

# Outlook for Legislative and Regulatory Activity in 2013

*An Overview of Policy Related to HR and Employee Benefits Expected in 2013*

*January 2013*

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### 113<sup>th</sup> Congress

The 113<sup>th</sup> Congress convened anew, with the House and Senate having returned to Capitol Hill on January 3, 2013. The new Congress contains a Democratic Senate majority (53 Democrats, 45 Republicans, and 2 Independents who usually caucus with the Democrats) and a Republican House majority (234 Republicans, 201 Democrats). The Senate gained 12 newly elected members and the House gained 82 new lawmakers.

With the passage of the American Taxpayer Relief Act (ATRA) in the final hours of the 112<sup>th</sup> Congress, the new law extended indefinitely several tax provisions impacting employer-provided fringe benefits, including adoption assistance, education assistance, child care tax credit, and dependent care benefits. The ATRA also re-established the parity between qualified transportation and qualified parking fringe benefits through December 31, 2013. For 2013, the excludable amount will be \$245 per month. (During 2012, qualified parking benefits increased from \$230 to \$240 a month due to cost-of-living adjustments. However, the pretax limit for qualified transportation benefits decreased to \$125.) In addition, the law increased taxes on certain individuals, increased tax rates on capital gains and dividends, permanently patched the alternative minimum tax (AMT), and extended unemployment insurance for one year.

The ATRA also includes another “doc fix” by avoiding a 27% reduction to Medicare physician reimbursements for 2013, and allows 401(k), 403(b), and 457(b) plans to be amended to permit the conversion of taxable vested amounts (e.g., elective deferrals, matching contributions, and nonelective employer contributions) to a designated Roth account maintained within the plan. Aon Hewitt expects continued debate over federal spending as the ATRA delayed sequestration for two months and did not address other federal budgetary issues. Potential spending and further revenue enhancements are likely to be considered during the upcoming year.

Congress is expected to be very active during the early months of 2013. On January 23, 2013, the House approved the “No Budget, No Pay Act of 2013” (H.R. 325) by a 285-144 vote. The bill would extend the debt ceiling until May 18 and contains a provision that requires each chamber of Congress to pass a budget by April 15 or have members’ pay suspended. Senate Majority Leader Harry Reid stated that the Senate will pass H.R. 325 without changes. The White House also confirmed that President Obama will sign the bill into law.

The passage of H.R. 235 removes the issue of the nation’s debt ceiling from center stage for the next few months. Sequestration will most likely go into effect and Congress will shift its attention to the federal budget. One factor plaguing the 2014 budget process is the lack of a budget baseline for the current fiscal year. Federal agencies are operating on a six-month continuing resolution that expires March 27, 2013. It is unknown whether Congress will approve a fiscal 2013 appropriation for the remainder of the year or simply extend it with a continuing resolution, which would provide funding for existing federal programs at current or reduced levels.

## The Regulatory Front

On December 21, 2012, federal agencies (i.e., the Department of Labor (DOL), Equal Employment Opportunity Commission (EEOC), and the Department of Health and Human Services (HHS)) released their Fall 2012 Semiannual Regulatory Agendas. The agendas include regulatory plans and priorities for fiscal year 2013, as well as regulations that were completed during the last six months. On the regulatory front, 2013 is expected to be a very busy year in both health care and retirement.

### Health Care

#### Continued Focus on the Patient Protection and Affordable Care Act

Implementation of the Patient Protection and Affordable Care Act (Affordable Care Act) continues to be a main focus for HHS, the DOL, and the Treasury/Internal Revenue Service (IRS) during 2013.

Developments are expected on the following topics in the upcoming year:

- **Health Insurance Marketplaces:** HHS states that it will continue to provide guidance on the health insurance marketplaces. The marketplaces were previously called “Exchanges” until HHS announced the name change in January 2013. Beginning in 2014, if an employer does not offer insurance, employees will be able to purchase coverage directly in the marketplaces, which are new transparent and competitive insurance platforms where individuals and small businesses can buy affordable and qualified health benefit plans. Coverage through the marketplaces will begin on January 1, 2014, with enrollment beginning October 13, 2013.
- **Other Guidance Expected:** HHS expects to release rules addressing risk adjustment, reinsurance, risk corridors, advanced premium tax credits, and cost-sharing reductions. Another final rule will outline many of the consumer protections included in the Affordable Care Act. HHS’s Centers for Medicare and Medicaid Services (CMS) is expected to develop converted modified adjusted gross income (MAGI) based standards using federal data and submit them to the states for review. In addition, new or revised safe harbors from the federal anti-kickback statute are expected by April 2013.
- **Employer Shared Responsibility:** In late December 2012, the Treasury/IRS released proposed rules regarding employers’ responsibility to offer health insurance coverage. While the proposed rules generally follow previous guidance regarding coverage for full-time employees, there were several new issues addressed. First, the proposed rules do require employers to offer dependent coverage (children up to the age of 26) and do not require the offering of spouse coverage. This requirement will be fully effective in 2015. Also, the rules permit employers to comply with the requirements on the plan year after January 2014. In addition, there are transitional rules that provide greater flexibility for employers in complying with the requirements.
- **CLASS Program Repealed:** The ATRA repealed the Community Living Assistance Services and Supports (CLASS) Act, which was intended to provide a voluntary, long-term care insurance program as part of the Affordable Care Act. Although repealed, Congress did replace the program with a 15-member commission to study long-term care insurance.
- **Legal Challenges:** Although the Supreme Court ruled on the constitutionality of the Affordable Care Act in June 2012, challenges on the validity of the law’s women’s preventive services mandate, as well as its provisions on contraception coverage, the Senate’s ability to “originate” a tax, and the legality of the health insurance marketplaces all may be reviewed by the courts.

## Other Health Care Issues

While implementation of the Affordable Care Act has taken center stage, developments on other health care issues are also expected in 2013, including:

- **Mental Health Parity:** In January 2013, as part of a plan to reduce gun violence, the Obama administration announced it will issue final regulations to implement the Mental Health Parity and Addiction Equity Act (MHPAEA). The final regulations, which are expected in February 2013, will outline key details that a previous interim final rule issued in February 2010 failed to address, including how existing group health plans offering mental health services must cover them “at parity” with other health coverage offered.
- **HIPAA:** HHS’s Office for Civil Rights released a long-awaited final rule on January 17, 2013 that updates privacy and security protections for health information as established by the Health Insurance Portability and Accountability Act (HIPAA). The rule expands many of the requirements to business associates of entities that receive protected health information, such as contractors and subcontractors. The rule is effective March 26, 2013, and covered entities and business associates must comply by September 23, 2013.

## Retirement

Although a great deal of attention has been focused on health care regulations due to the Affordable Care Act, the retirement community can expect to see several issues addressed during the upcoming year, such as:

- **Definition of Fiduciary:** The DOL is planning to re-propose rules addressing the definition of fiduciary, possibly in July 2013 (previous rules on the topic were withdrawn in 2011). Phyllis C. Borzi, Assistant Secretary of Labor for DOL’s Employee Benefits Security Administration (EBSA), has also stated that the DOL will propose “companion prohibited transaction exemptions (PTEs),” as part of this rule. Details are unavailable regarding how many PTEs will be included, as the rule is still under review.
- **Lifetime Income Options:** The DOL plans to address lifetime income options this year, most likely being released as an advance notice of proposed rulemaking.
- **Cash Balance and Hybrid Plans:** Industry experts are hopeful that the Treasury/IRS will issue final regulations on cash balance and other hybrid plans during 2013. It is also possible that a final regulation on minimum required contributions to single-employer defined benefit plans is released this year. The agencies included both items in their 2012-2013 Priority Guidance Plan document.
- **Target Date Fund Disclosures:** The DOL hopes to finalize amendments to the target date fund disclosure regulation.
- **PBGC/Pension Funding Relief:** Pension funding relief could be in the spotlight, due to the effects of funding stabilization provisions included in MAP-21 incrementally phasing out during the next several years. The PBGC is also expected to continue its efforts to reform procedures, making them more consumer-focused and intuitive. Agency Director Joshua Gotbaum has stated that he is interested in modifying PBGC’s reportable events requirements and looking into simplifying and reforming PBGC’s payment schedules. Increasing PBGC premiums could also be evaluated.

Other retirement regulations to watch for during 2013 include:

- Final regulations under Section 401(a)(9) on deferred annuities;
- Regulations on the status of Indian tribal governmental plans as a governmental plan under Section 414(d);
- Final regulations under Section 417(e) to simplify the treatment of optional forms of benefits that are paid partly in the form of an annuity and partly in a more accelerated form; and
- A Revenue Procedure under Section 430 relating to approval for funding method changes to reflect changes to the minimum funding requirements made by PPA.

## Other HR-Related Topics

In 2013, the DOL is expected to continue to promote its “Plan/Prevent/Protect Compliance Strategy,” which is designed to ensure employers are in compliance with employment law.

In addition, in December 2012, the EEOC approved a strategic enforcement plan (SEP) for fiscal years 2013–2016. The SEP grew out of the EEOC’s strategic plan for fiscal years 2012–2016, which was approved on February 22, 2012. The purpose of the SEP is to focus and coordinate the EEOC’s programs to have a sustainable impact in reducing and deterring discriminatory practices in the workplace. The SEP identifies six national priorities as the focus of this integrated enforcement effort: 1) eliminating barriers in recruitment and hiring; 2) protecting immigrant, migrant, and other vulnerable workers; 3) addressing emerging and developing employment discrimination issues; 4) enforcing equal pay laws; 5) preserving access to the legal system; and 6) preventing harassment through systemic enforcement and targeted outreach.

## Resources

To stay up to date with the latest workplace-related developments in 2013, read the Aon Hewitt Washington Report: [2013 Aon Hewitt Washington Report Index](#)

## Agencies' Regulatory Agendas and Priority Guidance Plans

In December 2012, federal agencies released their Fall 2012 Semiannual Regulatory Agendas. The agendas include regulatory plans and priorities for fiscal year 2013, as well as regulations that were completed during the last six months.

The link to the 2012 Regulatory Agenda (main website page, searchable by agency) is available at: <http://www.reginfo.gov/public/do/eAgendaMain>

The 2012 Agency Statements of Regulatory Priorities (listed by agency) are available at: [http://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION\\_GET\\_STATEMENT\\_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd](http://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_STATEMENT_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd)

Additionally in November 2012, the IRS released the 2012-2013 Priority Guidance Plan. The plan contains 317 projects that are priorities for allocation of the resources of IRS offices during the 12-month period from July 2012 through June 2013. The new plan provides guidance on a variety of issues important to individuals and businesses, including international taxation, health care, retirement benefits, executive compensation, and implementation of legislative changes. The IRS stated that the Priority Guidance Plan will be updated during the plan year to reflect additional items that have become priorities during the plan year and guidance that has been published. The Treasury/IRS also released the fourth quarter update to the 2011-2012 Priority Guidance Plan. This final quarterly update includes ten additional projects.

The 2012-2013 Priority Guidance Plan is available at: [http://www.irs.gov/PUP/pub/irs-utl/2012-2013\\_pgp.pdf](http://www.irs.gov/PUP/pub/irs-utl/2012-2013_pgp.pdf)

The 2011-2012 Fourth Quarter Update is available at: [http://www.irs.gov/PUP/pub/irs-utl/2011-2012\\_pgp\\_4th\\_update.pdf](http://www.irs.gov/PUP/pub/irs-utl/2011-2012_pgp_4th_update.pdf)



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