

# MONTHLY BENEFIT

## News and Developments

Employee Benefits

### GAO Report on Managing Retirement Savings

The Government Accountability Office's [\*Better Guidance and Information Could Help Plan Participants at Home and Abroad Manage Their Retirement Savings\*](#) examines key challenges retirement plan participants face when they change employers or participate in a workplace retirement plan abroad. The report particularly noted unclaimed U.S. retirement accounts and compliance with U.S. tax reporting requirements on participants' foreign retirement savings. The GAO's recommended that the DoL issue guidance to help ongoing plan sponsors search for separated participants and that the IRS issue guidance to clarify how U.S. individuals should report foreign retirement savings to the agency.

### Upcoming Key Dates

**5/1/18** – Opening of IRS determination letter program for employers eligible to submit a request under the second six-year remedial amendment cycle for defined benefit preapproved plans.

**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.

**12/15/18** (fiscal years beginning after) – Effective date of FASB Accounting Standards Update 2017-06, Plan Accounting (Topics 960, 962, and 965)—Employee Benefit Plan Master Trust Reporting, for benefit plans that hold interests in bank-managed master trusts, unless earlier adoption elected.

### Legislative Activity on the Benefits Front

Facing its fifth attempt at fiscal year 2018 funding for federal agencies and a possible third shutdown that would have begun on March 24, Congress reached an agreement and approved the "Consolidated Appropriations Act, 2018" (H.R.1625), a \$1.3 trillion spending package to keep the government running through Sept. 30. The House voted 256-167 to approve the measure on March 22, followed by Senate approval by a vote of 65-32. The President signed the bill into law (P.L.115-141) on March 23.

Overall, the Department of Labor would receive \$12.2 billion in discretionary funding, up \$192 million from FY2017 levels. The additional funding is targeted for veteran job placement and job training/apprenticeship programs; the Equal Employment Opportunity Commission also would see an increase, to \$379.5 million from \$364.5 million in FY2017.

The law's "policy riders" include one that prevents the Administration from proceeding with a DoL proposed rule that permits managers of restaurants/bars/other workplaces to retain workers' tips as part of the businesses' profits. The rule's overall provision letting employers impose tip-pooling arrangements is not affected, thereby potentially allowing managers – if the rule is finalized – to require the sharing of tips earned by wait staff with nontipped employees, such as dishwashers, as long as the tipped workers are paid the federal minimum wage. The law also extends through this Sept. 30 the E-Verify program that allows employers to check on whether an individual is authorized to work in the U.S.

Drafters of the bill ultimately avoided including many provisions that had been considered potentially controversial due to add-on restrictions. For example, Affordable Care Act insurance market stabilization funds were dropped in part because of an anti-abortion coupling, and help for "Dreamers" who came into the U.S. without documentation when they were children could not overcome the additional demands for more immigration restrictions. The final law also excludes a provision to overturn a 2015 ruling by the National Labor Relations Board on joint-employer liability. In that ruling, the NLRB said that multiple affiliated businesses (such as franchisees) can be considered joint employers for wage and hour and collective bargaining purposes if they exercise indirect control over workers.

The new law also includes tax technical corrections (but not for the recent Tax Cut and Jobs Act (TCJA)) and removes obsolete tax provisions. It provides \$11.43 billion for the IRS, including \$320 million in additional funding for the agency to implement the TCJA.

### Regulatory Roundup

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

- [\*Revenue Procedure 2018-21\*](#), modifying the procedures for issuing opinion and advisory letters for preapproved master and prototype and volume submitter plans to allow preapproved defined benefit plans containing a cash balance formula to provide the actual rate of return on plan assets as the rate used to determine interest credits.

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## A Pair of CRS Reports

The Congressional Research Service released:

■ [Child and Dependent Care Benefits: How They Work and Who Receives Them](#), which examines the child and dependent care tax credit, and the exclusion for employer-sponsored child and dependent care, two tax provisions that subsidize the child and dependent care expenses of working parents. The report also includes some summary data on these benefits, highlighting several characteristics of claimants.

■ [State Minimum Wages: An Overview](#), which briefly discusses the Fair Labor Standards Act's federal minimum wage coverage, and provides a summary of state minimum wage laws and the mechanisms states use to adjust their minimum wage levels above the FLSA rate. The report also discusses the interaction of federal and state minimum wages over time, and details the major components of minimum wage policies in all 50 states and the District of Columbia.

## Population and Labor Force Projections

The U.S. Census Bureau published [Demographic Turning Points for the United States: Population Projections for 2020 to 2060](#), which notes that the year 2030 will mark an important demographic turning point in U.S. history. By then, all baby boomers will be older than age 65, expanding the size of the retirement age population to one in every five residents.

The Congressional Budget Office's [Projection of Labor Force Participation Rates: Working Paper 2018-04](#) examines recent trends in the overall and prime-age labor force participation rates. The persistent weakness in the labor market after the 2007–2009 recession reduced the rates by as much as 1.2 and 1.3 percentage points, respectively. The vast majority of the recent decline in the overall rate stems from the aging of the baby-boom generation, with further declines projected over the next 10 years.

## Employer/Worker Confidence

The Bureau of Labor Statistics' [Measuring employer and employee confidence in the economy: the quits-to-layoffs-and-discharges \(Q/LD\) ratio](#) provides a gauge of employers' and employees' confidence in the economy by separating voluntary separations (Q) from involuntary separations (LD).

## Regulatory Roundup – continued

- [Revenue Procedure 2018-19](#), which reduces the user fee – from \$3,000 to \$2,300 – for Form 5310, *Application for Determination for Terminating Plan*, effective Jan. 2, 2018.
- [Revenue Procedure 2018-18](#), revising the 2018 inflation-adjusted amount for family coverage under a health savings account due to the recent tax law.
- [Announcement 2018-05](#), which states that the IRS intends to issue opinion and advisory letters for preapproved defined benefit plans for the second six-year cycle, requires adoption of the plan document by Apr. 30, 2020, and opens the determination letter program for the preapproved plan adopters starting May 1, 2018.
- A [memo](#) extending to 403(b) plans the audit guidelines for required minimum distribution failures due to missing participants and beneficiaries that were provided in the IRS's October 2017 memo to qualified plans.
- Sample [Notice CP-220J](#), which the IRS will use to notify applicable large employers (ALEs) of employer shared responsibility assessments for one or more months.
- [2018 Form W-2-Wage and Tax Statement, Instructions](#) for 2018 Forms W-2 and W-3, and [2018 Form W-4P, Withholding Certificate for Pension or Annuity Payments](#).
- [2018 Publication 15-B Employer's Tax Guide to Fringe Benefits](#), updated to reflect the changes made by the "Tax Cuts and Jobs Act" (TCJA).
- [2017 IRS Data Book](#), which describes activities conducted from Oct. 1, 2016, to Sept. 30, 2017, including determination letters issued on employee retirement plans.
- [Publication 5258: ACA Information Returns \(AIR\) Submission Composition and Reference Guide](#), updated as of March 15, 2018, providing guidance on composing and successfully transmitting compliant submissions to the IRS.
- Tax Tips to take into account the TCJA, including [Step-by-Step Instructions for Using the IRS Withholding Calculator](#), [Tips for Using the Withholding Calculator](#), and [Tips for Updating Form W-4 after Doing a Paycheck Checkup](#).

### From the Department of Labor:

- An [announcement](#) of [Payroll Audit Independent Determination \(PAID\) program](#), a pilot program to expedite resolution of inadvertent violations under the Fair Labor Standards Act (FLSA), as well as a [series](#) of instructional videos on complying with the FLSA.

### From the Pension Benefit Guaranty Corporation:

- [Proposed rule](#) to amend the regulations on guaranteed benefits and asset allocation.

### From the Equal Employment Opportunity Commission:

- A March 30 status report filing with a federal district court, stating that the agency "does not currently have plans" to issue new rules on wellness incentives by a date certain.

### Fiduciary Rule Temporarily Halted Nationwide by Appeals Court

The Department of Labor did not have the authority to adopt a final rule defining a fiduciary and acted arbitrarily and capriciously when it did so, according to the U.S. Court of Appeals for the Fifth Circuit ([U.S. Chamber of Commerce v. U.S. DoL](#) (No. 17-10238, 3/15/2018)). In its sweeping 2-1 decision, the court reversed a lower court and "vacated the Fiduciary Rule *in toto*," thereby also striking down the various class or prohibited transaction exemptions – including the "best interest contract exemption – that were promulgated alongside the final rule.

The ruling applies nationwide but its effective date is uncertain at this time. The DoL could request a rehearing by the full court or appeal the case to the U.S. Supreme Court. The agency also could withdraw the rule or allow the Fifth Circuit's decision to stand. Meanwhile, a DoL spokesman told various media outlets, "Pending further review, the Department will not be enforcing the 2016 fiduciary rule."

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