



BENEFITS INSIDER
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WEB's **Benefits Insider** is a bi-monthly member exclusive publication providing the latest developments from Washington, DC, on matters of interest to employee benefits professionals. The content of this newsletter is being provided through a partnership with the American Benefits Council, a premier benefits advocacy organization. To inquire about membership with the Council, contact Deanna Johnson at (202) 289-6700 or djohnson@abcstaff.org.

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RECENT LEGISLATIVE ACTIVITY

Nothing to report this issue.

Congress was in recess for the Thanksgiving holiday before returning for a lame-duck session to close out the calendar year.

RECENT REGULATORY ACTIVITY

IRS Extends Due Date for Furnishing 2016 Forms 1095-C and 1095-B

On November 18, the Internal Revenue Service (IRS) issued a [notice](#) extending the due date for furnishing individuals with Forms 1095-C and 1095-B from January 31, 2017 to March 2, 2017. The notice also extends certain good-faith transition relief to the 2016 information requirements under Internal Revenue Code sections 6055 and 6056, as added by the Affordable Care Act (ACA).

The announcement provides welcome relief for many plan sponsors that were facing significant challenges in consolidating year-end data in time to satisfy the January 31, 2016 furnishing deadline.

[Notice 2016-70](#) provides an “automatic” 30-day extension for furnishing Forms 1095-C and 1095-B to employees and extends good faith transition relief to 2016. “Automatic” means that requests do not have to be sent to the IRS. According to Notice 2016-70:

- The due date for furnishing the 2016 Forms 1095-B and 1095-C to the insured and/or employees is extended from January 31, 2017, to March 2, 2017.
- Further extensions of the extended January 31, 2017 due date will not be available. The IRS will also not be formally responding to extensions that have already been requested by reporting entities.
- The due date for health coverage providers and employers filing the 2016 Forms 1094-B, 1095-B, 1094-C or 1095-C to the IRS is not extended and remains February 28, 2017, if not filing electronically or March 31, 2017 if filing electronically. Automatic extensions will still be available by filing a Form 8809.

The IRS also states that, notwithstanding the extensions provided in the notice, employers and other coverage providers are “encouraged to furnish statements as soon as they are able.” The notice explains that because of the extension granted under this notice, some employees and other individual taxpayers may not receive a Form 1095-B or Form 1095-C by the time they are ready to file their 2016 tax return. Taxpayers may rely on other information received from their employer or other coverage provider for purposes of filing their returns, including determining eligibility for the premium tax credit and do not have to wait for Forms 1095-B or 1095-C before filing their tax returns.

The notice also extends transition relief with respect to penalties where reporting entities can show that they have made good-faith efforts to comply with the information-reporting requirements for 2016 (both for furnishing to individuals and for filing with the Service). As stated in the notice, this relief “applies to missing and inaccurate taxpayer identification numbers and dates of birth, as well as other information required on the return or statement.” No relief is provided in the case of reporting entities that do not make a good-faith effort to comply with the regulations or that fail to file an information return or furnish a statement by the due dates (as extended under the rules described above).

Lawmakers Introduce Bill to Address Frozen Pension Plan Nondiscrimination Issue

An updated version of important pension legislation was introduced on November 17, offering promise that the measure could be approved in a lame-duck congressional session before the end of the year.

Senators Ben Cardin (D-MD) and Rob Portman (R-OH), both members of the Senate Finance Committee, and Representatives Pat Tiberi (R-OH) and Richard E. Neal (D-MA), both members of the House of Representatives Ways & Means Committee, introduced [the Retirement Security Preservation Act of 2016 \(RSPA\)](#), which would amend the nondiscrimination rules that apply to qualified retirement plans to protect older, longer-service participants whose defined benefit plans have been closed or frozen. An [official summary](#) is also available.

When defined benefit plan sponsors “soft freeze” their plans (close them to new entrants), they commonly use various approaches to assist older employees with this transition, such as grandfathering existing participants. However, over time, some of these transition approaches can become technically inconsistent with current regulations prohibiting discrimination in favor of highly compensated employees due to turnover among lower compensated employees and movement of some of those employees to highly compensated status over time.

The measure, which was approved by the Senate Finance Committee as part of the [Retirement Enhancement and Savings Act \(RESA\)](#) on September 21, builds upon [Internal Revenue Service \(IRS\) guidance](#) that was [recently extended](#) through 2017. Specifically, RSPA would clarify that a plan that passed the nondiscrimination tests at the time it was soft frozen and for the next two years will be deemed to pass the tests as long as it is not amended in any discriminatory manner.

PBGC Releases FY 2016 Deficit

The PBGC released [its 2016 Annual Report](#) on November 16, including its deficit calculations for the single-employer and multiemployer plan programs. The agency reports that its single-employer program deficit decreased to \$20.6 billion, down from \$24.1 billion reported in 2015, and as Labor Secretary Thomas Perez notes, “the single-

employer program is likely to continue to improve over the next decade.” The multiemployer insurance program deficit, however, rose to \$58.8 billion, up from \$52.3 billion in 2015.

PBGC attributes the single-employer deficit decrease primarily to “investment and premium income and a low level of plan terminations during the year,” while the multiemployer deficit was driven by interest factors as well as “additional multiemployer plans that are expected to run out of money within the next 10 years.”

Pension plans would also benefit from pending legislation to ensure that premiums paid to the PBGC are no longer counted as general fund revenue. The Senate introduced [the Pension and Budget Integrity Act](#) to ensure that PBGC premiums are no longer counted as general fund revenue, matching a similar bill introduced in the House earlier this year.

RECENT JUDICIAL ACTIVITY

Nothing to report this issue.