

## October 2006

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 the message "SUBSCRIBE NEWS SCAN" in the subject line. To stop receiving this publication electronically, send the message "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).

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### **IRS Issues Transition Relief for Indian Tribal Government Plans**

On October 3, 2006, the Internal Revenue Service (IRS) issued Notice 2006-89 providing transitional relief for Indian tribal government (ITG) plans with regard to changes made under § 906 of the Pension Protection Act (PPA). The Act amended Internal Revenue Code (IRC) § 414(d) to expand the definition of "governmental plan" to include plans established and maintained by Indian tribal governments and certain related entities. However, not all ITG plans will qualify as governmental plans. Specifically, for an ITG plan to qualify as a governmental plan, PPA § 906(a)(1) requires:

1. All participants of the plan to be employees of the ITG or other such entity; and,
2. Substantially all of the participants' services to be in performance of essential governmental functions (and not commercial activities).

Notice 2006-89 clarifies that, for this purpose, "essential governmental functions" are defined under IRC § 7871 as interpreted in IRS advance notice of proposed rulemaking (REG-118788-06) published August 9, 2006. These rules determine the availability of tax-exempt bond financing for ITGs. Under the rules, the IRS will generally consider an activity to be an essential governmental function if there are numerous state and local governments with general taxing powers that have been conducting the activity and financing it with tax-exempt governmental bonds for many years and it is not a commercial or industrial activity.

The notice also clarifies that it would not be a reasonable, good faith interpretation of PPA § 906 if employees who perform commercial activities continue to accrue benefits under an ITG plan. However, it recognizes that some current ITG plans provide benefits to both governmental and commercial employees, and that transitional relief is necessary to allow for the required changes. Consequently, the notice gives ITG plans until September 30, 2007, to implement a separate plan for commercial employees. The new plan would be retroactively effective as of the first day of the plan year beginning on or after August 17, 2006, and would be subject to the IRC and ERISA rules for plans covering private-sector employees. The relief provided by the notice applies pending anticipated future guidance from the IRS on IRC § 414(d), including PPA § 906(a)(1).

The notice also requests public comments on the issues related to changes made by PPA § 906. Written comments must be submitted to the IRS by January 22, 2007.

IRS Notice 2006-89 can be found at: <http://apps.irs.gov/pub/irs-drop/n-06-89.pdf>

### **IRS Issues Final Rules on Use of Electronic Media for Plan Notices, Elections, and Consents**

On October 20, 2006, the Internal Revenue Service (IRS) published its final rule (T.D. 9294) regarding the use of electronic media by employee benefit plans for providing notices to plan participants, as well as recording participant elections and consents. The final standards, codified in Treas. Reg. 1.401(a)-21, are effective October 20, 2006, and apply to electronic notices, elections, and consents on or after January 1, 2007. The rules apply to a broad range of employee benefit plans, including retirement plans under IRC §§ 401(a), 403(a), 403(b), and 457, as well as accident and health plans, medical savings accounts, health savings accounts, and IRAs.

The Internal Revenue Code (IRC) and the Employee Retirement Income Security Act (ERISA) require certain written notices and participant elections. For example, IRC § 402(f) requires participants in public-sector and private-sector retirement plans to receive a written notice describing their rights regarding the rollover of plan distributions. Under T.D. 9294, retirement plans may provide this notice (and other required notices) electronically, if the final rules are met. These rules require that the notices be provided in a timely manner, be understandable to the recipients, and contain the same information included in the paper version.

However, before a plan may distribute the required notices electronically, the standards require that the plan obtain the participants' consent to receive them electronically. Moreover, prior to consenting, the participant must be provided a disclosure statement that describes the scope of the consent, the participant's right to withdraw consent, and the right to receive the communications via paper. The disclosure statement must also specify the hardware and software required for accessing the electronic media and the procedures for updating the participant's contact information. However, the consent requirement is waived if the participant is advised that a paper copy of the applicable document may be requested and will be provided at no charge.

If the plan also allows participants to use the electronic system to elect forms of payment or otherwise provide their consent, the final rules require that the electronic system be reasonably designed to (1) prevent any other person from making the participant's election; (2) provide the participant with a reasonable opportunity to review, confirm, modify, or rescind the election; and (3) to confirm the election either through a paper document or electronic document. Also, to satisfy the E-SIGN law of 2000, the electronic record of a notice or election must be in a form that can be retained and reproduced for later reference.

The final rule is available at: <http://benefitslink.com/taxregs/td9294.pdf>

### **FASB Issues Statement on Accounting for Defined Benefit Pension and OPEBs**

On September 29, 2006, the Financial Accounting Standards Board (FASB) issued Statement No. 158, *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans*. The statement requires private-sector employers to fully recognize the funded status of defined benefit pension, retiree health care, and other postretirement plans in their financial statements. The statement amends Statements Nos. 87, 88, 106 and 132R and includes revised disclosure requirements, transition rules, and special provisions for not-for-profit organizations. The statement does not apply to governmental employers.

Under Statement No. 158, the overfunded or underfunded status of a defined benefit postretirement plan must be included as an asset or liability in the sponsoring employer's statement of financial position. In addition, the sponsoring employer must recognize changes in that funded status in the year in which the changes occur. For publicly traded entities, Statement No. 158 is effective as of the end of the fiscal year ending after December 15,

2006. For privately held and non-governmental, not-for-profit entities, the changes are effective as of the end of the fiscal year ending after June 15, 2007.

The statement also requires an employer to measure the funded status of a plan as of the date of its year-end statement of financial position, with limited exceptions. Currently, the measurement of the liabilities and assets is allowed up to three months prior to the date of the balance sheet. Statement No. 158 eliminates the current provision and requires the measurement to be as of the balance sheet date. The effective date for the measurement change is the fiscal year ending after December 15, 2008, for all types of employers.

Statement No. 158 completes the first phase of FASB’s two-phase project to change the accounting rules for postretirement benefit plans. In the second phase, FASB will consider many aspects of pension and other postretirement plan accounting on a broader basis in collaboration with the International Accounting Standards Board (IASB).

FASB Statement No. 158 is available at: <http://www.fasb.org/pdf/fas158.pdf>

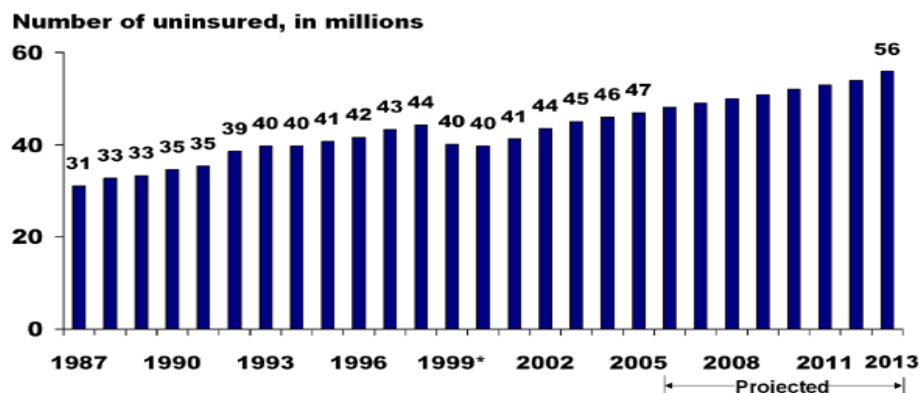
### U.S. Census Bureau Reports 46.6 Million Americans Lacked Health Insurance in 2005

On August 29, 2006, the U.S. Census Bureau reported that the number of Americans without health insurance coverage increased from 45.3 million in 2004 to 46.6 million in 2005. In its annual report, *Income, Poverty, and Health Insurance Coverage in the United States: 2005*, the Census Bureau found that 15.9% of the U.S. population did not have health insurance coverage in 2005 compared with 15.6% in 2004. Moreover, those with employer-sponsored health coverage decreased from 59.8% in 2004 to 59.5% in 2005. Conversely, 80.2 million individuals were covered by government health care programs in 2005, up from 79.4 million in 2004. In 2005, the number of Americans enrolled in Medicaid remained steady at 38.1 million (13.0%).

According to the Census Bureau, the number of children under age 18 without health insurance increased from 7.9 million in 2004 (10.8% of this age group) to 8.3 million in 2005 (11.2%). In 2005, children ages 12-17 were more likely to be uninsured than those under age 12 (12.6% compared with 10.5%). Children in poverty were more likely to be uninsured than all children combined (19.0% compared with 11.2%).

The following graph, made available by the Commonwealth Fund, illustrates the steady increase in uninsured Americans since 2000, which is projected to rise to about 56 million in 2013.

**Figure 4. 47 Million Uninsured in 2005; Increasing Steadily Since 2000**



\*1999–2003 estimates reflect the results of follow-up verification questions and implementation of Census 2000-based population controls.  
 Note: Projected estimates for 2006–2013 are for nonelderly uninsured based on T. Gilmer and R. Kronick, “It’s the Premiums, Stupid: Projections of the Uninsured Through 2013,” *Health Affairs* Web Exclusive, Apr. 5, 2005.  
 Source: U.S. Census Bureau, March CPS Surveys 1988 to 2005.



As a means of reducing the number of people without health insurance, President Bush has proposed health savings accounts (HSAs) that combine high-deductible health insurance coverage with a tax-free health spending account. This year the President proposed increasing the HSA contribution limits and offering a refundable tax credit for after-tax HSA contributions. However, even among some Republicans, this approach has raised concerns. Senate Finance Committee Chairman Charles E. Grassley (R-IA) was recently quoted as saying, “additional tax subsidies to help individuals purchase health care insurance ... may not be the answer to the nation’s health care cost and coverage crisis.” He added, “existing tax subsidies should be examined to determine if they are working effectively, before adding new ones.”

The Census Bureau report is available at: <http://www.census.gov/prod/2006pubs/p60-231.pdf>  
Further information from the Commonwealth Fund is available at: <http://www.cmwf.org>

Source: BNA *Pension & Benefits Reporter*, September 5, 2006.

### **Health Care Working Group Finds Majority of Americans Support Universal Coverage**

On September 25, 2006, the Citizens’ Health Care Working Group (CHCWG) issued a report, *Health Care That Works for All Americans*, based on American public views of health care services, coverage and payment. The Working Group was established by Congress under the Medicare Modernization Act of 2003 to engage Americans in an “informed national public debate to make choices about the services they want covered, what health care coverage they want, and how they are willing to pay for coverage.”

The Working Group held public meetings in 37 states and collected over 28,000 responses from participants across the country. It found that over 90% of participants believed U.S. public policy should support all citizens having access to affordable health care coverage regardless of financial resources or health status. Currently, U.S. health care spending totals nearly \$2 trillion per year. However, the U.S. Census Bureau recently reported that the number of uninsured Americans has grown by more than 1 million, increasing to 46.6 million in 2005. Additionally, tens of millions remain underinsured and could incur severe financial hardship in the event of serious sickness or injury.

Based on broad discussion by a cross-section of citizens on ways to address the current health care crisis, the Working Group developed the following recommendations which were presented to Congress and the President:

- 1) Establish public policy to ensure all Americans have affordable health care by 2012;
- 2) Guarantee financial protection against high health care costs and require participation by all U.S. citizens;
- 3) Define core benefits and services;
- 4) Foster innovative, integrated community health networks;
- 5) Promote efforts to improve quality of care and efficiency; and,
- 6) Fundamentally restructure end-of-life care and financing.

According to the report, by adopting these strategies, the U.S. health care delivery and financing systems could move toward universal health care coverage. However, the respondents’ preferences regarding the organization of a national health care system varied widely over a range of options, including:

- An entirely federal system with no private health care insurance;
- State-based, single-payer systems;
- A private system with established standards for benefits, coverage and cost with minimum government involvement in day-to-day operations; and,
- Entirely free-market approaches.

The Working Group proposed a five-year transition period, with the first phase addressing the most serious threats to health care security, such as excessive costs, lack of access to basic health care, preventive services, and community-based health education.

On September 22, 2006, the Heritage Foundation published a report by Dr. Kevin C. Fleming titled *High-Priced Pain: What to Expect From a Single-Payer Health Care System*. Although issued shortly before the Working Group's report, the Heritage report seemed to anticipate the Working Group's findings. In Fleming's opinion, "Some prominent Americans want...to adopt national health insurance as a means to cover the uninsured, to establish equality of care, and to control health care costs. Their preferred method is a single-payer health care system in which the government, through taxation, finances and regulates the delivery of health care services." According to Fleming, such a solution is a "nirvana approach." He urged policymakers to examine the performance of the single-payer national health insurance models such as those in Canada and Great Britain, arguing such systems are prone to adverse experience, including: chronic financial problems, personnel shortages, lower quality care, delayed diagnosis and treatment, labor strikes, outdated medical facilities and equipment, and politicization.

The CHCWG report is available at:

<http://www.citizenshealthcare.gov/recommendations/finalrecs.php>

The Heritage Foundation report is available at:

<http://www.heritage.org/Research/HealthCare/bg1973.cfm>

### **CRS Reports Long-Term Labor Shortages Due to Retiring Baby Boomers Are Unlikely**

On September 22, 2006, the Congressional Research Service (CRS) released its report "*Retiring Baby-Boomers = A Labor Shortage?*" The author, Linda Levine, a labor economics specialist in the Domestic Social Policy Division of CRS, examined the labor impact of baby boomers moving from work to retirement. According to the report, about 74 million baby boomers were born in the U.S. between 1946 and 1964, and currently represent about 29% of the U.S. population. The oldest baby boomers reached age 60 in 2006 and the baby boom generation will increasingly attain traditional retirement ages.

While the report found that the current rate of growth in the U.S. labor force is not sufficient to replace all retiring baby boomers, it also found that other factors may affect the potential future imbalance between labor supply and demand. It concluded that long-term labor shortages are unlikely since businesses can be expected to respond to the slowdown in labor growth by offering wage incentives or making other changes.

Moreover, the level of older workers in the workforce has been increasing, due partly to modifications made by Congress in the Social Security retirement system and age-discrimination laws. Some have urged Congress to make further changes to encourage older individuals to continue working and employers to hire and retain those workers. Additionally, the young "echo boom" generation (those born between the mid-70s and mid-90s) is another source for over 70 million replacement workers.

While long-term labor shortages may be unlikely, the report also found that short-term labor shortages could critically affect certain occupations and industries. Industries that have the largest proportion of older workers include health care, education, public administration, and transportation (including trucking). According to the U.S. Bureau of Labor Statistics, almost 50% of health care service workers (including physicians, nurses and technicians) were between the ages of 41 and 59 in 2005. The imminent retirement of these workers will likely pose problems in an industry where demand for labor is projected to increase by more than 1.3 million jobs over the next 10 years.

Source: BNA *Pension & Benefits Reporter*, October 3, 2006.