

MONTHLY BENEFIT

News and Developments
Employee Benefits

2015 Pension Funding Study

Milliman has released its *2015 Pension Funding Study*, which found that in 2014, the 100 largest U.S. corporate pension plans experienced a funded status decline despite a 10.9% investment return, with plan liabilities increasing by \$189.2 billion and assets increasing by \$57.9 billion. This resulted in a \$131.3 billion increase in the funded status deficit, representing a funding ratio decline of 6.1%

www.milliman.com

Upcoming Key Dates

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.

6/16/15 (financial statements beginning after 6/15) – Application of GASB Statement 72, requiring investments a government holds in an investment pool (such as pension plans) to be marked-to-market.

6/17/15 – Effective date of DOL's direct final rule on timing of annual defined contribution plan disclosures and related temporary enforcement policy unless withdrawn.

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 10/1/15) – 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.

Legislative Activity on the Benefits Front

Following the overwhelming, bipartisan House approval in March, the Senate voted 92-8 to approve the "Medicare Access and CHIP Reauthorization Act" (H.R.2), sending the measure to the President, who signed it into law (P.L. 114-10) on Apr. 16. The new law averted the 21% reduction in reimbursements to Medicare physicians and other providers that had been scheduled to begin on Apr. 1. One revenue raiser of the law requires higher premiums for Medicare Parts B (doctors' services) and D (prescription drugs) benefits for higher-income seniors. In addition, it prohibits Medigap supplemental insurance plans from providing first-dollar coverage for future retirees starting in 2020.

Congress continued to work on a fiscal year 2016 federal budget blueprint, with the House and Senate negotiating an agreement on a joint resolution for the first time since 2009. The House approved the plan (S.Con.Res.11) on Apr. 30; Senate approval is expected in May. The resolution will not have the force of law; it broadly outlines nonbinding targets for spending and revenues for the fiscal year that begins Oct. 1. The agreement limits the scope of reconciliation instructions – thereby restricting later legislation that would be subject to a Senate filibuster – to deficit-reduction bills emanating from the five House and Senate committees that have jurisdiction over any Affordable Care Act repeal efforts.

Legislation to set appropriations for the federal agencies is at the forefront of the House and Senate, but members of the various committees face difficulties due to the spending caps imposed by the 2011 Budget Control Act. The discretionary spending amounts available will essentially produce significant cuts for federal agencies and programs; the White House has threatened to veto bills that keep the sequester levels in place or that increase funding for Defense programs at the expense of nondefense spending.

EEOC Conciliation Efforts Are Mandatory and Reviewable

The Equal Employment Opportunity Commission must take steps to settle illegal employment practices under the 1964 Civil Rights Act's Title VII before filing a lawsuit against employers and federal courts may review those conciliation efforts, according to a unanimous ruling from the U.S. Supreme Court (*Mach Mining, LLC vs. EEOC* (No. 13-1019, 4/29/2015)). The decision resolves a split among the lower appellate courts on whether the agency made a good-faith effort to settle a discrimination claim and provides relief to employers that have complained about the agency's overaggressive stance in filing suits without first attempting to informally resolve a dispute.

To determine whether the EEOC was reasonable, the Court said the agency may present an affidavit attesting to satisfying the requirements of engaging in discussions to settle. An employer presenting evidence that the EEOC did not provide information about specific discrimination allegations and the employees affected or did not make efforts to engage in conciliation could lead to fact-finding by the court and, if finding for the employer, to require the agency to undertake the mandatory settlement negotiations.

Defined Contribution Plans of State/Local Governments

The Federal Reserve released *Defined-Contribution Plans for State and Local Government Employees in the Financial Accounts of the United States*, which newly includes data beyond defined benefit pensions in state/local governments. The report estimates defined contribution plan assets and discusses the impact of such assets on households' balance sheets.

www.federalreserve.gov

DOL's Report to Congress on Self-Insured Health Plans

The Department of Labor's fifth *Annual Report to Congress on Self-Insured Group Health Plans*, which includes changes in the appendices' methods for defining the plan universe and for counting both participants and plans to standardize the data, provides information based on Form 5500 filings.

www.dol.gov/ebsa

FASB Accounting Updates

The Financial Accounting Standards Board proposed *Three Accounting Standards Updates* (ASUs) to simplify accounting for employee benefit plans. The one document covers exposure drafts for plan accounting for: *Defined Benefit Pension Plans* (Topic 960), *Defined Contribution Pension Plans* (Topic 962), and *Health and Welfare Benefit Plans* (Topic 965), and addresses: *I. Fully Benefit-Responsive Investment Contracts*, *II. Plan Investment Disclosures*, and *III. Measurement Date Practical Expedient*. The FASB also issued ASU No. 2015-04 – *Compensation – Retirement Benefits* (Topic 715): *Practical Expedient for the Measurement Date of an Employer's Defined Benefit Obligation and Plan Assets*.

www.fasb.org

TIGTA Study of PCORI Fees

The Treasury Department's Inspector General for Tax Administration released *The Affordable Care Act: Processes Have Been Implemented to Administer the Patient-Centered Outcomes Research Fee, but Controls Need Improvement to Ensure Filing Compliance* (2015-33-019), which finds that health insurance providers and self-insured group health plan sponsors failed to pay about \$3.3 million in the fees required by the ACA.

www.treasury.gov/tigta

Regulatory Roundup

Jointly from Treasury, Labor, and Health and Human Services

- *Frequently Asked Questions (FAQs) Part XXV* on wellness programs under the Affordable Care Act (ACA).

From the Treasury/IRS:

- *Revenue Procedure 2015-28*, modifying the Employee Plans Compliance Resolution System (EPCRS) to provide new safe harbors to correct faulty automatic contribution features and faulty elective deferrals occurring over a limited duration (see [Client Action Bulletin 15-4](#)).
- *Employee Plan News* newsletter article emphasizing plan sponsors' responsibilities to maintain documentation of hardship distributions and plan loans even if a third-party administrator handles such transactions, and noting that a failure to maintain such records may be corrected using EPCRS.
- *Draft Publication 5156* and slides outlining the communication procedures, transmission formats, and other rules for electronically filing returns under the ACA's Information Returns system.
- Web updates on: withholding on plan distributions to foreign persons; applying for a determination letter for individually designed plans; and changes to the determination letter process that begin in 2015.

From the Department of Labor:

- *Proposed rule, Fact Sheet, FAQs*, and related proposed *Prohibited Transaction Exemptions* on the definition of fiduciary and conflicts of interest in providing retirement investment advice.
- *Workplace Wellness Programs – Services Offered, Participation and Incentives*, a research report on employer-sponsored wellness programs.
- An *announcement* that the ERISA Advisory Council this year will consider information participants need to make informed decisions when faced with lump-sum or insurance annuity risk transfers, along with best practices for plan sponsors to communicate such information, in anticipation that the agency will release draft model notices and disclosures.
- An issue of *Beyond the Numbers – A Look at Today's Pension Equity Plans*, which examines the concept behind, and looks at some unique features of, pension equity plans.

From the Pension Benefit Guaranty Corporation:

- *Proposed rule* to require electronic filing of certain notices by multiemployer plans beginning in 2016.

From the Department of Health and Human Services:

- An *announcement* providing the 2016 Medicare Part D benefit parameters, used to determine whether a group health plan's prescription drug coverage is creditable in 2016.
- *FAQs* from the Office of Civil Rights on workplace wellness program privacy and security under the Health Insurance Portability and Accountability Act.

From the Equal Employment Opportunity Commission:

- *Proposed rule* amending regulations and interpretive guidance on the Americans with Disabilities Act as they relate to employers' wellness programs, along with a related *Fact Sheet* and *FAQs*.

From the Securities and Exchange Commission:

- *Proposed rule* to require a company to show shareholders a comparison between total executive pay and the company's performance over the past year.
- *FAQs* regarding the agency's money market reform rules.

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