

# MONTHLY BENEFIT

News and Developments  
Employee Benefits

## Self-Insured Group Health

The Labor Department released [\*Annual Report to Congress on Self-Insured Group Health Plans\*](#), which provides detailed statistics on plans and sponsors that filed a Form 5500 for 2013, the most recent year for which data is available. The report references two appendices, which the DoL also released: [\*Appendix A, Group Health Plans Report: Abstract of 2013 Form 5500 Annual Reports Reflecting Statistical Year Filings\*](#); and [\*Appendix B, Self-Insured Health Benefit Plans 2016: Based on Filings through Statistical Year 2013\*](#).

## Upcoming Key Dates

**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.

**9/30/16** – Expiration of E-Verify program, unless extended by Congress.

**10/14/16** – Compliance by money market funds with the SEC’s final rule requiring institutional funds’ prices to float.

## Legislative Activity on the Benefits Front

The House Budget Committee approved a fiscal year 2017 budget blueprint that calls for \$1.07 trillion in discretionary spending and deep cuts to nondefense discretionary and entitlement programs. Prospects for enactment are uncertain, as some Republicans strongly oppose the proposal’s adherence to the spending limit was included in the 2015 Bipartisan Budget Act (P.L. 114-74). Members of the anti-spending House Freedom Caucus insist that the budget plan ignore the law’s inclusion of the “extra” \$30 trillion from the Overseas Contingency fund, and are therefore calling for deeper spending cuts. The House GOP leadership will need the support of these fiscal conservatives to pass the measure without Democratic support. The Senate is working on its own budget plan.

The budget resolution – even if approved by the House and Senate – does not become law, but rather sets guidelines for the various appropriations committees to consider when drafting the spending bills for the federal agencies for the upcoming fiscal year that begins Oct. 1. Benefits and employment-based provisions in the bill thus far include:

- \$2.013 trillion in savings from the repeal of the Affordable Care Act (ACA), including the taxes and fees that help fund the law’s coverage expansion and the Independent Payment Advisory Board;
- a requirement that the Social Security Board of Trustees submit legislative recommendations to the President in any year that the trust fund’s 75-year actuarial balance is in a deficit, and that agreement on such recommendations be submitted to Congress for a vote; and
- a transition to premium support for Medicare, retaining the current Medicare program for individuals in or near retirement.

## U.S. Supreme Court Rulings and Developments

The U.S. Supreme Court ruled 6-2 that ERISA preempts Vermont’s law requiring self-insured group health plans and their third-party administrators to report claims payment data to the state’s all-payer database (*Gobeille v. Liberty Mutual Ins. Co.* (No. 14-181, 3/1/2016)). The Court pointed out that “ERISA’s extensive reporting, disclosure, and recordkeeping requirements are central to, and an essential part of” the statute’s uniform plan administration system. It noted that preemption is necessary to prevent multiple jurisdictions from imposing differing, or even parallel, regulations that would create wasteful administrative costs. The Labor Secretary “is authorized to decide whether to require ERISA plans to report data such as that sought by Vermont,” the Court concluded.

A week later, the Court ordered the U.S. Court of Appeals for the Sixth Circuit to reconsider *Self-Ins. Inst. of America v. Snyder* (No. 14-741, vacated and remanded 3/7/2016) in light of the *Gobeille* decision. The lower court had upheld Michigan’s law requiring a 1% tax on healthcare claims paid within the state on behalf of state residents and also required ERISA-covered plans to submit claims paid records to state authorities.

(continued on p. 2)

## PBGC on Multiemployer Plans

The PBGC issued [Insurance of Multiemployer Pension Plans: A Five Year Report](#), offering information to Congress as it considers how to stabilize the multiemployer guarantee program. The report says that without changes, the multiemployer insurance program is likely to run out of money by 2025, despite a 2014 law (MPRA) that increased premiums. The report illustrates the effects of increasing premium revenues on PBGC's continued solvency under a variety of scenarios, reflecting different assumptions about the number of plans that would suspend benefits or apply for partition under the MPRA. Under each scenario, the likelihood that the program will be insolvent before 2034 exceeds 50%, even if premium revenues were doubled.

## Data on Determination Letters

The IRS published [2015 Data Book](#), which provides an annual snapshot of agency activities for the fiscal year from Oct. 1, 2014, through Sept. 30, 2015. The report notes that the agency issued 8,976 retirement plan determination letters during that fiscal year, consisting of 2,829 for defined benefit plans and 6,147 for defined contribution plans. The number of determination letters was down 22% from the 11,478 issued in the prior fiscal year.

## Retirement Plan Assets

The Federal Reserve Board released [Financial Accounts of the United States Z.1](#), which finds that public and private defined benefit plan assets totaled \$11.63 trillion at the end of 2015, up 2.83% from 2014. Corporate pension assets totaled \$3.14 trillion, up 1.29% from 2014, while corporate defined contribution plan assets totaled \$5.38 trillion, up 0.19%. State and local government pension assets reached \$5.16 trillion, while their defined contribution plan assets totaled \$478 billion, down 2.05% from the end of 2014.

## Employment and Wages in Nonprofits

The Bureau of Labor Statistics issued [Nonprofits in America: new research data on employment, wages, and establishments](#), which provides data on nonprofit organizations, including employment, wages, and the number of establishments. Nonprofit employment, total annual wages, and the number of establishments grew steadily each year from 2007 through 2012, including during the 2007–09 recession.

## U.S. Supreme Court Rulings and Developments – *cont'd.*

In other cases, the Supreme Court:

- ruled 6-2 that a class of workers could proceed with its pay dispute against the employer, and that the use of statistical sampling evidence – when an employer does not keep adequate records of hours worked by employees – was permitted to determine the amount awarded (*Tyson Foods v. Bouaphakeo* (No. 14-1146, 3/22/2016));
- split 4-4 in affirming the Ninth Circuit's ruling that individuals not covered by a public employees' labor union can be required to contribute a "fair share" of the fees covering collective bargaining costs, and thereby applying the decision only to states covered by the appellate court (*Friedrichs v. Calif. Teachers Assn.* (No. 14-915, 3/29/2016)); and
- appeared to signal a desire to avoid a split decision, ordering supplemental briefs in the cases concerning free coverage of contraceptives for employees covered by group health plans of faith-based nonprofit employers (e.g., hospitals, universities), to address how coverage could be provided without the employers submitting notification to the federal government or to their employees about the birth control options available under the ACA (*Zubik v. Burwell* (No. 14-1418, supplemental briefing ordered 3/29/16)).

## Regulatory Roundup

### From the Department of Treasury/IRS:

- [Notice and comment request](#) on 2016 proposed changes to the Form 5500 Series, along with the Employee Plans Compliance Unit's list of new projects focusing on [Form 5500 Series](#) and [Form 5330](#) filing errors.
- [Notice 2016-26](#), inviting comments on recommendations for the 2016-2017 Priority Guidance Plan.
- [Notice 2016-22](#), providing guidance and transition relief for employers claiming the Work Opportunity Tax Credit.
- Updates of interim guidance on: [Procedures for Appealed Adverse Determination Cases](#); [Spousal Provisions in Internal Revenue Code 403\(b\) Applications for Opinion and Advisory Letters](#); and [Normal Retirement Age in Multiemployer Collectively Bargained Plans](#).
- [Updated guidance](#) on Filing Information Returns Electronically (FIRE).
- [AIR Composition and Reference Guide, Version 4.3](#), covering details on composing and submitting Form 1094/1095-Bs and Form 1094/1095-Cs.
- [Frequently Asked Questions](#) on employer healthcare arrangements.
- [FAQs on USERRA and SSCRA](#), answering questions about reemploying veterans and restoring their retirement plan benefits.

### From the Department of Labor:

- [Final rule](#) from the Office of Labor-Management Standards to revise the Form LM-20 Agreement and Activities Report and the Form LM-10 Employer Report.

### From the Pension Benefit Guaranty Corporation:

- [Final rule](#) amending regulations on annual financial and actuarial information reporting under ERISA section 4010.
- A [notice](#) announcing that the American Arbitration Association has requested approval of its 2013 Fee Schedule in connection with its Multiemployer Pension Plan Arbitration Rules for Withdrawal Liability Disputes.

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

- An [announcement](#) launching the Office of Civil Rights' phase two of the HIPAA Privacy, Security, and Breach Notification Audit Program.
- A [web posting](#) explaining how HIPAA applies to certain workplace wellness programs.

Milliman Monthly Benefit News and Developments contains general information that is not intended to constitute the rendering of legal, tax, investment, or accounting advice. Application to specific circumstances should rely on further professional guidance.