

MONTHLY BENEFIT News and Developments

Employee Benefits

2016 Trustees' Reports

The [2016 Social Security Trustees Report](#) projects that the combined Old-Age and Survivors Insurance and Disability Insurance trust funds will be depleted in 2034, the same year projected in the 2015 report. The [2016 Medicare Trustees Report](#) projects that the trust fund financing Medicare Part A (hospital insurance coverage) will remain fully funded until 2028, 11 years longer than projected in 2009 before the passage of the ACA, but then will only be able to pay for 87% of its obligations. Medicare Parts B (office visits) and D (prescription drugs) are expected to be adequately financed. The Trustees urge lawmakers to act as soon as possible on policy options that would reduce or eliminate the long-term financing shortfalls.

Upcoming Key Dates

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.

11/1/16 – 2017 open enrollment begins for health insurance under the ACA exchanges.

11/1/16 – Delayed date for application of increased late-filing penalties for failure to file the 2015 ACA forms (1094-B and C, and 1095-B and C).

11/15/16 – Final annual reporting of enrollment of covered lives (for 2016) by self-insured and insured group health plans under the ACA transitional reinsurance program, as well as deadline to make final payment for 2015 if paying under the split schedule.

12/1/16 – Effective date of DoL final rule on the FLSA's overtime pay requirements for most "white collar" employees.

*This July/August **Monthly Benefit News and Developments** covers activity through July 15; with Congress in recess until Sept. 6, the next MBND will be the October issue.*

Legislative Activity on the Benefits Front

House and Senate members made little progress in advancing all 12 of the appropriations bills necessary to keep federal agencies operating in the 2017 fiscal year that begins Oct. 1, so Congress is expected to settle on a stop-gap measure when it returns in September from a seven-week break that began July 15. Some of the bills advancing would: prohibit the IRS and the Securities and Exchange Commission from, respectively, implementing the Affordable Care Act's (ACA) individual mandate and the using funds to "finalize, implement, administer, or enforce pay ratio disclosure rules"; prohibit the Department of Labor from enforcing the final rules on overtime pay and fiduciary/conflicts of interest; eliminate additional funds for the Department of Health and Human Services' ACA programs; allow group health plan sponsors to object to providing coverage for abortions or contraceptives on religious or moral grounds; and halt implementation of an Executive Order that requires companies seeking government contracts to disclose their violations of labor laws. In other action, the House approved:

- the "Helping Families in Mental Health Crisis Act" (H.R.2646), which, among other things, would: require group health plans to disclose the criteria for medical necessity determinations and reasons for claim denials; impose parity requirements for group health plans or insurance offering eating disorder benefits; and require federal agencies to issue employer guidance on compliance with the mental health parity standards;
- the "Restoring Access to Medication and Improving Health Savings Act" (H.R.1270), which would repeal the tax code's prohibition on payments from various health accounts for over-the-counter medications and increase in the maximum contribution limit to health savings accounts to the annual amount specified by the tax code's deductible and out-of-pocket limitations; and
- the "Small Business Health Care Relief Act" (H.R.5447), which would allow small employers that do not offer a group health plan to establish health reimbursement arrangements for workers to purchase insurance on the individual market.

Meanwhile, the President, as expected, vetoed H.J.Res.88, which would have blocked the DoL's fiduciary/conflict-of-interest rule from taking effect. The House vote fell short of the two-thirds majority needed to override the veto.

Regulatory Roundup

Jointly from the Departments of Treasury, Labor, HHS, and/or the PBGC:

- [Proposed rule](#) revising Form 5500 (Annual Information Return/Reports); [proposed rule](#) on annual reporting and disclosure, [Technical Appendix](#), [Fact Sheet](#), and [News Release](#).

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IRS Advisory Group's View on Determination Letter Program

The IRS's Advisory Committee on Tax Exempt and Government Entities (ACT) released its [annual report](#) and recommendations to the agency. Regarding the Determination Letter Program, the ACT Subcommittee recommended that IRS Employee Plans division reverse its plan to eliminate interim determination letters, suggesting that the current position be a transition rule while opening up discussions with the retirement plan community. The group urged the IRS to implement changes to the program in the least harmful manner and to provide certainty on the future availability of determination letters.

Pension Payment Options

The Bureau of Labor Statistics issued [You're Getting a Pension: What Are Your Payment Options?](#), examining the various payment options available under defined benefit retirement plans. The article discusses factors individuals should take into account when making decisions about their retirement payment options, and includes charts to illustrate the effect these various payment options have on periodic benefits.

Census Reports: Public Pensions and Health Coverage

The U.S. Census Bureau published:

- [Annual Survey of Public Pensions](#), which provides a comprehensive look at the financial activity of the nation's state and locally administered defined benefit pension systems. The report shows that total contributions in 2015 were \$180.2 billion, an increase of 7.9% 2014. Governments accounted for the bulk of the contributions (\$131.7 billion); employees contributed \$48.5. The other component of total revenue – earnings on investments – declined 68.4%, from \$534.4 billion in 2014 to \$168.7 billion in 2015.
- [2014 and 2015 CPS ASEC Research Files on Offer and Take-Up of Employer-Sponsored Health Insurance Coverage](#), which found increases in offer and eligible rates of 0.5 and 0.9 percentage points, respectively, and a decrease in the take-up rate of 1.5 percentage points, while the coverage rate remained stable. The study also noted an increase in the proportion of workers covered by another plan, but also a decrease in coverage for certain other types of workers.

Regulatory Roundup – continued

- [Proposed rule](#) for expatriate health plans, expatriate health plan issuers, and qualified expatriates under the 2014 Expatriate Health Coverage Clarification Act.

From the Department of Treasury/IRS:

- [Proposed rule](#) providing guidance for nonqualified deferred compensation plans under section 409A.
- [Proposed rule](#) for deferred compensation plans established and maintained by state/local governments or tax-exempt entities under section 457.
- [Revenue Procedure 2016-37](#) (and related [fact sheet](#)) on modifications to the determination letter program for individually designed plans and to the six-year remedial amendment cycle system for preapproved plans.
- [Notice 2016-39](#) on qualified retirement plan payments treated as an annuity during an employee's phased retirement.
- [Employer Shared Responsibility Estimator for Employers](#), a tool prepared by the Taxpayer Advocate Service.
- Web postings: [compliance trends and tips for multiemployer plans](#); [new process for defined benefit plan determination letter applications](#); and an updated [Issue Foci report](#), reflecting items applicable to 2016 plan terminations.

From the Department of Labor:

- [Final rule](#) on federal contractors' obligations to ensure sex nondiscrimination.
- [Interim final rule](#) (and related [fact sheet](#)) adjusting the DoL's civil monetary penalties.
- [Warning Signs - Plan or Policy Non-Quantitative Treatment Limitations \(NQTLs\) that Require Additional Analysis to Determine Mental Health Parity Compliance](#), providing guidance under the mental health parity requirements.
- [Employer's Guide to the Family and Medical Leave Act](#), which provides information about employers' obligations and options.

From the Pension Benefit Guaranty Corporation:

- [Proposed rule](#) on mergers and transfers between multiemployer plans.
- Two reports on the agency's insurance programs: [FY2015 Projections Report](#), covering the single-employer and multiemployer programs; and [MPRA Report](#), focusing on the multiemployer program.

From the Department of Health and Human Services:

- ACA and HIPAA checklists of market reforms for [nongrandfathered](#) and [grandfathered](#) self-funded, non-federal governmental group health plans.

From the Equal Employment Opportunity Commission:

- [Final rule](#) adjusting the civil monetary penalty for notice-posting violations.
- A [sample notice](#) on wellness programs under the Americans with Disability Act requirements, along with related [question and answers](#).
- Three resource documents on the equal employment opportunity rights of women in the workplace: [Equal Pay and the EEOC's Proposal to Collect Pay Data](#); [Legal Rights for Pregnant Workers under Federal Law](#); and [Helping Patients Deal with Pregnancy-Related Conditions and Restrictions at Work](#).
- An [announcement](#) seeking public input on proposed enforcement of national origin nondiscrimination.

From the Department of Commerce:

- [Final rule](#) on how pension plans and others may become certified to receive data from the Death Master File.

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