

# MONTHLY BENEFIT

## News and Developments

Employee Benefits

### Tax Reform Developments

The Senate Finance Committee released its tenth and final “options paper” on tax reform, examining non-income tax issues and related reforms. Options discussed include: changes to FICA taxes; eliminating employment tax exclusions for certain categories of workers; and replacing income or employment taxes or preserving them alongside a consumption tax.

The committee leaders subsequently asked their Senate colleagues for ideas on reforming the tax code beginning with a “blank slate,” specifically seeking legislative language or detailed proposals by July 26 for items to include in a reformed tax code.

[www.finance.senate.gov](http://www.finance.senate.gov)

### Upcoming Key Dates

**9/23/13** – Required compliance with final rule on HIPAA privacy requirements by covered entities and business associates.

**10/1/13** – Enrollment begins for 2014 health insurance exchanges.

**12/31/13** – Deadline to amend 401(k), 403(b), or 457 governmental plans to provide loans or hardship distributions due to Hurricane Sandy.

**12/31/13** (unless required later) – Deadline to amend single-employer defined benefit plans to comply with the restrictions on benefit accruals and optional benefit payment forms.

**12/31/13** – Expiration of: health insurance coverage and small business healthcare tax credits; various employment tax credits; employer wage credit for activated military reservists; and temporary increase in the amount excludable for employer-provided mass transit/vanpool benefits.

### Legislative Activity on the Benefits Front

Very little congressional action on compensation- or benefits-related bills occurred in June:

- Efforts in the Senate to move forward on a bill to stop student loan interest rates for certain types of loans from doubling on July 1 failed as members could not agree on a long-term solution before recessing for the Independence Day holiday. Senate leaders expect to vote on a new proposal on July 10 to extend the 3.4% interest rate for another year. Newly introduced competing bills, like an earlier Senate proposal (S.953), include a revenue-raising provision to generally require that retirement savings accounts be distributed to a nonspouse beneficiary within five years of the death of the account holder. The May 23 House-approved version (H.R.1911) does not have the retirement savings distribution provision.
- The Senate voted 68-32 to approve a comprehensive immigration reform bill (S.744), which includes a provision to require all employers to use E-Verify to confirm an individual's eligibility to work in the U.S. Mandatory use of E-Verify would be phased in over four years, beginning with federal contractors and larger employers. House approval of this bill is highly uncertain.
- The House Financial Services Committee approved: H.R.1135, which would repeal the requirement under the Dodd-Frank Act that publicly traded companies disclose the pay ratio between the median income of all employees other than the chief executive officer and the CEO's salary; and H.R.2374, which would require the Securities and Exchange Commission to assess the effects of providing a uniform definition of “fiduciary” before doing so and to require the SEC to advance a rule before the Department of Labor does so for retirement plan purposes.

### U.S. Supreme Court Rules on DOMA, Title VII

The U.S. Supreme Court handed down the following decisions:

- In *United States v. Windsor* (No. 12-307, 6/26/13), the Court decided 5-4 that the Defense of Marriage Act's (DOMA) definition of “marriage” – between a man and a woman – is unconstitutional. The ruling applies to marriages recognized under state law and does not address another DOMA provision that allows states to refuse to recognize a same-sex marriage legally entered into in another state. And by dismissing the related case, *Hollingsworth v. Perry* (No. 12-144, 6/26/13), on procedural grounds, the Court in a 5-4 decision declined to rule on the constitutionality of same-sex marriage bans across the country.
- In *Vance v. Ball State University* (No. 11-556, 6/24/13), the Court ruled 5-4 held that an employer “can be vicariously liable for an employee's unlawful harassment only when the employer has empowered that employee to take tangible employment actions

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## DOL Terminating, Winding Up Defined Contribution Plans

The Department of Labor announced it has approved a process for the termination and winding up of about 180 defined contribution retirement plans that have been abandoned due to corporate crises or neglect.

[www.dol.gov/ebsa](http://www.dol.gov/ebsa)

## GASB Issues Proposals on Assets, Liabilities, Fair Value

The Governmental Accounting Standards Board (GASB) released:

- *Measurement of Elements of Financial Statements*, an Exposure Draft proposing concepts that the GASB will apply when establishing future standards to measure assets and liabilities for U.S. state and local governments.
- *Fair Value Measurement and Application*, which describes the GASB's preliminary views on how fair value should be defined and measured, what assets and liabilities should be measured at fair value, and what information should be disclosed in the notes to the financial statements.

[www.gasb.org](http://www.gasb.org)

## Census on Public Pensions

The Census Bureau released *Summary of the Quarterly Survey of Public Pensions for 2013: Q1*, which found that assets held by public pension plans have reached the highest level since the survey began in 1968. For the 100 largest public employee retirement systems, cash and security holdings totaled \$2.93 trillion in the first quarter of 2013; the previous peak of \$2.929 trillion was reached just before the financial crisis in the fourth quarter of 2007.

[www.census.gov](http://www.census.gov)

## SEC Proposes Rule on Money Market Fund Reform

The Securities and Exchange Commission proposed two alternatives for amending rules governing money market mutual funds under the 1940 Investment Company Act. The proposal is aimed at reducing the funds' susceptibility to heavy redemptions, improve manageability, and increase the transparency of risks involved.

[www.sec.gov](http://www.sec.gov)

(U.S. Supreme Court Rules on DOMA, Title VII – cont.)

against the victim.” Under the Court’s narrowed definition of “supervisor,” an employee must have the power to hire, fire, demote, transfer, or discipline another employee in order to be held liable for any discrimination actions. The decision effectively rejects the Equal Employment Opportunity Commission’s “vague” guidance on the definition of supervisor.

- In *Univ. of Texas Southwestern Medical Center v. Nassar* (No. 12-484, 6/24/13), the Court concluded 5-4 that employees claiming unlawful employer retaliation for Title VII complaints must prove that the employer would not have taken an adverse employment action but for an improper motive, thereby limiting plaintiffs’ ability to prevail on retaliation claims. The Court held that the standard of proof for retaliation claims is higher than proving discrimination claims, where a “motivating factor” applies.

## Regulatory Roundup

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

- *Final rule*, model notice, and other guidance on coverage of certain preventive services under the Affordable Care Act (ACA).

### From the Department of the Treasury/IRS:

- *Notice 2013-42*, offering relief for individuals who are eligible to enroll in certain eligible employer-sponsored group health plans operating on a noncalendar plan year that begins in 2013 and ends in 2014.
- *Health Plan Administrator Operations Guide*, to help health plan administrators understand the Health Coverage Tax Credit (HCTC) Program.
- Updated *Form 720*, instructions, and a set of frequently asked questions (FAQs) for insurers and self-insured health plans paying the Patient Centered Outcomes Research (PCOR) Trust Fund Fee, along with a web posting of a chief counsel advice memorandum (AM 2013-002) stating that the fees are tax deductible.
- A *web posting* with an updated chart on exceptions to the tax on early distributions covering qualified retirement plans, IRAs, SEPs, SIMPLE IRAs, and SARSEPs.
- A *web posting* with information on the employee stock ownership plan (ESOP) determination letter review process.
- A *web posting* containing information about the agency’s non-governmental 457(b) plans project, which entails compliance check letters and a questionnaire to be sent to 400 organizations during fiscal years 2013 and 2014.

### From the Department of Labor (DOL):

- *Advisory Opinion 2013-02A*, concluding that the Teamsters union pension plan that provides benefits for officers, business agents, trustees, or clerical employees should not be treated as a multiemployer plan under ERISA.
- *Proposed amendments* to remove credit ratings as standards of credit-worthiness under certain prohibited transaction class exemptions.
- An *online retirement toolkit* developed with the Social Security Administration and the Centers for Medicare & Medicaid Services to help workers understand key decisions they make related to employment-based plans, Social Security, and Medicare.

### From the Pension Benefit Guaranty Corporation (PBGC):

- *Request for Information* on implementing a new program to address missing participants in terminating individual account plans.

### From the Department of Health and Human Services (DHHS):

- A *web posting* of the employer and employee applications forms for the ACA’s Small Business Health Option Program (SHOP) exchanges.

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