November 2013

Milliman

MONTHLY BENEFIT News and Developments

Employee Benefits

Upcoming Key Dates

12/31/13 – Deadline to amend 401(k), 403(b), or 457 governmental plans to provide loans or hardship distributions due to Hurricane Sandy.

12/31/13 (unless required later) – Deadline to amend single-employer defined benefit plans to comply with the restrictions on benefit accruals and optional benefit payment forms.

12/31/13 – Expiration of: health insurance coverage and small business healthcare tax credits; various employment tax credits; employer wage credit for activated military reservists; and temporary increase in the amount excludable for employer-provided mass transit/vanpool benefits.

1/1/14 (plan/policy years beginning on/after) – Depending on grandfathered or insured status and/or number of employees, applicable ACA requirements include: prohibitions on annual dollar limits, preexisting condition exclusions, and waiting periods longer than 90 days; restrictions on cost sharing; coverage for certain clinical trials; expanded wellness incentives; coverage for adult children up to age 26; and transitional reinsurance program fee.

1/1/14 (plan years beginning on/after) – For single-employer plans, PBGC flat-rate premiums increase to $49 per participant and variable-rate premiums increase to $14 per $1,000 of unfunded vested benefits, capped at $412 times the number of participants. Multiemployer premiums remain at $12 per participant.

1/31/14 – Deadline to file determination letter applications for retirement plans in Cycle C and for defined benefit preapproved plans in the second six-year remedial amendment cycle.

Legislative Activity on the Benefits Front

After a 16-day partial federal government shutdown resulting from disagreements on appropriate agency funding levels and the need to increase Treasury's borrowing authority, Congress approved and sent to the President the "Continuing Appropriations Act, 2014." The law (P.L.113-46), which makes continuing appropriations through Jan. 15, 2014 and increases the debt limit through Feb. 7, 2014, reopened all federal agencies and brought workers back to resume their work, including drafting regulatory guidance and collecting data used in employee benefit matters such as the 2014 qualified retirement plan limits.

The law also contains a provision requiring the Secretary of Health and Human Services to certify that there is a process to verify the income eligibility for recipients of federal subsidies under the Affordable Care Act (ACA). This provision was aimed at appeasing the Republicans who were advocates of "defunding" the ACA. The new law requires that the Secretary report by Jan. 1 the "procedures employed by the [health insurance exchanges] to verify eligibility for credits and cost-sharing reductions." In addition, the Department's Inspector General must issue a report six months later on the effectiveness of the procedures and safeguards provided under the ACA for preventing the submission of inaccurate or fraudulent information by applicants.

Under the new law, funding for the agencies is at the lower level imposed by the 2011 Budget Control Act's across-the-board spending cuts (the "sequester"). By Dec. 13, a House and Senate conference committee must resolve the differences between the resolutions (H.Con.Res.25 and S.Con.Res.8) approved by the respective bodies. These budget negotiations could produce legislative provisions affecting employee benefits and compensation. Whether the committee will be able to reach an agreement that satisfies the competing demands of Republicans and Democrats remains uncertain. For example, House Republicans support a $967 billion spending level for fiscal year 2014, and would like to shift the cuts called for the Defense Department to be made from the non-Defense discretionary account; Senate Democrats prefer a $1.058 trillion spending level to replace the level required by the sequester.

Action on Benefits Legislation

Meanwhile, two bills affecting employee benefits advanced in Congress during October:

- The House approved the "Retail Investor Protection Act" (H.R.2374), which effectively prohibits the Department of Labor from developing ERISA fiduciary rules on investor protections before the Securities and Exchange Commission (SEC) does so. The bill would stop the DOL from defining the circumstances under which an individual – such as a retirement plan investment advisor – is considered a fiduciary until 60 days after the SEC issues a final rule on the 1934 Securities Exchange Act's standards and conduct for brokers and dealers. The bill also specifies a broad range of actions and

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BLS Looks at Benefits

▪ The Bureau of Labor Statistics (BLS) released March 2013 information on employer premiums and employee contributions for family medical care benefits. The BLS found that private industry employers that required no employee contributions for family medical care benefits paid an average premium of $1,152 per month per employee; those employers requiring employee contributions paid a monthly average of $859, with the employee's average monthly contribution at $442. The BLS also includes data by employer size (50 to 99 workers, 100 to 499 workers, and 500 or more workers).

▪ The BLS also released March 2013 information on domestic partner benefits in private industry. The agency found that about half of private industry employees with access to a defined benefit retirement plan had a plan that provides survivor benefits to same-sex domestic partners. Among state and local government workers with access to a defined benefit retirement plan, three-fifths had a plan that provides survivor benefits to same-sex domestic partners.

www.bls.gov

Increasing the Medicare Age

The Congressional Budget Office (CBO) revised its 2012 report, *Raising the Age of Eligibility for Medicare to 67 – Updated Estimate of the Budgetary Effects,* analyzing an option to raise the eligibility age for Medicare from 65 to 67 by two months every year, beginning with people born in 1951. The CBO found that implementing the option would reduce federal budget deficits by $19 billion between 2016 and 2023, rather than $113 billion reported in its 2012 report. The lower estimate primarily reflects CBO's new assessment that some of the Medicare eligible people would not cost Medicare as much, under current law, as CBO previously projected.

www.cbo.gov

GASB Website Relaunched

The Government Accounting Standards Board (GASB) announced the launch of its updated web site, which will provide live video webcasting of the Board's in-person public meetings, beginning on October 30 and 31.

www.gasb.org

Legislative Activity on the Benefits Front – contd.

considerations for the SEC before promulgating a rule. The Senate is not likely to act on this bill and the President has issued a veto threat (notwithstanding the bill's support by 30 Democrats).

- The Senate Health, Education, Labor, and Pensions Committee approved, on a bipartisan basis, the "Cooperative and Small Employer Charity Pension Flexibility Act" (S.1302), which aims to facilitate the offering of pensions to employees by cooperative and small employer charities (CSECs). In general, the bill: establishes a definition of cooperative and small employer charity (CSEC) plans and creates special rules for them regarding funding, valuation, contributions, and liquidity. A similar bill (H.R.2134) was introduced in the House in May and has not advanced from the Education and Workforce or the Ways and Means Committees.

Separately, the House Separately, the House Education and the Workforce Committee's Health, Employment, Labor, and Pensions Committee's Subcommittee held a hearing on the challenges facing the multiemployer pension plan system. The panel expressed concern about the financial troubles of many large plans and the effects of unfunded benefit liabilities would have on employers, employees, retirees, and the PBGC. The panel also expressed a desire to act soon to address these issues.

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Regulatory Roundup

From the Department of Treasury/IRS:

1. *Information Release 2013-86,* announcing the cost-of-living adjustments for retirement plans for 2014 (see ***Client Action Bulletin 13-7***).
2. *Information Release 2013-87,* providing the 2014 annual inflation adjustments for various tax provisions and fringe benefits.
3. *Notice 2013-71* and related *Treasury Fact Sheet,* stating that employers immediately may allow participants in health flexible spending arrangements (FSAs) to carryover up to $500 of unused balances at the end of a plan year.
4. *Chief Counsel Memorandum 2013-0032,* which states that bike share expenses do not qualify for a tax exclusion as a transportation fringe benefit.
5. A web *update* on the multiemployer plan annual actuarial certifications project, noting that the agency's Employee Plans Compliance Unit is reviewing certifications to ensure complete and timely filing of all information under tax code section 432.
6. A web *posting* of the results of the agency's examinations of Form 5500 filings, noting that the most common failures involved: minimum funding; contribution allocations; participation and coverage; and inadequate bonding of plan fiduciaries.

From the Social Security Administration:

- An *announcement* of the cost-of-living adjustment for benefits payable in 2014, as well as the increase to the Social Security taxable wage base to $117,000 (see ***CAB 13-7***).

From the Department of Health and Human Services:

- A *final rule* on the health insurance exchanges that includes in the preamble a statement that the agency intends to propose a rule that would exempt certain self-insured, self-administered plans from the transitional risk reinsurance program fees for the 2015 and 2016 benefit years.
- *Notices* that announce the cost-of-living adjustments applicable to Medicare Parts A and B for 2014 (see ***CAB 13-6***).
- Guidance on the federally facilitated Small Business Health Options Program (SHOP) marketplace, including a web posted *chart* of the steps small employers must take to apply for coverage and *Frequently Asked Questions.*