



**BENEFITS INSIDER**  
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WEB's **Benefits Insider** is a member exclusive publication providing the latest developments from the Nation's Capital on matters of interest to benefits professionals. The content of this newsletter is being provided as a result of a partnership with the American Benefits Council, a premier benefits advocacy organization, which provides much of its core content.

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## RECENT LEGISLATIVE ACTIVITY

### Ways and Means Committee Holds Hearing on HSAs

On June 29, the U.S. House of Representatives Committee on Ways and Means held a hearing on the implementation of health savings accounts (HSAs) and changes Congress might consider for enhancing their appeal to employers and employees. Chairman Bill Thomas (R-CA) and committee members vigorously questioned a panel of seven witnesses representing a wide range of employers, health insurers, and other health organizations.

Employer witnesses from Ohio-based Wendy's International, Inc., Lutheran Social Services, a mid-sized nonprofit company also located in Ohio, and Buffalo Supply, a small medical supply distribution company from Colorado, testified that offering HSAs with compatible high deductible health plans (HDHPs) on a full-replacement basis had allowed them to keep health care coverage costs down while more actively engaging their workforce in health care spending decisions. The employers also called for changes to HSA rules that would allow them to better meet the needs of their workforce, including: (1) allowing employers to make higher contributions to HSAs of lower-paid workers; (2) increasing current limits on HSA contributions; (3) permitting more flexibility in using HSAs in combination with other tax-favored health spending accounts, such as health reimbursement arrangements (HRAs) and medical flexible spending arrangements (FSAs); and (4) allowing prescription drugs to be covered outside the high deductible.

America's Health Insurance Plans (AHIP), representing health insurers, reported that more than three million people were covered by HSA-compatible HDHPs as of January 2006, and the number of companies offering HSAs has doubled annually. AHIP also urged Congress to consider improvements to HSAs, including changes that would encourage greater participation by families, seniors, and the chronically ill.

Testimony by representatives of The Commonwealth Fund, a nonpartisan think-tank, and Neighborhood Family Practice, a federally qualified community health center located in Cleveland, Ohio, expressed concerns about the impact of higher cost sharing under HDHPs on lower-income individuals and families.

The leading HSA bill introduced in the House is the [Tax Free Health Savings Act \(H.R. 5262\)](#), introduced by Representative Eric Cantor (R-VA). Earlier this month, Senator Orrin Hatch (R-UT) introduced a comprehensive HSA bill, the [Health Savings Accounts Improvement and Expansion Act \(S. 3585\)](#), in the Senate.

Although exact next steps are uncertain with respect to congressional action on these and other HSA bills, Republican leaders in the House and Senate continue to report their intention to consider some form of HSA legislation by the end of the year.

### **Hatch Introduces Comprehensive HSA Bill**

As discussed above, Senator Orrin Hatch (R-UT) recently introduced the [Health Savings Accounts Improvement and Expansion Act \(S. 3585\)](#). The Act aims to improve and enhance HSAs by making it easier for businesses to offer the option and for employees to choose such options.

The crux of the legislation provides the ability to fund HSAs by a one-time rollover from HRAs or FSAs, or by a one-time distribution from an individual retirement account (IRA). The legislation would also:

- Increase the annual amount that individuals or employers may contribute to HSAs;
- Allow early retirees to use funds from their HSAs to pay health insurance premiums;
- Permit those who continue working after age 65 to continue making contributions to HSAs;
- Allow a family coverage plan to establish a separate (lower) deductible for individual family members;
- Allow certain health care expenses incurred before the establishment of the HSA to be paid with HSA funds;
- Move up the date by which annual indexed amounts for HSAs will be determined by the Treasury Department; and
- Make veterans with service-connected disabilities who receive Veterans Administration medical benefits eligible for HSAs.

### **Pension Bill Update: Conferees Moving Closer to Agreement**

The conference committee assigned with resolving the differences between the House of Representatives-passed [Pension Protection Act \(H.R. 2830\)](#) and the Senate-passed [Pension Security and Transparency Act \(S. 1783\)](#) appears to be moving closer to an agreement, yet the conferees are still struggling with the issues before them. The defined benefit pension plan funding rules have been subject to considerable discussion. At the core of the debate is the controversy over calculating whether a company is “at risk” and would therefore be subject to certain mandatory actuarial assumptions which result in significantly greater contributions.

The Senate bill would consider the credit rating of the company in conjunction with the funded status of the plan, while the House bill would look solely to the funded status of the plan using a 60 percent funding threshold. Furthermore, the House bill would reduce the value of the plan assets for this purpose by any existing credit balance and at-risk plans must assume that all participants will elect benefits at such times and in such forms as will result in the highest present value of liabilities. In addition, a loading factor applies to at-risk plans under the House bill.

Under the Senate bill, at-risk plans must assume that all participants who are eligible to elect benefits during the plan year and the next seven plan years will retire at their earliest retirement date (but not before the end of the current plan year). In addition, all employees are assumed to elect the most valuable form of benefit available to them. The

Senate bill's use of credit ratings is very controversial. Therefore, the conferees are trying to determine if there is a more acceptable alternative that can be agreed upon. The difficulty in crafting an alternative is avoiding an inappropriate result with respect to plans solely because of the plans' features or particular demographics or because the plans have large credit balances.

As for the effective date of a final bill, there seems to be increasing support among conferees to delay the legislation's effective date until 2008 (subject to transition rules thereafter). It appears that the final bill is moving toward a less favorable position on a number of key issues. For example, conferees are now discussing a two-year time frame for smoothing of pension assets and liabilities.

The conference committee is also considering making permanent the retirement savings provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). These measures include increased contribution limits to defined contribution plans and IRAs, improved portability among various plans (allowing rollovers from government plans to private sector plans and vice versa), and the important Saver's Credit for workers earning up to \$50,000. These provisions, detailed in the [American Benefits Council's updated chart](#), are currently scheduled to expire in 2010.

Other key issues, such as hybrid plans, remain open, though some discussions are taking place on a daily basis between groups of conferees to help clear up some differences of position. Resolving the at-risk liability issues is generally seen as key to moving the conference forward. Timing for completion remains uncertain. Sources have indicated, however, that a final compromise and decision may be announced before the August recess.

### **Senate Aging Committee Holds Hearing on Annuities**

On June 21, the Senate Special Committee on Aging held a hearing titled [Will You Have Enough? Managing Retirement Assets: Ensuring Seniors Don't Outlive Their Savings](#). Witnesses before the panel included C. Robert Henrikson, chairman, president and chief executive officer of MetLife, and Stephen P. Utkus, principal, with Vanguard Center for Retirement Research, as well as Ben Stein, spokesperson for the National Retirement Planning Coalition, and LeRoy Gilbertson of AARP's National Legislative Council.

Witness testimony and questions from the panel focused primarily on annuities and their role in providing retirement security. Committee Chairman Gordon Smith (R-OR) announced his intention to introduce legislation, along with Senators Kent Conrad (D-ND) and John Kerry (D-MA), to address saving for retirement, particularly for women.

## RECENT REGULATORY ACTIVITY

### **DOE Temporarily Suspends Benefit Reimbursement Policy; Linkage to Broader Pension Measure**

In news related to the pension reform legislation before the Congressional conference committee, the U.S. Department of Energy (DOE) has temporarily shelved its proposed new policy with regard to pension and health plan obligations for contract employees. As we reported in the June Benefits Insider Issue, the [DOE announced](#) a new procurement policy that would have denied its private sector contractors reimbursement for defined benefit pension plans and certain health benefits for newly hired employees. Under pressure from Congress, the DOE announced recently that it was suspending the policy for one year.

James A. Klein, President of the American Benefits Council has noted that the suspension of the DOE rule gives pension legislation conferees the opportunity to acknowledge the essential importance of predictability. Klein stated: "the DOE justified the proposed rule in April by contending that it would 'moderate the volatility and improve the predictability of the department's cost reimbursement obligations.'" Moderating volatility and improving predictability in benefit costs has been precisely the goal of the business community in attempting to shape the pending pension reform legislation.

Klein further stated that "employers have been portrayed as unwilling to meet tough funding rules. Nothing could be further from the truth. The employer community has proposed and advocated strong, but predictable, rules. Employer concerns about Administration and congressional proposals that curtail smoothing of assets and liabilities, limit use of pension credit balances, tie funding obligations to a company's credit rating and provide inadequate transition time to new rules are based on the fact that these changes would make pension funding obligations less predictable. Certainly, private sector employers are entitled to the same predictability of costs that the DOE is concerned about. We are very concerned that these legitimate employer concerns may not be reflected in the final legislation."

### **FASB Exposure Draft Regarding Pension, Retiree Health Plans**

FASB recently held a roundtable meeting to discuss the phasing-in of its process to reconsider existing pension accounting rules and the measurement method for pension obligations. FASB's [Proposed Standard on Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans](#) is the first phase in a process to reconsider existing accounting rules and would require employers to recognize the over funding or under funding of their defined benefit pension plans and other post-employment benefits, such as a retiree health plan. FASB has indicated that the second phase will be more comprehensive, and analysts suggest that FASB will likely attempt to introduce more of a "mark-to-market" approach to pension accounting, potentially causing more volatility in the financial reporting of companies that sponsor defined benefit plans.

Discussions at the roundtable meeting indicated mixed views regarding whether the board should use the projected benefit obligation (PBO) as the appropriate method for

measuring liabilities, and they debated whether that change should be made now or during the second phase of the project. In [formal comments to FASB](#), the American Benefits Council has recommended delaying the first phase and combining it with the second phase to minimize frequent revisions in policy. Roundtable participants expressed mixed views on whether FASB should use PBO or ABO. However, FASB board member and discussion leader George Batwick was quoted after the discussion by the Bureau of National Affairs as saying, "in choosing the PBO, by no means, of course, are we saying that we've made up our minds it's going to be the ultimate measurement of an obligation."

Comments may still be submitted to FASB in response to its draft of proposed rules.

### **PBGC Issues Final Rule for Calculating Terminal Liability Following a Facility Closure**

On June 15, the Pension Benefit Guaranty Corporation (PBGC) announced [publication of a final rule](#) directing calculation of defined benefit plan liability following cessation of operations resulting in the separation of service of 20 percent or more of participants covered under the plan. This rule modifies Title 29 of the Code of Federal Regulations, particularly Part 4062 (terminal liability for single-employer plans) and Part 4063 (withdrawal liability for plans under multiple controlled groups). It became effective July 17, 2006, and was published in the Federal Register on June 16.

[Described by the PBGC as being narrow in scope](#), the rule codifies for all such partial shut-down cases the method required by the PBGC in previous case-by-case situations. Terminal liability in a defined benefit plan is calculated at the time of a plant closure or other similar event by multiplying the total unfunded benefit liability by the percent of plan participants separating from service as a result of the cessation. The rule now requires that the resulting amount be deposited in an escrow account and, if the plan terminates within five years, the account balance is treated as a plan asset. The payment is returned to the employer if the plan does not terminate within the five-year time period. Alternatively, plan sponsors may be required to furnish to the PBGC a bond to be held in benefit for the plan in lieu of the termination liability payment.

### **CBO Issues New 100-Year Social Security Projections**

On June 14, the Congressional Budget Office (CBO) issued [new long-term \(100-year\) Social Security projections](#) that estimate that Social Security payments will begin to exceed revenues in 2019 and that the Social Security trust funds will be exhausted in 2046. The report also projects that revenues will increase very slightly from 5.2 percent of gross domestic product (GDP) to 5.26 percent and payments will increase from 5.77 percent of GDP to 6.04 percent from the projections in their last report issued in March 2005. The CBO first released 100-year projections in June 2004, which were updated in the March 2005 report.

The CBO estimates differ from, and are somewhat more optimistic than, those currently available from the [2006 Social Security Trustees' Report](#), as summarized in the June Benefits Insider. The Social Security trustees estimate that tax revenues will fall below program costs in 2017 and the trust funds will be exhausted in 2040. It projects an actuarial deficit of 2.02 percent of taxable payroll over a 75-year period. In this same 75-

year projection time frame, the trustees said the trust funds will require an additional \$4.6 trillion to pay all scheduled benefits.

While the CBO report conceded that long-term projections are necessarily uncertain, the CBO stated that the general conclusions presented in the report would hold true under a wide range of assumptions about future demographic and economic trends. Much of the increase is attributable to a decrease in the assumption for the long-term interest rate from 3.3 percent to 3.0 percent.

### **PBGC News**

On June 2, U.S. Secretary of Labor Elaine L. Chao named Vincent K. Snowbarger as acting executive director of the PBGC effective immediately. Snowbarger has served as the PBGC's deputy executive director since November 2004 and was the PBGC's assistant executive director for legislative affairs from June 2002 until November 2004. He also served in the House of Representatives as a Republican Congressman from Kansas between 1997 and 1999. Snowbarger succeeds Bradley Belt, who announced his departure on March 23 and completed his term on May 31.

In other PBGC news, the agency [announced on June 1](#) that sponsors of large defined benefit pension plans (those with at least 500 participants) must electronically submit their premium filings to the agency beginning July 1, 2006. All other plan sponsors must electronically submit their information beginning January 1, 2007. The practice had been voluntary since 2004 but was made mandatory through the Government Paperwork Elimination Act and [can be accessed through this link](#).

### **CMS Releases Data on Costs for Medical Procedures**

On June 1, the Centers for Medicare & Medicaid Services (CMS) released a [fact sheet](#) with information on Medicare costs for 30 common elective procedures and other hospital admissions. This follows a commitment President Bush made early in May to make data on Medicare's price and quality for hospital care publicly available on the Internet beginning in June.

The new information posted by CMS shows the number of cases treated at each hospital and the range of payments by county for a variety of treatments provided to seniors and people with disabilities in Fiscal Year 2005, including 30 common elective procedures such as heart operations and implanting cardiac defibrillators, hip and knee replacements, kidney and urinary tract operations, gallbladder operations, and back and neck operations, as well as several common nonsurgical admissions.

CMS plans to post payment information for common elective procedures for ambulatory surgery centers later this summer and for common hospital outpatient and physician services this fall.