

# FYI<sup>®</sup> Roundup

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## Retirement Plans – 2019 Winter Recap

This *FYI Roundup* recaps recent defined benefit and defined contribution retirement plan developments since our September review. Highlights include the new wave of class action lawsuits involving actuarial equivalents, DOL guidance on auto-portability, new rules for hardship distributions, the delayed implementation of changes to ERISA auditing standards, and agency relief for victims of recent disasters.

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### General interest

Our roundup of general interest items highlights changes to ERISA auditing standards, the annual IRS update to its procedural rules and fees, agency relief for disaster victims, 2019 retirement plan limits, increases to Social Security benefits and the taxable wage base, and updated IRS plan correction procedures.

**Changes to ERISA auditing standards.** AICPA's Auditing Standards Board has agreed on changes to auditing standards to respond to DOL's 2015 review of plan audits. In our [January 9, 2019 For Your Information](#), it was noted that the board would likely delay the implementation of the changes until periods ending on or after December 15, 2020 to coordinate with the effective date of broader standards updates. They subsequently voted to do so.

**No VCP relief.** Our [January 8, 2019 For Your Information](#) reviews the annual IRS update to its procedural rules and fees, which brought minor changes and no retreat on the higher VCP fees announced last year.

**DOL and (some) IRS relief for disaster victims.** As with other disasters in recent years, DOL will not pursue ERISA violations against plans for transactions involving hardship withdrawals, loans, and blackout notices for victims of Hurricanes Florence and Michael and the 2018 California wildfires. DOL has not mandated any additional COBRA deadline extension, as it did with Hurricane Maria in 2017. Additionally, for victims of these hurricanes, the IRS has offered relief from a number of the usual distribution restrictions so that participants can quickly access their retirement plan funds for disaster-related needs. While the IRS has not yet extended this relief to 2018 California wildfire victims, it seems likely that the agency will eventually do so. Additional relief may also come in the

form of legislation extending relief comparable to that provided for other recent disasters. Check out our [December 11, 2018 For Your Information](#).

**Key retirement plan limits for 2019.** As we reported in our [November 1, 2018 FYI Alert](#), the IRS issued [Notice 2018-83](#) announcing the retirement plan limits for 2019.

**Social Security benefits and taxable wage base increases.** The Social Security Administration has announced key 2019 Social Security numbers, including a cost-of-living adjustment of 2.8 percent and taxable wage base of \$132,900. Our [October 11, 2018 FYI Alert](#) lists these increases.

**Updated IRS plan correction procedure.** IRS released a new revenue procedure requiring plans, effective April 1, 2019, to use [www.pay.gov](http://www.pay.gov) for voluntary correction program submissions; paper filings and checks will no longer be allowed after that date. We note in our [October 5, 2018 For Your Information](#) that while the updated procedure does not address either the recoupment of overpayments or the expansion of the self-correction program, the IRS says it is considering changes on these topics in response to comments.

## Defined benefit developments

**New class action wave: actuarial equivalents.** A court in New York is being asked to certify a class action lawsuit served on MetLife earlier this month. This was followed by a nearly identical lawsuit in Texas served on American Airlines as well as another in New York served on PepsiCo. The first two suits fault the use of an old mortality table in determining optional forms of distribution; the PepsiCo suit faults simplified option factors. Additional lawsuits are likely to follow. These cases highlight the possible need to periodically re-evaluate the reasonableness of factors currently used in ERISA pension plans. Get the details in our [December 14, 2018 For Your Information](#). Note: after the publication of this *For Your Information*, a fourth lawsuit was filed alleging that early retirement factors used in U.S. Bancorp's plan are too steep.

## Defined contribution developments

Our roundup of issues primarily of interest to sponsors of defined contribution plans covers the DOL's advisory opinion and proposed prohibited transaction exemption on auto-portability, changes to hardship distribution regulations, and proposed multiple employer plan rules.

**Small retirement account balance auto-portability.** In our [December 3, 2018 For Your Information](#), we discuss DOL's advisory opinion and proposed prohibited transaction exemption concerning a program designed to automatically move an individual's small account from a prior employer's defined contribution plan to a default IRA and ultimately into that individual's account in a new employer's defined contribution plan. The program, which would charge asset-based fees for accounts over \$50, aims to eliminate duplicative fees for small retirement savings accounts and

reduce leakage of retirement savings. While the proposed prohibited transaction exemption is pending, plan sponsors should consider participating in this program.

**Hardship distribution regulations.** Taking hardship distributions got a lot easier and the sources available a lot broader. No longer must plan loans first be taken, and hardships due to disaster-related expenses and losses will be deemed an immediate and heavy financial need permanently; qualified nonelective contributions and qualified matching contributions and earnings on these amounts will be available; plan administrators can rely on participants' representations about their needs, although participants must still first obtain all available distributions under all employer plans — qualified and nonqualified. However, to encourage continued plan participation, the six-month deferral suspension period following a hardship distribution will no longer apply. We cover these developments in our [November 27, 2018 For Your Information](#).

**Proposed multiple employer plan rules.** Employers of all sizes that provide retirement plan coverage for all or a portion of their workforce through an association or leasing organization may benefit from new options presented by proposed DOL regulations. The proposal, explained in our [October 30, 2018 For Your Information](#), would simplify Form 5500 filing requirements and clarify fiduciary responsibilities.

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