

# MONTHLY BENEFIT News and Developments

Employee Benefits

## Upcoming Key Dates

**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.

**12/31/16** – Deadline for hybrid retirement plan amendments relating to noncompliant interest crediting rates.

**1/1/17** – Elimination of IRS's five-year remedial amendment cycle system for most ongoing individually designed retirement plans.

**1/1/17** – Elimination of IRS's automatic 30-day filing extension for employer information reporting forms (e.g., W-2, 1099), requiring submission of Form 8809 to obtain a single 30-day extension.

**1/1/17** (first fiscal year beginning on/after) – Compliance with SEC final rule on pay-ratio disclosures by certain publicly traded companies.

**1/17/17** – Deadline to pay \$27.00/\$21.60 per covered life (unified schedule/first payment split schedule) for 2016 TRPP (final year).

**1/31/17** – Deadline to submit on-cycle retirement plan determination letter requests to the IRS for plans in Cycle A.

*This Monthly Benefit News and Developments covers activity from July 16 through September; with Congress in recess until mid-November, the next MBND will be the December issue.*

## Legislative Activity on the Benefits Front

Congress approved a short-term government funding measure (H.R.5325) to keep federal agencies operating through December 9 and then promptly recessed until mid-November for a post-election "lame duck" session. The House and Senate at that time will again face having to tackle government funding for the remainder of the 2017 fiscal year that began Oct. 1, 2016. The 12 individual appropriations bills Congress had been considering include provisions that would: prohibit the IRS from implementing the Affordable Care Act's (ACA) individual mandate; prohibit the Securities and Exchange Commission from 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 on 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.

Before recessing:

- The House approved the "Empowering Employees through Stock Ownership Act" (H.R.5719), which would generally allow employees of nonpublicly traded companies to defer taxes on certain qualified stock grants under certain conditions. The Senate has not acted on this bill.
- The House approved the "Mobile Workforce State Income Tax Simplification Act" (H.R.2315), which would prohibit the earnings of an employee who works in more than one state from being taxed in states other than the state of the employee's residence and the state in which the employee performs employment duties for more than 30 days during the calendar year. The bill, which still requires Senate approval, also would exempt employers from state income tax withholding and information reporting requirements for such employees.
- The Senate Finance Committee approved the "Retirement Enhancement and Savings Act" (unnumbered), which aims to improve retirement policies by modifying the 401(k) plan safe harbor rules, providing small-employer start-up credits, encouraging portability and lifetime income options, establishing "open" multiple employer plans for unrelated employers, expanding disclosures to include lifetime income, and providing relief for "frozen" defined benefit plans. One revenue raiser to help pay for the bill calls for increasing penalties for late filing of the Form 5500 annual reports. The Committee also approved the "Miners Protection Act" (unnumbered), which aims to preserve the benefits of participants in the United Mineworkers health and pension plans by transferring funds from the Abandoned Mine Fund to the pension and health fund.

## Pension Accounting Proposal

The Financial Accounting Standards Board issued [Proposed Accounting Standards Update Plan Accounting: Defined Benefit Pension Plans \(Topic 960\)](#); [Defined Contribution Pension Plans \(Topic 962\)](#); [Health and Welfare Benefit Plans \(Topic 965\) Employee Benefit Plan Master Trust Reporting](#), which would clarify presentation requirements for a plan's interest in a master trust and require more detailed disclosures of the plan's interest in the master trust. The proposal also would eliminate a redundancy in disclosures for 401(h) accounts.

## PBGC Options to Improve the Multiemployer Program

The Congressional Budget Office's [Options to Improve the Financial Condition of the Pension Benefit Guaranty Corporation's Multiemployer Program](#) projects future claims on the program and losses to beneficiaries. In analyzing potential policy changes, the report notes that some options, such as providing federal funding to the PBGC, would help plans facing insolvency in the near term. Other options, such as restricting plans' investments in risky assets, would help currently well funded plans from becoming underfunded in the future but would have a limited effect on plans facing near-term insolvency.

## Options to Improve 401(k) Lifetime Income Options

The Government Accountability Office's [401\(k\) Plans: DOL Could Improve Use of Lifetime Income Options](#) (GAO-16-433) presents the results of a survey of 401(k) plan recordkeepers, finding that most plans covered had not adopted products and services that could help participants turn their savings into a lifetime income stream. The GAO found that about two-thirds of the plans did not offer a withdrawal option to provide payments from accounts, sometimes designed to last a lifetime, and about three-quarters did not offer an annuity arrangement that can guarantee set payments for life.

## Employment Tenure

The Bureau of Labor Statistics' [Employee Tenure, 2016](#) notes that the median number of years that wage and salary workers had been with their current employer was 4.2 years in January 2016, down from 4.6 years in January 2014. Median tenure during that period for men declined to 4.3 years from 4.7 years, while women's tenure declined to 4.0 years from 4.5 years.

## Regulatory Roundup

### Jointly from the Department of Defense, General Services Administration, and National Aeronautics and Space Administration:

- [Interim rule](#) on nonretaliation by federal contractors for employee disclosure of compensation information.

### From the Department of Treasury/IRS:

- [Final rule](#) on the minimum present value requirements applicable to certain defined benefit pension plans.
- [Final rule](#) to reflect changes to the definition of marriage for federal tax purposes.
- [Proposed rule](#) on the reporting of minimum essential healthcare coverage.
- [Notice 2016-58](#), updating the special per diem rates used in substantiating the amount of ordinary and necessary business expenses incurred while traveling away from home.
- [Notice 2016-57](#) to extend the temporary nondiscrimination relief for closed pension plans through 2017.
- [Notice 2016-50](#), providing updated static mortality tables for pension plans for 2017.
- [Revenue Procedure 2016-47](#), allowing self-certification by recipients of retirement plan distributions who inadvertently fail to timely roll over amounts into another retirement plan or individual retirement arrangement.
- [Revenue Procedure 2016-28](#), providing the 2017 inflation-adjusted amounts for health savings accounts (HSAs).
- [Announcement 2016-32](#), which seeks comments on how the IRS can facilitate compliance with the requirements for qualified retirement plan documents in light of changes to the determination letter program.
- [Form 1095-B \(Health Coverage\)](#) and [Instructions](#) for the 2016 calendar year.

### From the Department of Labor:

- [Final guidance](#) on federal agency reviews of contractors' compliance with labor laws.
- [Final rule](#) on paid sick leave requirements for federal contractors.
- [Final](#) and [proposed](#) rules on, respectively, state- and states' political subdivision-established retirement savings arrangements for nongovernmental employees.
- [Notice](#) establishing a \$10.20/hour minimum wage for contractors as of Jan. 1, 2017.

### From the Pension Benefit Guaranty Corporation:

- [Final rule](#) that lowers penalties for the late payment of premiums for all covered plans.
- [Proposed rule](#), [Frequently Asked Questions](#), and [draft forms](#) on expanding the missing participant program to include multiemployer, 401(k), and other retirement plans.

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

- [Proposed rule](#) and [Fact Sheet](#) on the annual notice of benefit and payment parameters, which proposes cost sharing limits of \$7,350 for self-only coverage and \$14,700 for other than self-only coverage for 2018.
- [Report to Congress on Telemedicine and E-Health](#), which examines federal telehealth policy and coordination.

### From the Equal Employment Opportunity Commission:

- [Informal Discussion Letter](#) on calculating incentive limits for employer wellness programs under disabilities and genetic nondiscrimination laws (ADA and GINA).

### From the Securities and Exchange Commission:

- [Compliance and Disclosure Interpretation](#) (question 139.33), discussing investments through a self-directed brokerage window under a 401(k) plan.

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