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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 its core content, and is edited by Christopher M. Smith, Employee Benefits attorney and Principal of Flexible Benefits Systems, Inc., csmith@fbsi.com.

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RECENT LEGISLATIVE ACTIVITY

Baucus, Johanns Introduce Dueling PPACA Reporting Repeal Measures

On January 25, U.S. Senate Finance Committee Chairman Max Baucus (D-MT) and Senate Majority Leader Harry Reid (D-NV) introduced [the Small Business Paperwork Mandate Elimination Act](#), legislation to repeal Section 9006 of the Patient Protection and Affordable Care Act (PPACA), including certain reporting requirements for small businesses.

The PPACA provision requires businesses to report payments made for goods and certain services to the IRS using tax form 1099. This expansion of mandatory Form 1099 reporting was originally designed and included in PPACA to improve tax compliance and thereby raise revenue. However, many employers, especially small business owners, have expressed concern that the filing requirements, currently set to go into effect in January 2012, will represent an unreasonable paperwork burden. Baucus introduced a similar bill, [the Small Business Paperwork Relief Act \(S. 3946\)](#), in the prior Congress. It was considered as an amendment to food safety legislation, but did not receive sufficient support to pass.

Meanwhile, Senator Mike Johanns (R-NE) has introduced the Small Business Paperwork Reduction Act (S. 18), a similar repeal bill. The Johanns bill is also a reintroduction of [previously considered legislation](#). The difference between the Baucus measure and the Johanns measure is that the Baucus bill does not provide a revenue offset, while the Johanns bill is paid for through a rescission of \$39 billion in certain unobligated discretionary funds (The Office of Management and Budget is given discretion to find appropriate sources for the rescissions). S. 18 already has 55 cosponsors in the Senate.

In his State of the Union Address on January 25, President Obama voiced his support for repeal of this narrow provision but was not specific about whether the expected revenue loss should be offset. His call for repeal of the provision was met with a standing ovation. The House of Representatives Ways and Means Committee has approved the [Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act \(H.R. 705\)](#). The bipartisan support for repeal of the 1099 requirement and support from the Obama Administration suggests that its passage is virtually certain.

RECENT REGULATORY ACTIVITY

DOL Announces Fiduciary Hearing and Extra Time for Comments

On January 11, 2011, the Department of Labor [officially announced](#) that it would hold a hearing on the [proposed fiduciary definition regulation](#) and indicated that the deadline for comment letters would be extended. The hearing will be held at the Department of Labor on March 1, 2011, and, if necessary, March 2, 2011, beginning at 9:00 a.m. ET. The deadline for comment letters, originally set for January 20, 2011, has been extended to February 3, 2011.

Preparers of Form 5500 Need Not Obtain PTIN

On December 30, 2010, the Internal Revenue Service (IRS) released [Notice 2011-6](#), which relieves 5500 annual return preparers from the requirement to obtain a preparer tax identification number (PTIN) under regulations governing them. Many holders of PTINs are generally subject to competency testing and continuing education requirements under

regulatory guidance provided in 2010, although Notice 2011-6 provides transition rules temporarily relaxing those requirements as well.

[The notice](#) includes a list of forms that are not subject to the requirement that preparers obtain the PTIN that includes: the 5500 series, W-2 series of returns, 5300 (Application for Determination of Employee Benefit Plan), 5307 (Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans), and 5310 (Application for Determination for Termination Plan).

[The notice](#) also permits certain individuals to obtain a PTIN even if they are not an attorney, certified public accountant (CPA), enrolled agent or registered tax return preparer if they are supervised by an attorney, CPA, enrolled agent or enrolled actuary authorized to practice before the IRS and the supervisor actually signs the returns or claims for refund filed by the individual. These individuals will not be subject to the competency testing or continuing education requirements.

RECENT JUDICIAL ACTIVITY

On January 31, the U.S. District Court for the Northern District of Florida (Pensacola Division) [handed down a judgment](#) stating that the entirety of the Patient Protection and Affordable Care Act (PPACA) is unconstitutional based on the inseparability of the individual mandate (the requirement that most Americans obtain health insurance). The court declined to halt implementation of the law, pending appeal, so the regulatory process will continue as usual.

In his decision, Judge Roger Vinson explained that "because the individual mandate is unconstitutional and not severable, the entire Act must be declared void." He also notes that his decision "is based on an application of the Commerce Clause law as it exists pursuant to the Supreme Court's current interpretation and definition. Only the Supreme Court (or a Constitutional amendment) can expand that."

This federal court decision is the latest strike against the PPACA on the grounds of the individual mandate. As we have previously reported, the U.S. District Court for the Eastern District of Virginia handed down a similar [December 13, 2010](#), ruling declaring that the law's individual mandate exceeds the authority granted to Congress under the Commerce Clause of the Constitution. Unlike the Florida case, however, the Virginia judge found that the law is severable and therefore did not declare the entire law unconstitutional.