



**WEB**  
Worldwide Employee  
Benefits Network

## ***WEB'S BENEFITS INSIDER***

**September 10, 2004**

Dear Members:

This is the inaugural edition of WEB's ***Benefits Insider***, 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.

### **IRS Announces 2004-2005 Guidance Priorities**

On July 26 the Internal Revenue Service (IRS) issued its [2004-2005 Priority Guidance Plan](#) indicating the regulatory and guidance projects it plans to issue during the 12-month period from July 2004 to June 2005. The plan includes 47 items under the category of employee benefits, including 23 on the topic of retirement and 24 under a catch-all category of executive compensation, health care and other benefits and employment taxes.

The plan indicates the IRS intends to finalize the regulations under sections 401(k) and (m) (relating to employee deferrals and matching contributions under 401(k) plans) as well as the section 411(d)(6) regulations for both defined contribution and defined benefit plans (relating to permitted elimination of some optional forms of benefit). Some other key portions of the plan on the retirement plan side include:

- guidance under section 401(a)(4) (nondiscrimination requirements);
- guidance under section 401(a)(31) on the default rollover of involuntary distributions;
- guidance on post severance of employment elective deferrals;
- guidance on Roth 401(k) elective contributions;
- guidance on amendments to suspension of benefits provisions;
- guidance on electronic communications; and
- guidance on the relative value of optional forms of benefit.

Key issues to be addressed for health plans include:

- guidance on Health Reimbursement Arrangements (HRAs);
- guidance on the election between taxable and nontaxable benefits;
- proposed regulations on the comparable contribution rules for employer contributions to Health Savings Accounts (HSAs)
- final regulations on HIPAA portability; and
- guidance on retiree health accounts established in a profit sharing plan.

It should be noted that the IRS does not always complete everything in its annual plan.

### **IRS Finalizes Deemed IRA Regulations**

On July 21, the Treasury Department and the Internal Revenue Service (IRS) issued [final regulations on “deemed IRAs” for tax-qualified retirement plans](#). The deemed IRA statutory provisions, which allow a tax-qualified retirement plan to include a separate IRA account within the plan, have been effective since January 1, 2003. The deemed IRA provisions were added to the tax code by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA).

The final regulations include two changes to the rules from the proposed regulations that may appeal to plan sponsors but, unfortunately, taking advantage of one new rule negates the second. First, unlike the proposed regulations, the final regulations generally allow the assets from the deemed IRA to be commingled in a single trust with the assets of the qualified plan so long as the plan’s accounting reflects separate accounts (tracking gains and losses separately for the IRA and the qualified plan benefit). Second, under the proposed regulations, a tax-qualified retirement plan could be disqualified if the deemed IRA failed to meet requirements applicable to IRAs (this “tainting” disqualification may have contributed to the lack of deemed IRA provisions inserted in plans since the effective date). The final regulation modified this rule so that it only applies when the plan sponsor commingles the assets of the IRA with the qualified plan in a single trust.

The final regulations are effective immediately. The IRS also issued temporary and proposed regulations that make it possible for government employers to serve as trustees of deemed IRAs they establish.

### **HHS Issues Medicare 'Message of the Day'**

The Department of Health and Human Services (HHS) has released several Medicare "Messages of the Day" that provide information on the changes made by the recently enacted Medicare Prescription Drug Improvement and Modernization Act (MMA). [The August 11 message](#) provides an overview for employers of the subsidy they can receive for offering retiree drug coverage that is at least actuarially equivalent in value to the Medicare drug benefit that begins in January 2006.

The messages from HHS are part of a broader campaign to educate Medicare beneficiaries about the operation of the new law.

### **IRS Releases Corporate Bond Rate for Plan Years Beginning in July 2004**

The Internal Revenue Service (IRS) recently issued [Notice 2004-51](#) providing a corporate bond weighted average of 6.32 percent for plan years beginning in July 2004 (the 90 to 100 percent permissible range is 5.69 to 6.32 percent). Under the Pension Funding Equity Act of 2004, the interest rates used to calculate

current liability and to determine the required contributions to defined benefit plans for plan years beginning in 2004 or 2005 must be within a permissible range based on the weighted average of rates of interest on amounts invested conservatively in long-term investment grade corporate bonds during the four-year period ending on the last day before the beginning of the plan year. Notice 2004-51 also provides information on the weighted average for 30-year Treasury bond rates used for determining the minimum lump-sum value of a participant's benefit.

### **IRS Revises Procedure for Amortization Extension Request**

The Internal Revenue Service (IRS) has issued [Revenue Procedure 2004-44](#) outlining the procedure for a plan administrator or sponsor to request an extension of the period by which unfunded plan liabilities can be amortized. The revised procedures apply to all ruling requests received after August 2, 2004, and, in many cases, significantly expand the information required to seek an extension of the amortization period. The new guidance provides a model notice and checklist to assist plan administrators and sponsors in complying with the requirements.

Under the minimum funding rules, contributions to a defined benefit plan must be sufficient to pay the normal cost of funding the plan and to amortize unfunded liabilities (which may be due to plan amendments, changes in actuarial assumptions and/or gains or losses to plan assets). The IRS can extend the applicable amortization period for up to 10 years in order to protect the interests of plan participants and beneficiaries. Under Section 304(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and Internal Revenue Code Section 412(e), the amortization period may be extended but only if the failure to permit the extension would (1) result in a substantial risk to the voluntary continuation of the plan, or a substantial curtailment of pension benefit levels or employee compensation, and (2) be adverse to the interest of plan participants in the aggregate.

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