Employee Benefits
In Focus

Pitta LLP
For Clients and Friends
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PRESIDENT BIDEN APPOINTS
NEW PBGC ADVISORY COUNCIL MEMBERS

On November 16, 2022, President Joe Biden appointed three (3) new members and reappointed one (1) member to serve on the Pension Benefit Guaranty Corporation's ("PBGC's") seven-member Advisory Council. The PBGC's Advisory Council represents the interests of labor, employers and the general public and in addition, counsels the PBGC on investment policies and matters central to the PBGC's mission. The new members are: 1) Jeanmarie Grisi of New Jersey, 2) Mike Jacobson of Maryland, 3) Joe LoCicero of New York, and 4) Kweku Obed of Illinois.

Grisi, a reappointed member, serves as chair and together with Obed represent the interests of employers. Grisi is head of global pensions at Nokia while Obed is managing director for Marquette Associates. Jacobson and LoCicero represent the interests of the general public. Jacobson worked as administrator of the National Automatic Sprinkler Industry Funds from 1984 to 2020 while LoCicero currently works as the chair of the Segal Group having joined Segal as president and chief executive officer in 2005. The three (3) new appointments, vacant since February 2022, are expected to be in place for the statutory period of three (3) years.

PBGC CONTINUES TO PROVIDE GUIDANCE REGARDING
ITS SPECIAL FINANCIAL ASSISTANCE PROGRAM APPLICATION PROCESS

Enacted as part of the American Rescue Plan Act of 2021 ("ARPA"), the Pension Benefit Guaranty Corporation's ("PBGC's") Special Financial Assistance Program ("SFA") provides funding to financially troubled multiemployer plans. For background information on the SFA Program, please click here to read our prior Employee Benefits In Focus article published on July 21, 2022. In a series of webinars and other comments, the PBGC continues to outline the current process.

To receive assistance, multiemployer plans must engage in an online application process. PBGC published an interim final rule ("IFR") in July 2021 that became effective on July 12, 2021 and a final rule in July 2022 that became effective on August 8, 2022. Applications that were submitted prior to the effective date of the final rule operate under the IFR provisions while applications submitted after such date operate according to the provisions of the final rule. However, applications submitted prior to the effective date of the final rule can be supplemented and re-submitted so that the final rule provisions apply.

The main differences between the IFR and the final rule include the interest rates used to calculate the required SFA and the permissible vehicles in which to invest SFA assets and earnings thereon. Under the IFR, plans were required to use the same interest rate assumption for both SFA and non-SFA assets in calculating the required SFA needed. However, under the final rule, plans must use two different interest rate assumptions – one for SFA assets and one for non-SFA assets. In terms of permissible investment vehicles, the IFR required 100% of SFA assets and earnings thereon to be invested in investment grade fixed income securities with an exception of 5% that could be invested in "investments that were considered investment grade at the time of purchase but are no longer of that credit quality." The final rule, on the other hand, permits plans to invest up to 33% of SFA assets and earnings thereon in return-seeking assets and 67% of SFA assets and earnings thereon in investment grade fixed income securities.

PBGC has held a series of webinars devoted to explaining the SFA Program application process as well as providing examples of permissible investments and those webinars can be accessed by clicking here. More recently, on August 16, 2022, the PBGC held a webinar that explained specific types of investments that are allowed under the SFA final rule. The August 16, 2022 webinar, mirroring the preamble to the final rule, provided general examples of SFA permissible investments which included: 1) "broad, liquid markets," 2) "publicly/widely traded," 3) "common, simple investments," 4) "robust regulatory framework," 5) "U.S. markets," and 6) "derivatives used to gain exposure, not leverage." In the webinar, the PBGC stated that these categories are "not bright-line definitions" but "simply general characteristics that were identified with the type of investments" the PBGC thought would be permissible investment vehicles for SFA assets.

At this time, multiemployer plans in priority groups 1, 2, 3, 4 and 5 are permitted to submit applications for SFA. Priority group 1 includes plans that are already insolvent or were expected to become insolvent before March 11, 2022. Priority group 2 includes plans that are projected to become insolvent within one year from the date of the plan's application filing. Priority group 3 includes plans with greater than 350,000 participants. Priority group 4 includes plans expected to become insolvent before March 11, 2023. Priority group 5 includes plans expected to become insolvent before March 11, 2026. Priority group 6 includes plans with a present value of financial assistance in excess of one ($1) billion. The application period for priority group 6 is currently closed but expected to reopen in the near future.

According to the PBGC website, the PBGC will accept only as many applications as it estimates it can process in 120 days. Subsequently, "the application period will temporarily close until the PBGC has capacity to process more applications." In addition, the PBGC will update a page on their website, which can be accessed by clicking here, when the application period opens and closes and will also update the page with information regarding the status of individual applications submitted. As of November 18, 2022, the PBGC has approved approximately $8.9 billion to plans that cover more than 191,000 workers, retirees, and beneficiaries.

2023 RETIREMENT-RELATED COST-OF-LIVING ADJUSTMENTS ANNOUNCED

On October 21, 2022, the Internal Revenue Service ("IRS") announced increases to contribution limits for employees who participate in 401(k), 403(b), most 457 plans, and the federal government's Thrift Savings Plan. According to Notice 2022-55, titled "2023 Limitations Adjusted as Provided in Section 415(d), etc.," some of the cost-of-living increases for this year include, but not are limited to, the following:

- Individual employee contributions to a 401(k), 403(b), most 457 plans and the federal government's Thrift Savings Plan are increased from $20,500 to $22,500, while the catch-up contribution limit for individuals aged 50 and over is increased from $6,500 to $7,500.

- The amount an individual may contribute to an individual retirement account ("IRA") is increased from $6,000 to $6,500.

- The amount an individual may contribute to a SIMPLE retirement account is increased from $14,000 to $15,500, while the catch-up contribution limit for individuals aged 50 and over who contribute to a SIMPLE retirement account is increased from $3,000 to $3,500.

- For single taxpayers who contributed to a traditional IRA, the phase-out range is increased from between $68,000 and $78,000 to between $73,000 and $83,000. For married couples who file jointly, if the spouse making the IRA contribution participates in a workplace retirement plan, the phase-out range is increased from between $109,000 and $129,000 to between $116,000 and $136,000.

- For an individual who contributes to an IRA but who does not participate in a workplace retirement plan and is married to someone who participates, then the phase-out range is increased from between $204,000 and $214,000 to between $218,000 and $228,000.

- For a married individual who files a separate return and who participates in a workplace retirement plan then the phase-out range is not affected by an annual cost-of-living adjustment and continues to be from between $0 and $10,000.

- For singles and heads of household taxpayers who contribute to a Roth-IRA, the income phase-out range is increased from between $129,000 and $144,000 to between $138,000 and $153,000.

- For taxpayers who are married and file jointly, then the adjusted gross income phase-out range for taxpayers making contributions to a Roth IRA is increased from between $204,000 and $214,000 to between $218,000 and $228,000.

- For a taxpayer who is married and files a separate return and is a Roth-IRA contributor then the phase-out range is not affected by an annual cost-of-living adjustment and continues to be between $0 and $10,000.

For more information on cost-of-living adjustments to retirement plan contributions, please see Notice 2022-55 by clicking here.

IN PRIVATE LETTER RULING IRS WAIVES IRA 60-DAY ROLLOVER REQUIREMENT FOR AN INDIVIDUAL

The Internal Revenue Service ("IRS"), through a redacted private letter ruling, granted a waiver to the 60-day rollover requirement set forth in Section 408(d)(3)(A) of the Internal Revenue Code of 1986 (the "Code"). Under this Section, if any amount is paid or distributed out of an individual retirement account ("IRA") or an individual retirement annuity, it will be included in the gross income of the payee or distributee. However, this rule will not apply to any amount paid or distributed out of an IRA or an individual retirement annuity if the entire amount received is paid into an IRA or into an eligible retirement plan for the benefit of payee or distributee no later than the 60th day after the day on which the payee or distributee receives the payment or distribution.

Consistent with Section 408(d)(3)(I) of the Code, the letter states that the Secretary of the Treasury is permitted to waive the 60-day requirement set forth under section 408(d)(3)(A) "where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement."

Pursuant to the letter, in deciding whether to grant a waiver of the 60-day rollover requirement, the IRS will review all relevant facts and circumstances including: 1) financial institution errors, 2) "inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error," 3) "the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed)" and 4) "the time elapsed since the distribution occurred."

Accordingly, based on the facts and representations, the letter avers that Taxpayer was the victim of a weeks-long international fraud scheme in which individuals falsely stated they were law enforcement officials from an undisclosed country and threatened her "with extradition and imprisonment unless she paid them an [unspecified amount] as proof of her innocence." The IRS determined that the "information and documentation submitted" were consistent with the Taxpayer's assertion that she was unable to accomplish a rollover within the 60-day time-period because she was the "victim of an international fraud scheme[.]" Citing its authority pursuant to section 408(d)(3)(I) of the Code, the IRS waived the 60-day rollover requirement with respect to the distribution of the unspecified amount. The private letter ruling provided that the Taxpayer had 60 days from the issuance of the ruling to make a contribution to an individual retirement account for the benefit of the Taxpayer in order for the contribution to be considered a rollover.

A FEW REMINDERS

(Based on calendar-year plans)

These reminders are for informational purposes only and are not intended to replace your regular compliance calendar as they do not include all deadlines that may be applicable to your plan.

NOVEMBER

DEFINED BENEFIT PLANS

- **PBGC Form 10**
  - November 15, 2022 is the deadline by which to file the Form 10 if the DB plan 1) has more than 100 participants, 2) missed its October 17 required contribution and the contribution remains unpaid as of November 15, 3) could not have satisfied the contribution by a Prefunding or Carryover Balance election and 4) had not filed a PBGC Form 200 for the same incident.

DECEMBER

HEALTH AND WELFARE PLANS

- **Summary of Benefits and Coverage ("SBC")**
  - December 2, 2022 is the deadline by which the plan administrator or health insurer must send the SBC to participants and beneficiaries if the plan does not conduct open enrollment and if the plan operates on a calendar-year cycle.
- **Prescription Drug Reporting**
  - December 27, 2022 is the deadline by which the plan administrator or other plan issuer must submit information on prescription drug and other health care spending for 2020 and 2021.
- **Summary Annual Report ("SAR")**
  - December 15, 2022 is the deadline by which health and welfare plans must distribute the SAR to all plan participants if the Form 5500 deadline was extended by Form 5558 or because of a corporate tax filing extension.

DEFINED BENEFIT PLANS

- **SAR**
    - December 15, 2022 is the deadline by which defined benefit plans must distribute the SAR to all plan participants if the Form 5500 deadline was extended by Form 5558 or because of a corporate tax filing extension.
- **Actuary's Certification of 2022 Adjusted Funding Target Attainment Percentage ("AFTAP")**
    - December 31, 2022 is the deadline by which the actuary must certify the 2022 AFTAP to avoid a presumed AFTAP of less than 60%.
- **Elect to Reduce January 1, 2022 Credit Balances**
    - December 31, 2022 is the deadline by which the plan sponsor must elect to reduce January 1, 2022 credit balances.
- **Revoke Election to Use Credit Balances in Excess of 2022 Minimum Required Contributions**
    - December 31, 2022 is the deadline by which the plan sponsor must revoke an election to use credit balances in excess of 2022 minimum required contributions excluding small plans that use year-end valuation dates.

DEFINED CONTRIBUTION PLANS

- **401(k) Plan Annual Safe Harbor Notice for 2023 Plan Year**
    - December 2, 2022 is the deadline by which the 401(k) Plan Annual Safe Harbor Notice for the 2023 Plan Year is due.
- **Annual Auto-Enrollment Notice(s) for 2023 Plan Year**
    - December 2, 2022 is the deadline by which the annual auto-enrollment notice(s) for the 2023 Plan Year are due.
- **Annual Qualified Default Investment Alternative ("QDIA") Notice for 2023 Plan Year**
    - December 2, 2022 is the deadline by which the annual QDIA Notice for the 2023 Plan Year must be furnished.
- **SAR**
    - December 15, 2022 is the deadline by which the SAR must be distributed to all plan participants if Form 5500 deadline was extended by Form 5558 or because of a corporate tax filing extension.
- **Ongoing Required Minimum Distributions**
    - December 31, 2022 is the deadline by which eligible participants must receive their ongoing required minimum distributions for 2022.

THANKSGIVING MESSAGE

As the Thanksgiving Holiday begins, we at Pitta LLP would like to extend our sincere thanks and gratitude to all of our clients and friends for their confidence and friendship throughout this year and always. May you all celebrate a healthy, peaceful, and happy Thanksgiving, and may you enjoy this Thanksgiving and the coming year with all good things in abundance.

WE WISH YOU AND YOUR FAMILIES A HAPPY AND HEALTHY THANKSGIVING!