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Social Security Trustees Project \$136,800 Wage Base for 2020

The Board of Trustees of the Social Security Trust Fund reports each year on the financial condition of the social security program. *The 2019 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds*, issued on April 22, includes both short- and long-term projections about the social security system. The projections, which are only an indication of the expected trend, are based on social security program provisions in current law and do not take into account any changes in these provisions that might be made in the future. The report is available on the Social Security Administration's website at <https://www.ssa.gov/OACT/TR/2019/tr2019.pdf>.

Intermediate projections: Wage base

Using "intermediate" forecasting assumptions (described as "best estimates") and projecting out nine years, the report estimates that the social security wage base will be \$136,800 in 2020 (up from \$132,900 this year) and will increase to \$191,100 by 2028. Note that these numbers are only estimates. The formal announcement of the 2020 wage base will not come until mid-October.

Calendar Year	Estimated Wage Base (Intermediate Estimate)
2020	\$136,800
2021	\$142,200
2022	\$149,100
2023	\$155,700
2024	\$162,300
2025	\$168,900
2026	\$175,800
2027	\$183,300
2028	\$191,100

Long-term projections: Trust fund solvency

Again, using "intermediate" forecasting assumptions, the report projects a mixed picture for the social security trust funds (the Old-Age and Survivors Insurance trust fund and the Disability Insurance trust fund) over the next several years. Under the intermediate assumptions, Social Security's total cost is projected to be less than its total income in

2019 and higher than its total income in 2020 and all later years. Social Security's cost has exceeded its non-interest income since 2010. For 2019, program cost is projected to be less than total income by about \$1 billion and exceed non-interest income by about \$81 billion.

ACA Employer Shared Responsibility Payments Adjusted for 2020

The premium adjustment percentage for 2020, which is used to calculate several inflation-adjusted amounts under the Affordable Care Act (ACA), including the employer shared responsibility (ESR) payment amounts, has been announced [84 F.R. 17454, 4-25-19; [https://](https://www.govinfo.gov/content/pkg/FR-2019-04-25/pdf/2019-08017.pdf)

Beginning in 2020, trust fund assets will diminish until they become exhausted in 2035. Non-interest income is projected to be sufficient to cover 80% of scheduled benefit payments for the rest of 2035, declining to 75% for 2093. ■

www.govinfo.gov/content/pkg/FR-2019-04-25/pdf/2019-08017.pdf]. The ESR payment amounts were set at \$2,000 and \$3,000 under the law but are adjusted annually for inflation. The ESR payment amounts for 2020 are \$2,570 and \$3,860 (\$2,500 and \$3,750 for 2019). ■

Court Requires EEOC to Set September 30 As Date for Employers to Send 2017 and 2018 Component 2 Pay Data

On April 29, the U.S. Equal Employment Opportunity Commission (EEOC) informed employers of the September 30, 2019, due date for submission of 2018 Component 2 pay data for the Employer Information Report (EEO-1). The notice was later published in the *Federal Register* [84 F.R. 18383, 5-1-19; <https://www.govinfo.gov/content/pkg/FR-2019-05-01/pdf/2019-09002.pdf>]. The due date is a result of an April 25 order from a U.S. district court judge requiring the EEOC to collect Component 2 pay data broken down into pay bands and gender, ethnicity, and race (*National Women's Law Center v. Office of Management and Budget (OMB)*, No. 17-2458 (D.C., 4-25-19)).

The court order also required the EEOC to collect Component 2 data for either calendar year 2017 or 2019. The EEOC chose to collect data for 2017, which will be due on September 30 along with the 2018 data. The EEOC has submitted the notice for publication in the *Federal Register* on May 3.

Background

The new data collection was originally slated to begin with the EEO-1 due by March 31, 2018. However, on August 29, 2017, the OMB issued a memo that blocked the revisions indefinitely (OMB Memorandum, 8-29-17; https://www.reginfo.gov/public/jsp/Utilities/Review_and_Stay_Memo_for_EEOC.pdf). On March 4, the court determined that the OMB exceeded its authority in overturning its original approval of the pay data collection and ordered further analysis on gathering information (see **PAYROLL CURRENTLY**,

Issue 3, Vol. 27). After analyzing testimony and records, on April 25, the judge ordered the 2018 pay data to be collected by September 30.

Required pay information

The revised EEO-1 includes reporting of aggregate Form W-2 data from Box 1 based on 12 pay bands – counting and reporting the number of employees in each band. The 12 pay bands are matched with 10 job categories and reported accordingly. Hours are calculated based on the total hours worked during the year by all employees in each category based on race, ethnicity, and gender.

Reminder on Component 1 due date

The deadline for employers to complete the EEO-1 survey with Component 1 data for 2018 is May 31, 2019 [EEOC, *The EEO-1 Survey Is Open*; https://www.eeoc.gov/employers/eeo1survey/index.cfm?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=]. The EEOC postponed the original March deadline because of the federal government shutdown caused by a lapse in funding.

Employers with 100 or more employees and federal contractors with 50 or more employees are required to file annual EEO-1 reports with the EEOC, which include information on race, ethnicity, and gender by job category. Employers count employees for purposes of this EEO-1 report during a “workforce snapshot period” between October 1 and December 31, 2018. ■

IRS Announces Results of Two-Week Employment Tax Enforcement Visits

In mid-April, the IRS announced results from its two-week education and enforcement campaign that was designed to combat employment tax crimes [IR-2019-71, 4-11-19; <https://www.irs.gov/newsroom/irs-highlights-importance-of-payroll-tax-compliance-in-two-week-campaign-focused-on-legal-actions-education-visits>]. During the campaign from March 25 to April 5, the IRS said it visited “nearly 100 businesses showing signs of potential serious noncompliance,” and it initiated “several dozen legal actions against suspected criminals.”

The IRS said it visited businesses it suspected were not complying with their employment tax requirements. The IRS informed these business owners about ways to stay current and catch up with back payroll taxes and the potential for civil and criminal penalties.

“Payroll taxes form a key part of our tax system,” IRS Commissioner Chuck Rettig said. “When individuals and businesses evade their employment tax obligations, it not only undermines our tax system, it also creates an unfair situation for people who are following the law. The IRS is

committed to compliance in the payroll tax arena, which helps ensure fairness and faith in our tax system.”

Payroll taxes withheld by employers account for nearly 72% of all revenue collected by the IRS, making noncompliance and cheating in this area one of the biggest problems for the nation’s tax system, according to the IRS.

Results

On the criminal side, IRS Criminal Investigation (CI)

worked with the U.S. Department of Justice Tax Division and U.S. attorneys to focus on about 50 law enforcement actions related to employment tax crimes. During the campaign, IRS CI indicted 12 people, executed four search warrants, and saw six people or businesses sentenced for crimes associated with payroll taxes. In addition to these early numbers, the IRS planned “roughly two dozen more enforcement actions . . . in the weeks following the two-week campaign.” ■

DOL Issues Three Opinion Letters on FLSA Topics

The U.S. Department of Labor’s (DOL) Wage and Hour Division (WHD) issued three opinion letters that address compliance under the Fair Labor Standards Act (FLSA) [DOL, *U.S. Department of Labor Issues New Wage and Hour Opinion Letters*, 4-2-19; <https://www.dol.gov/newsroom/releases/whd/whd20190402>].

Opinion letter topics

The three opinion letters address these very specific FLSA issues.

Residential care facilities and the “8 and 80” overtime system. Although this opinion letter does not reach a conclusion as to whether the “youth residential care facility” in question qualified as a “residential care institution” on the facts presented, it restates the allowances for residential care facilities’ use of the “8 and 80” overtime system (Opinion Letter FLSA2019-3; https://www.dol.gov/whd/opinion/FLSA/2019/2019_04_02_03_FLSA.pdf). Under the “8 and 80” system, a hospital or residential care institution may, pursuant to a prior agreement or understanding with its employees, calculate overtime over a consecutive, 14-day period rather than a workweek under 29 C.F.R. §778.601. Employers that use this method must pay overtime for all hours worked over 8 in any workday and over 80 hours in a 14-day period. However, any premium payments for daily overtime hours may be credited toward the overtime payments due for hours worked in excess of 80 in the 14-day period.

Nutritional outreach instructors’ exemption as teachers. The next opinion letter addresses whether nutritional outreach instructors employed by a public university are exempt from overtime pay requirements (Opinion Letter FLSA2019-4; <https://www.dol.gov/whd/opinion/>

[FLSA/2019/2019_04_02_04_FLSA.pdf](https://www.dol.gov/whd/opinion/FLSA/2019/2019_04_02_04_FLSA.pdf)). The letter said these instructors fell under the teacher exemption in 29 USC §213(a)(1) since their primary duty is “teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge” and they do so as employees of an “educational establishment” as defined in 29 C.F.R. §541.303(a).

Agricultural exemptions. This letter addresses specific farm activities and whether they fall under the agricultural exemption (Opinion Letter FLSA2019-5; https://www.dol.gov/whd/opinion/FLSA/2019/2019_04_02_05_FLSA.pdf). Under 29 USC §213(b)(12), employees employed in agriculture are exempt from overtime. The letter explains primary and secondary agricultural activities listed in 29 USC §203(f) and also points to Field Assistance Bulletin 2013-1, which discusses how to determine whether a farmer’s processing of its own agricultural products is subordinate to or independent from its farming activities.

The letter stated that a farm’s activities of cutting or freezing its own fruit, vegetables, or meat can qualify as secondary agriculture if they are subordinate to farming operations and do not amount to an independent business. The employees performing those activities would be exempt from overtime pay requirements. In such situations, the farmer’s employees who pack and store the cut or frozen products and deliver them from the farm to market would also be working in secondary agriculture.

Searching opinion letters

Employers can search available opinion letters to see if their situations have been addressed by the DOL by visiting <https://www.dol.gov/whd/opinion/search/fullsearch.htm>. ■