

# MONTHLY BENEFIT

News and Developments  
Employee Benefits

## Upcoming Key Dates

**1/1/18** – PBGC flat-rate premiums for single-employer plans increase to \$74 per participant by statute, and variable-rate premiums increase to \$38 per \$1,000 of unfunded vested benefits, capped at \$523 per participant. Multiemployer plan premiums remain at \$28 per participant.

**1/1/18** (plan years beginning on/after) – Required use of IRS updated mortality tables by single-employer plans for calculating lump-sum distributions and, unless relying on available one-year delayed relief, for funding and related purposes.

**1/1/18** – Resumption of annual health insurance provider fees.

**1/31/18** – Deadline for various tax filing, tax payments, retirement plan and group health plan requirements under extended relief for victims of recent disasters.

**2/28/18** – Deadline for single-employer pension plan sponsors to submit request to use substitute mortality tables.

**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

The Senate is poised to narrowly approve its version of a "tax reform" bill in early December, paving the way for negotiations with key House members to forge a compromise that both chambers can approve before sending the final measure to the President, who expressed a desire to have a bill on his desk by Christmas. The House on Nov. 16 had voted 227-205 to approve its bill (H.R.1), the "Tax Cut and Jobs Act."

Tax cuts are a major focus of both bills, calling for lower corporate and individual tax rates and the elimination or restriction of many deductions currently allowed. Because Congress is attempting to pass a bill with a simple majority in the Senate under budget reconciliation rules, the tax writers have had to draft plans to keep the net cost of a final bill below \$1.5 trillion over the 10-year period ending in 2027. Consequently, the House and Senate proposals differ in some significant ways (e.g., different tax rates, sunset of tax cuts).

The House-approved bill's provisions relating to retirement benefits include: a reduction in the minimum age for allowable in-service distributions by a governmental 457(b) plan; changes to regulations governing retirement plan hardship distributions; and relief from certain nondiscrimination and benefit accrual rules for certain closed or frozen plans. The bill's other employment-based provisions would repeal or restrict current tax rules for educational, dependent care, and adoption assistance programs; moving expenses; achievement awards; qualified child care expenditures; employer-provided housing; and expenses attributable to the trade or business of being an employee (e.g., professional or union dues, licenses, uniforms, and travel, transportation, meals, entertainment). H.R.1 also includes provisions relating to executive compensation.

Action in the Senate bill on Nov. 30 remained fluid, as Republican leaders continued to modify the legislative language to gain the votes of specific Senators. The Senate proposal that emerged from the Finance and Budget Committees, however, contains retirement, compensation, health and welfare, and employment-based provisions that touch on the areas adopted in H.R.1. But it also repeals or modifies special rules that apply to 403(b) and governmental 457(b) arrangements, and repeals the tax rules for qualified transportation fringe benefits and qualified bicycle commuting reimbursements. In addition, the Senate bill reduces the Affordable Care Act's (ACA) penalty for individuals not purchasing health insurance to zero and provides a tax credit for employers that provide paid family/medical leave.

### FY2018 Appropriations Funding

Following work on tax reform, Congress will turn to appropriations bills to fund the federal agencies beyond Dec. 8, when the temporary funding enacted in September expires. Discussions are underway to enact a short-term funding bill (through Dec. 22 or early January), but Republican intraparty disagreements and demands from Democrats are increasingly suggesting that a federal government shutdown is possible. Congress would like to complete work on other bills (e.g., children's health funding, additional disaster relief, tax "extenders") in December, possible forcing a shortened year-end congressional holiday recess.

## DoL Inspector General's Programs and Operations

The Department of Labor's Office of Inspector General (OIG) released [\*Semiannual Report to Congress, Volume 78 \(April 2017-September 2017\)\*](#), detailing its accomplishments and activities. The report notes the OIG remains concerned with the Employee Benefits Security Administration's (EBSA) ability to administer and enforce ERISA requirements, particularly in light of statutory limitations on DOL's authority. One challenge facing EBSA has been that ERISA allows pension assets held in banks and otherwise regulated entities to escape full audit scrutiny and instead permits limited-scope audits. The report also suggests that EBSA should focus its available resources on investigations it believes will most likely result in the deterrence, detection, and correction of ERISA violations, given the number of plans it oversees relative to the number of investigators.

## GAO on IRS's Mortality Table Rule Promulgation

The Government Accountability Office released [\*Mortality Tables for Determining Present Value under Defined Benefit Pension Plans\*](#), which provides an assessment of IRS's compliance with the procedural steps required for a "major" rule's effective date. According to the GAO, the Congressional Review Act (CRA) requires, among other things, a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. The final rule was published Oct. 5 and has a stated effective date of Oct. 5, 2017, and thus does not have the required 60-day delay in its effective date. However, the GAO said, the IRS stated that the final rule applies to plan calendar years starting on Jan. 1, 2018, and later. The GAO concluded that with the exception of the requirement to provide a 60-day delay in the rule's effective date, the IRS complied with the CRA's other applicable requirements.

## GASB on Fiduciary Duty

The Governmental Accounting Standards Board's [\*Understanding Costs and Benefits: Fiduciary Activities\*](#) summarizes how the GASB assessed the expected costs and benefits of its new fiduciary activities standards (Statement No. 84, *Fiduciary Activities*) and outlines the process leading its conclusion that the expected benefits of the new standards justify the costs.

## Regulatory Roundup

### Jointly from Treasury, Labor, and the PBGC:

- Advance, informational copies of the [2017 Form 5500 Annual Return/Report and related instructions](#), along with a [news release](#) highlighting changes made to the forms.

### Jointly from Treasury and Labor:

- An [announcement](#) extending certain timeframes for employee benefit plans and plan participants and beneficiaries directly affected by Hurricane Maria.

### From the Department of Treasury/IRS:

- [Revenue Ruling 2017-22](#), providing the 2018 "covered compensation" tables. (Note: The tables will be updated due to the Social Security Administration's recent revisions.)
- [Defined Contribution Listing of Required Modifications and Information Package](#), with sample plan provisions that account for changes listed in the 2017 Cumulative List of Changes in Plan Qualification Requirements, and [Cash or Deferred Arrangement \(CODA\) Listing of Required Modifications and Information Package \(LRMs\)](#), with sample provisions that satisfy tax code amendments made through the 2015 Surface Transportation and Veterans Health Care Choice Improvement Act.
- [Notice 2017-70](#), providing guidance on the treatment of leave-based donation programs to aid victims of the 2017 California wildfires.
- Information on making an Affordable Care Act's employer shared responsibility payment, including [Questions and Answers 55-58](#); [Letter 226J](#); [Form 14765: Employee Premium Tax Credit \(PTC\) Listing](#); and [Form 14764: ESRP Response](#).

### From the Department of Labor:

- A [final rule](#) delaying the applicability date of the final rule on disability benefits claims procedures until Apr. 1, 2018.
- A [final rule](#) rescinding the "Fair Pay and Safe Workplaces" final rule that required federal contractors to comply with various workplace laws (e.g., health and safety, wages, and civil rights) before they receive new contracts.
- An [18-month Extension of Transition Period and Delay of Applicability Dates](#) for certain Prohibited Transaction Exemptions under the fiduciary conflict of interest rule.
- [Frequently Asked Questions \(FAQs\)](#) for benefit plan participants and beneficiaries following Hurricane Maria, along with separate [FAQs](#) covering Hurricanes Harvey and Irma and the California wildfires.
- A [news release](#) announcing its first temporary restraining order to protect participants and beneficiaries in a failing multiple employer welfare arrangement.
- [Draft FY 2018-2022 Strategic Plan](#), outlining the DoL's planning and budget activities.

### From the Pension Benefit Guaranty Corporation:

- [2017 Annual Report](#) on the agency's operations and finances, as well as providing information on the single-employer and multiemployer pension programs.
- A [table](#) with the guaranteed limits for participants in single-employer plans that fail in 2018.

### From the Social Security Administration:

- An [announcement](#) revising the 2016 national average wage index, thereby reducing the 2018 Social Security taxable wage base and modifying the "bend points" for the Primary Insurance Amount and the family maximum (see [Client Action Bulletin 17-4R](#)).

### From the Equal Employment Opportunity Commission:

- [Performance and Accountability Report](#), noting more than twice as many discrimination lawsuits filed in fiscal year 2017 compared with FY2016, while also significantly reducing a persistent backlog of pending investigations.

Milliman Monthly Benefit News and Developments contains general information that is not intended to constitute the rendering of legal, tax, investment, or accounting advice. Application to specific circumstances should rely on further professional guidance.