

# MONTHLY BENEFIT News and Developments

Employee Benefits

## GAO on Pension Lump Sums

The Government Accountability Office's *Private Pensions: Participants Need Better Information When Offered Lump Sums that Replace Their Lifetime Benefits* (GAO-15-74) examines issues associated with lump-sum "window" offerings by large defined benefit plan sponsors. The 79-page report focuses on the prevalence of lump-sum offers and sponsors' incentives to use them, the implications for participants, and the extent to which selected communications include key information.

[www.gao.gov](http://www.gao.gov)

## Upcoming Key Dates

**4/30/15** – Revised deadline for 403(b) preapproved plans to submit applications for opinion and advisory letters.

**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.

**6/30/15** – 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 10/1/2015) – 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.

**10/1/15** – Implementation of ICD-10 standards by group health plans that engage in electronic transactions.

## Legislative Activity on the Benefits Front

The President formally released his \$4 trillion budget proposal for fiscal year 2016, following up on the broad outlines he announced in his annual State of the Union address in late January. The budget request contains several items that would affect employee benefits, compensation, and other workplace-related issues, including:

- authority for the PBGC to set risk-based premiums for defined benefit plans;
- a limit (about \$3.4 million or enough to provide \$210,000 annually today) on contributions and benefit accruals in tax-preferred retirement plans;
- an exemption from the required minimum distribution rules for account balances of \$100,000 or less as of a measurement date;
- restrictions on converting after-tax contributions to a 401(k) plan into a Roth IRA;
- elimination of the incentive for employees to invest in employer stock through 401(k) and similar retirement plans by modifying the exclusion of net unrealized appreciation in employer securities from gross income in the year of a distribution;
- a requirement to allow part-time workers who have worked for at least 500 hours per year for three years with the employer to contribute to the 401(k) plan;
- a requirement that employers with 10 or more employees and that do not offer a retirement plan to automatically enroll workers in individual retirement arrangements, along with tax credits for small employers establishing automatic enrollment in IRAs or in employer-sponsored 401(k) or other retirement plans;
- \$6.5 million for the Department of Labor to help states launch retirement savings programs (with waivers under ERISA's preemption provisions), as well as \$35 million to help states implement paid sick and family leave programs; and
- a reduction in the value of itemized deductions to 28%, which would include retirement contributions and employer-sponsored healthcare coverage.

The Republican-controlled Congress is not likely to act on the President's budget request.

## ACA Repeal and Replacement

The House voted 239-186 to approve a bill (H.R.596) to repeal the Affordable Care Act (ACA). The bill also provides instructions to House committees on drafting ACA replacement legislation. House and Senate leaders – aware of the potential fallout that might result from a U.S. Supreme Court decision disallowing federal subsidies in states using the federal exchanges – also indicated that the ACA replacement bill would include tax credits to help individuals buy insurance, a tax on employer-provided coverage with values exceeding \$12,000 for individual/\$30,000 for family coverage, elimination of the employer and individual mandates, and a "continuous coverage" requirement on individuals for preexisting conditions not to be considered by insurers. ■

## Study of Tax Expenditures

The Joint Committee on Taxation released *Background Information on Tax Expenditure Analysis and Historical Survey of Tax Expenditure Estimates* (JCX-18-15) for a Feb. 10 Senate Finance Committee hearing on tax reform. Among the 10 largest “individual” expenditures for the 2014-2018 period are: the exclusion of employer contributions for healthcare, insurance premiums, and long-term care insurance premiums (\$785.1 billion); the net exclusion of pension contributions and earnings for defined contribution retirement plans (\$399 billion); subsidies for insurance purchased through health exchanges (\$318.1 billion); and the net exclusion of pension contributions and earnings for defined benefit pension plans (\$248.3 billion).

[www.jct.gov](http://www.jct.gov)

## Two CRS Reports

The Congressional Research Service released:

- *The Affordable Care Act and Small Businesses: Economic Issues*, which analyzes ACA provisions most relevant to small businesses, those that include fewer than 500 employees in this report. The report provides an overview of the rationale behind employer-sponsored health insurance, and examines the employer penalty, health care tax credits, and SHOP exchanges for their potential economic effects on small businesses.

- *Same-Sex Marriage: A Legal Overview*, which provides background on and analyses of significant issues surrounding the same-sex marriage debate. The report discusses key cases that led to the existing circuit court split on the constitutionality of state same-sex marriage bans and analyzes how the U.S. Supreme Court might resolve them on appeal.

[www.fas.org](http://www.fas.org)

## Guide to Increase Hiring of Disabled Individuals

The Equal Employment Opportunity Commission released a new resource guide for employers, *Recruiting, Hiring, Retaining, and Promoting People with Disabilities*. The guide includes federal and federally funded resources and plain language technical assistance tools in question-and-answer format.

[www.eeoc.gov](http://www.eeoc.gov)

## Regulatory Roundup

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

- *Frequently Asked Question (FAQ, Part XXIII)* on the Affordable Care Act, clarifying when certain supplemental group or individual health insurance coverage that does not include essential health benefits coverage may qualify as “excepted benefits.”

### From the Treasury/IRS:

- *Final Forms (1094-B and 1094-C), Instructions, and Publication 5196*, relating to the reporting of health coverage information that will be used to enforce the employer penalties and individual mandate under the ACA.
- *Revenue Procedure 2015-22*, modifying the address to mail requests for 403(b) preapproved plan opinion and advisory letters, and providing the user fee information.
- *Notice 2015-17*, providing transition relief from the ACA excise tax for small employers that reimburse or pay a premium for an employee’s individual health insurance policy.
- *Notice 2015-16*, providing background information and definitions and seeking comments on the excise tax on high-cost employer-sponsored healthcare coverage.
- A *request for information* on matters that may be addressed in future guidance about the benefit suspension provisions of the Multiemployer Pension Reform Act (MEPRA).
- Three *final project reports* from the Employee Plans Compliance Unit, on: Form 5500 returns with assets; qualified joint-and-survivor annuities; and money purchase plans.
- *Web postings* on the ACA’s: transition relief for employer shared responsibilities; minimum essential coverage reporting; and employer shared responsibility payments.

### From the Department of Labor:

- *Final rule* on the definition of “spouse” under the Family and Medical Leave Act.

### From the Pension Benefit Guaranty Corporation:

- *FAQs* regarding MEPRA and a *request for information* on issues to address regarding partitions of eligible multiemployer plans and facilitated mergers.

### From the Department of Health and Human Services:

- An *announcement* that the Retiree Drug Subsidy Center Help Line telephone support will be discontinued in March 2015.

### From the Securities and Exchange Commission:

- *Proposed rule* on corporate disclosure of company hedging policies for directors and employees.
- A *No-Action Letter* extending the agency’s position on information furnished to participants and beneficiaries in non-ERISA 403(b) retirement savings plans.

### White House Weighs in on Investment Advice/Fiduciary Issues

The White House, along with the Department of Labor, released materials regarding investment advice, including a report, FAQs, a toolkit, and a video. The website includes a survey for the public to share individual stories.

The Administration also announced the transmittal of the DoL’s proposed conflict-of-interest rule to the Office of Management and Budget for a final review before publication in a future *Federal Register*. According to the description of the rule, the rulemaking would more broadly define the term “fiduciary” under ERISA and the tax code to include persons who render investment advice to plans and IRAs for a fee. It would take into account current practices of investment advisers, and the expectations of plan officials, participants, and IRA owners who receive investment advice, as well as consider changes in the investment marketplace and in ways advisers are compensated that frequently subject advisers to harmful conflicts of interest.

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