February 2015

Milliman

MONTHLY BENEFIT News and Developments

Employee Benefits

Milliman PFI

The funded status for the 100 largest corporate defined benefit plans in the Milliman Pension Funding Index (PFI) decreased by $22 billion during December 2014. Historically low interest rates were the dominant factor in the $105 billion deficit increase during the year. While higher-than-expected investment returns produced a solid $81 billion gain, pension liabilities increased by $186 billion. The funded ratio was 83.6% as of Dec. 31, 2014, compared with the 88.3% ratio on Dec. 31, 2013.

www.milliman.com/insight

Upcoming Key Dates

4/30/15 – Revised deadline for 403(b) preapproved plans to submit applications for opinion and advisory letters.

6/2/15 – Expiration of IRS's penalty relief pilot program for sponsors of non-ERISA and foreign plans subject to the Form 5500 reporting requirements.

6/30/15 – Revised deadline for preapproved defined benefit plans to submit applications for opinion and advisory letters for the second six-year remedial amendment cycle.

7/31/15 (for plan years ending on/after 10/1/14 and on/before 10/1/2015) – Third reporting and payment of the outcomes research ("PCORI") fee by self-insured group health plan sponsors and insurers.

9/30/15 – Expiration of E-Verify program that is mandatory for federal contractors and some employers in 19 states that require its use.

10/1/15 – Implementation of ICD-10 standards by group health plans that engage in electronic transactions.

Legislative Activity on the Benefits Front

The 114th Congress convened on Jan. 6, with Republicans having become the majority party in the Senate and thereby controlling both chambers. Members of the GOP leadership announced their intention to govern responsibly and quickly embarked on moving legislation they expect to pass on a bipartisan basis:

- The "Hire More Heroes Act" (H.R.22) cleared the House by a vote of 412-0. The measure would encourage the hiring of veterans who have healthcare coverage from TRICARE or the Veterans Health Administration by excluding them from the 50-or-more employee threshold count that triggers the Affordable Care Act's (ACA) employer mandate. The Senate Finance Committee also unanimously approved the bill, although amendments may be offered when it reaches the floor. The Congressional Budget Office (CBO) said that enacting H.R.22 would reduce the number of employers that would be required to make employer responsibility payments and thus would increase budget deficits by $858 million over the 2015-2025 period.
- The "Save American Workers Act" (H.R.30) passed the House by a 252-172 vote that included 12 Democrats. The bill would change the ACA's "full-time" workweek definition from 30 hours to 40 hours. No action has occurred in the Senate on a companion bill (S.30), which was introduced with bipartisan support. The CBO projected that about 1 million workers would lose their employer-based healthcare coverage under H.R.30, and that the bill would cost $53.2 billion over 10 years. The White House announced the President would veto this bill.
- The "Protecting Volunteer Firefighters and Emergency Responders Act" (H.R.33) was approved 410-0 in the House. The bill would exempt bona fide emergency services volunteers of a state or local government or a tax-exempt charitable organization from the count as employees under the ACA. No action on the bill has occurred in the Senate. The CBO scored a similar bill (H.R.3979) in the last Congress as having no significant budgetary effect.

The President's Views on Retirement Benefits

The President's Jan. 21 State of the Union address did not directly specify plans to address retirement issues, but a series of earlier speeches and documents the White House released indicated his intention to seek ways to boost retirement savings for workers and to cap the amount eligible for favorable tax treatment in retirement accounts. Both proposals have been offered up in his previous budget proposals.

To increase savings, the President would require employers with more than 10 employees and that do not offer a retirement plan to automatically enroll workers in an individual retirement account. The proposal would provide such employers tax credits for offering the auto-IRAs. Under the second proposal, the President would cap contributions and accruals of benefits in tax-preferred retirement plans once individuals' balances reach about $3.4 million.

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BLS Reports on Health

The Bureau of Labor Statistics (BLS) released two *Beyond the Numbers* reports:

- *Understanding Health Plan Types: What's in a Name?* explores how the BLS's National Compensation Survey uses plan features to identify six medical plan types: fee-for-service plans; preferred provider organizations; exclusive provider organizations; point-of-service plans; health maintenance organizations (HMOs); and open-access HMOs. The report contains a side-by-side comparison of the types of plans, showing their differences based on the plans' features.

- *Access to Dependent Care Reimbursement Accounts and Workplace-Funded Childcare,* which examines the rate of worker access to each of these types of benefits. According to the report, 39% of civilian workers in 2014 had access to employer-sponsored dependent care reimbursement accounts and 11% had access to workplace-funded childcare benefits.

www.bls.gov

Young Adults' Balance Sheet

The Federal Reserve Bank of St. Louis published *The State of Young Adults' Balance Sheets: Evidence from the Survey of Consumer Finances,* which found that young adults in 2013 were more likely to own homes, stocks, and retirement accounts when compared with young adults in 1989. In 2013, more than 97% of young adults owned some type of asset: 90% had a deposit account; 34% owned a home; 37% had a retirement account; and 37% owned stocks.

www.stlouisfed.org

Expiring Tax Provisions

The Joint Committee on Taxation released its annual list of federal tax provisions that expired at the end of 2014 or that are scheduled to expire over the next 10 years. The *List of Expiring Tax Provisions, 2014-2025* (JCX-1-5) covers tax breaks that Congress renewed in December 2014 but only for that year, such as the increase in the tax break for employer-provided commuter mass transit benefits, bring it to parity with the tax treatment for parking benefits. The report also includes the benefits and employment-based tax provisions that are scheduled to expire, such as various employment and wage tax credits.

www.jct.gov

Regulatory Roundup

From the Departments of Treasury/IRS:

- *Revenue Procedures 2015-01* through *2015-08,* providing the 2015 procedures for IRS issuance of letters, rulings, determination letters, and technical advice on specific issues related to employee benefits.
- *Notice 2015-07,* announcing forthcoming proposed regulations to permit a state or local government retirement system to cover public charter school employees.
- *Notice 2015-06,* providing guidance on filing *Form 8922, Third-Party Sick Pay Recap,* which replaces the filings made with the Social Security Administration.
- *Notice 2015-02,* relating to the retroactive increase in the monthly transit benefit exclusion for 2014.
- *Announcement 2015-03,* providing guidance on the automatic approval of a change in funding method for single-employer defined benefit plans due to a change in the plan's enrolled actuary.

From the Department of Labor:

- *Final rule* on defined benefit plan annual funding notice requirements, along with related *Field Assistance Bulletin 2015-01* and an updated *model supplement*.
- A *proposed rule* to clarify prohibited sex discrimination by federal contractors.

From the Pension Benefit Guaranty Corporation:

- An *announcement* and *description of changes* to the moratorium on the notification and funding requirements of ERISA section 4062(e) if an employer ceases operations at a facility and a substantial number of plan participants separate from employment.
- *First Annual Report of the Participant and Plan Sponsor Advocate,* which identifies areas for improvement, including having the PBGC take a less adversarial approach to enforcement and improving communications, processes, and inter-agency coordination.

From the Department of Health and Human Services:

- A *notice* announcing the 2015 federal poverty level, which group health plans may consider in determining whether or not the coverage is affordable to employees.

State Law Development of National Interest: Illinois

Private-sector employers in Illinois that do not provide a retirement savings program for employees will be required to automatically enroll employees in the *Illinois Secure Choice Savings Program.* Although the program is effective June 1, 2015, the new state law – signed on Jan. 4 – calls for a 24-month implementation period. It also requires the program's Board to first obtain rulings from the U.S. Department of Labor on the application of, or exemption from, ERISA and from the IRS on the program qualifying for favorable tax treatment, in addition to the state securing start-up funding.

Supreme Court Invalidates Vesting Inference in Retiree Health Contracts

The U.S. Supreme Court unanimously ruled that employers may terminate retiree health benefits when renewed collective bargaining agreements contain ambiguous language from the original contract (*M&G Polymers USA, LLC v. Tackett* (No. 13-1010, Jan. 26, 2015)). The decision formally invalidates what has been referred to as the "Yard-Man inference," which the U.S. Court of Appeals for the Sixth Circuit applied in 1983 to find that retiree health benefits vest for life in the absence of specific language to the contrary in a plan document or collective bargaining agreement. Remanding the case to the Sixth Circuit, the Court said that ordinary contract principles should apply, rather than special inferences or presumptions. In a separate, concurring opinion, four justices said that lower courts may consider extrinsic evidence – including bargaining history – when interpreting what labor and management intended when considering vested or temporary benefits, if the relevant documents are found to be ambiguous.