

MONTHLY BENEFIT NEWS AND DEVELOPMENTS

May 2008

8th Annual Milliman Pension Funding Study

Milliman issued its eighth annual study of the financial reports of the 100 largest U.S. public corporations that sponsor defined benefit pension plans. In total, these companies had pension plan assets of more than \$1.3 trillion and annual pension costs of \$19.3 billion. Although pension funded status improved significantly in 2007 – exceeding 105% – asset losses and lower interest rates in the first quarter of 2008 reversed the 2007 gains, leaving funded status slightly below 100%. Though funded status improved by \$85 billion in 2007, it fell by an estimated \$62 billion in the first quarter of 2008.

To download the full report, go to:

www.milliman.com

Upcoming Key Dates

6/30/08 – Deadline for plan sponsors with retiree drug subsidy applications for plan years ending in 2006 to complete the 2006 retiree drug subsidy reconciliation.

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

12/15/08 – Proposed modification for reporting pension assets under FASB 132.

12/31/08 – Expiration of 0.2% FUTA (unemployment) surtax.

12/31/08 – Deadline for compliance with final 409A regulations on nonqualified deferred compensation plans.

Legislative Activity on the Benefits Front

After reaching a compromise with the House, the Senate voted 95-0 to approve H.R.493, the “Genetic Information Nondiscrimination Act,” sending the revised bill back to the House for approval. The House then passed it by a vote of 414-1. The bill, which the President supports, would:

- prohibit enrollment restriction and premium adjustment on the basis of genetic information or genetic services;
- prohibit health plans and insurers from requesting or requiring that an individual take a genetic test;
- prohibit discrimination on the basis of genetic information in hiring, compensation, and other personnel processes;
- prohibit the collection of genetic information, and allow genetic testing only in very limited circumstances, such as monitoring the adverse effects of hazardous workplace exposures; and
- require genetic information possessed by employers to be confidentially maintained and disclosed only to the employee or under other tightly controlled circumstances.

The bill covers all health insurance programs, including those under the Employee Retirement Income Security Act (ERISA), state regulated plans, and the individual market.

The House during March also had attached genetic nondiscrimination language from its previously approved H.R.493 to its mental health parity bill, H.R.1424; the mental health parity bill remains under negotiations to resolve differences between the House and Senate.

Other Legislation Moving

Meanwhile, congressional action is occurring on:

- H.R.2831, which failed to muster the Senate votes needed to bring the measure to a vote. This bill, which would modify the statute of limitations applicable to pay discrimination suits, responds to last year’s U.S. Supreme Court decision holding that employees must sue within 180 days of an alleged discriminatory act. The House had approved H.R.2831 last July.
- H.R.5719, the “Taxpayer Assistance and Simplification Act,” which the House approved. The bill calls for amounts paid or distributed out of health savings accounts (HSAs) to be substantiated as being used for qualified medical expenses. The White House has issued a veto threat, in part over the bill’s substantiation requirements.
- H.R.3185, a 401(k) fee disclosure bill, which the House Education and Labor Committee amended and approved. Although the bill currently falls within the committee’s jurisdiction, the House Ways and Means Committee could weigh in on it before it reaches the floor. Senate action on the bill or a similar proposal this year remains uncertain.

A Pair of SSA Reports

The Social Security Administration has released:

- *Effective Retirement Savings Programs: Design Features and Financial Education*, which provides an overview of the literature on best practices for designing retirement savings plans and providing financial education to employees.
- *Annual Statistical Supplement, 2007*, which provides the latest statistics on Social Security, Supplemental Security Income, Medicare, Medicaid, Unemployment Insurance, Workers' Compensation, Temporary Disability Insurance, and Black Lung Benefits.

Go to: www.ssa.gov

A Pair from the CRS

The Congressional Research Service has released:

- *Summary of the Employee Retirement Income Security Act (ERISA)*, providing a detailed overview of ERISA.
- *Regulation of Health Benefits Under ERISA: An Outline*, discussing certain health benefit requirements under ERISA, as well as current legislation that would affect the health benefits.

Go to: www.opencrs.com

Government Contract Accounting Rule for ESOPs

The Cost Accounting Standards Board (CASB) has issued a final rule on the cost recognition of an employee stock ownership plan (ESOP), amending Cost Accounting Statements (CAS) 412 and 415 with regard to government cost-based contracts and subcontracts. Go to:

www.whitehouse.gov/omb/procurement/casb.html

Regulatory Roundup

From the Department of the Treasury/IRS:

- *Final regulations* on employer comparable contributions to health savings accounts under tax code section 4980G.
- *Proposed regulations* providing guidance for single employer defined benefit plan sponsors on the determination of minimum required contributions, including quarterly contribution requirements, under the Pension Protection Act (PPA).
- *Corrections* to a proposed rule on certain hybrid defined benefit plans.
- A new web page offering guidance, information, and resources for governmental plans maintaining tax-qualified retirement plans. (Go to: www.irs.gov/retirement/article/0,,id=181779,00.html)

From the Department of Labor:

- *Corrections* to the final rule on qualified default investment alternatives (QDIA), clarifying the guidance on the treatment of "round-trip restrictions," employer committees being named plan fiduciaries, and "grandfather" relief for stable value funds.
- *Field Assistance Bulletin 2008-03* providing guidance on QDIAs in the form of frequently asked questions.
- An updated fact sheet on QDIAs, available at: www.dol.gov/ebsa.
- An online video, "Choosing a Retirement Solution for Your Small Business," to help small employers and accountants understand their options for providing a retirement program for employees.

From the Pension Benefit Guaranty Corporation:

- An announcement that *PBGC Form 200* (Notice of Failure to Make Required Contributions) must be filed whenever pension plan sponsors fail to make a required payment under the PPA and the total of unpaid balances, including interest, exceeds \$1 million.

From the Department of Health and Human Services:

- An announcement from the Centers for Medicare & Medicaid Services (CMS) containing the 2009 adjusted amounts for the deductible, the initial coverage limits, the "gap" amount, the maximum out-of-pocket threshold, and the retiree drug subsidy amounts under standard Medicare Part D prescription drug program.
- An announcement from CMS that plan sponsors applying for the retiree drug subsidy may appeal certain determinations through the RDS Secure Web Site (go to: <http://rds.cms.hhs.gov/>)

Inaccurate Benefit Statement Not a Fiduciary Breach, Court Rules

A company's human resources representative who provided an inaccurate estimate of an employee's future retirement benefit did not breach his fiduciary responsibilities, because he performed merely a ministerial task and was not a plan fiduciary, the U.S. Court of Appeals for the First Circuit ruled (*Livick v. Gillette Co.* (No. 07-2108, 4/17/08)). The court also rejected the employee's argument that the company breached its ERISA fiduciary duties when it failed to properly train the human resources representative in preparing benefit estimates, concluding that the amount the employee is ultimately entitled to depends on the plan document.