

# Monthly Benefit News & Developments

## SOCIAL SECURITY AND MEDICARE: TRUSTEES' REPORTS

The [2019 Social Security Trustees Report](#) on the current and projected financial status of the combined reserves of the Old-Age and Survivors Insurance (OASI) and Disability Insurance (DI) Trust Funds shows that reserves are projected to become depleted in 2035, one year later than projected in the 2018 report, under the intermediate assumptions. Considered separately, the OASI Trust Fund reserves become depleted in 2034 (same as in the 2018 report) and the DI Trust Fund reserves become depleted in 2052 (extended 20 years from last year's estimate of 2032).

- The [2019 Medicare Trustees Report](#), which assesses the Hospital Insurance (HI) Trust Fund and the Supplementary Medical Insurance (SMI) Trust Fund, projects that the HI Trust Fund will be depleted in 2026, the same year projected in the 2018 report. For SMI, the Trustees project that both Part B and Part D will remain adequately financed into the indefinite future because current law provides financing from general revenues and beneficiary premiums each year to meet the next year's expected costs. However, the aging population and rising health care costs cause SMI projected costs to grow steadily from 2.1% of Gross Domestic Product (GDP) in 2018 to approximately 3.7% of GDP in 2038, and to then increase more slowly, to 4.2% of GDP by 2093.

## UPCOMING KEY DATES

**7/31/19** – Reporting and payment of (the final) PCORI fee by affected self-insured group health plans and insurance issuers for plan/policy years ending on/after 10/1/18 and on/before 10/1/19.

**9/30/19** – Court-ordered deadline for submission of EEO-1 Employer Information Report survey for 2017 and 2018, providing pay data categorized by race/ethnicity, gender, and job category.

**12/31/19** – Expiration of the tax credit for qualifying health insurance costs purchased by eligible individuals, including Trade Adjustment Assistance recipients, PBGC pension recipients, and workers with certain COBRA coverage.

## Legislative Activity on the Benefits Front

The House Ways and Means Committee has unanimously approved H.R.1994, the "Setting Every Community Up for Retirement Enhancement" (SECURE) Act, which contains many of the provisions from last year's "Retirement Enhancement and Savings Act" (RESA). The bill also had been referred to the Education and Labor Committee, which has not indicated whether it will allow the bill to proceed directly to the House floor. Among the provisions included in the SECURE Act are:

- simplification of the 401(k) safe harbor rules;
- an increase – from age 70-1/2 to age 72 – for the required beginning date for mandatory distributions;
- a requirement that 401(k) plans enable participation by part-time workers who satisfy a specified employment service rule;
- a requirement that DC plan (and IRA) distributions be made to nonspouse beneficiaries within 10 years of the death of the account holder;
- permission for DC plans, including 403(b) or governmental 457(b) plans, to make direct trustee-to-trustee transfers of lifetime income investments to another employer-sponsored retirement plan (or IRA);
- "open" multiple employer plans (MEP) for unrelated employers;
- reduced PBGC premiums by cooperative and small employer charity (CSEC) pensions;
- clarification of retirement income account rules for church-controlled organizations;
- relief from the funding rules for community newspapers;
- an increase in the tax credit for small-employer plan start-up costs and a new tax credit for its adoption of automatic enrollment; and
- various "administrative improvements," such as plan adoption/filing dates, disclosures, and nondiscrimination rules for "closed" pension plans.

During the mark-up session, Chairman Richard Neal (D-MA) announced that he is working on other bipartisan retirement bills that he hopes will be formally considered before the August recess. In the Senate, Finance Committee Charles Grassley (R-IA) announced that he remains committed to retirement legislation and that RESA will be a high priority this year.

## U.S. Supreme Court on Class-Wide Arbitration

The U.S. Supreme Court, in a 5-4 decision, ruled that arbitration agreements must expressly provide by their terms for class arbitration to be valid ([Lamps Plus, Inc. v. Varela](#) (No. 17-988, 4/24/2019)). The Court overturned the appellate court's decision that compelled arbitration of employees' dispute on a class, rather than individual, basis. The High Court instead held that class-wide arbitration cannot be inferred where an underlying arbitration agreement is ambiguous, thereby requiring the employees to individually arbitrate their dispute.

## ERISA ADVISORY COUNCIL REPORTS

The 2018 ERISA Advisory Council released:

- [Lifetime Income Solutions as a Qualified Default Investment Alternative \(QDIA\) – Focus on Decumulation and Rollovers](#), focusing on recommendations to promote lifetime income (LTI) within defined contribution retirement plans through changes to the annuity selection safe harbor and modifications to the Qualified Default Investment Alternative rule to focus on asset accumulation and decumulation issues in the context of LTI needs and solutions.
- [Evaluating the Department's Regulations and Guidance on ERISA Bonding Requirements and Exploring Reform Considerations](#), which examines the effectiveness of the DoL's regulations and sub-regulatory guidance that generally requires an employee benefit plan to purchase a fidelity bond to protect against losses to plan funds or other property caused by acts of fraud or dishonesty.

## GAO REPORTS

The Government Accountability Office released:

- [Retirement Savings: Additional Data and Analysis Could Provide Insight into Early Withdrawals](#), using 2013 IRS and DoL data to examine the incidence and amount of early retirement savings withdrawals; factors that might lead individuals to access retirement savings early; and policies and strategies that might reduce early withdrawals. Participants in employer-sponsored plans, such as 401(k) plans, withdrew at least \$29.2 billion early as hardship withdrawals, lump-sum "cash out" payments made at job separation, and loan balances that were not repaid. Hardship withdrawals were equivalent to about 0.5% of the age group's total plan assets and about 8% of their contributions.
- [Older Workers: Other Countries' Experiences with Phased Retirement](#), which considers the extent to which phased retirement exists in other countries with aging populations, the key aspects of phased retirement programs in selected countries, and the experiences of other countries in providing phased retirement and how their experiences can inform policies in the U.S.

## REPORT FROM THE CRS

The Congressional Research Service's [Worker Participation in Employer-Sponsored Pensions – A Fact Sheet](#) provides updated data on the percentage of U.S. workers who have access to and who participate in employer-sponsored pension plans.

## Regulatory Roundup

### FROM THE WHITE HOUSE:

- Executive Order on [Promoting Energy Infrastructure and Economic Growth](#), directing the DoL to review its ERISA-covered plan data to "identify whether there are discernible trends" in investments in the energy sector.
- A [memorandum](#) reaffirming the Congressional Review Act's broad applicability to all federal agencies and rules, and providing a process and guidance for the Office of Management and Budget to determine whether a rule is "major."

### DEPARTMENT OF TREASURY/IRS:

- [Revenue Procedure 2019-19](#), updating the Employee Plans Compliance Resolution System to facilitate corrections of certain retirement plan document and operational failures without a Voluntary Correction Program submission.
- [Notice 2019-30](#), inviting recommendations for items to include on the 2019-2020 Priority Guidance Plan.

### FROM THE DEPARTMENT OF LABOR:

- [Proposed rule](#) to revise and clarify the responsibilities of employers and joint employers to employees in joint-employer arrangements, along with a [fact sheet](#), [frequently asked questions](#), and [examples](#).
- A [letter](#) (FLSA2019-6) addressing whether a service provider for a virtual marketplace company is an employee or an independent contractor.
- [Mental Health Toolkit](#), providing information for employers.
- A [chart](#) showing that 44% of civilian workers had access to dental care plans in March 2018.
- [Questions and Answers](#) about the federal district court invalidation of the DoL's final rule on association health plans, as well as a later [Statement](#) indicating that the DoL is appealing the ruling and will not pursue enforcement actions against parties for potential violations during an interim period if parties acted in good faith reliance on the rule's validity prior to the court's decision.
- A [fact sheet](#) on the Employee Benefits Security Administration's enforcement actions for 2018.

### FROM THE PENSION BENEFIT GUARANTY CORPORATION:

- An [announcement](#) offering a pre-filing consultation for ERISA 4010 Filers.

### FROM THE DEPARTMENT OF HEALTH AND HUMAN SERVICES:

- [Final rule](#), [fact sheet](#), [final letter to insurers in the federal marketplace](#), and [key dates for calendar year 2019](#), providing the benefit payment parameters for 2020 and other guidance for federally facilitated and state-based health insurance Exchanges.
- A [notice](#) lowering the Health Insurance Portability and Accountability Act's civil penalties for certain violations.
- An [announcement](#) containing the 2020 Medicare Part D benefit parameters used for creditable coverage disclosures.

### FROM THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION:

- An [announcement](#) immediately reinstating the revised EEO-1: Pay Data Collection and the collection of 2018 pay data (EEO-1 Component 2) from EEO-1 filers by Sept. 30, 2019.
- A [news release](#) showing the agency's 2018 enforcement actions.

### FROM THE SOCIAL SECURITY ADMINISTRATION:

- A [web posting](#) noting that "No-Match" letters are again being mailed to employers submitting at least one wage and tax statement (Form W-2) that does not match the agency's records for a worker's name and Social Security number.

## Other Recent Milliman Publications You May Be Interested in:

- ***2019 Corporate Pension Funding Study*** Despite investment losses of 2.8%—the worst asset performance since 2008—the private single-employer defined benefit plans of the Milliman 100 companies continued to make funding improvements in 2018.
- ***What does corporate pension funding look like by sector?*** An infographic on pension plan funding by business sector including funded ratio, asset allocation, and expected investment returns.
- ***The spot rate method, lump sums, and potential audit requirements*** Use of the spot-rate method in developing pension cost is a practice which is increasingly being used.

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