Monthly Benefit News & Developments

PRESIDENT SIGNS EXECUTIVE ORDER ON RETIREMENT SECURITY

The President signed an *Executive Order* (EO) directing the Departments of Treasury and Labor to review the rules that require retirees to start taking mandatory distributions from retirement accounts upon reaching age 70-1/2. The EO also calls for regulatory clarifications and expanded circumstances under which small and mid-sized businesses may sponsor or adopt multiple employer plans as a workplace retirement option for their employees, and seeks useful and understandable disclosures to participants while reducing costs and burdens on employers and other plan fiduciaries.

UPCOMING KEY DATES

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.

12/15/18 (annual periods after) – Effective date of FASB Accounting Standards Update 2017-07, Compensation—Retirement Benefits (Topic 715), for defined benefit plans or retiree health plans offered by nonpublicly traded companies, unless earlier adoption elected.

12/31/18 – Extended deadline to submit opinion letter applications for preapproved defined contribution plans for the third six-year remedial amendment cycle.

1/1/19 (plan years beginning on/after) – Required use of IRS mortality assumptions by single-employer, multiple-employer, and CSEC pension plans, unless use of substitute tables was approved.

1/1/19 (years beginning on/after) – Penalty for individuals not having healthcare coverage is reduced to $0.

1/1/19 – Final year tax credits are available for certain employers that provide paid family and medical leave.

1/1/19 (through 3/31/19) – Transition period for Voluntary Compliance Program submissions via IRS website before required electronic submissions.

Legislative Activity on the Benefits Front

Making a concerted effort to avoid a federal government shutdown September 30, the House and the Senate approved and sent to the President two appropriations bills that provides funding for federal agencies in the fiscal year 2019 that begins October 1. The bills package spending levels for multiple departments, with one providing funding through December 7 for agencies not covered by either bill.

The law (signed by the President on Sept. 28) covering the Departments of Labor, Health and Human Services, and Education extends (for one year, ending Jan. 1, 2021) the current delay in implementing the 2009 U.S. Preventive Services Task Force's recommendations on breast cancer screening, mammography, and prevention. By so doing, it leaves in place the 2002 USPSTF recommendations on coverage without deductibles and copays for annual screenings for women 40 in plans subject to the Affordable Care Act's (ACA) preventive services guidelines.

The law dropped "policy riders" adopted earlier in the House, such as provisions to undo the National Labor Relations Board's decision on "joint employers" and defunding of ACA implementation. It also provides no funding for DoL enforcement of "association health plans."

Congress also sent to the President the "Patient Right to Know Drug Prices Act" (S.2554), which prohibits health insurers and pharmacy benefit managers from limiting pharmacies' ability to discuss cheaper drug options with consumers. These "gag" clauses prevent pharmacists from telling group health plan (including a self-insured plan) enrollees (and individual drug plan enrollees) if the retail price of a drug would be cheaper than the enrollees' co-pay amounts.

OTHER MOVING BILLS

The House – but not the Senate – voted to advance three bills that constitute a "Tax Reform 2.0" package, including the "Family Savings Act" (H.R.6757) that contains provisions culled from the "Retirement Enhancement and Savings Act." Among other things, the bill would: exempt individuals with less than $50,000 in retirement account balances from the required minimum distribution rules; allow up to $7,500 in penalty-free withdrawals from qualified retirement plans for expenses in the first year of the birth or adoption of a child; permit plan participants to roll over their lifetime income investments to another retirement savings vehicle if the plan sponsor discontinued that investment option; modify the 401(k) plan "safe harbor" option rules; and provide relief to frozen defined benefit plans.

The other two bills address individual taxes (e.g., making the Tax Cuts and Jobs Act's individual tax rates permanent) and small business start-up incentives. The Senate is not expected to act on these bills.

The House also approved and sent to the Senate a compromise on H.R.6 to address the opioid crisis. It would require employer-sponsored group health plans to report whether they are the primary payer for benefits related to prescription drug coverage under Medicare Part D, but does not include an earlier House provision to expand the Medicare Secondary Payer coverage period for group health plans. The bill also allows individuals to avoid the ACA mandate based on religious reasons, provides grants to study substance abuse in the workplace, and calls for data on investigations of health plans that violate the mental health "parity" requirements.

MULTIEMPLOYER PENSIONS

The Congressional Research Service's (CRS) *Policy Options for Multiemployer Defined Benefit Plans* provides an overview of possible choices under discussion to address plan solvency and related issues. The CRS also released *Data on Multiemployer Defined Benefit (DB) Plans,* examining data from the 2015 plan year Form 5500 annual disclosures. The report: categorizes the data based on plans' 2015 zone status; provides a year-by-year breakdown of the number of plans that are expected to become insolvent and the number of participants in those plans; provides information on the 25 largest multiemployer plans; and provides data on those employers contributing more than 5% of the plans' total contributions.

HSAs AND HDHPs

The Centers for Disease Control and Prevention's *High-deductible Health Plan Enrollment among Adults Aged 18–64 With Employment-based Insurance Coverage* found that about 60% have employment-based coverage. From 2007 through 2017, enrollment increased in high-deductible health plans (HDHPs) with and without a health savings account (HSA), while decreasing in traditional plans. Enrollment in an HDHP with an HSA was higher among adults aged 30–44 (21.0%) than among those aged 18–29; enrollment in HDHPs with an HSA increased with and educational attainment.

Separately, the CRS released *Health Savings Accounts (HSAs)*, summarizing the principal rules governing HSAs such as eligibility, qualifying health insurance, contributions, withdrawals, and tax advantages. The report concludes with a discussion of HSA data limitations and recent research findings on HDHP enrollment and HSA utilization trends.

FASB ACCOUNTING UPDATES

The Financial Accounting Standards Board issued two new updates (that may be adopted earlier than required):

- *ASU on Defined Benefit Plan Disclosure Requirements*, which applies to DB pensions or other postretirement plans effective for fiscal years ending after Dec. 15, 2020, for public companies, and for fiscal years ending after Dec. 15, 2021, for all other organizations; and

- *ASU on Fair Value Measurement Disclosure Requirements*, which modifies Topic 820 and is effective for all organizations for fiscal years (and interim periods within those fiscal years) beginning after Dec. 15, 2019.

Regulatory Roundup

JOINTLY FROM DEFENSE, GSA, AND NASA

- Final rules on *paid sick leave* and on *nonretaliation for disclosure of compensation* for federal contractors.

JOINTLY FROM TREASURY, LABOR, AND HHS

- *Final rule* amending the definition of short-term, limited-duration health insurance that individuals may purchase.

FROM THE DEPARTMENT OF TREASURY/IRS:

- *Revenue Procedure 2018-52*, updating the Employee Plans Compliance Resolution System for retirement plans and requiring use of www.pay.gov to file Voluntary Correction Program submissions beginning Apr. 1, 2019 (with a transition period from Jan. 1 to March 31, 2019).
- *Rev. Proc. 2018-42*, extending to Dec. 31, 2018, the deadline to submit opinion letter applications for preapproved defined contribution plans for the third six-year remedial amendment cycle.
- *Notice 2018-77*, providing the special per diem rates effective Oct. 1, 2018, to substantiate expenses while taxpayers travel on business.
- *Notice 2018-75*, providing guidance on employer reimbursements in 2018 for employees' qualified moving expenses incurred in a prior year.
- *Notice 2018-74*, modifying the safe harbor explanations on eligible rollover distributions.
- *Notice 2018-71*, guidance on the business tax credit available for 2018 and 2019 for eligible employers that provide paid family and medical leave.
- *Notice 2018-69,* extending temporary nondiscrimination relief for closed (frozen) defined benefit plans through 2019.
- *2018 General Instructions for Form W2 and W3*.
- 2018 Forms *1095-B*, *1095-C*, and *1094-B* for health coverage information.
- Question and answer *No. 18*, on the ACA's employer shared responsibility.

FROM THE DEPARTMENT OF LABOR:

- Updated *Family Medical Leave Forms*, extended to 2021.
- A *notice* announcing the minimum wage rate for government contractors beginning in 2019.
- *Association Health Plans: ERISA Compliance Assistance Publication*.
- Two directives from the Office of Federal Contract Compliance Programs addressing *focused reviews* and *religious discrimination*.
- Six *opinion letters* from the Wage and Hour Division on compliance with the Fair Labor Standards Act and the Family Medical Leave Act.

FROM THE PENSION BENEFIT GUARANTY CORPORATION:

- *Modifications to the 2018 Comprehensive Premium Filing Instructions*.
- *Final rule* on mergers and transfers between multiemployer plans.

FROM THE SOCIAL SECURITY ADMINISTRATION:

- *Summary of Provisions that Would Change the Social Security Program*, which examines legislative and other proposals and options to address the Trust Fund solvency and issues related to benefits and financing.

FROM THE CONSUMER FINANCIAL PROTECTION BUREAU:

- An *updated model notice* summarizing individuals' rights under the Fair Credit Reporting Act, for use effective Sept. 21, 2018, by employers conducting background checks on applicants and employees.

Other Recent Milliman Publications You May Be Interested in:

- ***Co-sourced to outsourced: Is now the time?*** Pension plan administration can be managed through a variety of arrangements: insourced, co-sourced, and outsourced. As insourcing has become less common, plan sponsors are turning to outside vendors to co-source and outsource the administration.
- ***Pension Funding Index August 2018*** and ***Pension Funding Index September 2018***
- ***Piloting the state-run defined contribution retirement plan: Where are they headed?*** We've said it before and we'll say it again-- retirement is largely going to be funded by the individual rather than an employer. What does this mean for the 27% of workers 1who don't have access to an employer-sponsored defined contribution plan?
- ***Implementing a participant loan provision in a Taft-Hartley Defined Contribution Plan: What to consider*** Like other types of defined contribution plans, Taft-Hartley Defined Contribution (DC) participant loans are an optional plan provision that a plan sponsor can choose to offer participants. Plan sponsors should ensure that participant loan provisions in a Taft-Hartley DC retirement plan be thoroughly vetted and in compliance.
- ***Helping employees to financial wellness: An innovative approach*** Employers take different viewpoints when addressing requests of employees for assistance in managing personal financial obligations.
- ***Association health plans after the final rule*** In this article, we examine the final rule released on June 21, 2018, evaluate considerations for sponsors of AHPs, and briefly assess the final rule's impact on the small-group health and individual ACA markets.

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