

MONTHLY BENEFIT

News and Developments
Employee Benefits

President Signs Nondiscrimination Orders

The President on July 21 signed Executive Orders 11478 and 11246, expanding the protections for federal government workers and contractors' employees, respectively, from discrimination based on sexual orientation and gender identity. E.O. 11246 directs the Labor Secretary to prepare regulations within 90 days to implement the requirements, applying them to contracts entered into on or after the effective date of the rules promulgated.

www.whitehouse.gov

Upcoming Key Dates

10/15/14 – New PBGC flat-rate premium filing due date for large single-employer and multiemployer calendar-year defined benefit pension plans.

10/31/14 (unless a later date applies) – Compliance with new compensation committee independence standards for NYSE and NASDAQ listed companies.

11/5/14 – Deadline for large health plans that are covered entities under the HIPAA rules to obtain a Health Plan Identifier Number.

11/15/14 – First reporting of annual enrollment of covered lives by self-insured or partially insured group health plans, under the ACA's transitional reinsurance program.

11/15/14 – Start date of delayed open enrollment period for insurance purchases through an Exchange for 2015.

12/31/14 – Expiration of the PPA's multiemployer defined benefit pension plan special funding rules for calendar-year plans, unless Congress acts.

*This August **Monthly Benefit News and Developments** covers developments through Aug. 6; with Congress in recess until Sept. 8, the next MBND will be the October issue.*

Legislative Activity on the Benefits Front

In a last-minute effort to secure funding for transportation infrastructure-related needs before a five-week break, the Senate acceded to the House and approved the "Highway and Transportation Funding Act" (HATFA, H.R.5021), retaining the House-passed version of a pension "smoothing" extension provision that had been adopted in the 2012 "MAP-21" transportation/highway funding law. The bill, which the President will sign, extends the MAP-21 funding stabilization provisions for corporate single-employer and multiple-employer defined benefit retirement plans for five years (through 2020) and is expected to raise \$6.4 billion. By including the pension provision in HATFA, Congress no longer may count the expected revenues to pay for an emergency unemployment extension proposal. HATFA does not contain provisions to increase PBGC premiums or to modify the required distribution requirements applicable to retirement plans.

The new law modifies the MAP-21 interest-rate corridors that affected pension plan sponsors use to determine their minimum funding liabilities. HATFA maintains a narrower corridor than MAP-21 for the 2013-2017 plan years and then phases in a wider corridor over four years beginning in 2018. A plan sponsor may elect, in writing, to retain its use of the MAP-21 interest-rate corridor only for the 2013 plan year; starting in 2014, the HATFA corridors by all plan sponsors will be required (see [Benefits Alert 14-7](#)).

In other legislative developments:

- The House Energy and Commerce Committee approved the "Employee Health Care Protection Act" (H.R.3522), which would allow health insurers to continue to offer non-Affordable Care Act-compliant group health plans that were in effect in 2013. The bill would permit individuals to purchase the plans even if they were not previously covered by those plans and would treat the plans as meeting the ACA's minimum essential coverage requirements.
- The Senate Health, Education, Labor, and Pensions Committee approved S.2511, which would clarify what constitutes a "cessation of operations" under ERISA section 4062(e). The bill is aimed at limiting the pool of employers that would be subject to the PBGC's bonding or escrow requirement based on a defined benefit plan's unfunded termination liability.

September Outlook

Congress is expected to work on a compressed schedule in September, with leaders aiming to adjourn before the month ends to give members time to campaign for the November election. Highest priority will be given to bills funding federal agencies, although some benefits- or compensation-related provisions could be added to an omnibus or other similar spending bill.

GAO Reports of Interest

The Government Accountability Office released:

- *Private Pensions: Targeted Revisions Could Improve Usefulness of Form 5500 Information* (GAO-14-441), which recommends that the Departments of Labor (DoL) and Treasury and the PBGC: revise Schedule H; develop a central repository for EIN and PN numbers; and clarify Schedule C and its instructions.
- *401(k) Plans—Improvements Can Be Made to Better Protect Participants in Managed Care Accounts* (GAO-14-310), which recommends that the DoL consider providing fiduciary roles and requiring performance and benchmarking information disclosures.
- *Pension Advance Transactions: Questionable Business Practices Identified* (GAO-14-420), which: describes the number and characteristics of pension advance firms and marketing practices; evaluates how pension advance terms compare with other products; and assesses the extent to which there is related federal oversight.
- *Fair Labor Standards Act—Department of Labor Needs a More Systematic Approach to Developing Guidance* (GAO-14-629T), which recommends that the DoL develop a systematic approach to review areas of confusion contributing to possible FLSA violations.

www.gao.gov

Federal Tax Expenditures

The Joint Committee on Taxation released *Estimates of Federal Tax Expenditures for Fiscal Years 2014-2018* (JCX-97-14), which continues to find that the exclusion for employer-provided health insurance costs the federal government more revenue than any other tax expenditure. The latest report finds that the exclusion will cost \$785 billion from 2014 to 2018. The third top “expenditure” is the net exclusion of defined contribution retirement plans, at \$399 billion.

www.jct.gov

BLS: Medical and Vacation Benefits

The Bureau of Labor Statistics posted two new charts, one showing employer-provided medical care benefits according to establishment size, and the other reflecting access to paid vacations in private industry.

www.bls.gov

Regulatory Roundup

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

- A *Frequently Asked Question (FAQ), Part XX*, stating that closely held corporations that eliminate some or all contraceptive services from their group health plans based on religious beliefs must disclose the change to their employees.

From the Departments of Treasury/IRS:

- *Final rule* on longevity annuity contracts in tax-qualified defined contribution retirement plans, 403(b) plans, and 457(b) eligible governmental plans.
- *Final rule* on truncated taxpayer identification numbers that can be used instead of a Social Security number to help stop identity theft-related tax fraud.
- Revised *Form 8951*, Compliance Fee for Application for Voluntary Correction Program.
- *Draft Forms 1095-B* (Health Coverage), *1094-B* (Transmittal of Health Coverage Information Returns), *1095-C* (Employer-Provided Health Insurance Offer and Coverage), and *1094-C* (Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns) that, when final, will be used to report employer-provided health coverage information.
- Updated *FAQs* on retirement plan terminations and events triggering participant rights.
- *FAQs* on the EGTRRA determination letter program for preapproved plans.

From the Department of Labor:

- A *proposed rule* that would require federal contractors and subcontractors to submit an annual “Equal Pay Report” on employee compensation to the Office of Federal Contract Compliance Programs, as required by the Presidential Memorandum signed on Apr. 8.

From the Pension Benefit Guaranty Corporation:

- An *announcement* of a moratorium until the end of 2014 on the enforcement of ERISA section 4062(e) cases, which involve pensions when a company ceases operations at a facility through a shut down or sale and 20% of pension-covered workers lose their jobs.
- An *online resource guide* that provides information to participants on choosing between a lump sum and an annuity.

From the Department of Health and Human Services:

- *Updated Procedures and Requirements for HIPAA Exemption Election by Non-Federal Governmental Plans that Are Self-Insured.*
- A *press release* announcing that the agency projects average premium for a basic Medicare Part D prescription drug plan in 2015 to increase by about \$1, to an estimated \$32 per month.

From the Equal Employment Opportunity Commission:

- *Enforcement guidance, FAQs, and Fact Sheet* on pregnancy discrimination and related issues under the Pregnancy Discrimination Act and the Americans with Disabilities Act.

From the Securities and Exchange Commission:

- *Final rule* on money market mutual funds, requiring a floating net asset value (NAV) for institutional prime money market funds, as well as a *proposed exemption* from certain confirmation requirements for transactions effected in shares of floating NAV money market funds and a *reproposed* amendment to the agency’s money market fund rules to address provisions referencing credit ratings.

Social Security and Medicare Trustees Reports:

- The Social Security Trustees’ *annual report* projects that the combined asset reserves of the OASDI Trust Funds will be depleted in 2033, but the Disability Insurance fund will be depleted in 2016, both unchanged from last year’s report. The Medicare Trustees’ report projects solvency until 2030, four years beyond that projected last year.

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