

Monthly Benefit News & Developments

PBGC ANNUAL REPORT, 2018

The Pension Benefit Guaranty Corporation's *2018 Annual Report* notes that as of the end of the Sept. 30, 2018 fiscal year, the single-employer program had a surplus – the first since FY 2001 – of \$2.4 billion, a \$13.3 billion improvement in just one year. The program had a deficit of \$10.9 billion at the end of FY 2017. Regarding the multiemployer program, the report said it “unfortunately continues on the path toward insolvency, likely by the end of FY 2025.” The PBGC says this is because the demand for its financial assistance “will increase rapidly as more and larger multiemployer plans run out of money and need help to provide benefits at the guarantee levels set by law.” During FY 2018, the PBGC provided \$153 million in financial assistance to 81 insolvent multiemployer plans. In FY 2017, it had furnished \$141 million to 72 plans.

UPCOMING KEY DATES

1/1/19 (plan years beginning on/after) – Required use of IRS mortality assumptions by single-employer, multiple-employer, and CSEC pension plans, unless the agency approved the use of substitute tables.

1/1/19 (years beginning on/after) – Penalty for individuals not having healthcare coverage is reduced to \$0.

1/1/19 – Final year tax credits are available for certain employers that provide paid family and medical leave.

1/1/19 (through 3/31/19) – Transition period for Voluntary Compliance Program submissions via IRS website before required electronic submissions.

1/14/19 – Effective date of final rules exempting individuals and entities from the ACA's contraceptives coverage requirement based on religious or on moral grounds.

3/4/19 – Extended due date for insurers, self-insured employers, and other providers of minimum essential coverage to furnish individuals information (IRS Forms 1095-B and 1095-C) about healthcare offers and coverage.

4/1/19 – Effective date of Consumer Financial Protection Bureau's rule providing protections for prepaid cards, including payroll debit cards.

Legislative Activity on the Benefits Front

House Republican tax-writers unveiled a bill (H.R.88) that includes retirement plan-related provisions for floor consideration during the post-election “lame duck” session. The “Retirement, Savings, and Other Tax Relief Act” also calls for extensions of various tax provisions that have expired or are set to expire, disaster-related tax relief, and a few technical corrections to the 2017 tax cut law.

The bill requires a simple majority to clear the House, but its prospects in the Senate are uncertain. Senate tax-writers plan to introduce their own year-end tax bill, but with few legislative days remaining before a planned adjournment and with significantly more pressing issues (e.g., avoiding a partial government shutdown) confronting Congress, neither bill is likely to advance.

The House bill's retirement-related provisions draw on previously considered proposals and would address:

- the automatic enrollment safe harbor (QACA) contributions cap after the first plan year;
- election of safe harbor status for 401(k) plans;
- required minimum distribution rules for individuals with certain account balances;
- fiduciary safe harbor for the selection of lifetime income provider;
- disclosures regarding lifetime income;
- withdrawals in cases of birth or adoption of a child;
- loans through credit card and similar arrangements;
- elective deferrals by members serving in a reserve component of the Armed Forces;
- PBGC premiums for cooperative and small employer charity plans;
- nondiscrimination rules to protect older, longer service participants;
- multiple employer/pooled employer plans;
- custodial accounts upon the termination of 403(b) plans;
- portability of lifetime income investments;
- rules applicable to retirement income accounts in church-controlled organizations; and
- small employer pension plan start-up costs and automatic enrollment credits.

The bill's disaster relief provisions cover recent hurricanes, wildfires, and volcanic eruptions and earthquakes, and would allow individuals access to retirement funds and provide special tax credits for employee retention.

High Court Applies ADEA to Small Public Entities

The U.S. Supreme Court unanimously ruled that the 1967 Age Discrimination in Employment Act (ADEA) extends to small state and local government employers, rejecting an Arizona fire district's argument that the statute should apply only to public entities with at least 20 employees (*Mount Lemmon Fire District v. Guido et al.* (No. 17-587, 11/6/2018)). The Court concluded that the legislative history of the law included amendments that established separate categories in applying the ADEA: “persons engaged in an industry affecting commerce with 20 or more employees; and States or political subdivisions with no attendant numerosity limitation.”

CDC BRIEFS ON MORTALITY

The Centers for Disease Control (CDC) released three data briefs: *Mortality in the United States*; *Suicide Mortality in the United States, 1999-2017*; and *Drug Overdose Deaths in the United States, 1999-2017*. The CDC says Americans' average age at death is 78.6 years, declining a tenth of a year from last year's report. The drop has been driven significantly by 70,237 deaths from drug overdoses. In 2016, one fifth of all deaths among Americans aged 24 to 35 were due to opioids, and there has been a major rise in suicides, which are up 3.7% in the past year alone.

DOL INSPECTOR GENERAL'S REPORTS

The Department of Labor's Office of Inspector General (OIG) released *2018 Top Management and Performance Challenges Facing the Department of Labor*, which discusses significant DoL progress to date and what remains to be addressed. The OIG reports that the Employee Benefit Security Administration "is challenged in identifying the investigations, audits, reviews, and compliance assistance activities that will best protect workers' pensions, health, and other benefits." Specifically, EBSA is challenged to determine which of its enforcement initiatives are the most effective, particularly given the potential expansion of the health and retirement marketplaces as a result of the Executive Orders on expanding access to association health plans and on expanding access to multiple employer retirement plans.

The OIG also released *Semiannual Report to Congress*, which highlights the DoL's most significant activities and accomplishments for the six-month period ending Sept. 30, 2018. The OIG expressed concern that EBSA for decades has been faced with ERISA allowing billions of dollars in pension assets held in otherwise regulated entities, such as banks, to escape full audit scrutiny. These concerns were renewed by recent audit findings that as much as \$3.3 trillion in pension assets, including an estimated \$800 billion in hard-to-value alternative investments, received limited-scope audits that provided few assurances to participants regarding the financial health of their plans.

ALTERNATIVE WORK ARRANGEMENTS

The Bureau of Labor Statistics' *Spotlight on Statistics: Workers in Alternative Employment Arrangements* found that independent contractors remain the largest of the four alternative arrangements, followed by on-call workers, temporary help agency workers, and workers provided by contract firms.

Regulatory Roundup

JOINTLY FROM TREASURY, LABOR, AND THE PBGC:

- 2018 *Form 5500, Schedules, and Instructions* (Annual Return/Report of Employee Benefit Plan) and updated *Form 5558*. (Application for Extension to File Certain Employee Plan Returns).

JOINTLY FROM TREASURY, LABOR, AND HHS:

- A *final rule* providing an exemption from the Affordable Care Act's (ACA) contraceptive coverage mandate based on objections to such services due to sincerely held religious beliefs, and a *final rule* providing a similar exemption for those objecting based on nonreligious moral convictions.

FROM THE DEPARTMENT OF TREASURY/IRS:

- Proposed rule* to update the rules on 401(k) plan hardship distributions in light of recent laws.
- Revenue Procedure 18-58*, postponing employee benefit deadlines due to a federally declared disaster.
- Revenue Procedure 18-57*, announcing the 2019 inflation-adjusted amounts for certain benefits and tax items.
- Notice 2018-94*, extending the due dates for certain 2018 information reporting requirements for insurers, self-insured employers, and certain other providers of minimum essential coverage under the ACA.
- Notice 2018-92*, providing interim guidance for 2019 on income tax withholding, requests comments on certain withholding procedures, and notes the agency plans to update the withholding rules due to the 2017 tax law.
- Notice 2018-91*, which contains the 2018 "Required Amendments List" for tax-qualified retirement plans.
- Notice 2018-89*, providing guidance on the tax treatment of leave-based donation programs to aid victims of Hurricane Michael.
- Notice 2018-88* to initiate the development of guidance to address integrated health reimbursement arrangements (HRAs).
- Notice 2018-85*, announcing the Patient-Centered Outcomes Research Trust Fund fee for the plan or policy year beginning Oct. 1, 2018, is \$2.45 per covered life.
- Notice 2018-83*, providing the 2019 official indexed figures for retirement and other employee benefit plans.
- A web posting with a report from Employee Plans Compliance Unit: *Updating Frozen Defined Benefit Plans for Current Law and Other Compliance Issues*.

FROM THE DEPARTMENT OF LABOR:

- Advisory Opinion 2018-01A*, stating that a defined contribution plan sponsor accepting automatic rollover contributions under auto portability will not be a fiduciary with respect to those contributions.
- A *notice* of proposed exemption relating to the consolidation of small retirement savings accounts in 401(k) plans and IRAs when workers change jobs.

FROM THE PENSION BENEFIT GUARANTY CORPORATION:

- A *notice* proposing modifications to the 2019 Form 5500 Schedule R (Retirement Plan Information), Form 5500-SF, and Schedule SB (Single-Employer Defined Benefit Plan Actuarial Information), and their related instructions.
- The Office of Inspector General's report prepared by an independent auditor, *Audit of the Pension Benefit Guaranty Corporation's Fiscal Year 2018 and 2017 Financial Statements*.

Other Recent Milliman Publications You May Be Interested in:

- **[2019 Key Administrative Dates and Deadlines for Calendar-Year Single-Employer Defined Benefit Retirement Plans](#)** Milliman's calendar lists relevant 2019 administrative dates encountered by most single-employer defined benefit plans.
- **[2018 Year-end compliance issues for single-employer retirement plans](#)** By the end of the year, plan sponsors must adopt necessary and discretionary plan amendments to ensure compliance.
- **[Case study: Needle in a haystack: Thinking outside the box to get information from inside the box](#)** Milliman helps a new client with questions regarding final benefits for a deferred vested population.
- **[Self-funding can give employers more control over every aspect of their medical insurance programs](#)** This article examines the key benefits employers derive from transitioning to a self-funded program.
- **[Giving nonqualified deferred compensation plans their due diligence in M&As: Part 1: 409A fitness](#)** This article reviews the potential pitfalls that nonqualified deferred compensation plan sponsors may face as they attempt to successfully navigate a merger and acquisition to a satisfactory conclusion.
- **[Pension Funding Index, November 2018](#)**
- **[Lost in the mists of time](#)** Plan sponsors should have solid procedures for locating lost participants and initiating benefit payments or could end up spending a lot of time documenting the details or perhaps defending their actions (or inactions) in an audit.
- **[Benefits Perspectives: November 2018](#)** This issue features an article comparing and contrasting three volatility-based investment strategies and discussing the implications of applying them in a retirement plan, and an article about managing pharmacy costs through focused analytics.
- **[COLAs for retirement, Social Security, and health benefits for 2019](#)** The Social Security Administration and the IRS have announced cost-of-living adjusted figures for Social Security and retirement plan benefits, respectively, for 2019. The 2019 adjusted figures for high-deductible health plans and health savings accounts were released by the IRS earlier this year and are provided for convenience.

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