

MONTHLY BENEFIT

News and Developments
Employee Benefits

Report Advocates for Retirement Security

The Democratic staff of the congressional Joint Economic Committee released a report urging lawmakers to focus on policies that broaden access to low cost, high-yield retirement savings options, strengthen Social Security, secure pension plans, and restore access to a stable and adequate retirement for an aging population. *Retirement Security in Peril* calls for modernizing Social Security, raising the payroll tax cap and expanding benefits, extending access to defined contribution retirement plans by allowing more open multiple employer plans, and offering start-up credits to help small businesses to offer retirement plans, among other steps. Regarding the PBGC, the report notes that Congress has taken the approach of issuing short-term fixes for the program, but that it should work to create a long-term solution to ensure that the agency's protections continue to cover workers' retirement benefits.

Upcoming Key Dates

4/2/18 – Revised applicability date of DoL's final rule on disability benefits claims procedures.

4/30/18 – Deadline for publicly traded companies to provide pay-ratio disclosures on SEC Form 10-K and/or registration, proxy, or information statements for fiscal years beginning on or after 1/1/2017.

6/15/18 – Expiration of IRS temporary rule on participant-voting process when a sponsor of a multiemployer pension plan in "critical and declining status" proposes to reduce benefits.

7/31/18 – Reporting and payment of PCORI fee by affected self-insured group health plans and insurance issuers for plan/policy year ending in 2017.

Legislative Activity on the Benefits Front

Again facing a federal government shutdown on Feb. 8, Congress approved another short-term "continuing resolution" through March 23, this time pairing it with a budget agreement on funding for the fiscal year that began Oct. 1. The budget agreement also included budget language for FY2019, provided some funding for disaster relief, and raised the debt ceiling through March 2019. The "Bipartisan Budget Act of 2018" (P.L. 115-123) was signed into law on Feb. 9.

With the budget agreement, House and Senate committees remain under pressure to produce an omnibus spending legislation (rather than bills to cover individual departments) before the March 23 shutdown deadline, but they now have top line figures with which to work. In general, the law will cost nearly \$320 billion over a decade while reducing mandatory spending by about \$47 billion, according to the Congressional Budget Office.

Of interest to employers that sponsor benefit programs, the new law:

- establishes a congressional committee to study and make recommendations to address the multiemployer pension crisis;
- allows individuals to recontribute amounts to an employer-sponsored retirement plan (or IRA) if the IRS improperly subjected the amounts to a levy and returned those amounts to the individuals;
- directs that regulations be modified – in time for plan years beginning in 2019 – to enable 401(k) and 403(b) plan participants to continue making elective deferrals during the six months following the receipt of a hardship distribution, and allows defined contribution retirement plans to include account earnings and contributions in hardship distributions;
- removes the requirement that retirement plan participants take a loan before taking a hardship distribution;
- provides an employee retention credit for employers affected by Hurricanes Harvey and Irma and by the California wildfires; and
- creates special rules for the use of retirement funds for participants affected by the hurricanes and wildfires.

The President's FY2019 Budget

The President on Feb. 12 released his budget request for the fiscal year that begins this coming October, outlining increases for military spending and reductions for domestic programs. Although the budget proposal is not likely to become law, it specifies certain White House priorities. In areas related to employment-based programs, it calls for: increased and new PBGC premiums for multiemployer pension plans; increased funding to support association health plans; paid parental leave using unemployment benefits; further scaling back of Affordable Care Act provisions; mandatory use of E-Verify; and cuts to Medicare (but not to benefits).

National Health Expenditures

The Centers for Medicare and Medicaid Services' Office of the Actuary released [2017-2026 Projections of National Health Expenditures](#), noting that national health expenditures growth is expected to average 5.5% annually over 2017-2026. Growth in national health spending is projected to be faster than projected growth in Gross Domestic Product (GDP) by 1.0 percentage point over 2017-2026. As a result, the report projects the health share of GDP to rise from 17.9% in 2016 to 19.7% by 2026.

GAO Report on DoL's Process in Issuing Fiduciary Rule

The Government Accountability Office (GAO) reviewed the DoL's fiduciary rule, issuing a [letter](#) to the House Education and the Workforce and the Senate Health, Education, Labor, and Pensions Committees. The letter, which assessed the agency's compliance with the procedural steps required in issuing the final rule, concluded that the DoL properly considered a cost-benefit analysis, the Regulatory Flexibility Act, the Unfunded Mandates Reform Act, and other relevant information or requirements under other laws and executive orders.

Labor Force Participation

The Congressional Budget Office released [Factors Affecting the Labor Force Participation of People Ages 25 to 54](#), which examines how various demographic factors relate to labor force participation, how economic conditions are likely to affect that rate over the next decade, and what keeps people from participating in the labor force.

Tax and Budget Reports

The Congressional Research Service released [The 2017 Tax Revision \(P.L. 115-97\): Comparison to 2017 Tax Law](#), which summarizes the tax reform law (P.L. 115-97, known as the "Tax Cut and Jobs Act") and compares the act with prior tax law. The report also provides a brief legislative history leading to enactment of the last tax reform law in 1986, and estimates the revenue and distributional effects of the 2017 law.

Separately, the Congressional Budget Office released four reports that estimate the costs of the Bipartisan Budget Act of 2018: 1) [Bipartisan Budget Act of 2018](#); 2) [Direct Spending and Revenue Effects of Division E](#); 3) [Direct Spending and Revenue Effects of Division C](#); and 4) [Direct Spending Effects of Division F](#).

Regulatory Roundup

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

- A [proposed rule](#) that would allow health insurers to sell short-term, limited duration, individual policies lasting 364 days, reversing requirements that limit such policies to no more than 90 days.

From the Department of Treasury/IRS:

- [Final rule and removal of temporary regulations](#) on the annual fee imposed on covered entities engaged in providing health insurance for health risks.
- A [proposed rule](#) calling for the elimination of 298 tax regulations – including some pertaining to retirement plans, fringe benefits, and payroll – that are unnecessary, duplicative, or obsolete.
- An [announcement](#) that the 2017 Tax Cut and Jobs Act (TCJA) does not affect the tax year 2018 dollar limitations for retirement plans.
- [Questions and Answers](#) (Q&As) about information reporting in 2018 by employers on Forms 1094-C (*Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns*) and 1095-C (*Employer-Provided Health Insurance Offer and Coverage*) for calendar year 2017, along with [Updated Q&As 30-35](#) on extended due dates and transition relief for reporting by health coverage providers.
- [2018 Form W-4](#), (*Employee's Withholding Allowance Certificate*) and an updated [IRS Withholding Calculator](#) for 2018, taking into account the tax cuts enacted under the TCJA.

From the Department of Labor:

- [Private Pension Plan Bulletin](#), providing an abstract of 2015 Forms 5500 benefit plan annual report filings with data extracted as of July 2017, and [Historical tables and graphs 1975-2015](#).
- [Form M-1, Instructions, and Self-Compliance Tool](#), to electronically report information about multiple employer welfare arrangements and certain entities claiming exception.
- A [chart](#) showing the percentages of private industry workers with access to medical care benefits and retirement benefits in March 2017.

From the Pension Benefit Guaranty Corporation:

- A [Notice](#) that the Office of Management and Budget approved a new collection of information under the agency's regulations on missing participants.

From the Securities and Exchange Commission:

- [National Exam Priorities for 2018](#), which describes the agency's compliance investigation efforts in protecting retail investors, particularly seniors and those saving for retirement, including pursuing examinations of firms that provide products and services directly to them.

High Court Rules against Retirees' Claim for Lifetime Health Benefits

The U.S. Supreme Court summarily rejected a lower court's decision that a union contract entitled a group of retirees to lifetime healthcare benefits ([CNH Industrial N. V. v. Reese](#) (No. 17-515, per curiam 2/20/2018)). The unanimous ruling without oral argument repeated the Court's 2015 decision in *M&G Polymers USA v. Tackett*, which held that retiree health benefit disputes involving a collective bargaining agreement be considered under "ordinary principles of contract law" and take into account extrinsic evidence only when a contract is ambiguous.

"If the parties meant to vest healthcare benefits for life, they easily could have said so in the text. But they did not," the Court stated. "Thus, the only reasonable interpretation of the 1998 agreement" is that the healthcare benefits expired "when the collective-bargaining agreement expired in May 2004," the court concluded, remanding the case to the U.S. Court of Appeals for the Sixth Circuit for further proceedings.

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