

## December 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 website 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 Releases 2009 Cumulative List of Changes in Plan Qualification Requirements for Cycle E Filers**

On December 11, 2009, the Internal Revenue Service (IRS) issued Notice 2009-98 with the 2009 Cumulative List of Changes in Plan Qualification Requirements. Notice 2009-98 includes a list of changes referred to in Revenue Procedure 2007-44 pertaining to the statutory, regulatory, and other changes needed for opinion, advisory, or determination letter requests. The list covers requirements for both governmental and non-governmental plans. The law changes applicable to governmental plans include:

- Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA);
- Pension Protection Act of 2006 (PPA);
- Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act); and
- Worker, Retiree, and Employer Recovery Act of 2008 (WRERA).

The 2009 Cumulative List contains items identified by the IRS for review in determining whether a plan filing for an opinion or determination letter in Cycle E has been properly updated. Generally, the 2009 Cumulative List applies to plan sponsors of individually designed plans in the Cycle E submission period. Cycle E applies to private-sector single employer plans where the last digit of the employer's identification number is 5 or 0. Cycle E also applies to governmental plans (as defined in Internal Revenue Code § 414(d)) for which an election was made by the plan sponsor to treat Cycle E as the initial EGTRRA remedial amendment cycle for the plan.

The IRS will begin accepting determination letter applications for Cycle E plans beginning on February 1, 2010, and the 12-month submission period will end January 31, 2011. For Cycle E filers, the IRS will exclude from its review of the plan: (1) any guidance issued or statutes enacted after October 1, 2009; (2) any qualification requirements effective in 2011 or later; and (3) any statutory provisions effective in 2010, but for which there is no guidance identified in Notice 2009-98. In early 2010, GRS will prepare a research memorandum on Notice 2009-98 providing more detailed information regarding the remedial amendments applicable to governmental plans.

Notice 2009-98 is accessible at: <http://www.irs.gov/pub/irs-drop/n-09-98.pdf>

## **PBGC Holds Policy Forum on Preserving and Strengthening Defined Benefit Pension Plans**

On December 7, 2009, the Pension Benefit Guaranty Corporation (PBGC) sponsored a policy forum commemorating its 35<sup>th</sup> anniversary. Entitled “The Future of Defined Benefit Plans,” the forum focused on ways to preserve and strengthen defined benefit pension plans in light of their decline over the past 25 years. According to PBGC statistics, the number of defined benefit plans insured by the PBGC has fallen from 114,000 in 1985 to 29,000 in 2009.

The forum featured speakers from the PBGC, Department of Labor, Pension Rights Center (PRC), ERISA Industry Committee (ERIC), and the National Institute on Retirement Security (NIRS). Karen Ferguson, executive director of the PRC, remarked that guaranteed pensions are important because they offer workers the best chance to make ends meet in retirement, and because they provide a critical source of long-term investment capital.

Beth Almeida, executive director of NIRS, noted that even before the recent stock market downturn, defined contribution plans were inadequate to provide for retirement needs. She also explained that defined benefit plans provide “a better bang for the buck” since they can deliver the same lifetime benefit as defined contribution plans for half the cost.

In addition, David Strauss, the PBGC’s Advisory Committee Chairman, is quoted as saying “if retirement income security is still part of public policy, then defined benefit plans must be part of that system.” However, speaking from the floor, Dallas Salisbury, executive director of the Employee Benefit Research Institute, cautioned the PBGC to ensure its premiums remain adequate to cover its future liabilities. (See BNA’s *Pension & Benefits Reporter*, 12/15/09)

Beth Almeida’s presentation is at: [http://www.nirsonline.org/storage/nirs/documents/pbgc\\_dec\\_2009.pdf](http://www.nirsonline.org/storage/nirs/documents/pbgc_dec_2009.pdf)

Karen Ferguson’s presentation is at: <http://www.pensionrights.org/policy/presentations/091207-PBGC-Policy-Forum-Future-of-DB-Plans.pdf>

## **Issue Brief Discusses Myths and Realities Regarding State and Local Government Retiree Health Benefits**

On November 24, 2009, the Center for State and Local Government Excellence (SLGE) published its issue brief, *The Crisis in State and Local Government Retiree Health Benefit Plans: Myths and Realities*. The brief updates an earlier brief written in July 2008 by Dr. Robert L. Clark, Professor of Economics and of Management, Innovation and Entrepreneurship at North Carolina State University.

Both briefs identify some of the major perceptions and misperceptions concerning public-sector retiree health plans. The latest brief also reports data related to the financial status of plans covering general employees in 49 states including: unfunded actuarial accrued liabilities (UAAL), annual required contributions (ARC), and plan funding methods.

Some of the key findings include:

- Regardless of wide-spread reports of a major financial crisis in state retiree health plans, the reality is that some states face a financial crisis while others do not.
- Substantial differences in the total liabilities of state retiree health plans depend mainly on the size of the workforce; generosity of the retiree health plan; portion of the total cost paid by the state; and type of employees covered by the plan.

- In many cases, states have flexibility to amend retiree health plans to moderate their projected costs and thus reduce the UAAL and ARC. However, any reductions or eliminations of retiree health benefits may be constrained by collective bargaining contracts.
- Public-sector employers continue to amend their health plans for active workers and retirees in order to help reduce costs. Some changes include higher premiums, deductibles and co-payments; and increased eligibility requirements based on years of service.

The issue brief is available at: <http://www.slge.org/>

### **Massachusetts Health Care Plan Covers Over 97% of State Residents**

On November 11, 2009, the Robert Wood Johnson Foundation released its report on the Massachusetts' State Health Access Reform Evaluation, *The Secrets of Massachusetts' Success: Why 97 Percent of State Residents Have Health Coverage*. The state's new health reform law became effective in April 2006, and provides: (1) coverage subsidies for consumers, (2) an individual mandate to purchase insurance, and (3) regulations for uncompensated care and reimbursement to providers. The Robert Wood Johnson report evaluated the impact of the change and found that, after enactment of the legislation, 97.4% of state residents were covered by health insurance, up from 93.6% in 2006.

Over half (56%) of the increased coverage occurred through the state's new subsidy program for uninsured adults with incomes below 300% of the Federal Poverty Level (FPL). This program, known as Commonwealth Care (or "CommCare"), provides comprehensive health care and premium subsidies to adults who are ineligible for Medicaid and have incomes below 300% of the FPL. The reform legislation also extended Medicaid coverage for children up to the 300% FPL. As established under the reform law, the subsidy program is administered by a new independent state agency, the Commonwealth Health Insurance Connector Authority (the "Connector").

Some of the key factors contributing to the high enrollment of eligible, uninsured individuals in the state health care programs included:

- **Data-driven eligibility and automatic enrollment** – Using data obtained through the Uncompensated Care Pool system, uninsured adults who qualified for CommCare were automatically enrolled without submitting new applications. In less than one year after implementation, nearly 80% of CommCare participants were automatically converted. Within 15 months, nearly 25% of newly insured state residents received subsidized coverage.
- **Integrated application form** – A single application form was used to determine eligibility for multiple subsidy programs, thereby simplifying enrollment. The same form was used to apply for a broad range of programs, including Medicaid, CommCare, the Health Safety Net, and other state-funded programs.
- **Assistance from health care providers and community-based organizations** - Through the state's "Virtual Gateway," over 50% of all successful applications for subsidized coverage were completed and filed online for individual consumers by health care providers and community based organizations. The organizations were trained to educate consumers about applicable requirements, help them enroll, and ensure any necessary follow-up.
- **Intensive public education campaign** – A multi-faceted public education campaign was used to inform state residents about the individual mandate and assistance available. This helped to increase enrollment into Medicaid and CommCare.

The full report is accessible at: <http://www.rwjf.org/files/research/51368fullreport.pdf>