

MONTHLY BENEFIT NEWS & Developments

Employee Benefits

CRS Report of Interest

The Congressional Research Service's report, "Tax Exclusion for Employer-Provided Health Insurance: Policy Issues Regarding the Repeal Debate," explores the pros and cons of changing the existing employer-based health insurance system so that employee health benefits are treated as taxable income.

Go to: <http://openncrs.com>

Upcoming Key Dates

2/1/09 – Start of EGTRRA remedial amendment period for retirement plans in Cycle D and multiemployer plans.

5/21/09 (plan years beginning after) – Genetic information nondiscrimination rules apply to group health plans (e.g., 1/1/2010 for calendar-year plans).

9/30/09 (plan years beginning on or before; but after 9/30/08) - Last date defined benefit plans permitted to use prior plan year's funding level for benefit freeze determination.

10/3/09 (plan years beginning on or after) – Effective date for mental health/substance use disorder benefits parity requirements (e.g., 1/1/2010 for calendar-year plans; delay may apply for collectively bargained plans).

10/9/09 (plan years beginning on or after) – Effective date for group health plans and insurance that extend coverage to dependent college students to continue that coverage if the student is on a medically necessary leave of absence (e.g., 1/1/2010 for calendar-year plans).

11/21/09 – Effective date of the prohibition on employment discrimination based on genetic information.

12/31/09 – Sunset date of one-year suspension of retirement plan minimum required distribution requirements.

Legislative Activity on the Benefits Front

In its last legislative session for the 110th Congress, the House and the Senate approved the "Worker, Retiree, and Employer Recovery Act of 2008" (H.R.7327), which includes limited relief from the 2006 Pension Protection Act's (PPA) defined benefit retirement plan funding requirements. The bill was introduced on December 10, approved by voice vote in the House that day, and cleared the Senate on December 11 (see [Client Action Bulletin 08-24R](#) and the [January 2009 Multiemployer Alert](#)).

The bill, which also contains some PPA technical corrections, was signed into law (P.L.110-458) on Dec. 23, even though the White House had earlier expressed opposition to the measure, primarily due to the possible effects on claims against the Pension Benefit Guaranty Corporation. "Our concerns with the legislation remain, but we do believe that in this current economic environment and current economic circumstances, that the benefits of the legislation outweighed our objections," said an Administration spokesman.

The new law also provides a waiver of the required minimum distribution rules for 401(k), 403(b), 457(b), and other tax-qualified defined contribution retirement vehicles (including IRAs) for 2009.

In other legislative activity, the House approved S.3712, clarifying that the federal mental health parity requirements (enacted as part of P.L.110-343 (see [CAB 08-20R](#))) are effective no earlier than January 1, 2010, for health plans pursuant to collectively bargained agreements. The Senate in November had approved the technical correction to the "Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act"; the President signed the bill (P.L.110-460) on December 23.

Adjournment of the 110th, Start of the 111th Congress

- With the House and Senate in recess, the House was subject to return "at the call of the Chair" while the Senate scheduled intermittent *pro forma* sessions until January 3, 2009, when the 110th Congress adjourned *sine die*. The 111th Congress convened on January 6.
- The new Congress is expected to make an economic stimulus package the top legislative priority, with House and Senate leaders currently crafting a bill that they hope to have ready soon after President Barack Obama is sworn in on January 20. Although such a bill is likely to include some tax relief for the middle class, it is also expected to include help for states in the form of funding for infrastructure and healthcare (primarily Medicaid and children's healthcare) costs, as well as outlays for initial healthcare system reforms (such as for health information technology initiatives). Additional pension funding relief and broader PPA technical corrections possibly could be included, given that the ideas being raised by lawmakers and incoming Administration officials currently indicate there will be a broad stimulus package somewhere in the \$700 billion to \$800 billion range.

GASB Issues Technical Bulletin No. 2008-1

The Governmental Accounting Standards Board (GASB) issued *Technical Bulletin No. 2008-1, Determining the Annual Required Contribution Adjustment for Postemployment Benefits*. This technical bulletin clarifies GASB Statement No. 27 and GASB Statement No. 45.

Go to: www.gasb.org

FASB's Final Amendment to SFAS 132

The Financial Accounting Standards Board issued FASB Staff Position *FAS132(R)-1, Employer's Disclosures about Postretirement Benefit Plan Assets*, providing guidance on an employer's disclosures about plan assets in a defined benefit pension or other postretirement plan. This FSP includes a technical amendment to Statement 132(R), requiring a nonpublic entity to disclose net periodic benefit cost for each annual period for which a statement of income is presented.

Go to: www.fasb.org

DOL Items of Interest

- A revised Family and Medical Leave Act poster, reflecting recently published final rules.
- A Compliance Guide for Qualified Medical Support Orders.

Go to: www.dol.gov

CBO Report on Health Insurance Proposals

The report, "Key Issues in Analyzing Major Health Insurance Proposals," describes the key assumptions that the Congressional Budget Office would use in estimating the effects of elements of the various proposals under discussion to modify the health insurance system in the U.S.

Go to: www.cbo.gov

Regulatory Roundup

From the Department of the Treasury/IRS:

- *Final, temporary, and proposed rules* on the annual reporting and payment of withheld income and FICA taxes.
- A *proposed rule* on the calculation of amounts includible in income under section 409A and the additional taxes imposed.
- *Revenue Procedure 2009-13*, setting forth how employers may request notification of their eligibility to file annual tax returns or to request to file quarterly returns.
- *Rev. Proc. 2009-10*, creating a safe harbor for certain money market funds to maintain a per-share net asset value of \$1.
- *Revenue Ruling 2009-2 (revised)*, providing the 2009 covered compensation tables used to determine contributions to defined benefit plans and permitted disparity.
- *Notice 2009-3*, extending the deadline for 403(b) plan sponsors to adopt or amend a written plan.
- *Notice 2008-115*, providing guidance on 2008 reporting requirements for amounts includible in gross income under section 409A.
- *Notice 2008-113*, providing guidance on correcting certain operational failures under section 409A.
- *Notice 2008-104*, providing additional transition relief for debit cards used for medical expense reimbursements at certain stores.
- The Winter 2009 *Employee Plans News* with information on filing determination letters, common document language mistakes, and the timing of a 2009 funding method change.

From the Department of Labor:

- A *final rule* on the assessment of civil penalties for a failure to disclose certain documents to participants and beneficiaries.
- *Advisory Opinion 2008-08A*, which discusses the filing of a single registration statement by a "top hat" plan covering a "controlled group of corporations" or a "group of trades or businesses under common control."
- *Form M-1* for MEWAs, the 2008 Annual Report for Multiple Employer Welfare Arrangements and Certain Entities Claiming Exception.

From the PBGC:

- A *final rule* implementing the Pension Protection Act's changes to the withdrawal liability methods for multiemployer plans.
- A *final rule* that includes a change in the methodology used to determine the interest factors for determining the variable rate premiums.
- *Technical Update 08-4*, expanding on *Technical Update 07-3* and providing guidance on applying the PPA changes in the interest rate and mortality table used in calculating lump-sum amounts.
- *Technical Update 08-3*, waiving the filing under ERISA section 4010 for information years beginning on or after January 1, 2008, for certain underfunded plans.
- *Technical Update 07-4 (updated)*, describing the methodology used to determine the present value of PBGC's maximum guarantee and providing the table for 2009.
- Premium payment instructions and illustrative forms for plan years beginning in 2009 for both estimated flat-rate and comprehensive filings.

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