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MONTHLY BENEFIT News and Developments
Employee Benefits

Social Security and Medicare Trustees' Reports Released

■ The Social Security *2018 Annual Report* states that, under intermediate assumptions, the Old-Age and Survivors Insurance and the Disability Insurance programs' total cost is projected to exceed total income in 2018 for the first time since 1982, and remain higher throughout the 75-year projection period. The dollar level of the hypothetical combined trust fund reserves declines until reserves become depleted in 2034, allowing for 79% of scheduled benefits to be paid.

■ The Medicare *2018 Annual Report* estimates that the Part A trust fund's depletion date is 2026, three years earlier than in the 2017 report. Because current law requires them to be automatically financed, the trust funds covering Parts B and D will be financed in full indefinitely.

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.

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.

Legislative Activity on the Benefits Front

Members of Congress continue to draft appropriations measures to fund the government for the FY2019 that begins October 1. Because the President has expressed strong opposition to "omnibus" legislation that covers all federal spending, House and Senate appropriations committees are tackling "minibus" bills that cover just a few departments at a time. By so doing, Republicans – particularly in the House – hope to package some key priorities and policies with less popular items in an effort to gain some Democratic support for the overall bill. The Senate, however, appears to be excluding potentially controversial provisions, given the slim majority Republicans hold in that chamber.

For example, the House voted 213-211 to approve H.R.2, the "Agriculture and Nutrition Act" (commonly referred to as the "farm bill"), with controversial components such as requiring individuals to work to obtain food stamps (formally, Supplemental Nutrition Assistance Program). The bill covers nutrition assistance, commodity support, crop insurance, conservation, farm credit, rural development, forestry, horticulture, and trade programs, among other things. One provision in the bill would authorize $65 million for fiscal years 2019 through 2022 to provide loans and grants to help create agricultural association health plans (AHPs) for farmers and ranchers. These AHPs would be treated as group health plans under ERISA and would have to satisfy the Labor Department's final rule specifying large group standards.

But the Senate voted 86-11 to pass its version of the farm bill, inserting language from S.3042 into H.R.2. The bill, unlike the House-approved measure, does not include language for association health plans for farmers/ranchers or controversial language such as work requirements for food stamps. Thus, House and Senate negotiations to reach a compromise will have to take place.

House Advances Legislation to Address Opioids Crisis

The House voted 396-14 to approve H.R.6, the "Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act," which calls for opioid use disorder prevention, recovery, and treatment, generally under Medicare and Medicaid. Before final passage, H.R.6 was amended to include about 50 other opioids-related bills the House had cleared earlier. The bill heads to the Senate, which is drafting its own bill.

For employers, the House-approved bill includes changes to the Medicare Secondary Payer requirements. It would require group health plans to cover a beneficiary's cost for end stage renal disease for 33 months, up from the current 30 months, before Medicare pays, starting in 2020. Group health plans also would have to report to the Centers for Medicare and Medicaid Services (CMS) whether they are the primary payer for benefits related to prescription drug coverage under Medicare Part D, also beginning in 2020.

The House bill also requires the Labor Department to establish an advisory committee to address opioid abuse in the workplace, providing recommendations for best practices on workplace safety and substance abuse policies, and employee retention and productivity.

Effects of Pay and Pensions on Employee Retention

The Congressional Budget Office (CBO) released *Comparing the Effects of Current Pay and Defined Benefit Pensions on Employee Retention* (Working Paper 2018-06), which studies how cuts to pension benefits and reductions in pay caused by higher employee contributions can affect people's incentive to continue working for their current employer and thus decrease retention. The CBO considered changes in resignation rates, retirement rates, and job tenure.

Federal Reserve on 1Q 2018 Retirement Accounts

In *Financial Accounts of the United States Report*, the Federal Reserve Board found that corporate defined benefit (DB) plan assets rose by $9 billion in the quarter ended March 31, to $3.212 trillion, a 0.28% increase from the last quarter of 2017. Corporate defined contribution (DC) plans decreased by $40 billion, or 0.64%, to $6.249 trillion, while state and local government DB plan assets added $58 billion to $5.859 trillion, a 1% increase. State and local government DC plan assets totaled $494 billion, down 0.8%.

Accounting Update

The Financial Accounting Standards Board issued *Accounting Standards Update (ASU) No. 2014-12*, (*Compensation –Stock Compensation (Topic 718) – Accounting for Share-Based Payments When the Terms of an Award Provide that a Performance Target Could be Achieved after the Requisite Service Period (A consensus of the FASB emerging issues task force)*), which aims to reduce cost and complexity and to improve financial reporting for nonemployee share-based payments issued to nonemployees for goods or services.

Federal Budget Outlook

The CBO's *2018 Long-Term Budget Outlook* projects the federal debt will increase sharply over the next 30 years as spending grows faster than revenues. Driving the spending growth are interest payments on the debt, major healthcare programs, and Social Security. If current laws are changed to maintain certain policies now in place – such as making individual income tax rates permanent – even larger increases in debt would result. The increase in debt through 2041 stems primarily from the 2017 tax law, the 2018 two-year budget deal, and the 2018 fiscal year omnibus spending law.

Regulatory Roundup

From the Department of Treasury/IRS:

- *2018 Report of Recommendations* from the Advisory Committee on Tax Exempt and Government Entities, which includes two subgroups' reports making recommendations on reopening the Determination Letter Program and on missing participants.
- Draft 2019 *Form W-4*, Employee's Withholding Allowance Certificate, and *Instructions*.

From the Department of Labor:

- *Final rule* and *frequently asked questions* expanding the use of association health plans by small employers and self-employed individuals.
- *2017 Contingent Worker Survey*, which found that 1.3% of wage and salary workers held jobs they consider temporary or that they do not expect to last beyond one year.
- A *chart* showing that lump sums are the most common payment option for participants in defined contribution plans.

From the Pension Benefit Guaranty Corporation:

- *Notice of Intent to Request Approval* from the Office of Management and Budget of a survey of terminated and insolvent multiemployer pension plans to obtain withdrawal liability information.
- An *announcement* that the agency automatically will provide relief from filing deadlines and penalties when a disaster occurs whenever the IRS issues disaster relief that includes filing extensions for the Form 5500 series.

From the Department of Health and Human Services:

- A *form* (with instructions) that plan sponsors offering limited wraparound coverage use to satisfy the reporting required for the coverage to qualify as an excepted benefit.

From the Equal Employment Opportunity Commission:

- *The State of Older Workers and Age Discrimination 50 Years after the ADEA* , which provides a brief history of the law and its enforcement by the DoL and the EEOC, and describes the significant changes over time in who constitutes the "older worker."

High Court on Public-Sector Union Fees and Religious Freedom

The U.S. Supreme Court, in a 5-4 decision, struck down state laws requiring public-sector workers to pay union fees for collective bargaining even if the workers are not members of a union (*Janus v. American Federation of State, County and Municipal Employees* (No. 16-1466, 6/27/2018)). In so ruling, the Court reversed its 1977 *Abood* decision in which it held that nonunion government employees can be required to pay a "fair share" or "agency" fee to cover the union's costs to negotiate a contract that applies to all public employees, including those who are not union members.

The Court's ruling is expected to produce significant revenue losses for public-sector unions, as well as potentially sizeable numbers of members over time. In addition, the decision will require that governmental employees affirmatively consent to the fees before the amounts can be withheld from their paychecks.

Separately, the Court ruled 7-2 that a Colorado baker who refused to make a custom wedding cake for a same-sex couple did not violate the state's anti-discrimination law in exercising his First Amendment right to religious freedom and free expression (*Masterpiece Cakeshop v. Colorado Civil Rights Commission* (No. 16-111, 6/4/2018)). The majority opinion noted that whether a business may refuse to serve gay and lesbian people "must await further elaboration," as the Colorado Civil Rights Commission did not properly consider the religious beliefs of the baker. The "delicate question of when the free exercise of [the baker's] religion must yield to an otherwise valid exercise of state power needed to be determined in an adjudication in which religious hostility on the part of the State itself would not be a factor in the balance the State sought to reach. That requirement, however, was not met here," the Court concluded.