

MONTHLY BENEFIT News and Developments

Employee Benefits

Public Pension Funding Index, 2018 Second Quarter

Milliman's *Public Pension Funding Index* for the second quarter of 2018 found a \$23 billion loss in funding, largely due to a lackluster asset performance of 0.70% in aggregate. The 100 of the largest U.S. public plans studied earned approximately \$45 billion for the quarter, below assumed investment returns reflected in liability calculations. This shortfall was exacerbated by \$28 billion flowing out of the plans, as benefits paid out exceeded contributions coming in from employers and plan members. The PPF funding ratio dipped slightly from 71.4% as of the end of the first quarter to 71.2% in the second quarter. At the end of June 2018, the deficit stood at \$1.448 trillion, the largest deficit since the PPF began in September 2016.

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.

The October MBND will cover congressional activity in late August and September.

Legislative Activity on the Benefits Front

Before recessing for the month of August, the House approved two bills that would significantly change health savings accounts (HSAs) and health flexible spending arrangements (FSAs). Both bills combine parts of other bills that the House Ways and Means Committee approved earlier in July or that had been introduced earlier. The Senate, which remains in session during August, has not acted on the bills.

The “Increasing Access to Lower Premium Plans and Expanding Health Savings Accounts Act” (H.R.6311) and the “Restoring Access to Medication and Modernizing Health Savings Accounts Act” (H.R.6199) contain provisions that would:

- increase the HSA limit to equal the maximum \$6,750 in deductible and out-of-pocket costs, allow spouses to make catch-up contributions to the same HSA, and permit expenses incurred under a high-deductible health plan (HDHP) before an HSA is established to be counted as qualified medical expenses;
- allow unused health FSA amounts to be carried over to the following year if they do not exceed three times the health FSA contribution limit minus amounts exceeding \$500;
- permit HSAs, health FSAs, Archer medical savings accounts (MSAs), and health reimbursement arrangements (HRAs) to pay a limited amount for covered sports and fitness expenses (e.g., gym memberships and exercise classes) and safety equipment, as well as for over-the-counter medication and menstrual care products;
- expand the types of health plans that may be used with an HSA, such as direct primary care service arrangements under which a patient receives only primary care services for a fixed periodic fee (not to exceed \$150/\$300 (individual/more than one person)), and require form W-2 reporting by employers if they pay the fees;
- allow HDHPs to cover up to \$250/\$500 (single/family) of nonpreventive care (e.g., telehealth, diabetic testing strips) before the deductible is met;
- exclude certain items and services (e.g., physical exams, drug testing) as “other coverage” for HSA eligibility purposes if they are provided at an employer-owned facility or retail clinic;
- permit employees to transfer a certain amount of funds from a health FSA or HRA to an HSA if the transfer is made while the employee is establishing coverage under a HDHP, and require W-2 reporting of such a transfer;
- allow individuals to remain eligible for HSAs if their spouse has health FSA coverage, provided that the FSA reimbursements are limited to expenses incurred by the spouse; and
- allow beneficiaries enrolled only in Medicare Part A (hospital care) to contribute to HSAs.

Multiemployer Pension Plans

The Congressional Research Service issued [Data on Multiemployer Defined Benefit Plans](#), presenting data from the public use file of the Form 5500 annual disclosure for the 2015 plan year (the most recent year for which complete information is available). The data are categorized in several ways: based on plans' zone status in 2015; a year-by-year breakdown of the number of plans that are expected to become insolvent and the number of participants in those plans; the 25 largest multiemployer plans (each plan has at least 75,000 participants); and employers contributing more than 5% of the plans' total contributions in the 2015 plan year.

A Pair of CBO Reports

The Congressional Budget Office released:

- A preliminary analysis of [the Butch-Lewis Act of 2017, as introduced](#), which would establish the Pension Rehabilitation Administration (PRA) to provide loans and financial assistance to certain multiemployer defined benefit pension plans. According to the CBO, the bill specifies that plans would have to apply to the PRA to qualify for loans and assistance, but does not describe exactly how the PRA would evaluate those applications. Even if CBO could determine which applications would be approved, the bill as introduced does not resolve uncertainties around several key elements with large budgetary effects.
- An analysis of the ["Employer Relief Act" \(H.R.4616\)](#), which would suspend the collection of penalties on large employers that decline to offer qualifying health insurance coverage for plan years 2015-2018 and delay implementation of the excise ("Cadillac") tax on high-premium insurance plans by one year. The CBO estimates that the bill approved by a House committee would increase federal deficits by \$39.5 billion over the 2019-2028 period and would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

GAO on DoL's AHP Rule

The Government Accountability Office's [Department of Labor, Employee Benefits Security Administration: Definition of "Employer" Under Section 3\(5\) of ERISA-- Association Health Plans](#) concluded that the DOL complied with the procedural steps necessary to promulgate the June 21 final rule, taking into account costs/benefits, regulatory flexibility, and other requirements.

The bills also call for changes related to insurance purchased on the health exchanges, such as expanding the availability of catastrophic policies and allowing bronze and catastrophic insurance plans to be used with HSAs.

Upcoming Items

Congress must focus on the fiscal year 2019 appropriations bills to fund federal agencies beginning Oct. 1. Although the House and Senate have made progress on most of the funding bills, some significant differences remain for the two chambers to iron out. In general, the House bills contain policy riders – such as overturning the National Labor Relations Board's "joint employer" liability rule or prohibiting the Office of Personnel Management from administering multistate health insurance plans authorized under the Affordable Care Act – that will be difficult to pass in the Senate.

Regulatory Roundup

Jointly from Treasury, Labor, and Health and Human Services:

- [Final rule](#) and [fact sheet](#) on short-term, limited-duration health insurance.

From the Department of Treasury/IRS:

- [Final rule](#) on the definitions of qualified matching contributions (QMACs) and qualified nonelective contributions (QNECs).
- [Notice 2018-62](#), announcing an intent to propose regulations clarifying rules on contribution limits to ABLE accounts from certain designated beneficiaries.
- [Information Letter 2018-0013](#) discussing employer shared responsibility and coordination of prevailing wage laws.
- An update of the [403\(b\) checklist](#) as of July 2018.

From the Department of Labor:

- [Final rule](#) rescinding the regulations requiring employers to disclose contacts with outside consultants on how to handle employees' union organization efforts.

From the Pension Benefit Guaranty Corporation:

- [Proposed rule](#) on terminated and insolvent multiemployer plans and the duties of plan sponsors.
- A newly launched [web page](#) compiling staff responses to practitioners' questions about ERISA Title IV requirements.
- A [second installment](#) of the 2016 Data Tables on the private defined benefit pension system.
- A [web posting](#) of the new mailing address for premium payments and correspondence.

From the Department of Health and Human Services:

- An [announcement](#) that the average Medicare Part D premium for 2019 will be \$32.50.

DoL's Fiduciary Rule Case Finally and Formally Closed

A federal judge in Texas formally ordered the administrative closure of a case involving the Department of Labor's rule from the Obama Administration that would have required investment advisers to put the interests of their retirement saver-clients before their own interests (*U.S. Chamber of Commerce v. DoL* (U.S.D.C. Northern District of Texas, No. 3:16-cv-01476-M, 7/13/2018)). The order came after the district court received no request from three states and the AARP seeking further relief after the U.S. Court of Appeals for the Fifth Circuit struck down the controversial rule earlier this year – and the Trump Administration's DoL not appealing that ruling – and the court's ensuing denial of a motion for reconsideration of the parties' motion to intervene in the litigation.

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