Monthly Benefit News & Developments

CBO LISTS COMPENSATION, BENEFITS OPTIONS TO REDUCE THE FEDERAL DEFICIT

The Congressional Budget Office released *Options for Reducing the Deficit (2019-2028)*, which presents 121 policy options that Congress could consider to decrease federal spending or increase federal revenues over the next 10 years. The list includes mandatory and discretionary spending options, as well as revenue options, such as:

- reducing tax subsidies for employment-based health insurance;
- further limiting annual contributions to retirement plans;
- increasing the payroll tax rates;
- increasing the maximum taxable earnings subject to the Social Security payroll tax;
- increasing individual income tax rates;
- expanding Social Security coverage to newly hired state and local government employees;
- increasing premiums for Medicare Parts B and D;
- raising the age of eligibility for Medicare and the full retirement age for Social Security; and
- using an alternative measure of inflation for adjustments to Social Security and other programs.

UPCOMING KEY DATES

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.

4/1/19 – Beginning date for groups to create self-insured group health plans.

7/31/19 – Reporting and payment of (the final) PCORI fee by affected self-insured group health plans and insurance issuers for plan/policy years ending on/after 10/1/18 and on/before 10/1/19.

12/31/19 – Expiration of the tax credit for qualifying health insurance costs purchased by eligible individuals, including Trade Adjustment Assistance recipients, PBGC pension recipients, and workers with certain COBRA coverage.

Legislative Activity on the Benefits Front

Despite House passage of a short-term spending bill to keep several departments – including Treasury/IRS and the Securities and Exchange Commission – running through Feb. 8, the Senate failed to approve the measure following the President's late opposition. Efforts to negotiate a compromise were unproductive before agencies shut down on Dec. 22, and with Democrats controlling the House in the 116th Congress that begins Jan. 3, prospects for a quick reopening of the shuttered agencies appear murky.

Before recessing in December, House Ways and Means Committee Chairman Kevin Brady (R-TX) formally released legislative language for the "Retirement, Savings, and Other Tax Relief Act" (H.R.88), which included retirement plan-related provisions and extensions of various tax components that have expired, disaster-related tax relief, and a few technical corrections to the 2017 tax law. The House approved the bipartisan bill by a vote of 220-183, but no action occurred in the Senate. Thus, the bill will have to be reintroduced to be considered in 2019. But with Democrats newly in charge, employee benefit plan sponsors can expect some revisions, possibly including an emphasis on protections for workers' savings plans.

New chairs of key House committees with employee benefits/compensation oversight are expected to include: Reps. Richard Neal (D-MA) for the Ways and Means Committee; Bobby Scott (D-VA) for the renamed Education and Labor Committee; and Frank Pallone, Jr. (D-NJ) for the Energy and Commerce Committee. No committee chairs in the Senate are expected to change, as Republicans maintain their majority. And because the Senate did not confirm Gordon Hartogensis, the President's nominee to serve as Executive Director of the PBGC before adjourning, his name will have to be resubmitted for consideration.

Court Rulings: Contraceptives, Joint-Employer, ACA

Federal appeals courts have ruled in the following cases:

- In *California v. Azar* (No. 18-15144, 12/13/18), the Ninth Circuit ruled that employers with religious or moral objections to providing contraceptives under their healthcare coverage must continue to do so or request an accommodation, despite the federal agencies' October 2017 interim final rule allowing them to opt out. The court said the rule should have undergone the normal notice-and-comment rulemaking procedures.
- In *Browning-Ferris Industries of Calif., Inc. v. NLRB* (No. 16-1028, 12/28/18), the DC Circuit said the National Labor Relations Board acted properly in setting standards for determining if franchise, staffing, and other similar companies are "joint employers" for liability and collective bargaining purposes if they exercised a certain level of indirect control over working conditions or if it reserved the authority to do later. The court sent the case back to the NLRB to revise its joint-employer test.

Separately, the U.S. District Court of the Northern District of Texas ruled in *Texas v. U.S.* (No. 18-167 (N.D. Tex., 12/14/18)) that the passage of the 2017 Tax Cuts and Jobs Act rendered the Affordable Care Act's individual mandate unconstitutional, and thus invalidated the ACA entirely. However, on Dec. 30, the judge stayed his ruling to allow for appeals, keeping the health law in effect while litigation continues.

NATIONAL HEALTH EXPENDITURES

The Centers for Medicare and Medicaid Services' Office of the Actuary published *National Health Expenditures in 2017*, which shows that overall national health spending grew at a rate of 3.9% in 2017, almost 1.0 percentage point slower than the growth in 2016. The deceleration was largely associated with slower federal Medicaid spending due to lower Medicaid enrollment growth, a reduction in the federal government's share of funding for newly eligible Medicaid enrollees, and a decline in the net cost of insurance for Medicare and Medicaid enrollees in private plans in 2017. Growth in household spending on healthcare also slowed in 2017, increasing 3.8% following growth of 4.8% in 2016. The slowdown was mainly driven by slower growth in out-of-pocket spending.

PENSION ADVOCATE'S REPORT

The Pension Benefit Guaranty Corporation released the *2018 Report of the PBGC Participant and Plan Sponsor Advocate*, which provides the second part of its study on single-employer pension plan de-risking, found in the Appendix. Unlike the quantitative approach of the first part of the de-risking study, Part II takes a qualitative approach, which consisted of a focus group from a small but diverse group of plan sponsors on varying paths toward de-risking. The small group format allowed for a deeper probe into the reasoning behind de-risking decisions, which can be helpful to inform and shape retirement policy for all Americans, according to the report. The report, required by statute and submitted to Congress, also offers numerous recommendations for multiemployer plans.

JOINT TAX COMMITTEE ON THE TAX LAW

The Joint Committee on Taxation released the *General Explanation of the Tax Cuts and Jobs Act*, also known as the "Blue Book," which provides an explanation of the 2017 law. The document describes provisions in the tax law as it existed just prior to the TCJA's enactment, explains the various provisions and effective dates, and discusses Congress' intent.

HEALTH REFORM RECOMMENDATIONS

Reforming America's Healthcare System Through Choice and Competition, outlines recommendations in response to a 2017 Executive Order directing the Treasury, Labor, Health and Human Services Departments to facilitate "the development and operation of a healthcare system that provides high-quality care at affordable prices."

Regulatory Roundup

FROM THE DEPARTMENT OF TREASURY/IRS:

- *Notice 2019-09*, which provides interim guidance on reporting and paying excise taxes on excess remuneration and excess parachute payments paid by applicable tax-exempt organizations to covered employees as required by the tax law.
- *Notice 2019-02*, specifying the 2019 optional standard mileage rates to use in computing the deductible costs of operating an automobile for business and other purposes.
- *Notice 2018-99*, providing guidance and a special rule on determining nondeductible employer-provided parking expenses for qualified transportation fringes and tax-exempt organizations' calculation of the corresponding unrelated business taxable income after Dec. 31, 2017.
- *Notice 2018-97*, guidance on the deferral of income taxes on the value of qualified stock options and restricted stock units for qualified employees of privately held corporations.
- *Notice 2018-95*, providing transition relief from the "once-in-always-in" condition for excluding part-time employees in 403(b) plans.
- *2019 Publication 15a*, Employer's Supplemental Tax Guide, containing specialized and detailed employment tax information supplementing the basic information provided in Publication 15.
- The final 2019 Form W-4, *Employee's Withholding Allowance Certificate.*
- A *web posting* updating frequently asked questions on the employer credit for paid family and medical leave under tax code section 45S.

FROM THE DEPARTMENT OF LABOR:

- *Private Pension Plan Bulletin: Abstract of 2016 Form 5500 Annual Reports*, *Historical Tables and Graphs, 1975 – 2016*, containing statistical information on private pension plans.
- *2018 Form M-1 and Instructions* and *10 Tips for Filing Form* for administrators of multiple employer welfare arrangements that provide medical benefits, including association health plans.
- A Wage and Hour Division *opinion letter* on determining minimum wage and overtime compliance for employees with varying average hourly rates.

FROM THE PENSION BENEFIT GUARANTY CORPORATION:

- The *Comprehensive Premium Filing Instructions for 2019 Plan Years*.
- A *final rule* adjusting for inflation the civil penalties under ERISA sections 4071 and 4302.
- A *final rule* providing a new table for determining expected retirement ages for participants in pension plans undergoing distress or involuntary termination with 2019 valuation dates, and *2019 Mortality Tables* used for determining the present value of annuities in involuntary and distress terminations of single-employer plans with 2019 valuation dates.
- A *notice* requesting Office of Management and Budget approval of a *form* and *instructions* plan sponsors will use when submitting a coverage determination request.
- *Semiannual report to Congress, for the Period April 1, 2018 to September 30, 2018*, which discusses key management and performance challenges facing the agency.
- *Office of the Inspector General's Audit Report*, regarding the PBGC's fiscal year 2018 compliance with the Federal Information Security Modernization Act of 2014.

Other Recent Milliman Publications You May Be Interested in:

- ***2019 Key Administrative Dates and Deadlines for Calendar-Year Multiemployer Defined Benefit Retirement Plans*** Milliman's calendar lists relevant 2019 administrative dates encountered by most multiemployer (Taft-Hartley) defined benefit plans.
- ***Benefits Perspectives: December 2018*** This issue features an article on employer considerations to achieve real savings and improvements to employee satisfaction when group disability and life insurance policies come up for renewal.
- ***Pension Funding Index, December 2018***
- ***Case study: Plan termination pitfalls and how to avoid them*** A Milliman Plan Actuary and Administration Project Team worked closely with a client's plan termination consultant to manage, organize, and track a termination, resolving some key issues, overcoming several challenges, and preventing potentially costly mistakes during the process.
- ***Case study: Assisting a plan sponsor with its investment portfolio using asset liability modeling*** Milliman helps a client that emerged from a divestiture explore investment options that would best allow the defined benefit plan to meet its future contribution requirements while limiting the risk of being underfunded on either an accounting or PBGC basis. Milliman also explained the impact on accounting expense and balance sheet volatility as a result of investment allocation changes where the employer would take on more equity exposure.
- ***PBGC Q&A: Reverse spinoffs to reduce variable-rate premiums*** As PBGC premiums have continued to increase, pressures have mounted to find clever ways for plan sponsors to minimize their premium obligations. One of these approaches, called a reverse spinoff, uses a two-step transaction to exploit two perceived loopholes in rules that are only intended for new or terminating plans. This article suggests there is significant cause for concern upon a thorough examination of the reverse spinoff approach.

For more information, please contact your Milliman consultant.

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