October 2017

MONTHLY BENEFIT News and Developments

Employee Benefits

Upcoming Key Dates

11/1/17 – Open enrollment begins (and ends on 12/15/17) for health insurance purchases on the ACA exchanges, for coverage to be effective beginning on 1/1/2018.

11/15/17 – Deadline for health insurance issuers and third-party administrators on behalf of self-insured group health plans to make 2016 (and final) transitional reinsurance payments under the split payment schedule.

12/15/17 (annual periods after) – Effective date of FASB accounting rule on pension costs for publicly traded companies, unless earlier adoption is elected.

1/1/18 – By statute, PBGC flat-rate premiums for single-employer plans increase to $74 per participant, and variable-rate premiums increase by inflation plus $4. Multiemployer plan premiums are inflation-adjusted.

1/1/18 – DoL begins enforcement of most of its fiduciary/conflict-of-interest final rule.

1/31/18 – Deadline for various tax filing, tax payments, retirement plan and group health plan requirements under extended disaster relief for victims of recent hurricanes.

4/30/18 – Deadline for publicly traded companies to provide pay-ratio disclosures on SEC Form 10-K and/or registration, proxy, or information statements for fiscal years beginning on or after 1/1/2017.

6/15/18 – Expiration of IRS temporary rule on participant-voting process when a sponsor of a multiemployer pension plan in "critical and declining" status proposes to reduce benefits.

7/31/18 (for plan years ending on/after 10/1/17 and on/before 10/1/18) – Sixth reporting and payment of the outcomes research ("PCORI") fee by self-insured group health plan sponsors and insurers.

Legislative Activity on the Benefits Front

After the Senate could not agree to debate a newly developed Republican proposal to repeal and/or replace the Affordable Care Act (ACA) in late September, congressional leaders and the White House turned to begin a focus on tax reform. The nine-page "Unified Framework for Fixing Our Broken Tax Code" document developed by key GOP tax writers in the House, the Senate, and the Administration calls for changes to the rules governing individual and business taxes, and also sets certain overall policy goals. Details fleshing out the framework are left to the House Ways and Means and the Senate Finance Committees.

Regarding work and retirement issues, the document states that it "retains tax benefits that encourage work…and retirement security. The committees are encouraged to simplify these benefits to improve their efficiency and effectiveness. Tax reform will aim to maintain or raise retirement plan participation of workers and the resources available for retirement." Thus, until there is legislative language, the effects of tax reform on employment-based retirement programs will remain unknown.

The framework is silent on healthcare and related issues. But because it indicates that corporate tax rates would be reduced and that "numerous other special exclusions and deductions will be repealed or restricted," the deductibility for employer-provided healthcare coverage (and/or the exclusion for employees) could be on the table. In addition, with Congress unable to repeal the ACA's tax provisions, there may be added pressure to raise revenues to enact tax reform, as the repeal would have lowered the amount of money necessary for overhauling the tax code on a revenue-neutral basis.

Budget Resolution and FY2018 Appropriations Funding

Before legislative language for tax reform is developed and released, Congress must agree to a fiscal year budget resolution for 2018, because the Republicans anticipate passing tax reform via the budget reconciliation process that requires 50 "yeas" to approve the bill in the Senate (with the Vice President casting a tie-breaking vote if necessary). The House Budget Committee passed a FY2018 budget resolution in July that is awaiting floor action; no action has occurred thus far in the Senate. Concerns have been expressed, including from some fiscal hawks, that the budget resolution will allow federal deficits to increase under tax reform.

Meanwhile, Congress approved and the President signed legislation to fund the federal agencies for the FY2018 that began Oct. 1 and extend the federal debt limit through Dec. 8 while also providing $15.25 billion for hurricane relief. Congress continues to work on appropriations measures for the 12 individual departments, but the House and Senate bills in some cases have significant differences. The House-approved bill (H.R.3354) covering Department of Labor appropriations cuts funding by 11%, and calls for reversal of the fiduciary/conflict-of-interest rule and restrictions on using funds for new hires who have not been verified through the E-Verify program and for enforcement of the "joint employer" liability rule from the National Labor Relations Board. The Senate committee version (S.1771) contains no similar language or policy riders.

Census on Public Pensions

The U.S. Census Bureau released *Summary of the Quarterly Survey of Public Pensions for 2017*, showing that for the 100 largest systems in the country, assets (cash and investments) totaled $3,584.0 billion in the second quarter of 2017, increasing by 2.2% from the first quarter level of $3,505.5 billion. Compared to the same quarter in 2016, assets for these public pension systems increased 8.5% from $3,302.5 billion.

Federal Reserve on Pensions

The Federal Reserve Board 's *Financial Accounts of the United States: Flow of Funds, Balance Sheets, and Integrated Macroeconomic Accounts* contains information on private pension funds, state and local government employee retirement funds, and federal government retirement funds, both defined benefit and defined contribution plans.

CBO on Health Insurance Premiums and Coverage

The Congressional Budget Office's *Federal Subsidies for Health Insurance Coverage for People under Age 65: 2017 to 2027* projects that premiums are expected to increase by 15% in 2018 for nongroup plans due to market uncertainty, possibly resulting in 2 million people losing health insurance although nearly 90% would remain covered, mostly by employment-based plans and Medicaid. The CBO projects 5 million people will drop out of employer-based coverage in the next 10 years, mostly due to the ACA.

CRS on Social Security

The Congressional Research Service's *Social Security: The Trust Funds* presents an overview of the financing and operation of the Social Security programs. The CRS also issued *Social Security: What Would Happen If the Trust Funds Ran Out?*, which describes the historical operations of and the trustees' projections for the trust funds in light of possible actions by Congress.

GAO on "Cadillac" Plan Tax

The Government Accountability Office's *Affordable Care Act: IRS Should Mitigate Limitations of Data to Be Used for the Age and Gender Adjustment for the Tax on High-cost Health Plans* recommends that in determining the "Cadillac" tax to apply to employment-based coverage, the IRS should consider and adjust for certain limitations of the standard (BCBS) federal employee health plan data.

Regulatory Roundup

Hurricanes Harvey, Irma, and Maria Disaster Relief:

- The IRS, the Department of Labor, and the Pension Benefit Guaranty Corporation released more than two dozen pieces of guidance to ease some of the rules applicable to employers, benefit plan sponsors, and plan participants affected by the recent hurricanes. See ***Client Action Bulletin 17-2***.

From the Department of Treasury/IRS:

- *Proposed rule* that would permit employers to truncate employees' Social Security numbers on W-2 tax forms.
- *Notice 2017-54*, specifying the special per diem business expense rates for lodging, meals, and incidental expenses effective Oct. 1, 2017.
- *Notice 2017-45*, which extends the temporary nondiscrimination relief for closed defined benefit plans through 2018.
- *Notice 2017-44*, providing model plan amendments for defined benefit pension plans to use in calculating payments to participants electing to receive distributions partly as an annuity and partly as a lump sum.

From the Department of Labor:

- *Notice of proposed amendments* to delay the application of portions of the final fiduciary rule's prohibited transaction exemptions until July 1, 2019, along with *Field Assistance Bulletin 2017-03*, outlining an enforcement policy related to the arbitration limitation in the exemptions.
- A *notice* specifying the minimum wage for employees working on covered federal contracts beginning in 2018.
- A *chart* showing the percentage of defined benefit plans that: are open to new participants; no longer allow for new participants; and no longer accrue benefits for all participants.

From the Pension Benefit Guaranty Corporation:

- A *notice* proposing to modify the information collection requirements relating to single-employer plan terminations and a *notice* proposing changes to the information collected on the actuarial reports (Schedules SB for single-employer plans and MB for multiemployer plans) attached to the annual Form 5500 filings.
- *Technical Update 2017-1*, providing an alternative method for determining whether a plan's "active participant" count has been reduced to trigger a reportable event.
- Final release of information in the *2015 Data Book*, updating the guarantee payments and the summary tables, and presenting new tables for the multiemployer program.
- A new *webpage* that summarizes the pension plans that are covered by the agency's insurance program and those that are not.

From the Equal Employment Opportunity Commission:

- A *notice* announcing that the EEO-1 reporting does not require the submission of aggregate data about employees' Form W-2 income and hours worked until further notice, but that data on workers' ethnicity, race, and sex continues to be required.

From the Securities and Exchange Commission:

- *Guidance on calculation of pay-ratio disclosure*, describing how publicly traded companies may use statistical sampling to calculate the ratio of compensation paid to a principal executive officer to the median employee's pay under the Dodd-Frank Act.

From the Social Security Administration:

- *Fast Facts & Figures*, which answers the most frequently asked questions about the programs, highlighting data on retirement, survivors, and disability programs, as well as the Supplemental Security Income program.