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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.

Articles in this Edition

RECENT LEGISLATIVE ACTIVITY

House Ways and Means Committee Approves 1099 Repeal

On February 17, the U.S. House of Representatives Ways and Means Committee approved, by a vote of 21-15, the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act (H.R. 705), a revised version of legislation to repeal the Form 1099 reporting requirements contained in the Protection and Affordable Care Act (PPACA)

Section 9006 of PPACA expands the requirement for businesses to report payments made for goods and certain services to the IRS using tax form 1099. This expansion 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.

Unlike the Small Business Paperwork Mandate Elimination Act (H.R. 4), which would have repealed Section 9006 of PPACA, H.R. 705 amends Section 6041 of the Internal Revenue Code to eliminate the requirement. Also unlike H.R. 4, H.R. 705 (1) repeals an additional Form 1099 information reporting requirement on owners of rental real estate and (2) adds an revenue offset that would increase the amount of improper subsidy payments that can be recaptured under PPACA. An official summary of H.R. 705 is available.

Consideration of H.R. 705 by the full House has not yet been scheduled. The U.S. Senate approved an amendment similar to H.R. 4 during consideration of the FAA Air Transportation Modernization and Safety Improvement Act (S. 223), which was approved by the full Senate on February 17. The FAA bill amendment offsets the federal revenue loss through a rescission of certain unobligated discretionary funds (excepting funds to the Social Security Administration, the Department of Defense and the Department of Veterans Affairs.)

Stand-alone legislation has also been introduced in the Senate: the Small Business Paperwork Mandate Elimination Act, sponsored by Finance Committee Chairman Max Baucus (D-MT) and Senate Majority Leader Harry Reid (D-NV), and the Small Business Paperwork Reduction Act (S. 18), sponsored by Sen. Mike Johanns (R-NE).

Bipartisan support for repeal of the Form 1099 requirement and support from the Obama Administration – based on his remarks in the State of the Union Address – suggests that its passage is virtually certain.

President Obama 2012 Budget Analysis: Health and Retirement Plan Proposals

President Obama released his Fiscal Year 2012 budget outline on February 14, dedicating $3.7 trillion for the government's operation and setting forth a number of policy priorities for the next year.

The White House Office of Management and Budget (OMB) released the budget overview documents for each of the administrative agencies; historical tables, which illustrates budget data over the last century; and Analytical Perspectives, which provides a detailed discussion of certain budget concepts and Administration policies. The budget proposal includes substantial cuts to government programs, including a 5-year freeze on all discretionary spending outside of security. The budget also addresses a number of health and retirement benefit initiatives:

Health Care Reform

- President Obama's budget message indicates that the administration "is committed to implementing the [Patient Protection and] Affordable Care Act (PPACA) swiftly and efficiently since rising health care costs are the single biggest driver of our long-term fiscal problems. … [A]s a down payment toward a permanent fix, the Budget proposes additional reforms to our health care system that would be sufficient to pay for 2 years of fixing the Medicare's sustainable growth rate, thus preventing a large cut in Medicare reimbursements for doctors that would jeopardize care for older Americans."

  The proposed two year relief in Medicare physician payments (commonly referred to as the "doc fix") is estimated to cost $62 billion and would be offset by an assortment of relatively minor spending reforms, most significantly $18.4 billion in savings from a reduction in Medicaid provider taxes and $12.9 billion in savings from the pharmaceutical industry, including a shorter exclusivity period for follow-on biologics and provisions to end so-called "pay-for-delay" arrangements.

Retirement Savings

- The Budget proposes to give the Board of Directors of the Pension Benefit Guaranty Corporation (PBGC) the authority to adjust the premiums charged to defined benefit pension plans. Specifically, the proposal directs PBGC to take into account the risks that different sponsors pose to their retirees and to PBGC. The budget would also require two years of study and public comment before any implementation and gradual phasing in of any increases. The proposal is estimated to save $16 billion over ten years. In December, the president's National Commission on Fiscal Responsibility and Reform issued its final report recommending an increase in PBGC premiums by the same amount.

- As in the Fiscal Year 2011 budget, the president proposes an "automatic workplace pensions" initiative. Under the proposal, employers who do not currently offer a retirement plan will be required to enroll their employees in a direct-deposit IRA account that is compatible with existing direct-deposit payroll systems. Employees would be permitted to opt-out if they choose. Small employers (ten employees or fewer) and new businesses (in existence for two years or less) would be exempt.

- The 2012 budget also includes the previous year's proposal to double the small employer pension plan startup credit. Under current law, small employers are eligible for a tax credit equal to 50 percent (up to a maximum of $500 a year for three years) of the start-up expenses of establishing or administering a new qualified retirement or SIMPLE plan. To encourage small employers to offer pensions to their workers in connection with the automatic workplace pensions' proposal, the budget would increase the maximum credit from $500 a year to $1,000 per year.

- The Obama Administration proposes to exempt an individual from minimum required distribution requirements if the aggregate value of the individual's IRA and tax-favored retirement plan accumulations does not exceed $50,000 at the beginning of the year in which the individual turns 70½ or, if earlier, the year in which the individual dies. While Roth IRAs are exempt from the pre-death minimum required distribution rules, Roth IRA balances would be taken into account in measuring retirement assets against the $50,000 threshold. Annuitized defined benefit plan payments would not be taken into account.

- The Administration's budget proposes a 60-day rollover opportunity for amounts distributed from a qualified plan or IRA to non-spouse beneficiaries (who presently may only do a direct rollover in the case of inherited plan assets and only a trustee-to-trustee transfer in the case of inherited IRA assets).

- The budget proposes to give the IRS the authority to require certain employee benefit plan tax information to be filed electronically as part of the annual Form 5500.

Entitlement Reform

- While the Analytical Perspectives document acknowledges that "the key drivers of the long-range deficit are the Government's major health and retirement programs: Medicare, Medicaid and Social Security," the budget proposal does not outline any specific long-term entitlement program reforms beyond the aforementioned Medicare spending cuts to offset the cost of the relief in Medicare payments to doctors.

- The budget document urges a bipartisan effort to strengthen Social Security financing and sets out six general "principles" for Social Security reform:
    - "Any reform should strengthen Social Security for future generations and restore long-term solvency.
    - The Administration will oppose any measures that privatize or weaken the Social Security system.
    - While all measures to strengthen solvency should be on the table, the Administration will not accept an approach that slashes benefits for future generations.
    - No current beneficiaries should see their basic benefits reduced.
    - Reform should strengthen retirement security for the most vulnerable, including low-income seniors.
    - Reform should maintain robust disability and survivors' benefits."

Other Issues

- As in the previous year's budget proposal, the president recommends a program to penalize and eliminate misclassification of employees as "independent contractors." The budget proposal specifically includes $46 million to combat misclassification, including $25 million for grants to states to identify misclassification and recover unpaid taxes and $15 million for personnel at the Wage and Hour Division to investigate misclassification. The use of contract and contingent workers has been scrutinized under previous administrations. In 2007 then-Senator Obama (along with the late Senator Edward Kennedy (D-MA)) introduced the Independent Contractor Proper Classification Act (S.2044).

- With regard to family leave issues, the budget also establishes a $23 million "State Paid Leave Fund" within the Labor Department to provide competitive grants that would help states cover the start-up costs of launching paid-leave programs. This initiative was proposed in last year's budget at a level of $50 million.

Education and Workforce Committee Discusses 2012 Budget with DOL Secretary Solis

On February 16, The U.S. House of Representatives Education and the Workforce Committee held a hearing, Policies and Priorities at the U.S. Department of Labor (DOL), to discuss the contents of President Obama's Fiscal Year 2012 budget proposal related to workplace issues, including employee benefits.

The administration's budget includes proposals related to:

- Implementation of the Patient Protection and Affordable Care Act (PPACA);
- Changes in the Pension Benefit Guaranty Corporation (PBGC) insurance premium program;
- Automatic workplace savings arrangements;
- Increasing the small employer pension plan startup credit;
- Limited exemptions from minimum required distribution requirements;
- Sixty-day rollover opportunities for amounts distributed from a qualified plan or IRA to non-spouse beneficiaries;
- Electronic filing of certain employee benefit plan tax information as part of the annual Form 5500;
- Principles for Social Security reform;
- Misclassification of employees as "independent contractors;" and
- Grants for state paid-leave programs.

The committee heard testimony from DOL Secretary Hilda Solis, who outlined the Obama Administration's initiatives for job training and safety before moving to a thorough discussion of workplace health and retirement benefits (beginning on Page 17 of her written testimony). In this context, Solis discussed the agency's proposed regulations on subjects such as defined contribution plan fee transparency and retirement plan investment advice, noting that DOL expects to finalize these regulations in 2011.

President Obama Expresses Support for Legislation to Move Up PPACA State Waivers

On February 28, President Obama offered remarks in support of the Empowering States to Innovate Act (S. 248), sponsored by Senators Ron Wyden (D-OR), Scott Brown (R-MA) and Mary Landrieu (D-LA), legislation to move up the date when states will be eligible to apply for waivers from the health care law to develop their own health reform standards. This is the first significant policy change to PPACA supported by the president.

Currently, under the Patient Protection and Affordable Care Act (PPACA), states may apply for five-year "State Innovation Waivers" from certain coverage requirements beginning in 2017, as long as the state program covers provides the same amount of coverage without increasing the federal deficit. S. 248 would accelerate the eligibility period to begin in 2014.

In remarks before the National Governors Association, Obama asserted "I think that's a reasonable proposal. I support it. It will give you flexibility more quickly, while still guaranteeing the American people reform. If your state can create a plan that covers as many people as affordably and comprehensively as the Affordable Care Act does – without increasing the deficit – you can implement that plan."

The White House released a fact sheet on supporting state innovation and Health and Human Services (HHS) Secretary Kathleen Sebelius reiterated Obama's remarks in a post on the White House blog. The fact sheet indicates that proposed regulations to implement the state waiver program will be issued this spring, followed by the opportunity for public comment.

S. 248 has not yet been scheduled for formal consideration in committee or on the Senate floor. Other legislative efforts are already afoot in the Senate to provide additional state control over health care reform: Senators John Barrasso (R-WY) and Lindsay Graham (R-SC) have introduced the State Health Care Choice Act (S. 244) and Senator Bernie Sanders (I-VT) has introduced the State Leadership in Health Care Act (S. 73).

Congress Preparing Response to GAO Target Date Fund Report

The Government Accountability Office (GAO) released on February 24 a report on "Defined Contribution Plans: Key Information on Target Date Funds as Default Investments Should Be Provided to Plan Sponsors and Participants." The report was requested by Senate Aging Committee Chairman Herb Kohl (D-WI) and House Education and the Workforce Committee Ranking Member George Miller (D-CA).

In its report, the GAO answered a series of concerns regarding target date funds including: to what extent investments in target date funds (TDFs) vary, a summary of recent investment performance of these funds, how plan sponsors monitor and select TDFs particularly when they are designated as a plan's default investment, how plan sponsors communicate information about TDFs as plan default investments to plan participants, and what actions the Department of Labor (DOL) and the Securities and Exchange Commission (SEC) have taken to ensure plan sponsors appropriately select and use target date funds. While the GAO noted the two agencies have taken steps to improve disclosures, participant education, and guidance for plan sponsors and participants, the GAO specifically made three recommendations to the DOL.

First, the report recommends that the DOL "amend the qualified default investment alternatives (QDIA) regulations so that fiduciaries are required to document that they have considered, to the extent possible, whether other characteristics of plan participants, in addition to age or target retirement date, are relevant factors in choosing a QDIA." The GAO acknowledged that the DOL disagreed with its recommendation. A copy of a letter from the DOL included with the report (see pages 51-53) indicates the DOL considered and rejected this approach but believes it **may** be appropriate for fiduciaries to consider other factors and will be including similar considerations (such as existence of a DB plan, salary level, turnover rate, or participant behavioral characteristics) in its guidance for plan fiduciaries (checklist-type guidance for fiduciaries is currently going through the DOL's approval process).

Second, the GAO recommended that the DOL provide guidance to plan sponsors regarding the limitations of existing TDF benchmarks and the importance of considering long-term TDF investment allocations and assumptions used in developing the TDF allocation strategy. The third recommendation is that the DOL expand the requirement that plan sponsors provide information regarding key assumptions concerning contributions and withdrawal rates by requiring that participants receive a statement regarding the potential consequences of saving, withdrawing, or otherwise managing TDF assets in a way that differs from the assumptions on which the TDF is based. The DOL indicated it would consider these recommendations in the course of its ongoing regulatory and guidance efforts but expressed concerns about the third recommendation, indicating that it would be a very complicated and subjective undertaking that might affect a plan sponsor's decision to offer a TDF.

House Votes to De-Fund PPACA During Spending Bill Debate

During consideration of the Full Year Continuing Appropriations Act (H.R. 1) – the measure to fund federal government agencies, programs and services for 2011 – the U.S. House of Representatives voted to approve a number of amendments prohibiting funding for implementation of the Patient Protection and Affordable Care Act (PPACA):

- An amendment (No. 575) by Representative Denny Rehberg (R-MT), prohibiting the funding of "any employee, officer, contractor, or grantee of any department" to implement PPACA, passed on a 239-187 vote;
- An amendment (No. 267) by Representative Steve King (R-IA), prohibiting the funding of any implementation of the law passed on a 241-187 vote;
- Another amendment (No. 268) by Rep. King, prohibiting the funding of any salary of any official to implement the law, passed on a 237-191 vote; and
- An amendment (No. 83) by Jo Ann Emerson (R-MO), prohibiting the Internal Revenue Service from enforcing the individual mandate, passed on a 246-182 vote.

All votes were cast generally along party lines, with Republicans voting in favor.

It is unlikely that the Senate will approve such restrictions to the implementation of PPACA when the chamber takes up the measure.

House Judiciary Committee Approves Medical Malpractice Legislation

On February 17, the House Judiciary Committee approved the Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act (H.R. 5). This measure, sponsored by Representative Phil Gingrey (R-GA), Judiciary Committee Chairman Lamar Smith (R-Texas) and Representative David Scott (D-GA), seeks to reduce the cost of medical malpractice insurance (thereby reducing overall health costs) by limiting frivolous malpractice lawsuits.

H.R. 5 is modeled after a longstanding California law, providing:

- a $250,000 cap on noneconomic damages;
- limits on the contingency fees lawyers can charge;
- authorization for defendants to introduce evidence showing the plaintiff received compensation for losses from outside sources (to prevent double recoveries);
- authorization for courts to require periodic payments for future damages instead of lump sum awards; and
- provisions creating a "fair share" rule, by which damages are allocated fairly, in direct proportion to fault, and reasonable guidelines -- but not caps -- on the award of punitive damages.

The bill was approved on a strict party-line vote, with firm Democratic opposition (co-sponsor Scott does not sit on the Judiciary Committee). No amendments to the measure were approved during the mark-up. Full House consideration of the measure is not yet scheduled.

Agriculture Subcommittee Panel Hears Testimony on Swaps, Retirement Plans

The House of Representatives Agriculture Committee's General Farm Commodities and Risk Management Subcommittee held a public hearing on February 15 to review implementation of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. (Title VII addresses transparency and accountability in the derivatives market, including regulation of over-the-counter swaps transactions. When used by defined benefit plans, swap trades are primarily used to mitigate risk.)

The subcommittee heard testimony from the following individuals:

- Bella Sanevich, general counsel for NISA Investment Advisors, L.L.C., explained that the implementation of the Dodd-Frank Act, as coordinated by the U.S. Department of Labor (DOL), Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC), is moving too quickly. "The agencies need more time to develop proposed rules, the retirement plan community needs more time to review those proposed rules and to provide comments to the agencies, the agencies need more time to consider the comments and provide final rules and the retirement plan community needs more time to prepare to comply with a whole new system," Sanevich said. "If plans' ability to hedge effectively with swaps is curtailed by the new rules, funding obligations will become more volatile. This will, in turn, force many employers to reserve large amounts of cash to cover possible funding obligations, diverting cash from critical job retention, business growth projects and future pension benefits," Sanevich added.
- Shawn Bernardo, managing director/Americas head of electronic broking for Tullet Prebon and vice chairman of the Wholesale Markets' Brokers Association, Americas (WMBAA), spoke from the perspective of wholesale brokers and argued that regulators should take into account the unique challenges of fostering liquidity in the diverse range of swaps markets.
- Bill Bullard, chief executive officer of Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America, sought to clarify the difference between the live cattle industry and the beef commodity industry while urging Congress to support CFTC's rulemaking.
- Stuart Kaswell, general counsel of the Managed Funds Association, discussed a number of technical issues related to swap trade practices including central clearing, segregation of customer collateral, definition of major swap participant, capital and margin requirements, position limits and swap execution facilities.
- John M. Damgard, president of the Futures Industry Association, echoed Sanevich's concerns with the content, number and pace of CFTC regulations, suggesting a stronger reliance on self-regulation.
- Richard F. McMahon Jr., vice president of energy supply and finance at the Edison Electric Institute (EEI) (on behalf of the Edison Electric Institute, the American Public Power Association and the Electric Power Supply Association), talked specifically about concerns regarding the implementation burden of clearing exceptions on end-users.

During the question-and-answer period, Representative Randy Hultgren (R-IL) indicated a strong interest in Sanevich's testimony, asking for clarification of how the current proposed Dodd-Frank rules would affect pension plans. Sanevich reiterated that – absent changes to the proposals – the CFTC regulations, in combination with the DOL proposed regulations on the definition of a "fiduciary," would effectively prevent pension plans from using swaps to mitigate risk.

The full Agriculture Committee held an earlier hearing on February 10 to review the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act, featuring testimony from CFTC Chairman Gary Gensler.

Senators Introduce Lifetime Income Disclosure Bill

On February 2, Senators Jeff Bingaman (D-NM) and Johnny Isakson (R-GA), members of the Senate Health, Education, Labor and Pensions (HELP) Committee, along with Senate Special Aging Committee Chairman Herbert Kohl (D-WI), introduced the Lifetime Income Disclosure Act, legislation that would require 401(k) plan sponsors to inform participating workers of the projected monthly income they could expect at retirement based on their current account balance. Introduction of the measure coincided with the February 3 HELP Committee hearing Simplifying Security: Encouraging Better Retirement Decisions.

Specifically, defined contribution plans subject to ERISA – including 401(k) plans – would be required annually to inform participants of how the account balance would translate into guaranteed monthly payments based on age at retirement and other factors. The legislation also directs the U.S. Department of Labor (DOL) to issue tables that employers may use in calculating an annuity equivalent, as well as a model disclosure. Employers and service providers using the model disclosure and following the prescribed assumptions and DOL rules would be insulated from liability.

The bill was previously introduced in 2009. An official summary of the measure is also available. This legislation represents the latest effort to educate plan participants on long-term retirement strategies, with an emphasis on the possible value of annuities to participants.

Senate HELP Committee Hears Testimony on 401(k) Plans

In the February 3 hearing Simplifying Security: Encouraging Better Retirement Decisions, the Senate Health, Education, Labor and Pensions Committee heard testimony from a number of retirement finance experts on the topic of "what can be done to help Americans save more for retirement and make better decisions about their retirement savings."

The following witnesses provided testimony before the panel:

- Jean Chatzky, financial journalist, author and editor, urged the committee to provide incentives for small businesses to sponsor retirement plans and for workers to participate in those plans.
- Lori Lucas, executive member of the Defined Contribution Institutional Investment Association, discussed how automatic features are being implemented in defined contribution plans and how these features can improve retirement income security.
- Dr. Julie Agnew, associate professor of economics and finance at William and Mary's Mason School of Business, shared the findings of recent academic research that demonstrates the clear role investor psychology and financial literacy plays in retirement decision making.
- Dr. Jeffrey R. Brown, William G. Karnes Professor of finance at the University of Illinois at Urbana-Champaign College of Business, provided a brief overview of academic research revealing the importance of guaranteed lifetime income in light of increasing exposure to longevity risk. He specifically recommended the proposal of legislation such as the Lifetime Income Disclosure Act of 2009 – a bill proposed several years ago by HELP Committee members Jeff Bingaman (D-NM) and Johnny Isakson (R-GA) – which

would require sponsors of defined contribution plans to inform plan participants of the projected monthly income they could expect at retirement based on their current account balance.

During the question-and-answer period, committee members asked about various initiatives for simplifying retirement planning and decision making by employees. In answering a question by Committee Chairman Tom Harkin (D-IA), Dr. Brown noted that "the employer does play … an important intermediary role and in many cases is a trusted source of information. We have put, for good reason, restrictions on what employers can do in terms of providing advice and so forth to the employees, but I think we need to be careful not to go so far as to make employers or plan sponsors – who would like to provide access to unbiased advice – concerned about doing so out of fear of violating fiduciary rules. Employers really do play a central role in all of this, and I think the more we can do to make that easier for them to pass along useful information, the better."

The HELP Committee is expected to develop defined contribution plan legislation sometime in 2011.

RECENT REGULATORY ACTIVITY

DOL Delays Applicability Date for Interim Final 408(b)(2) Regulations

In a February 11 news release, the U.S. Department of Labor (DOL) Employee Benefits Security Administration announced the intention to delay the applicability date for interim final regulations governing disclosure of defined contribution plan fees by service providers to plan fiduciaries under ERISA Section 408(b)(2).

DOL will extend the applicability date to plan contracts or arrangements for services in existence on or after January 1, 2012. The requirements were originally scheduled to apply on or after 2011.

The regulations would require that service providers give plan fiduciaries written disclosures of certain fee and services information necessary to assist plan fiduciaries in assessing the reasonableness of compensation or fees paid by the plan, as well as the potential for conflicts of interest.

IRS Issues Revenue Ruling Clarifying Termination Provisions for 403(b) Plans

On February 22, 2011, the Internal Revenue Service (IRS) released Revenue Ruling 2011-07, which clarifies when a 403(b) plan is considered terminated under the 403(b) regulations issued on July 23, 2007. The 2007 final regulations required 403(b) contracts to have a written plan that meets the 403(b) requirements. The regulations allowed these plans to contain provisions that provide for plan termination and that allow accumulated benefits to be distributed on termination.

The revenue ruling provides examples of the steps necessary to terminate 403(b) plans funded with (1) individual annuity contracts, (2) a group annuity contract, and (3) one or more regulated investment companies. The ruling also provided guidance on 403(b) money purchase pension plan terminations. The guidance indicated that participants in plans meeting the termination requirements would not be taxed on distributions from the 403(b) plan if made in the form of an individual annuity contract or an individual certificate evidencing fully paid benefits under a group annuity contract until amounts are actually paid out of the contract, so long as the contract maintains its status as a 403(b) contract.

IRS Issues Final FBAR Regulations Considered Helpful Without Providing A Blanket Exception For Plans

On February 24, 2011, the Internal Revenue Service (IRS), through its Financial Crimes Enforcement Network ("FinCEN") published final FBAR regulations (Report of Foreign Bank and Financial Accounts (Form TD 90-22.1)), which provides helpful relief for many plan sponsors and their employees who might otherwise have been required to make FBAR filings or adjustments to their individual Form 1040s due to the plan's foreign investments. Groom Law Group has prepared a summary of the final regulations, reporting that these final rules largely follow the proposed regulations published last February, and offer helpful relief for many plan filers. In addition, the final regulations largely resolve the Form 1040 reporting requirements that have been of concern to many plan sponsors.

FBAR reports are compiled for use in governmental criminal, tax or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities to protect against international terrorism. FBAR reporting for individuals with "signature authority" over foreign bank accounts has existed for many years. However, in the instructions for the 2009 report, the definition of signature authority was broadly expanded generally to include those who can influence those accounts in addition to those with actual signature authority. Potentially this could have included various employees of plan sponsors whose employee benefit trusts contain foreign investment holdings.

The IRS issued Notice 2009-62, providing an additional extension for 2009 FBAR filings by some plan sponsors and service providers who otherwise might have been required to file the FBAR by September 23, 2009. Although the final regulations did not provide a blanket exemption for plans, the final rules favorably address many plan sponsor issues.

The Treasury Department issued proposed regulations in February 2010, and the Council, along with the Committee on the Investment of Employee Benefit Assets (CIEBA) sent a letter to the Financial Crimes Enforcement Network on November 22, 2010, requesting formal guidance regarding the application of FBAR filing requirements to retirement plans.

RECENT JUDICIAL ACTIVITY – Nothing to report this month