

MONTHLY BENEFIT NEWS AND DEVELOPMENTS

August 2008

GAO Issues Report on Frozen Pension Plans

The Government Accountability Office issued "Defined Benefit Pensions: Plan Freezes Affect Millions of Participants and May Pose Retirement Income Challenges," examining private pension plan freezes and the implications for plan participants, plan sponsors, and the Pension Benefit Guaranty Corporation. From 1990 to 2006, plan sponsors voluntarily terminated over 61,000 sufficiently funded single-employer plans, affecting 3.3 million plan participants.

Go to: www.gao.gov/

Upcoming Key Dates

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.

12/31/08 – Expiration of current-law \$100 per day excise tax on group health plans that fail to satisfy the mental health parity requirements.

12/31/08 (remuneration paid after) – Differential wages paid to employees on active duty are treated as "wages" for federal income tax withholding purposes and (for plan years after) as "compensation" for retirement plan purposes.

This MBND covers federal news and developments through August 1. With Congress in recess until September 8, the October MBND will be the next issue published.

Legislative Activity on the Benefits Front

In the last major push to enact legislation before the August recess and party conventions, Congress tackled several benefits-related bills but was unable to reach a final agreement on any. Upon their return on September 8, the House and Senate will have only three weeks remaining for the year if the leaders adhere to the planned September 26 adjournment of the 110th Congress. There has been some talk of returning following the November election for a "lame duck" session, but until an agreement is reached on how to proceed on key legislation (such as appropriations bills to keep the federal government operating in the fiscal year 2009 that begins October 1), the final schedule will remain open.

Pension Protection Act (PPA) Technical Corrections and Other Bills

The House approved the new version (H.R.6382) of technical corrections to the PPA, sending the bill to the Senate. The bill includes a clarification on "asset smoothing," preserving plan sponsors' ability to use 24-month asset smoothing in calculating the value of pension assets.

Meanwhile, in other congressional action:

- The Senate was unable to overcome a procedural roadblock to begin debate on a new energy and "tax extenders" bill (S.3335) before the recess. The bill calls for mental health and substance abuse treatment parity for employer-sponsored health plans covering 50 or more workers. The bill also would: extend certain employment tax credits; change the tax treatment of deferred compensation paid by managers of certain offshore hedge funds (or other "tax indifferent parties"); and provide favorable tax treatment for bicycle commuting and group legal services. It also includes "qualified disaster distributions" from retirement plans for individuals affected by the floods and tornadoes in the Midwest earlier this year, provisions that were dropped in the final housing bill (H.R.3211) and which now also exist in a stand-alone disaster-relief bill (S.3322 and H.R.6587).
- The House approved "Michelle's Law" (H.R.2851), which would require group health plans and insurance to extend coverage for dependent college students for one year if they take a medically necessary leave of absence.
- The House also approved H.R.1338, which would modify the Fair Labor Standards Act to provide new remedies to employees who are discriminated against on the basis of sex with respect to wages.
- The House approved H.R.6633, the "Employee Verification Amendment Act of 2008," which would extend the federal government's voluntary electronic employment verification system to October 31, 2013.

HHS/CMS Items

The Centers for Medicare & Medicaid Services (CMS) issued:

- a proposed information collection notice to implement the recent Medicare law's requirement that, effective January 1, 2009, group health plan administrators and insurers must obtain information from the plan sponsor and plan participants that can be used by CMS to identify situations where the group health plan is a primary payer to Medicare.
- updated model notices of creditable and noncreditable coverage under Medicare Part D, for coverage provided after June 15, 2008.

Meanwhile, the Department of Health and Human Services (HHS) published a final rule on medical support orders covering children, providing guidance on healthcare coverage for children where parents have access to an employer-sponsored plan.

GAO Studies State and Local Government Pension Plans

The Government Accountability Office issued "State and Local Government Pension Plans: Current Structure and Funded Status," which reports that a growing number of these plans are underfunded and not making their annual required contributions.

Go to: www.gao.gov/

GASB Technical Bulletin on Retirement Benefits

The Government Accounting Standards Board issued a proposed technical bulletin, "Determining the Annual Required Contribution Adjustment for Postemployment Benefits," providing guidance on adjusting contributions for postemployment benefits.

Go to: www.gasb.org

Regulatory Roundup

From the Department of the Treasury/IRS:

- *Final regulations* providing the mortality tables for determining present value or making any computation related to funding of single-employer defined benefit plans under the Pension Protection Act (PPA); specifying the mortality tables to determine multiemployer plan current liability; and providing rules for developing substitute mortality tables.
- *Revenue Ruling 2008-40*, describing distributable events involving transfers from a qualified U.S. plan to a nonqualified foreign trust or Puerto Rican plan described in ERISA.
- *Notice 2008-62*, stating the IRS's intention to propose regulations on when an arrangement covering an employee (such as a teacher) or independent contractor receiving recurring part-year compensation over an extended period (such as a 12-month pay schedule for a 10-month work schedule) does not constitute deferred compensation for purposes of tax code section 457(f).
- *Proposed rules* providing guidance on employer comparable contributions to HSAs and the excise taxes required when employers fail to make comparable contributions.
- *Proposed rules* to permit a governmental plan to comply with the tax code's minimum distribution requirements by using a reasonable and good-faith interpretation of the statute.
- *Proposed rules* on options granted under an employee stock purchase plan.
- *Proposed rules* on information reporting requirements for stock transfers under tax code section 6039.
- *Fix-It Guide*, posted on the web site, to help employers find and fix mistakes in their Simplified Employee Pension (SEP) retirement programs.

From the Department of Labor:

- *Proposed rules* on certain plan and investment-related information disclosure, including fee and expense information, to participants and beneficiaries in participant-directed individual account plans.
- *Frequently Asked Questions*, posted on the web site, providing responses to 40 questions about the 2009 Form 5500 Schedule C filing requirements. (See [Client Action Bulletin 08-17](#).)
- A *Memorandum of Understanding*, issued jointly with the Securities and Exchange Commission (SEC), formalizing a reciprocal information-sharing agreement on retirement and investment matters.
- An *Advisory* issued with the SEC on important factors to consider before using a 401(k) debit card.

From the Pension Benefit Guaranty Corporation:

- *Comprehensive Premium Payment Instructions*, rewritten to take into account the PPA's requirements, have been posted on the agency's web site.
- *Annual Report for 2007*, noting that the agency reported a year-end deficit of \$14.1 billion, down from the \$18.88 billion recorded in 2006.