

## February/March 2009

The following news summaries were developed by Gabriel, Roeder, Smith & Company to inform clients and other benefit professionals of news in the benefits industry. Our thanks to Mary Ann Vitale for her diligent work on this issue. To receive this publication electronically, send an email to [web.admin@gabrielroeder.com](mailto:web.admin@gabrielroeder.com) with "SUBSCRIBE NEWS SCAN" in the subject line. To stop receiving this publication electronically, send "UNSUBSCRIBE NEWS SCAN" in the same manner. Copies of this and other benefit-related publications are available on the GRS web site at [www.gabrielroeder.com](http://www.gabrielroeder.com).

Note: The authors of these summaries are not attorneys and the statements made are not legal advice or opinion. Qualified legal advice should be obtained before acting with regard to related laws and regulations.

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### **IRS Publishes New Withholding Tables for Wages and Pension Income**

Effective as of February 17, 2009, the American Recovery and Reinvestment Act of 2009 (ARRA) added the new "Making Work Pay" credit, which is a refundable tax credit equal to 6.2% of earned income up to \$400 (\$800 for taxpayers filing jointly) for the 2009 and 2010 tax years. The credit will be included in workers' paychecks through adjusted tax withholding tables. The new tables are to be used by employers as soon as possible, but not later than April 1, 2009.

In implementing this provision, the IRS changed the income tax withholding tables and posted the new tables on the IRS web site in Publication 15-T, along with Notice 1036 which indicates the new tables replace the tables in Publication 15. It is important to note that Publication 15-T formalizes the IRS position that the new withholding tables apply to wages and pensions. The introduction specifically states, "For the calculation of income tax withholding on pensions, the new withholding tables also apply." Therefore, the new tables should be applied to: 1) employees receiving wages and 2) retirees and/or beneficiaries receiving benefit payments from pension plans.

In addition to the Making Work Pay tax credit, ARRA provides the "Economic Recovery Payment." Under this provision, Social Security will distribute a one-time payment of \$250 to each person receiving Social Security old-age, survivors, or disability benefits. Also, for government retirees who are not eligible for Social Security benefits, ARRA provides a one-time refundable tax credit of \$250. In either case, this payment or credit would reduce any allowable Making Work Pay credit.

There is some concern that, because the Making Work Pay tax credit applies to earned income rather than pension benefits, the application of the new tax tables to pension benefits may result in an under-reporting of taxes on pension income. As a result, retirees may be surprised to find they owe hundreds of dollars in taxes at the end of the year. While this issue has been raised with Congress and the IRS, it has not yet been resolved.

Publication 15-T is available at: <http://www.irs.gov/pub/irs-pdf/p15t.pdf>

IRS Notice 1036 is available at: <http://www.irs.gov/pub/irs-pdf/n1036.pdf>

## Groom Law Group Summarizes New COBRA Provisions in American Recovery and Reinvestment Act

In February 2009, the Groom Law Group released a summary of new COBRA provisions contained in the American Recovery and Reinvestment Act (ARRA) of 2009, which was signed into law on February 17th. Among other benefit changes, the legislation temporarily modifies the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) to subsidize health continuation coverage for employees who involuntarily lose their jobs.

As originally enacted, COBRA continuation coverage generally allows an employee to continue participating in the employer's group health plan for up to 18 months after termination of employment, provided the employee pays the necessary premiums. Continuation coverage applies to employers with 20 or more employees. The new Act provides a temporary federal subsidy of COBRA continuation coverage premiums for employees who lose their group health care coverage due to an involuntary termination during the period from September 1, 2008, through December 31, 2009. The subsidy is 65% of the continuation coverage premiums and is available for up to 9 months. The Act limits eligibility for the subsidy to former employees with modified adjusted gross income of up to \$145,000 for individuals (\$290,000 for joint filers), and is reduced proportionally for former employees with adjusted gross income between \$125,000 and \$145,000 for individuals (\$250,000 and \$290,000 for joint filers).

Although the subsidy is funded by the federal government, the employer must first pay the subsidy. After receiving the reduced 35% COBRA premium from former employees, the employer or health plan is reimbursed for the 65% subsidy through an offset to its payroll tax liability (i.e. for wage withholding and FICA tax). If the offset does not cover the subsidy, the U.S. Department of the Treasury will issue tax credits or refunds for the difference. All entities that provide COBRA continuation coverage (e.g., employers, multiemployer plans and insurers) should file a revised quarterly Form 941 for reimbursement, reporting the number of individuals receiving COBRA premium assistance and the subsidy payment amount.

The new Act also requires employers to modify their COBRA election notices or provide separate, supplemental notices to all individuals who become entitled to elect COBRA continuation coverage between September 1, 2008, and December 31, 2009. The notices must describe the new premium subsidy and, if applicable, the right to change coverage options. Recently, the U.S. Department of Labor (DOL) developed four COBRA model notices, each intended for a separate group of qualified beneficiaries:

- 1) A general notice regarding COBRA coverage for those individuals who have not yet received a COBRA election notice;
- 2) A limited notice of the new subsidy for those currently enrolled in COBRA;
- 3) An alternative notice for use by employers subject to health care continuation coverage under state law rather than the federal COBRA rules; and
- 4) An extended election notice for individuals who may have failed to elect COBRA when first eligible, or elected and subsequently discontinued COBRA coverage. **This notice must be provided by employers on or before April 18, 2009.**

The COBRA model documents are available at: <http://www.dol.gov/ebsa/COBRAModelNotice.html>

The COBRA premium assistance subsidy program applies to all private and public-sector group health plans currently subject to COBRA, and to continuation coverage under similar federal and state laws. For most plans, the provisions are effective as of March 1, 2009. Both the IRS and DOL have web sites that provide COBRA subsidy information and periodic updates for further guidance and tools which are available respectively at: <http://www.irs.gov/newsroom/article/0,,id=204505,00.html> and <http://www.dol.gov/ebsa/COBRA.html>

The Groom Law Group summary is accessible at:

<http://www.groom.com/documents/COBRAProvisionsinAmericanRecoveryandReinvestmentAct021609.pdf>

Additional information about the model documents is at:

[http://www.mwe.com/info/pubs/cobraguide\\_0409.pdf](http://www.mwe.com/info/pubs/cobraguide_0409.pdf)

### **IRS Receives Comments Requesting Guidance on Waiver of Required Minimum Distributions**

In January 2009, the Treasury Department and IRS received comment letters from benefit professionals requesting guidance on the waiver of the minimum distribution rules for defined contribution plans in 2009. Under Internal Revenue Code § 401(a)(9), qualified retirement plans must make annual required minimum distributions. Generally, the required distributions must begin no later than April 1st of the year following the year the participant attains age 70½ or retires, whichever is later.

In 2008, stock market declines spurred concern that required minimum distributions would diminish defined contribution accounts before the accounts could recover the investment losses. In response, Congress included provisions in the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) suspending the minimum distribution rules for defined contribution plans in calendar year 2009. The suspension applies to defined contribution plans established under Code §§ 401(a), 403(a), 403(b), as well as § 457(b) governmental deferred compensation plans and IRAs (but not to defined benefit plans).

The American Society of Pension Professionals and Actuaries (ASPPA) was among the organizations submitting comments. According to ASPPA, although WRERA suspended required distributions, it is not clear whether the suspension was required or whether a plan could continue making distributions as though the law had not changed. ASPPA requested that the IRS issue guidance allowing plans the option to continue or suspend distributions, in order to minimize the burden of the new rule on the plans. Other issues addressed in the comment letter include: participant consent requirements, Form 1099-R reporting, plan amendments, and eligible rollover distributions.

ASPPA's letter is at: [http://www.asppa.org/pdf\\_files/012609.RMD.comment.letter.Unsol.FIN.pdf](http://www.asppa.org/pdf_files/012609.RMD.comment.letter.Unsol.FIN.pdf)

### **CRS Publishes Overview of Worker, Retiree, and Employer Recovery Act of 2008**

On February 10, 2009, the Congressional Research Service (CRS) released its overview of the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA), which was signed into law on December 23, 2008. WRERA made several technical corrections to the Pension Protection Act of 2006 (PPA) and also contains provisions easing certain private-sector plan funding rules in light of current recession and financial market declines. Written by Legislative Attorney Jennifer Staman, the CRS report focuses on the provisions designed to protect individuals and retirement plans from the potentially large asset losses, including:

- The temporary waiver of the minimum distribution rules;
- Temporary relief from the PPA funding rules for private-sector single and multi-employer plans; and
- Rollovers to non-spouse beneficiaries.

The report is available at: [http://assets.opencrs.com/rpts/R40171\\_20090129.pdf](http://assets.opencrs.com/rpts/R40171_20090129.pdf)

### **NIRS Reports on the Economic Impact of State and Local Pension Plans**

On February 26, 2009, the National Institute on Retirement Security (NIRS) published its report, *Pensionomics: Measuring the Economic Impact of State and Local Pension Plans*. The study finds that state and local government pension benefits offer significant support for the U.S. economy. According to the study, each dollar of benefit paid to retirees supports \$2.36 of total economic output. In addition, these benefits help to stabilize the economy, since retirees with monthly pension income continue spending on basic needs, even during economic downturns. During the fiscal year ending in 2006, the study reports:

- State and local pension plans provided nearly \$152 billion in benefits to over 7 million retirees and beneficiaries.
- These benefits supported \$358 billion in total U.S. economic output, and provided an estimated \$186 billion in value added to the national economy.
- This, in turn, supported approximately 2.5 million American jobs paying more than \$92 billion in total compensation, as well as \$57 billion in annual federal, state, and local tax revenues. The largest economic impacts were in retail trade, health care, manufacturing, finance, and the accommodation and food service industries.

The study also finds that over the period from 1993 to 2006, government (i.e., taxpayer) contributions to public plans averaged 19% of total annual plan receipts, with the remainder coming from investment earnings (70%) and employee contributions (11%). As a result, the study estimates that every dollar contributed by taxpayers to public pension funds supports an estimated \$11.45 in total economic output.

The analysis was conducted using data from the U.S. Census Bureau and input-output modeling software (IMPLAN) to assess the economic impact. In addition to providing national estimates of economic activity, the report also estimates the economic impact of public pensions in all 50 states and provides fact sheets for each state.

The report and state fact sheets are available at:

<http://www.nirsonline.org/index.php?option=content&task=view&id=189>

### **S&P Report Finds Market Losses will Shake Up Public Pension Plan Funding**

On February 26, 2009, Standard & Poor's (S&P) Rating Services issued its report "Market Declines Will Shake Up U.S. State Pension Funding Stability." According to the report, the median performance of public pension plans was -24.9% in 2008, a year in which the S&P 500 returned -38.5%. However, the report also noted that the decline in investment returns may not immediately have a negative effect on annual contributions made by state and local governments, since public plans typically "smooth" asset values over several years for actuarial purposes. Following a market decline, contributions to public plans tend to increase more gradually as a result of this smoothing. Therefore, volatility in pension fund assets does not necessarily equate to the same volatility in the state and local government's annual budget.

The report also notes that S&P does not include a public pension plan's unfunded actuarial accrued liabilities (UAAL) when evaluating the debt of the sponsoring state or local government. However, S&P does factor the UAAL into the credit analysis as an additional long-term liability. The report concludes that the recent investment declines will present challenges for public pension plans and that the "annual costs of servicing this liability relative to a government's resources" will play an important role in future credit reviews.

The report is available on the NASRA web site at: <http://www.nasra.org/resources/S&P0903.pdf>

### **AARP Finds Certain Pension Rules Interfere with Phased Retirement**

On January 28, 2009, the AARP released its report, *Making Work More Flexible: Opportunities and Evidence*. The report examines a wide range of flexible working arrangements for employees of all ages, and includes a section on phased retirement for older workers. According to the report, several current legislative and regulatory pension rules serve as barriers to phased retirement, including provisions in the Employee Retirement Income Security Act (ERISA), Internal Revenue Code, and Age Discrimination in Employment Act (ADEA). However, recent policy developments have allowed employers to offer greater flexibility to older workers including:

- The Pension Protection Act (PPA) changed ERISA’s restrictions on defined benefit distributions to allow workers age 62 and older to continue employment while receiving full pension benefits; and
- Participants in 401(k) and 403(b) plans who attain age 59½ are allowed to continue working for their employer while receiving distributions from their accounts.

The report also suggests that more flexibility for phased retirement could be introduced by allowing workers to gradually reduce their hours, modify their responsibilities, and coordinate various sources of income. By transitioning gradually from full-time to part-time employment, workers could combine reduced earnings with partial pension benefits to serve as wage supplements. In 2004, the IRS issued proposed regulations on such phased retirement plans. However, the AARP report noted that it was unclear whether the IRS will continue working on these regulations in light of the PPA changes.

The report is available at: [http://www.aarp.org/research/work/issues/i11\\_work.html](http://www.aarp.org/research/work/issues/i11_work.html)

### **BLS Reports on the Structure of State and Local Government Retirement Benefits**

On February 25, 2009, the U.S. Labor Department’s Bureau of Labor Statistics (BLS) issued its report: “The Structure of State and Local Government Retirement Benefits, 2008.” Written by Associate Commissioner, William Wiatrowski, the study is based on BLS’s National Compensation Survey of Employee Benefits in the United States, published in March 2008. Major findings of the 2009 study include:

- State and local government workers are more likely than private-sector workers to participate in plans that offer guaranteed retirement income.
- Most public plans have either mandatory or voluntary employee contributions.

Most government workers have access to multiple plans, typically a defined benefit plan in combination with a supplemental deferred compensation plan. According to the study, 92% of all state and local government employees have access to at least one retirement plan, with 84% having access to a DB plan, 30% having access to a DC plan, and about 70% having access to multiple plans. By comparison, 22% of private-sector employees have access to a DB plan and 62% have access to a DC plan, with few having access to more than one type of plan. From 1986 to 2008, state and local government employee participation in DB plans declined slightly from 93% to 88% compared with private-sector employees whose participation in DB plans declined from 76% to 24%.

In 2008, 77% of state and local government employees were required to make contributions to their retirement plans, compared with only 4% of private-sector employees. On average, state and local employee contributions averaged 6.3% of earnings in 2008. The report noted that government employees were originally not included in Social Security, and so their required contributions were similar to private-sector employees’ required contributions to Social Security. According to Social Security Administration estimates, about 30% of state and local government workers are currently not covered by Social Security.

The study also reported on the availability of “employee-contribution-only” plans sponsored by governments. According to the study, the percent of governmental workers with access to such plans grew from 22% in 1998 to 59% in 2008. Typically, these are 403(b) or 457(b) plans allowing tax-deferred contributions. Since the majority of public-sector employees have access to defined benefit plans, these deferred compensation plans tend to be supplemental plans.

The report is available at: <http://www.bls.gov/opub/cwc/print/cm20090218ar01p1.htm>

## **IFEBP Survey Finds Public Sector Employers Favor Disease Management for Controlling Health Costs**

On January 15, 2009, the International Foundation of Employee Benefit Plans (IFEBP) released its survey report, *Health Care Cost Control: Industry Approaches and Attitudes*. The report summarizes responses from over 1,000 plan sponsors, trustees, and benefit industry officials drawn from the IFEBP's membership. The results indicate that public sector employers prefer to control health care costs through disease management and wellness programs rather than through consumer-directed health plans. Survey highlights include:

- 69% of the public-sector respondents have implemented disease management programs, typically focusing on diabetes, heart disease, hypertension, and pulmonary diseases;
- 65% have created wellness programs, typically offering some combination of health screenings, health risk assessments, flu shots, smoking cessation programs, health fairs and wellness education; and
- Only 17% of public-sector respondents have instituted consumer-directed health plans.

In order to further control health care costs, 68% of the survey respondents increased employee cost sharing, 64% changed to a self-funded plan, 45% changed to managed care programs, and 33% have based premiums on healthy behavior. In addition, the survey found that the 69% of the respondents favor a national approach to health care reform, 67% favor universal coverage, and 65% favor the continuation of an employer-based system as a primary source of health insurance.

Regarding their reluctance to implement consumer-directed health plans, over 75% of the public-sector respondents cited a shortage of data on the effectiveness of such plans and about 37% believe such plans would encourage employees to neglect their health care. Most consumer-directed health plans are high-deductible plans that are combined with a tax-favored savings account for use in paying deductibles and out-of-pocket health care expenses. In order to qualify for tax-favored treatment on account contributions in 2009, minimum plan deductibles are \$1,150 for single coverage and \$2,300 for family coverage.

The report is available for a fee at: <http://www.ifebp.org/books.asp?6535E>