

MONTHLY BENEFIT NEWS AND DEVELOPMENTS

February 2008

Variable Annuities and Guaranteed Living Benefits

Milliman's third annual Guaranteed Living Benefits (GLB) survey of leading U.S. variable annuity carriers found nearly 95% of variable annuities include GLBs these days, up from 87% in 2005. The purchase of GLBs by policyholders also continued to increase. In the first half of 2007, 74% of variable annuity holders chose to have GLBs, up from 56% in 2004. Of the three most popular GLBs, the guaranteed minimum withdrawal benefit/guaranteed lifetime withdrawal benefit was the most popular, followed next by the guaranteed minimum income benefit, and lastly by the guaranteed minimum accumulation benefit.

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Upcoming Key Dates

3/1/08 – Deadline for prescription drug plan sponsors to disclose to CMS whether their employer drug coverage is creditable.

3/30/08 – Annual certification of status for multiemployer plans is due (90 days after beginning of the plan year).

4/1/08 – Benefit restrictions may apply on a presumed basis for calendar-year single-employer defined benefit plans that were underfunded in 2007.

5/23/08 – Deadline to comply with HIPAA national provider identifier standards for small health plans.

12/15/08 (financial periods beginning after) – Application of GASB Statement 45 for governments with total annual revenues of less than \$10 million.

Legislative Activity on the Benefits Front

Upon reconvening for the second session of the 110th Congress in mid-January, members of the House and Senate were confronted with worsening economic conditions calling for a temporary, short-term stimulus plan. Negotiations between the House and the Administration produced a quick agreement to push through a \$146 billion package of tax rebates for individuals and business incentives, leading to the January 29 passage of H.R.5140 by a vote of 385-35.

In the Senate, however, key members of the Finance Committee felt the bill fell short in several areas and approved a \$157 billion measure with a broader base of individuals (i.e., seniors and veterans) eligible for the tax rebates than contained in the House bill. The expanded bill also includes an extension of unemployment insurance benefits and tax incentives for renewable energy projects. The Senate is expected to vote on the Finance Committee's stimulus package in early February; if the Senate passes a bill with any language different from the House version, negotiations will be necessary to work out a compromise agreement.

Congress will also tackle federal budget issues, working on the 2009 fiscal year priorities as outlined in the President's State of the Union speech. Members are under significant pressure this election year to complete high-priority legislation in time to hit the campaign trail.

New Law Expands FMLA and Revises Government Contracting

Congress was forced to act again on a Defense Department spending bill (H.R.1585) that the President unexpectedly vetoed despite overwhelming support. After revising the language to strip the bill of the provisions opposed by the White House, Congress approved the new proposal (H.R.4986), which the President signed on January 28. The "National Defense Authorization Act for Fiscal Year 2008" (P.L.110-181) includes:

- an expansion of Family and Medical Leave Act (FMLA) coverage – Employees who provide care to a spouse, child, parent, or "nearest blood relative" or "next of kin" who suffers an injury or illness while on active duty are entitled to up to 26 weeks of FMLA leave during a 12-month period, effective as of the law's enactment date. In addition, employees are entitled to up to 12 weeks of FMLA leave if a spouse, child, or parent is called to active duty and the employees experience "any qualifying exigency" arising from their immediate family member being called to active duty. The Department of Labor will promulgate regulations defining "qualifying exigency" and this provision of the new law will not take effect until those regulations are issued.
- an exclusion of retirement costs (in addition to the current exclusion of healthcare costs) from consideration in cost studies required by the Office of Management and Budget Circular A-76, the federal government's policy manual for private-sector contracting. The new law will eliminate any pricing advantage contractors may have in competing for government work if they provide their employees benefit programs less than what the federal government provides.

CRS Reports

The Congressional Research Service (CRS) issued:

- “Quarantine and Isolation: Selected Legal Issues Relating to Employment,” which considers such issues as the employment-at-will doctrine, possible public policy exceptions to it in the event of an influenza pandemic, the Family and Medical Leave Act, and the possible application of nondiscrimination mandates of the Americans with Disabilities Act.
- “Spending by Consumers on Health Care and Health Insurance: a Data Brief,” which analyzes consumer healthcare spending over the 20 years from 1986 to 2005. According to the Consumer Expenditure Survey, Americans spent less in 2005 on healthcare and health insurance (5.4%) than they did on housing (32.7%), transportation (18.0%), or food (12.0%).
- “The Impact of Medicare Premiums on Social Security Beneficiaries,” which reports that a growing percentage of Social Security benefits are being expended on Medicare Part B physician services and Part D pharmaceuticals. Standard Part B premiums, which are automatically deducted, will consume 8% of average benefits in 2008, while the average Part D premium for a median earner will cost an additional 3% of the total Social Security benefit.

Go to: www.opencrs.com.

CMS Report

The Centers for Medicare and Medicaid Services (CMS) issued a report that confirms that health care spending, which grew 6.7% in 2006, continues to outpace overall economic growth (6.1%) and general inflation (3.2%) over the same period.

Go to: www.cms.gov.

Regulatory Roundup

From the Department of the Treasury/IRS:

- *Revenue Procedures 2008-1 through 2008-8*, updating procedures for obtaining rulings, information letters, technical advice, and applying for and receiving determination letters, as well as updating user fees.
- *Proposed rules* offering guidance on the Pension Protection Act’s (PPA) diversification requirements for defined contribution plans (under tax code section 401(a)(35)).
- *Private Letter Ruling 200804004*, under which an incentive compensation plan that provides for payment to an executive in the event of termination of employment without cause, even if performance goals are not met, will not be considered performance-based compensation under section 162(m).
- *Notice 2008-21*, formalizing an earlier announcement that a later effective date would apply for proposed rules applicable to single employer pension plans under sections 430 and 436 (although the PPA’s provisions (without asset smoothing relief) prevail for the 2008 plan year); and also providing transitional guidance for 2008 for certain small plans.
- *Employer’s Tax Guide to Fringe Benefits*, the 2008 version of Publication 15-B, which gives employers information on the employment tax treatment of such fringe benefits as accident and health coverage, adoption assistance, dependent care assistance, educational assistance, group-term life insurance, health savings accounts, and transportation benefits.

From the Department of Labor:

- *Opinion Letter (2007-7A)*, stating that a pension plan sponsor may not use pension plan assets for the purpose of furthering public policy or other political activities through a proxy resolution that does not enhance the value of the pension plan’s investment in the company.

From the Pension Benefit Guaranty Corporation:

- Announced that the agency no longer will publish in the *Federal Register* the monthly interest rates and assumptions to be used under parts 4006, 4007, 4062, 4219, and 4281 of the PBGC regulations, but will instead post them on its web site (at www.pbgc.gov).

Developments at the U.S. Supreme Court

The Supreme Court ruled that defrauded shareholders do not generally have the right to sue third parties – including lawyers, accountants, advisors, and vendors – that might have helped a company commit securities fraud (*Stoneridge Investment Partners v. Scientific-Atlanta Inc. and Motorola Inc.*, No. 06-43, Jan. 15, 2008).

Separately, the Court recently agreed to hear the following cases:

- *MetLife v. Glenn* (No. 06-923) seeks to resolve whether an ERISA plan administrator that both evaluates and pays claims operates under a conflict of interest.
- *Crawford v. Metropolitan Government of Nashville and Davidson County Tennessee* (No. 06-1595) turns on whether employees are protected from retaliation under Title VII if they are discharged because they cooperated in an internal company investigation of sexual harassment.
- *Meacham v. Knolls Atomic Power Laboratories* (No. 06-1505) asks whether an employee alleging disparate impact under the age nondiscrimination law bears the burden of persuasion on the “reasonable factors other than age” defense.