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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 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.

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.

GRS Goes Live with Redesigned Web Site

On July 16, 2007, Gabriel, Roeder, Smith & Company activated its newly redesigned web site. Developed with graphical assistance from PWB Marketing Communications, the new site provides easier navigation, full text searching, and demos of several GRS products, including our Premier Pension Administration System, our Minute Master recordkeeping system, and our on-line calculators for pension benefits and service purchases. The web site also includes current and archived issues of GRS *News Scan*, *Insight*, and other publications.

Our redesigned site is available at: <http://www.gabrielroeder.com>

EEOC Amends Age Discrimination Regulations to Conform with Supreme Court Ruling

On July 6, 2007, the Equal Employment Opportunity Commission (EEOC) published a final rule to amend the Age Discrimination in Employment Act (ADEA) regulations to conform to a 2004 Supreme Court decision in *General Dynamics Land System, Inc. v. Cline*. In that case, the court held that the ADEA only prohibits employment discrimination based on relatively older age, not based on age generally. The Supreme Court reasoned that ADEA only prohibits employers from discriminating against older workers (generally defined as age 40 and older), but does not prohibit employers from favoring older workers.

As initially proposed by the EEOC in 2006, the final rule deletes language in the ADEA regulations prohibiting discrimination against relatively younger individuals. After the public comment period, the EEOC unanimously voted to approve the revisions, effective July 6, 2007. Specifically, Title 29 of the Code of Federal Regulations § 1625.2 was amended to read:

"It is unlawful for an employer to discriminate against an individual in any aspect of employment because that individual is 40 years old or older, unless one of the statutory exceptions applies. Favoring an older individual over a younger individual because of age is not unlawful discrimination under the ADEA, even if the younger individual is at least 40 years old. However, the ADEA does not require employers to prefer older individuals and does not affect applicable state, municipal, or local laws that prohibit such preferences."

The EEOC's final rule and updated ADEA regulations are available at:
<http://edocket.access.gpo.gov/2007/pdf/E7-13051.pdf>

CRS Reports on Pension Plan Investments in Hedge Funds

On June 15, 2007, the Congressional Research Service (CRS) released its report, *Pension Funds Investing in Hedge Funds*. According to the report, the percentage of U.S. corporate pension funds that invest in hedge funds increased rapidly from 12% in 2000 to 24% in 2006. This has triggered Congressional concerns over hedge funds' risky nature, rapid growth, lack of oversight, and recent losses. In addition to ongoing CRS research, the Senate Finance Committee has requested that the Government Accountability Office (GAO) study public and private pension plans' investments in hedge funds, in order to evaluate their potential risks and returns.

CRS defines a hedge fund as "an entity that holds a pool of securities or other assets, whose interests are not sold in a registered public offering, and that is not registered as an investment company under the Investment Company Act of 1940." Typically, hedge funds are private investment funds that invest in a wide range of asset classes, such as equity and fixed income securities, currencies, derivatives, futures contracts and other assets. Often hedge funds engage in a wide variety of investment strategies and seek to profit by using leverage, such as investing borrowed money or other speculative practices that can increase the risk of investment loss.

According to the report, there is concern that such complex investments could expose the pension plans, their participants, and ultimately the taxpayers to greater financial risk. Until recently, hedge funds were limited in how much pension plan equity they could receive, but the Pension Protection Act of 2006 effectively eliminated such restrictions with regard to certain pension plan assets. As a result, more pension assets can now be invested in hedge funds, which are generally subject to less regulatory oversight than traditional investments.

The report is available for a fee from BNA PLUS at: <http://www.library.vcu.edu/tml/docsupp/bnaplus.html>

DOE Announces Continuation of Contractor Benefit Reimbursements

On June 22, 2007, the U.S. Department of Energy (DOE) announced it will not reissue its controversial policy on reimbursement of federal contractor costs for employee pension and medical benefits. Instead, the DOE will continue to operate under the previous policy whereby it reimburses its contractors for allowable costs incurred in providing pension and medical benefits to employees and retirees.

Last year, in April, the DOE announced a new policy under which, for its contractors' new employees, the DOE would only reimburse the contractors' pension and medical benefit costs up to the "market-based" costs of defined contribution retirement and medical plans. "Market-based" in this context was understood to refer to 401(k) plans and, presumably, health savings accounts. The policy was intended to help control the DOE's contractor reimbursement costs, which totaled \$1.08 billion for pension and medical plans in FY 2006.

However, in June 2006, the policy was suspended due to significant opposition from affected groups and pending Congressional action to prevent the DOE from carrying out the policy. Opponents contended that the DOE should not dictate the pension policy of its contractors. Moreover, they argued that the DOE's refusal to reimburse defined benefit pension costs contradicted the intent of the 2006 Pension Protection Act (PPA), and would undermine the PPA's support of defined benefit plans and the voluntary nature of the U.S. retirement system.

Additional information is available at: http://management.energy.gov/request_for_comments.htm

Fitch Ratings Issues Special Report Regarding OPEB Treatment in Public Finance Ratings

On March 22, 2007, Fitch Ratings issued a special report regarding the effect of other postemployment benefits (OPEBs) on the credit ratings of state and local governments. The report discusses how the various approaches for managing and funding OPEBs will be viewed by Fitch, and presents case studies illustrating positive governmental actions. It also emphasizes that failure to comply with the Governmental Accounting Standards Board's OPEB standards in GASB Statement No. 45 would be viewed negatively as a weak management practice.

With regard to managing OPEBs, Fitch says it will positively view governments that are forward looking, anticipate potential problems, and take early action to minimize them. The report states the first step in this process is an actuarial valuation of OPEB costs and liabilities, applying realistic assumptions. Later steps could include finding ways to better manage the growth of health care costs and better share the costs with members. However, the report also suggests that efforts to control and share costs must be balanced against the employer's need to attract qualified employees.

With regard to funding OPEBs, the report recognizes that while OPEBs are not new, the GASB's reporting requirements will establish a new OPEB annual required contribution (ARC) that competes with other government activities for limited resources. Therefore, in reviewing the government's funding plans, Fitch believes it appropriate to increase contributions to reach the ARC over a "reasonable period – one that minimizes the growth in the liability while maintaining sufficient financial stability." However, the report also warns that unless the OPEB liability is confronted within a reasonable time, it could grow into a "monumental challenge."

The report is titled "Old Promises, Emerging Bills--Considering OPEB in Public Finance Ratings" and may be found by searching the Fitch Ratings web site at: <http://www.fitchratings.com/>

CBO Director Testifies on Approaches to Reduce U.S. Health Costs

On June 21, 2007, Peter Orszag, the director of the Congressional Budget Office (CBO), testified before the U.S. Senate Committee on the Budget regarding health care reform and the federal budget. Stating that the nation's long-term fiscal balance will be primarily determined by the future growth rate of health care costs, he discussed the reasons for such growth and various approaches for controlling it.

Orszag argued that much of the growth in health care spending is attributable to the "development and diffusion of new medical technology" leading to increased medical capabilities and utilization. Although medical advances have increased the number and variety of available treatments, and many have improved medical outcomes, they also come at added costs. Moreover, he argued that current financial incentives for both health care providers and patients "tend to facilitate the adoption of expensive treatments, even if evidence for their relative effectiveness is limited" – i.e., some new treatments are provided broadly to patients who could do just as well with less expensive care.

To address this issue, he recommended research on the "comparative effectiveness" of various treatments, and policy changes that would alter financial incentives and ensure that the most effective treatment was offered. He also discussed policy changes to promote healthier lifestyles and manage chronic conditions.

His testimony is available at: <http://www.cbo.gov/ftpdocs/82xx/doc8255/06-21-HealthCareReform.pdf>

New Jersey Governor Signs Legislation to Reduce Pension and Health Costs for State Employees

On June 28, 2007, New Jersey Governor Jon S. Corzine signed legislation (A. 5005) to implement several pension and health coverage changes which were negotiated as cost-saving measures in collective bargaining agreements. The changes affect the Teachers' Pension and Annuity Fund (TPAF), the Public Employees' Retirement System (PERS) and the Defined Contribution Retirement Program (DCRP). The changes include increases in employee contribution rates; increases in retirement age, limitations on employees' compensation base, and creation of a new School Employees' Health Benefits Program.

Pension benefit changes include:

- For TPAF, PERS, and DCRP members, employee contributions are increased from 5% of salary to 5.5%, to help offset the pension systems' unfunded liability. For State employees, teachers, and school employees, this provision is effective for the next payroll period beginning immediately after July 1, 2007. For county, municipal, judicial, and other employees, the increase is effective after July 1, 2008.
- For new TPAF and PERS members after July 1, 2007, the pension system contributions are capped at the maximum wage base for Social Security (\$97,200 in 2007). Workers with earnings in excess of the Social Security cap will have the option of contributing 5.5% of those excess earnings to the Defined Contribution Retirement Program (DCRP).
- Also for TPAF and PERS members after July 1, 2007, eligibility for an unreduced retirement benefit is increased from age 55 to age 60. Early retirement benefits would still be available for new members prior to age 60, provided they completed 25 years of service; however the benefits would be reduced by 1% for each year prior to age 60, and by 3% for each year prior to age 55.

Health benefit changes include:

- Creation of a new School Employees' Health Benefits Program to cover active and retired teachers, with a preferred provider organization replacing the current point-of-service plan.
- Retirees with 25 years of service have the option of continuing to receive employer-paid health coverage; provided they participate in a wellness program.
- Active employees and retirees are required to make pre-tax contributions equal to 1.5% of their salaries or pensions to cover health benefit costs.

The bill's text is available at: http://www.njleg.state.nj.us/2006/Bills/A9999/5005_r1.PDF