

MONTHLY BENEFIT

News and Developments

Employee Benefits

Upcoming Key Dates

11/1/15 – 2016 open enrollment begins for health insurance under the ACA exchanges, with 1/1/16 penalties for individual noncompliance increasing to the greater of \$695 or 2.5% of household income over the filing threshold.

11/16/15 – Second annual reporting of enrollment of covered lives (for 2015) by self-insured and insured group health plans under the ACA transitional reinsurance program, as well as deadline to make final payment for 2014 if paying under the split schedule.

12/15/15 (fiscal years beginning after) – Application of FASB's ASU No. 2015-12, relating to benefit plan accounting.

12/31/15 (last day of the plan year that begins in 2015) – Deadline for hybrid retirement plans to be amended to comply with the "market rate of return" and other requirements of IRS's final rule, and for cafeteria plans to be amended to expand flexibility for certain employees who wish to purchase health insurance coverage through an exchange.

12/31/15 – Deadline for retirement plans that are dual-qualified under the U.S. and Puerto Rico tax codes and that participate in a U.S. group trust to spin off assets and liabilities to a stand-alone P.R. plan without triggering U.S. federal income tax consequences.

1/1/16 – Application of new penalties for failures to file correct tax information returns or provide payee statements (e.g., IRS Forms W-2, 1099).

1/1/16 (plan year valuations) – Required use of IRS updated mortality tables for pension plan valuations, unless credible tables are constructed using plan's own experience.

Legislative Activity on the Benefits Front

The President signed a 10-week spending bill (H.R.719) for the 2016 federal fiscal year, avoiding a government shutdown that would have occurred beginning Oct. 1. The continuing resolution funds the government only through Dec. 11, by which time Congress and the White House must reach an agreement on a full spending package. Republicans and Democrats are at odds on the appropriate funding levels for discretionary and nondiscretionary spending, while also facing the challenge of raising the debt limit or risk a federal government default on its obligations.

ACA Bills Moving

The House on Sept. 28 approved modifications to the Affordable Care Act (ACA):

- the "Protecting Affordable Coverage for Employees Act" (H.R.1624), which would keep the current definition of "small group health plan" under the ACA at 50 or fewer employees unless states elect otherwise, thereby exempting such coverage from some of the insurance market requirements and the employer mandate; and
- the "Equitable Access to Care and Health Act" (H.R.2061), which would expand the ACA's existing religious exemption for the individual mandate to include groups (such as Christian Scientists) with religious objections to certain medical services but not to health insurance.

House committees also advanced legislative language to repeal portions of the ACA, with the intention of including the budget reconciliation instructions in a bill that could pass the Senate with a simple majority. Notwithstanding a certain veto by the President, the reconciliation bill offers Republicans another vote against Obamacare as they campaign for reelection in 2016. The language calls for repeal of: the excise tax on high-cost health plans (the "Cadillac tax"); the individual mandate; the employer mandate, the Independent Payment Advisory Board; and the medical device tax. Other ACA provisions that could be considered include a repeal of the automatic enrollment requirement for employers with 200 or more full-time employees.

Fiduciary Definition, Executive Pay Ratio Rule

Meanwhile, the House Financial Services Committee approved:

- the "Retail Investor Protection Act" (H.R.1090), which would prohibit the Department of Labor from prescribing a regulation to define "fiduciary" for retirement plans and individual retirement accounts until the Securities and Exchange Commission (SEC) issues a final rule providing standards of conduct for brokers and dealers (the Education and the Workforce Committee also has jurisdiction on this bill but has not yet acted); and
- the "Burdensome Data Collection Relief Act" (H.R.414), which would nullify the SEC's regulations governing certain compensation disclosures, including the ratio of the chief executive's pay to the median pay of his or her company's employees.

Joint Tax on Fiduciary Status

The Joint Committee on Taxation released *Law and Background on Prohibited Transactions, Investment Advice, and Fiduciary Status with Respect to Retirement Plans, IRAs, HSAs, and MSAs* (JCX-131-15), a report for congressional hearings on the Labor Department's proposed fiduciary rule. The report also provides data on retirement plans and individual retirement accounts.

www.jct.gov

GAO Reports on Retirement

The Government Accountability Office issued:

- *401(k) Plans: Clearer Regulations Could Help Plan Sponsors Choose Investments for Participants* (GAO-15-578), which examines: the options plan sponsors selected as default investments and why; how plan sponsors monitor their default investment selections; and the challenges for plan sponsors when adopting a default option.
- *Federal Action Could Help State Efforts to Expand Private Sector Coverage* (GAO-15-556), which looks at the growing number of states proposing to expand coverage in private-sector workplace retirement savings programs and the changes to ERISA and regulations that may be necessary.

www.gao.gov

CRS on "Cadillac Tax"

The Congressional Research Service released two related reports on the excise tax on high-cost employer-sponsored coverage. The report on the *Background and Economic Analysis* provides an overview and analyzes insurance premium data to provide insights into the share of plans that could exceed the Cadillac tax threshold. The report on the *Estimated Economic and Market Effects* evaluates the tax's potential effect on coverage and workers' incomes, and discusses the implications for economic efficiency in the context of tax administration.

www.fas.org/sgp/crs/misc

Healthcare Coverage

The Census Bureau's *Health Insurance Coverage in the U.S., 2014* finds that the percentage of people without health insurance coverage decreased sharply between 2013 and 2014, by about 2.9 percentage points.

www.census.gov

Regulatory Roundup

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

- *Frequently Asked Questions Part XXVII* regarding transparency reporting under the Affordable Care Act (ACA).

From the Treasury/IRS:

- *Final rule* on determining minimum required contributions for single-employer pension plans and the excise tax for a single-employer or multiemployer plan sponsor's failure to satisfy the minimum funding requirements.
- *Final and temporary rules* eliminating the automatic extension of time to file information returns for W-2 series forms and certain ACA forms.
- *Temporary and proposed rules* on multiemployer pension plan participant voting on a suspension of benefits.
- *Proposed rule* on the minimum value of eligible employer-sponsored health plans.
- *Revenue Procedure 2015-47* on requesting a waiver of the electronic filing requirements for Forms 8955-SSA and 5500-EZ due to an economic hardship.
- *Notice 2015-63*, providing the 2015-2016 special per diem rates for taxpayers to substantiate the amount of ordinary and necessary business expenses incurred while traveling away from home.
- *Notice 2015-58*, providing guidance on minimum funding requirements for pension plans maintained by groups of cooperatives and related entities and groups of charities.
- *Forms 1094-B, 1095-B, 1094-C, and 1095-C and Instructions* for plan sponsor reporting of ACA healthcare coverage.

From the Department of Labor:

- *Final rule* on pay transparency by federal contractors, as well as a *notice* on the applicable minimum wage rate starting in 2016 for federal contract workers covered by Executive Order 13658.

From the Pension Benefit Guaranty Corporation:

- *Final rule* on reportable events and certain other notification requirements.
- *Final rule* on required electronic filing of certain multiemployer pension plan notices (e.g., notices of termination or insolvency).
- *Temporary and proposed rule* on the administration of the suspension of benefits voting by multiemployer pension plan participants.
- *FY2014 Projections Report*, which reports that the insolvency date for multiemployer pension plans will be delayed by three years, to 2025, from last year's projections.

From the Department of Health and Human Services:

- Answers to questions about the federally facilitated marketplace's 2016 employer notice program.
- An *announcement* that the average Medicare Advantage monthly premium in 2016 will be \$32.60, a decrease of \$0.31.
- An *announcement* that new or existing authorized representatives that are assigned to an application no longer are required to be verified of a plan sponsor to receive payment under the Retiree Drug Subsidy Program.

From the National Labor Relations Board:

- A 3-2 *decision* (in *Browning-Ferris Industries* (Aug. 27, 2015)), refining the NLRB standard for determining joint-employer status by also considering whether an employer has exercised control over terms and conditions of employment indirectly through an intermediary, or whether it has reserved the authority to do so.

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