

# MONTHLY BENEFIT News and Developments

Employee Benefits

## Treasury on President's Revenue Proposals in Budget

The Treasury Department issued its *General Explanations of the Administration's Fiscal Year 2017 Revenue Proposals*, which provides additional details about the President's budget. For example, the explanation addresses "loophole closers" relating to retirement plans, including: limits on the amount tax-favored plans may accumulate for an individual; restrictions on rollover/conversions from eligible plans to Roth IRAs; and requirements for distributions for nonspouse beneficiaries.

## Upcoming Key Dates

**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.

**5/31/16** – Extended date for first filing (on paper) to IRS by applicable large employers and group health insurers about calendar year 2015 offers of and enrollment in coverage.

**6/15/16** (fiscal years beginning after) – Application of GASB Statement 74 by governments to calculate the present value of retiree healthcare liabilities.

**6/30/16** – Extended date for first filing (electronically) to IRS by applicable large employers and group health insurers about calendar year 2015 offers of and enrollment in coverage.

**8/1/16** (for plan years ending on/after 10/1/15 and on/before 10/1/16) – Fourth reporting and payment of the outcomes research ("PCORI") fee by self-insured group health plan sponsors and insurers.

## Legislative Activity on the Benefits Front

As expected, the President released his budget for the fiscal year 2017 that begins this October, setting forth a \$4.1 trillion budget to fund his top priorities for the year while adhering to the discretionary spending limits set in the 2015 Bipartisan Budget Act (BBA). In the employee benefits area, the budget blueprint includes:

- an increase in the threshold determining whether a plan is a "high cost employer-sponsored health plan" subject to the 40% excise ("Cadillac") tax, so that the threshold is based on a "gold plan average premium" that is calculated for each state, while also considering the "average amount" (rather than actual, employee-by-employee amounts) of salary reduction contributions to a health flexible spending account in defining the cost of high-cost coverage;
- an increase in premiums for multiemployer defined benefit plans, via the Pension Benefit Guaranty Corporation creating a variable-rate premium based on the plans' level of underfunding and an exit premium for employers withdrawing from a plan;
- a requirement that employer contributions to a defined contribution plan be reported on the plan participant's Form W-2;
- an exemption from the required minimum distribution requirements for individuals whose value of their account does not exceed \$100,000 on a measurement date;
- a requirement that retirement plans allow long-term, part-time workers to participate (i.e., those with 500 hours of service per year with the employer for at least three consecutive years);
- an exception for penalty-free withdrawals from tax-qualified retirement plans or IRAs for long-term unemployed individuals; and
- permission for unaffiliated employers to maintain a single multiple-employer defined contribution plan offered by a provider that is a regulated financial institution that agrees to be a named fiduciary and registered with the Labor Secretary as the ERISA plan administrator.

In other employment-related areas, the President's budget calls for: an increase in and permanency for the unemployment insurance surtax; an increase in and indexation of the Federal Unemployment Tax Act taxable wage base; permission for the IRS to issue generally applicable guidance about the proper classification of workers; and adjustment of all civil tax penalties for inflation.

Congressional Republicans quickly criticized the White House proposal and the GOP leadership continued to insist that they will craft their own budget and move appropriations bills accordingly. Some of the more conservative Republicans, however, are questioning their leadership's plan to draft bills with the BBA's "extra" \$30 billion allowed for FY2017 and are beginning to insist that corresponding spending cuts are necessary.

## Employer Costs for Defined Benefit Retirement Plans

The Bureau of Labor Statistics issued [\*Beyond the Numbers: Trends in employer costs for defined benefit plans\*](#), which explores how costs fluctuate by industry, occupation, establishment size, and region, and reviews trends in costs for employees with access to these plans from 2008 to 2015. Although administrative aspects, such as policies surrounding a specific plan (generosity, investment, eligibility, etc.), greatly influence the price employers pay for these plans, such information is employer-specific and may be difficult to collect.

## State & Local Pension Data

The Federal Reserve released [\*State and Local Pension Funding in the Financial Accounts\*](#), which provides state-level data on the funding status of state and local government defined benefit (DB) pension plans. State and local governments have traditionally offered DB plans, but are slowly moving toward defined contribution (DC) arrangements. The report finds that state and local DB pension entitlements totaled \$4.9 trillion in 2013, while DC arrangements totaled only \$0.5 trillion.

## Health Insurance and Federal Policy

The Congressional Budget Office released [\*Private Health Insurance Premiums and Federal Policy\*](#), which projects that the 2016 premium for employment-based insurance will be about \$6,400/\$15,500 for single/family coverage. Average premiums purchased by individuals in the nongroup market are also high—but not as high as employment-based premiums, mostly because nongroup coverage is less extensive and requires higher out-of-pocket payments. The report reviews the available evidence about premium levels and growth; analyzes federal subsidies, taxes, fees, and regulations that affect premiums; and examines how insurers' own actions affect premiums.

## EEOC Litigation Data

The Equal Employment Opportunity Commission released [\*Fiscal Year 2015 Enforcement and Litigation Data\*](#), which details the 89,385 charges of workplace discrimination the agency received. Retaliation charges (44.5% of all charges) continue to be the leading concern raised by workers across the country, followed by racial discrimination (34.7%) and disability discrimination (30.2%) charges.

## Regulatory Roundup

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

- A [\*notice\*](#) seeking Office of Management and Budget approval of and public comments on proposed revisions to the [\*Summary of Benefits and Coverage \(SBC\) Template, Instructions, and Related Materials\*](#) under the Affordable Care Act (ACA).
- [\*Notice 2016-17\*](#), [\*Technical Release 2016-01\*](#), and [\*Information Standards Bulletin\*](#) providing colleges and universities temporary transition relief to address compliance with certain group market reform provisions of the ACA.

### Jointly from Treasury, Labor, and Pension Benefit Guaranty Corporation:

- [\*2015 Instructions for the Form 5500\*](#) and an [\*announcement\*](#) that plan sponsors should not answer certain questions on the form for the 2015 plan year.

### From the Department of Treasury/IRS:

- [\*Proposed rule\*](#) on additional limitation of suspension of benefits under the Multiemployer Pension Protection Act.
- [\*Revenue Ruling 2016-5\*](#), providing covered compensation tables for the 2016 plan year.
- [\*Notice 2016-16\*](#), guidance on complying with the 401(k)/(m) safe harbor retirement plan and notice requirements when making mid-year changes.
- [\*Revenue Procedure 2016-14\*](#), modifying the inflation adjustment for qualified transportation fringe benefits and other items necessitated by the 2015 Protecting Americans from Tax Hikes Act.
- [\*Frequently Asked Questions\*](#), providing detailed information about completing Form 1094-C and Form 1095-C, as well as [\*Fact Sheet 2016-10\*](#), providing explanations to individuals about: the ACA information forms; the individual shared responsibility provision; health coverage exemptions; premium tax credit; and electronic filing.

### From the Department of Labor:

- [\*Proposed rule\*](#) on establishing paid sick leave for federal contractors.
- [\*2015 Form M-1\*](#), the annual report filed by multiple employer welfare arrangements (MEWAs).

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

- [\*Final rule\*](#) on the ACA benefit and payment parameters for the 2017 coverage year (with [\*fact sheet\*](#)), announcing that the 2017 maximum annual limitation on cost sharing is \$7,150 for individual coverage and \$14,300 for family coverage.
- [\*FAQs\*](#) about fees that may be charged for and individual rights regarding their protected health information under HIPAA's privacy requirements.
- An [\*announcement\*](#) about the ACA's transitional reinsurance program's contribution collections for the 2015 benefit year.

### The Effect Justice Scalia's Death on Pending U.S. Supreme Court Cases

With the death of U.S. Supreme Court Justice Antonin Scalia, questions may arise about the status of ERISA or employment-based cases not yet decided or not yet argued.

*For cases that have been argued but for which the Court has not yet issued an opinion, Scalia's views are voided and are considered draft opinions. Decisions he may have been writing are assigned to another justice and accordingly become a new Court ruling.*

*For cases that have not yet been argued, the Court will continue to operate with eight justices. In these cases, if there is a 4-4 split, the lower court's decision will apply, but only for the states covered by the applicable lower court. Such a ruling could result in laws being applied differently across the country. Alternatively, Chief Justice John Roberts could order that a case be reargued when the Court has nine justices.*

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