



## Employee Benefits Legislative & Political Update / Plan Issues

ULA Advanced ERISA Seminar

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# Regulatory Issues—Mental Health Parity

- ▶ Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA)
  - ▶ Requires that if mental health / substance use disorder benefits are provided, there must be “parity” between medical/surgical benefits and mental health / substance use disorder benefits
- ▶ CAA 2021 (enacted December 2020)
  - ▶ Requires that plans perform and document comparative analyses of the design and application of nonquantitative treatment limitations (NQTLs)
  - ▶ Plans required to furnish these analyses to DOL/HHS upon request, beginning 45 days from enactment (February 10, 2021)
- ▶ Proposed rules issued August 2023—incredibly problematic for plans
  - ▶ Substantially all/predominant test
  - ▶ Meaningful benefit requirements
  - ▶ Network adequacy NQTL
  - ▶ Fiduciary certification



# Regulatory Issues—Mental Health Parity

- ▶ Departments received over 9,500 comments
- ▶ Final rule released September 9, 2024 and published in the Federal Register this past Monday, September 23
  - ▶ Staggered effective dates for plan years beginning on and after 1/1/2025 or 1/1/2026
- ▶ Many changes from the proposed rule based on comments
  - ▶ Predominant/substantially all test removed for NQTLs
  - ▶ Duty to identify and remedy “material” differences in outcomes data
  - ▶ Meaningful benefit requirement to provide “core treatments” with respect MH/SUD benefits where medical/surgical benefits are provided
  - ▶ Fiduciary certification changed substantially
- ▶ HOWEVER—strong concerns remain with subjectivity of final rule



# What to watch at the PBGC

- ▶ Final 4213 withdrawal liability regulations
  - ▶ Multiemployer Pension Plan Amendments Act of 1980 (MPPAA) offered two paths for assumption setting
    1. Plan actuary's best estimate of anticipated experience under plan
    2. Assumptions prescribed by PBGC regulation
  - ▶ Issued proposed regulations October 14, 2022
  - ▶ Proposed rule provides a range of acceptable discount rates:
    - ▶ Valuation discount rates used for minimum funding
    - ▶ PBGC annuity purchase rates
    - ▶ Any blend of the two
  - ▶ Range generally encompassed all current approaches plan actuaries use for determining unfunded vested liabilities
  - ▶ Included in PBGC Regulatory Agenda for October 2024
  
- ▶ Deva Kyle nomination for PBGC Director



# SECURE 2.0 Technical Corrections

- ▶ 2 major concerns with SECURE 2.0 for multiemployer 401(k) plans:
  - ▶ Roth catch-up contributions
    - ▶ Treasury provided 2-year administrative delay
  - ▶ Automatic enrollment
    - ▶ Treasury released some guidance in its grab bag but multiemployer plans with a 401(k) component established or a new multiemployer plan established after 12/29/22 would be subject to the automatic enrollment and automatic escalation requirements
- ▶ Staff released a discussion draft of technical fixes in December 2023
  - ▶ Draft exempted multis from automatic enrollment provisions, but did not go far enough
  - ▶ Roth provisions not addressed
- ▶ Revised technical package unlikely to be released before attached to a vehicle
- ▶ Timing of legislative package unclear . . . but likely end of year



# Looking forward

- ▶ Split government
  - ▶ Unlikely to see major pension legislation move
  - ▶ Focus will remain on Committees with jurisdiction
- ▶ What about a GOP sweep?
  - ▶ Special financial assistance challenges
  - ▶ Multiemployer funding requirement challenges



Questions?

