

MONTHLY BENEFIT News and Developments

Employee Benefits

Multiemployer Plan Funding

Milliman's Spring 2015 *Multiemployer Pension Funding Study* found that the cumulative funded status of all U.S. multiemployer pension plans slipped slightly, from an 81% funded status in 2013 to 80% at the end of 2014. The market value of assets increased by \$7 billion, but the liability for accrued benefits grew by \$12 billion, resulting in an increased shortfall of \$5 billion.

www.milliman.com/mpfs/

Upcoming Key Dates

6/2/15 – Expiration of IRS's penalty relief pilot program for sponsors of non-ERISA and foreign plans subject to the Form 5500 reporting requirements.

6/16/15 (financial statements beginning after 6/15) – Application of GASB Statement 72, requiring investments a government holds in an investment pool (such as pension plans) to be marked-to-market.

6/17/15 – Effective date of DOL's direct final rule on timing of annual defined contribution plan disclosures and related temporary enforcement policy unless withdrawn.

6/30/15 – Revised deadline for preapproved defined benefit plans to submit applications for opinion and advisory letters for the second six-year remedial amendment cycle.

7/31/15 (for plan years ending on/after 10/1/14 and on/before 10/1/15) – Third reporting and payment of the outcomes research ("PCORI") fee by self-insured group health plan sponsors and insurers.

9/30/15 – Expiration of E-Verify program that is mandatory for federal contractors and some employers in 19 states that require its use.

Legislative Activity on the Benefits Front

Congress heavily focused on the fiscal year 2016 budget during March, with Republicans countering the President's budget proposal with their own fiscal priorities. Like the President's proposal, the FY2016 budget plans from the House and Senate will not have the force of law and broadly outline nonbinding targets for spending and revenues, while also addressing the federal deficit over 10 years and adhering to the limits imposed by the 2010 Budget Control Act. The House voted 228-199 and the Senate voted 52-46 to approve their respective budget resolutions (H.Con.Res.27 and S.Con.Res.11).

Although the House and Senate budget resolutions differ from each other, both in their own ways generally attempt to repeal the Affordable Care Act (ACA), tackle tax reform, and create a commission to recommend structural reforms to Social Security. The House proposal also would: adopt a premium support model for Medicare; and require various committees (e.g., the Education and Workforce Committee) to report legislation that would reduce the deficit by various amounts.

During debate on the Senate proposal, several amendments with employment-based implications were approved, including calls for legislation that would: allow for paid sick leave; promote equal pay (e.g., preventing discrimination on the basis of sex and preventing retaliation against employees for discussing wage information); prevent employment discrimination against pregnant workers (e.g., providing workplace accommodations); increase disclosure of ACA taxes in health insurance monthly premium statements; and extend and expand refundable workplace-based tax credits applicable to individuals.

If the House and Senate can negotiate an agreement on their differing resolutions, the prospects for enacting legislation such as repealing the ACA will increase, because the Senate will be able to do so with a simple majority. And although the President would not sign ACA repeal legislation, the Senate would not likely be able to override a veto and Republicans would be able to make political points with their constituents who generally oppose Obamacare.

Other Legislative Action

Before recessing until Apr. 13, the House approved:

- The "Medicare Access and CHIP Reauthorization Act (H.R.2), which would repeal the Medicare physician payment formula, by a bipartisan vote of 392-37. Without this repeal – which still requires Senate approval – reimbursements to providers are slated to be reduced by 21% starting on Apr. 1. The Senate will take up the bill in mid-April. One revenue raiser included in the bill calls for higher premiums for Medicare Parts B (doctors' services) and D (prescription drugs) benefits for higher-income seniors. In addition, first-dollar coverage from Medigap supplemental insurance plans would be prohibited from covering the Part D deductible for future retirees starting in 2020.

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GASB and Fair Value Measurement and Application

The Governmental Accounting Standards Board issued final guidance on accounting and financial reporting issues relating to fair value measurements that primarily applies to investments made by state and local governments. GASB Statement No. 72, *Fair Value Measurement and Application*, defines “fair value” and describes how it should be measured, what assets and liabilities should be measured at fair value, and what information should be disclosed in the notes to the financial statements.

www.gasb.org

E-Verify: Employers’ Agents

The U.S. Citizenship and Immigration Services published a new *Supplemental Guide for E-Verify for Employers Agents*, providing an overview of the E-Verify process that entities confirming employment eligibility of employees of third-party employers must follow when using E-Verify.

www.uscis.gov/e-verify

CBO on the ACA and Federal Budget Projections

The Congressional Budget Office released *Updated Budget Projections 2015-2025*, which projects deficits for the 10-year period totaling \$431 billion less than the cumulative deficit that CBO projected in January. The largest factor underlying the reduction is a downward revision to projected growth in private health insurance spending, which is estimated to lower the net cost of the provisions of the ACA that are related to insurance coverage and to increase overall revenues from income and payroll taxes.

www.cbo.gov

Consumer Guide on Pension Advances/Loans

The Consumer Financial Protection Bureau released a consumer guide and advisory about advances and loans from pension plans. Companies that provide pension advances offer retirees and veterans either a loan or a cash advance in exchange for all or part of their pension payments. The guide warns that obtaining funds from these sources may seem like a “quick fix” to financial problems, but they can eat into retirement income when people start paying back the advance plus interest and fees.

www.consumerfinance.gov

Legislative Activity on the Benefits Front – continued

- The “Protecting Volunteer Firefighters and Emergency Responders Act (H.R.1191), which would exempt certain volunteer emergency personnel from the ACA’s employer mandate, by a vote of 415-0. The bill excludes services rendered by bona fide volunteers to a state/local government or a tax-exempt charitable organization from the category of services counted toward the 50 full-time employee threshold in which an employer must provide healthcare coverage under the ACA.

Regulatory Roundup

Jointly from Treasury, Labor, and Health and Human Services

- *Final rule* on limited wraparound coverage as excepted benefits under the ACA.

From the Treasury/IRS:

- *Revenue Procedure 2015-27*, to improve and update the Employee Plans Compliance Resolution System for sponsors of retirement plans.
- *Notice 2015-28*, extending for one more year the temporary nondiscrimination relief for closed defined benefit plans.
- *403(b) Plan Listing of Required Modifications and Information Package*, containing sample plan provisions that satisfy the tax code requirements.

From the Department of Labor:

- *Direct final and proposed rules* on an extended deadline for annual disclosures by sponsors of 401(k) and other participant-directed individual account plans.

From the Pension Benefit Guaranty Corporation:

- *2015 Premium Payment Instructions*, which newly require single-employer and multi-employer plan sponsors that undertake “de-risking” activities to disclose information about annuity purchases or lump-sum window offerings (see [CAB 15-3](#)).
- *Multiemployer Guarantee*, the agency’s first report on the multiemployer plan guarantee program, which looks at currently insolvent plans and ones that are terminated and headed toward insolvency.

From the Equal Employment Opportunity Commission:

- A *Memorandum of Understanding* with the Justice Department’s Civil Rights Division to further the 1964 Civil Rights Act’s goal of prohibiting employment discrimination in the state/local government sector.

Supreme Court Defers to Federal Agencies on Interpretive Rulemaking

The U.S. Supreme Court unanimously ruled that the Department of Labor’s (and other federal agencies’) “interpretive” rules need not go through a notice-and-comment process as do formal regulations, overturning a 1997 doctrine that applied the Administrative Procedure Act’s rulemaking procedures to new interpretations of ambiguous regulations (*Perez v. Mortgage Bankers Association* (No. 13-1041, March 9, 2015)). Reversing what has been known as the “Paralyzed Veterans” doctrine (after a 1997 U.S. Court of Appeals for the District of Columbia’s decision), the Supreme Court pointed out that the APA’s notice-and-comment requirement applies to “legislative” and not “interpretive” rules.

The case involved the DOL’s rule under the Fair Labor Standards Act’s overtime pay requirement. The DOL in 2004 revised its regulations, through notice-and-comment rule-making, to require overtime pay for employees “whose primary duty is selling financial products.” In 2006, the agency issued an opinion letter interpreting the final rule, exempting mortgage loan officers from overtime pay; in 2010, the agency reversed that interpretation and issued a new opinion letter requiring overtime pay for such officers. The Mortgage Bankers Association argued that the 2010 reinterpretation was invalid because it did not go through the notice-and-comment process and the appellate court had agreed.

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