Court ruling, which suggested these participants might have grounds to seek "equitable relief," including money damages, and ordered the lower court to revisit those issues. This latest judgment won't take effect until the issues are resolved on appeal.

Cash balance conversion. The controversy stemmed from communications about converting traditional pension benefits (Part A) to cash balance accounts (Part B). The Part B opening balance didn't include the full value of the Part A early retirement benefit, so many participants experienced a wearaway period during which their Part A benefit exceeded their Part B benefit. On retirement, participants could elect a lump sum equal to the greater of the cash balance account or the present value of their Part A benefit. The plan also protected participants' rights to subsidized early retirement benefits under the traditional formula, but only if taken in annuity form.

Flawed SPD. The summary plan description (SPD) didn't disclose that some participants' benefits would not grow during the wearaway period. Nor did the SPD highlight that participants could lose early retirement benefits by choosing a lump sum. The court found the employer intentionally misled participants with affirmative statements and omissions that impeded comparison of old and new benefits and avoided employee backlash. This "fraud" fostered participants' reasonable (if mistaken) expectation of receiving "the full value of their Part A benefits, undiminished by wear away and inclusive of their early retirement benefits," the court said.

Contract reform. To remedy this harm, the latest decision orders the employer to "reform" (modify) the pension plan to give participants "A+B" relief: Participants would get all of their Part A benefits (including early retirement benefits) in annuity form, plus all benefits accrued under Part B in lump sum or annuity form. This approach eliminates the need for an opening balance – and any questions about whether it includes early retirement benefits. Because Part B benefits are simply tacked onto Part A benefits, the remedy also prevents any possibility of wearaway.

Alternative grounds for relief. The court also ruled the employer may be "surcharged" (assessed money damages) to compensate participants for a fiduciary breach, which would effectively yield the same A+B relief. This holding may come into play if the relief described above is overturned on appeal.

Fiscal cliff bill secures education and adoption benefits, renews transit benefit hike: The employee tax exclusions for employer-provided educational and increased adoption assistance benefits – which technically expired at the end of 2012 – are permanently renewed in fiscal cliff legislation (HR 8). Signed Jan. 2 by President Obama, the act also reinstates and extends parity between tax-free mass transit and parking benefits for 2012 and 2013. Other provisions expand retirement plan Roth conversion options.

Educational assistance. Code Section 127 allows an employee to exclude from income up to $5,250 per year in employer-provided assistance for educational courses at the associate, undergraduate and graduate levels. Enacted as a temporary provision in 1978, Section 127 has been extended (sometimes retroactively) many times, most recently for two years in 2010. Given concerns that Congress might not renew the provision, many employers and employees welcome the news that HR 8 makes Section 127 permanent.

Adoption assistance. The legislation also makes permanent substantial increases in Section 137 employer-provided adoption assistance benefits, originally enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001. Employers sponsoring qualified adoption assistance programs may reimburse employees' adoption expenses (including court costs, attorney fees, travel expenses, and other reasonable and necessary expenses directly related to an adoption) on a tax-free basis, up to an annually adjusted limit (estimated at $12,970 for 2013). The income exclusion is phased out for higher-income employees.

Parity for transportation benefits. HR 8 increases Section 132(f) tax-free mass transit benefits to equal parking benefits for 2012 and 2013. This boosts the tax-free monthly mass transit benefit from $125 to $240 for 2012 and an estimated $245 for 2013.

Payroll tax break ended. Congress did not renew the payroll tax holiday that reduced employees' share of Social Security taxes from 6.2% to 4.2% for the past two years. Lawmakers let the break expire amid worries about Social Security's long-term solvency.

Bigger changes ahead? While HR 8 largely blocks tax rate increases for most Americans, it delays for just two months approximately $110 billion in automatic spending cuts. Around the same time, the US will need to increase its borrowing limit – a change only Congress can make. Republicans plan to use the debt ceiling to press for spending cuts, setting up another budget battle in which benefit-related proposals to raise revenue will probably be in play.