

MONTHLY BENEFIT

News and Developments
Employee Benefits

Upcoming Key Dates

1/1/16 – Application of new penalties for failures to file correct tax information returns or to provide payee statements (e.g., IRS Forms W-2, 1099).

1/1/16 (plan year valuations) – Required use of IRS updated mortality tables for pension plan valuations, unless using approved, substitute credible tables.

1/1/16 (events occurring after) – Application of PBGC's final rule on filing of certain reportable events.

1/15/16 – Deadline for health insurance issuers and third-party administrators on behalf of self-insured group health plans to make 2015 transitional reinsurance payments under the unified or split schedule.

2/1/16 – First notification by applicable large employers and health insurers to group health plan participants about calendar year 2015 offers of and enrollment in coverage.

2/1/16 – Deadline to submit to IRS on-cycle determination letter applications for retirement plans in Cycle E, and first day for Cycle A applications.

2/29/16 – First filing (on paper) to IRS by applicable large employers and group health insurers about calendar year 2015 offers of and enrollment in coverage.

3/31/16 – First filing (electronically) to IRS by applicable large employers and group health insurers about calendar year 2015 offers of and enrollment in coverage.

4/30/16 – Deadline for sponsors of defined contribution preapproved plans to adopt new or restated plans and, if applicable, submit applications for individual determination letters.

Legislative Activity on the Benefits Front

Congress in November turned its attention to some of the remaining “must pass” legislation for the year, including bills to keep the federal government operating beyond the Dec. 11 expiration of the current spending authority for the fiscal year and to pay for highway and transportation projects beyond the Dec. 4 expiration of a short-term funding authorization. Talks also are underway for action in December on “tax extenders” legislation, as well as another attempt by Republicans to repeal significant portions of the Affordable Care Act (ACA).

Highway/Transportation and Agency Funding

The “Fixing America’s Surface Transportation Act” (H.R.22) provides \$305 billion in funding for five years. The bill’s only provision affecting employer-sponsored benefit programs calls for the repeal of the three-and-a-half month automatic extension of the due date for Form 5500 that was enacted in July under the “Surface Transportation and Veterans Health Care Choice Improvement Act” (P.L.114-41). The House and Senate are likely to clear the measure in early December, and the President is expected to sign it.

Negotiators continue to draft an omnibus appropriations bill to cover government operations for the fiscal year that began Oct. 1 but face some sharp divisions on certain “policy riders” (e.g., funding for Planned Parenthood; oversight of and restrictions on Syrian refugees) that could be included. Because discussions remain ongoing, there is uncertainty about whether specific provisions will be included that could affect employee benefits. For example, earlier talks about funding for the Department of Labor considered a prohibition on the agency from moving forward with its conflict-of-interest/fiduciary rule.

If either the highway or the appropriations bill cannot clear Congress by the respective Dec. 4 and Dec. 11 deadlines, new short-term funding measures will provide extensions to enable House and Senate negotiators to reach a compromise.

Tax Extenders and ACA Provisions

With Congress scheduled to adjourn for the year around Dec. 18 and not return until January, members of the House and Senate are under pressure to extend the expired or expiring tax provisions, such as the parity for employer-provided mass transit and parking benefits and various employment-based tax credits. In a new development, efforts are underway to include a two-year delay of the 40% excise tax (also known as the “Cadillac” tax) on high-cost employer-sponsored healthcare coverage that is scheduled to be assessed beginning in 2018.

Meanwhile, the Senate is set to debate the House-approved “Restoring Americans’ Healthcare Freedom Reconciliation Act” (H.R.3762), a budget reconciliation bill that repeals significant portions of the ACA, including the Cadillac tax and the individual and employer mandates. Even if it clears the Senate by the 51-vote simple majority permitted under reconciliation rules, there will be insufficient votes to override a certain Presidential veto.

Milliman's Multiemployer Pension Funding Study

Milliman released the results of its Fall 2015 *Multiemployer Pension Funding Study* (MPFS), which analyzed the cumulative funded status of all U.S. multiemployer pension plans. These pension plans showed little movement in the last six months, dropping from 80% as of Dec. 31, 2014, to 79% as of June 30, 2015. The study noted that the market value of assets for all multiemployer plans decreased by \$1 billion. The liability for accrued benefits grew by \$7 billion and resulted in an increase in the funded status shortfall of \$8 billion.

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Milliman's Public Pension Funding Study

Strong market performance through 2014 has led to an increase in overall reported funded ratios, from 70.7% to 75.0% on a market value of assets basis, according to Milliman's 2015 *Public Pension Funding Study*. After several years of strong returns, the flat market to date during 2015 will erode funded ratios, although the impact will not be fully recognized for several years in most plan sponsors' funding policies. A significant headwind for funded status is generated by the continued decline in market consensus views on long-term return expectations – lower return assumptions mean higher liabilities. For the first time, retired and inactive members outnumber active members.

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Employment and Health Issues for People with Disabilities

The Labor Department's Office of Disability Employment Policy, in conjunction with the National Center on Leadership for the Employment and Economic Advancement of People with Disabilities ("LEAD") Center, released *The Impact of Employment on the Health Status and Health Care Costs of Working-age People with Disabilities*. The brief concludes that employment appears to have a protective impact on health, and thus establishes that an added benefit of employing people with disabilities – beyond the effects of providing them income and possibly reducing costs of various social protection programs – would be to lower public expenditures on health care.

www.leadcenter.org

Regulatory Roundup

Jointly from Treasury, Labor, and Health and Human Services:

- *Final rule* on grandfathered health plans, preexisting condition exclusions, lifetime and annual dollar limits on benefits, rescissions, coverage of dependent children to age 26, internal claims and appeal and external review processes, and patient protections under the Affordable Care Act's (ACA).

From the Treasury/IRS:

- *Final rule* specifying requirements for certain hybrid pension plan amendments to comply with the market rate-of-return interest-crediting rate without violating the anti-cutback rules.
- *Employee Plans News* newsletter and web posting, which announce changes to, and ultimately the discontinuance of, the Enrolled Retirement Plan Agent program.
- *Chief Counsel Memorandum 201547006*, stating that an employer may exclude from an employee's gross income payments for the cost of health insurance coverage provided through the spouse's group health plan, but only to the extent the spouse has paid for all or part of the coverage on an after-tax basis and not through salary reduction under a cafeteria plan.
- *Health Care Tax Tip 2015-77*, which explains the different types of 2015 transition relief under the ACA's employer shared responsibility provisions.
- *Health Care Tax Tip 2015-71*, providing information to help health coverage providers and affected employers understand the ACA's information return (AIR) electronic filing requirements.

From the Department of Labor:

- *Proposed rule*, *Interpretive Bulletin 2015-02*, and *Fact Sheet* on the application of ERISA to certain state laws designed to expand the retirement savings options to nongovernment employees via payroll deductions.
- *Recommendations* from the ERISA Advisory Council on: model notices and plan sponsor education on lifetime plan participation; and model notices and disclosures for pension risk transfers; as well as related sample communications documents and tip sheet for plan sponsors.
- *Workplace Flexibility Issue Brief* and *Workplace Flexibility Initiatives Issue Brief* from the Women's Bureau in collaboration with the Small Business Administration, which examine, respectively, the business case for supporting flexible workplace policies and the range of options for small employers to adopt.

From the Pension Benefit Guaranty Corporation:

- Update to *Appendix D*, the tables used to determine expected retirement ages.
- *2015 Annual Report*, showing that the single-employer program deficit increased to \$24.1 billion (up from the previous year's \$19.3 billion), while the multiemployer insurance program reported a deficit of \$52.3 billion (increasing from \$42.4 billion).

From the Department of Health and Human Services:

- *Proposed rule* on the 2017 benefit and payment parameters, proposing changes to (among other things): the open enrollment period; the notification requirements by exchanges to employers; the out-of-pocket limits for self-only and family coverage; and the transitional risk reinsurance fee upon its expiration after 2016.
- An *announcement* specifying the 2016 Medicare premiums, coinsurance, and deductible amounts (see *Client Action Bulletin 15-11*).
- An *announcement* about changes to the Retiree Drug Subsidy secure website and to the communications process when the Centers for Medicare and Medicaid Services makes payments to plan sponsors.

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