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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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This issue edited by Jan Bucheit, BIScom Business Communications, 630-858-7733

HURRICANE RELIEF

Hurricane Legislation

Hurricane Katrina Relief Bill Enacted

On September 21, Congress passed the Katrina Emergency Tax Relief Act of 2005 (KETRA) and it was signed into law by President Bush on September 23. The retirement plan provisions in the bill allow:

- Penalty-free distributions of up to $100,000 for Hurricane Katrina victims (eliminates the Internal Revenue Code (Code) Section 72(t) 10 percent premature distribution penalty),
- Participants to pay the resulting income tax liability over three years,
- Participants to choose to repay the distributed amount to the qualified plan within three years and get "60-day" rollover treatment,
- Distributions for home purchases that were not finalized because of Hurricane Katrina to be re-contributed to the plan,
- Increases in loan limitations for affected participants to the lesser of $100,000 or 100 percent of the participant's account balance,
- Deferral of loan payments due beginning on August 25, 2005 and ending on December 31, 2006, for a period of one year (with subsequent repayments appropriately adjusted to reflect the delay in due date and any interest accruing during the delay),
- In determining the maximum five-year period for non-principal residence loans, the period described in the preceding bullet is disregarded,

The relief applies to distributions and loans made on or after August 25, 2005, and before January 1, 2007, to participants whose principal residence on August 28, 2005, was located in the Hurricane Katrina disaster area and who have sustained an economic loss by reason of Hurricane Katrina. The relief on loans does not apply to the limitation imposed under ERISA that limits the loan "security" to 50 percent of the participant's account balance. The Department of Labor has been asked to provide expedited relief from the security limitation (otherwise, plan fiduciaries would need additional security for a loan in excess of 50 percent of the participant's account balance).

The legislation will also provide (1) tax credits to employers who continue to pay affected employees, (2) charitable giving incentives, and (3) additional tax relief provisions

Additionally, this tax relief measure also provides employers a maximum tax credit of $2,400 (40 percent of the first $6,000 in wages) for employers who continue the payment of wages for employees in the hurricane affected areas. According to an explanation of the Senate provision provided by committee staff, the credit would also apply to the employer's expenses related to health insurance coverage and other medical expenses on behalf of employees in these areas.

Loans and Distributions from Retirement Plans

On September 22, Representative John Boehner (R-OH), Chairman of the House of Representatives Education and the Workforce Committee, introduced the Pension Flexibility for Displaced Workers Act of 2005 (H.R. 3862), which would give the U.S. Department of Labor (DOL) the authority to issue guidance that could make it easier for some Hurricane Katrina victims to receive loans and distributions from their retirement plans. The legislation would allow the DOL to prescribe, by notice or otherwise, a waiver,

suspension or exemption from any provision of Title I of the Employee Retirement Income Security Act (ERISA) that the Secretary of the DOL determines appropriate to facilitate the distribution or loan of assets from the retirement plan affected by Hurricane Katrina. The potential waiver, etc. can be applied to service providers or any other person dealing with a plan affected by Hurricane Katrina.

The legislation further provides that no person would be held liable for a violation of Title I of ERISA based upon an act or omission covered by a waiver, suspension or exemption if the act or omission is in compliance with the waiver, suspension or exemption. Thus, the DOL would receive the authority to, for example, either allow the participant's entire account balance to be used as security for the 100 percent loan newly authorized by Hurricane Katrina legislation or allow 50 percent of the participant's account balance to suffice as security for a larger loan. The DOL could also allow service providers who have not been able to locate the plan fiduciaries to approve loans and distributions within the guidelines of a waiver, suspension or exemption provided by the DOL without facing fiduciary liability.

Hardship Withdrawals

The Internal Revenue Service (IRS) and DOL also issued Announcement 2005-70 providing relief and guidance for loans and hardship distributions to the victims of Hurricane Katrina and members of their families. The IRS relaxed procedural and administrative rules that normally apply to retirement plan loans and hardship distributions, allowing plans to make loans or hardship distributions to Hurricane Katrina victims (and, in some cases, their immediate family members) before the plan is formally amended. The announcement also deems any distribution for hardships caused by Hurricane Katrina to be a hardship for purposes of the hardship distribution rules (hardships are not limited to the types enumerated in the regulations) and allows plans to use "good-faith efforts" under the circumstances to comply with procedural requirements including documentation. However, as soon as practicable, the plan administrator must make a reasonable attempt to assemble any foregone documentation. In addition, the six-month ban on 401(k) contributions that normally affects employees who take hardship distributions will not apply.

Form 5500

The Department of Labor announced during this same time the expansion and extension of time for filing Form 5500 by employee benefit plans affected by Hurricane Katrina. The reporting relief, which was originally granted to October 31, was extended to January 3, 2006.

IRS Health Care Guidance

The Internal Revenue Service (IRS) issued Notice 2005-73 summarizing and clarifying the benefit plan relief previously granted by the IRS to taxpayers affected by Hurricane Katrina and includes a list of affected counties and parishes. The notice also applies to HIPAA creditable coverage periods, special enrollment rights and notices; COBRA requests for coverage, premium deadlines, and notices; and benefit claims procedure timelines under ERISA.

For participants and affected employers in the disaster area, the period between August 29, 2005, and January 3, 2006, is to be disregarded when calculating applicable time periods and dates for most HIPAA and COBRA notices and elections. (The period was later extended to February 28, 2006.) The notice applies to HIPAA creditable coverage

periods, special enrollment rights and notices; COBRA requests for coverage, premium deadlines, and notices; and benefit claims procedure timelines under ERISA.

Victims of Hurricane Katrina will have until February 28, 2006, to file any returns, pay any taxes or make any deposits due, without incurring any interest, late filing, late payment or failure-to-deposit penalties that would otherwise apply. This extends and expands relief granted previously by the IRS and is available in all the counties and parishes listed in IRS news release IR-2005-91. It applies to any return, tax payment or tax deposit with an original or extended due date that fell on or after August 29, 2005. The IRS confirmed that this extends the deadline for all statutory and regulatory requirements in Section 8 of Revenue Procedure 2005-27, as contained in Internal Revenue Bulletin 2005-20. The deadline was again extended to February 28, 2006, after this information was published.

Minimum Funding Contributions
The Internal Revenue Service (IRS), the Department of Labor's Employee Benefits Security Administration and the Pension Benefit Guaranty Corporation (PBGC) provided minimum funding relief for companies affected by Hurricane Katrina. IRS Notice 2005-60, released September 2, gives employee benefits plan sponsors and administrators until October 31, 2005, to make minimum funding contributions to their plans – or apply for waivers – if the original deadline was between August 29, 2005, and October 30, 2005.

In some cases, applicable penalties are being waived but not applicable interest charges. For example, an affected plan may delay filing its Form 1, relating to PBGC premiums, that is due September 15 until October 31, and the PBGC will waive late payment penalties. However, applicable interest charges will still apply. Delays were also granted for filings and distributions related to plan terminations and a number of other reports and notices.

Both the DOL and PBGC relief apply to plans where the plan administrator, plan sponsor or other entity is located in the federally declared disaster area, or the company cannot reasonably obtain information or other assistance needed to meet the deadline from a service provider, bank or insurance company that was directly affected by the hurricane. The federally declared disaster area currently includes 31 parishes in Louisiana, 15 counties in Mississippi and three counties in Alabama.

The relief provided by the agencies and Congress often references different subsets of the federally declared disaster areas and plan sponsors should carefully read the appropriate guidance to determine the area (counties and parishes) affected by the particular relief. Other Hurricane Katrina disaster relief can be accessed on either the DOL or Internal Revenue Service Web sites.

RECENT JUDICIAL ACTIVITY

Judge Reverses *AARP v. EEOC* Retiree Health Decision
The judge in the *AARP v. EEOC* “Erie County” case has reversed her earlier ruling, now holding that Equal Employment Opportunity Commission (EEOC) does have the authority to issue its regulations on retiree health benefits. However, the judge has also stayed the effect of the new ruling pending appeal to the Third Circuit.

On March 30, the U.S. District Court for the Eastern District of Pennsylvania issued an order that delayed the effective date of the Equal Employment Opportunity Commission's (EEOC) final regulations on age discrimination and retiree health plans. These rules would clarify that an employer-sponsored retiree health plan would not violate the Age Discrimination in Employment Act (ADEA) even if it does not provide the same level of benefits to early retirees and to older retirees who are eligible for coverage under Medicare.

In July, Judge Brody, who issued both the original order and this new District Court decision, asked both the AARP and the U.S. Justice Department on behalf of the EEOC to file briefs for her to reconsider *AARP v. EEOC* in light of the Supreme Court's recent decision in *National Cable & Telecommunications Assoc. v. Brand X Internet Services*. A key question addressed in the case is what standard courts should use to evaluate whether an agency appropriately interpreted a specific statute. Judge Brody's opinion in *AARP v. EEOC* analyzed whether the EEOC's final rule on retiree health appropriately interpreted the Age Discrimination in Employment Act. Upon reconsideration, Judge Brody reviewed whether applying the new test established by the Supreme Court would lead to a different result in *AARP v. EEOC* and concluded that it did. AARP has appealed this decision to the Third Circuit.

RECENT REGULATIONS AND GUIDANCE

Treasury/IRS Release Nonqualified Deferred Compensation Regulations

On September 29, the U.S. Department of Treasury and the Internal Revenue Service (IRS) released the much-anticipated proposed regulations on Internal Revenue Code Section 409A, which governs the taxation of nonqualified deferred compensation arrangements. The regulations were formally published in the Federal Register on October 4.

The proposed regulations are a significant regulatory package (in excess of 200 pages of Federal Register copy) and continue to be analyzed by plan sponsors. Several items that that have been followed closely and commented upon are addressed, including:

- Extension of the "reasonable and good faith reliance" standard through December 31, 2006
- Extension of the time period for adopting conforming plan documents through December 31, 2006
- Extension through December 31, 2006, of the transition rule allowing changes in the timing or form of payments without violating 409A, provided that such changes in the timing and form do not apply to amounts otherwise payable in 2006
- Extension through December 31, 2006, of the transition rule allowing the form and timing of payment in supplemental pensions to be linked to the form and timing elected under a qualified plan
- Exceptions for common severance arrangements, including broad-based severance arrangements
- A permanent exception from 409A for stock appreciation rights ("SARs) that are economically equivalent to fair market value stock options, including SARs payable in cash and SARs issued by privately-held companies

- ? Safe harbors for valuation of equity arrangements provided by private companies
- ? Limited exceptions for U.S. persons who earn income abroad under broad-based plans of foreign employers

Medicare Drug Benefit Said to Be on Track and Ready for Launch
CMS Administrator Mark McClellan and other administration officials have made several recent public statements that the Medicare prescription drug benefit is on track and ready to be launched in time for Medicare beneficiaries to enroll in plans offering the new drug benefit starting November 15, 2005. Drug coverage for enrollees in these plans will be effective January 1, 2006.

On September 23, Department of Health and Human Services (HHS) Secretary Mike Leavitt announced the prescription drug plans and Medicare Advantage plans that will begin offering the new Medicare prescription drug benefit. Plans contracting with Medicare to offer the prescription drug benefit will be available in every state, including eight plans that will be available nationwide and at least 11 plans that have indicated they intend to be available and enroll Medicare beneficiaries in multi-state regions. Beneficiaries will have until May 15, 2006, to enroll for the first time in one of the new plans without being subject to an additional premium amount for late enrollment.

All Medicare beneficiaries will be receiving the new Medicare handbook, *Medicare and You*, which will describe how they can enroll in a plan offering prescription drug coverage. The Medicare handbook and other CMS information sources such as the toll-free 1-800-MEDICARE line and www.medicare.gov will urge those who have employer-sponsored coverage to first check the information provided by their employer to determine if their best coverage option may be to remain enrolled in their current retiree health plan or consider one of the new plans offering drug coverage. In mid-October, CMS is also scheduled to release decision-making tools designed to help individual Medicare beneficiaries make decisions about whether to enroll in a plan offering drug coverage and how to choose plans best-suited to their needs.

Active nationwide marketing of the plans offering the Medicare drug benefit is expected to begin in October. Before this marketing phase occurs, CMS staff has emphasized the importance of early and frequent communications from employers to their Medicare-eligible employees and retirees about how the new coverage will affect the benefits they may now have through their employer plan. CMS staff believes that direct communications by employers will provide a critical source of information to retirees as they are soon faced with the decision about whether they should enroll in one of the new plans offering prescription drug coverage.

CMS has released a new partnership document: Frequently Asked Questions about Retiree Prescription Drug Coverage and the New Medicare Prescription Drug Coverage. The document is intended to help people with Medicare who also have retiree drug coverage from an employer or union understand their options and make informed choices. In addition to distributing this document to retirees and other interested people, these FAQs are also intended to serve as a resource for employers, unions and other information intermediaries to use in developing their own communications to retirees. Other information helpful to employers is also available on CMS' Employer/Union Partnership webpage.

Also, CMS recently announced that it will automatically grant a one-time extension until October 31, 2005, for all plan sponsors applying for the Retiree Drug Subsidy (RDS). Plan sponsors do not need to submit anything to request the extension. However, CMS still urges plan sponsors to submit their applications and retiree lists as early as possible to ensure they will be processed quickly and in a timely manner. Applications may be submitted now via the RDS Center website.

The Web site began accepting retiree list submissions on September 26. Submitting the retiree lists as soon as possible will minimize the risk that a plan sponsor would encounter problems meeting the submission deadlines. CMS is currently issuing conditional approvals of completed RDS applications. The approvals are conditioned on the submission of retiree lists within applicable deadlines, and the RDS Center's processing of those retiree lists.

CMS staff have pledged to continue working closely with employers to help assure a smooth transition for the start-up of the new prescription drug benefit, both for employers that have decided to apply for payments under the retiree drug subsidy to help maintain current coverage for retirees and employers that may be coordinating their retiree health plans with one or more of the new plans offering the Medicare drug benefit. In particular, CMS staff has urged employers to inform them as quickly as possible about any operational problems or information needs employers and retirees encounter as the drug benefit enters the implementation stage so problems can be identified and corrected quickly.

FASB Seeks to Clarify Stock Option Grant Date Issue

At its meeting on September 14, the Financial Accounting Standards Board (FASB) authorized its staff to prepare a FASB Staff Position to help clarify the accounting treatment of awards that are communicated to employees after the date the awards are approved by the board of directors or compensation committee. On September 16, the staff issued a proposed FASB Staff Position (FSP) providing that a mutual understanding of the key terms and conditions shall be presumed to exist at the date an award is approved in accordance with applicable corporate governance requirements, as long as: (a) the recipient does not have the ability to negotiate the key terms and conditions of the award; and (b) the key terms of the award are expected to be communicated to all of the recipients within a relatively short time period from the date of approval.

The move was a response to recent comments by FASB staff regarding the grant date of stock awards for accounting purposes. Some accounting firms had reported that they were advised by FASB staff that for purposes of Statement of Financial Accounting Standards No. 123(R) (FAS 123(R)), the grant date of a stock award is established only when the key terms and conditions of the award have been communicated to the grantee. This position apparently was based upon a definition of the term "grant date" in the appendix to FAS 123(R) that suggests that the grant date does not occur until there is a "mutual understanding of the key terms and conditions" of the award.

The FASB staff's informal interpretation was in sharp contrast to the recently-issued IRS regulations with respect to incentive stock options (ISOs) and employee stock purchase plans (ESPPs), which generally provide that the option grant date occurs on the date the corporation granting the option completes the corporate actions needed to issue the

option. The proposed section 409A regulations relating to nonqualified deferred compensation provide rules similar to those in the ISO/ESPP regulations. Concerns have arisen that any potential discrepancy between the IRS and FASB rules would result in significant confusion, administrative burden and errors in the accounting or tax treatment of options. Therefore, FASB elected to clarify the accounting treatment of stock awards in a way that will be much more manageable for employers.

According to the proposed FSP, the clarification is intended to be effective upon a company's initial adoption of FAS 123(R). Moreover, companies that adopted FAS 123(R) before the issuance of the FSP may apply the guidance in the first quarterly reporting period beginning after the date the FSP is posted on the FASB Web site.

DOL Proposes Mandated Electronic Filing of Form 5500

On August 30, the Employee Benefits Security Administration (EBSA) of the U.S. Department of Labor (DOL) published a proposed rule that would require Form 5500, Annual Return/Report of Employee Benefit Plan, to be filed electronically. The electronic mandate would apply to filings for plan years beginning on or after January 1, 2007, and would not apply to Schedules (such as E and P) and other filings (such as 5500-EZ) that are only required under the Internal Revenue Code (Code), not the Employee Retirement Income Security Act (ERISA). Issues relating to transition from paper filing to electronic filing (for Code requirements) are under consideration by the Internal Revenue Service.

The DOL indicated that it expects third-party software to remain the primary means of producing electronic Form 5500s but the DOL intends to provide a new system, as a separate filing method, which will involve a dedicated, secure Internet website through which plan administrators (or other 5500 preparers) will be able to input and save data for an individual filing through multiple sessions. The system will authorize input from multiple parties (service providers, actuaries, accountants, etc.) and allow attachments to be uploaded. The system can be used to complete and submit the filing to EBSA.

The DOL indicated that technical details of the electronic filing requirements are yet to be worked out but that the DOL is committed to resolving electronic filing impediments identified by companies that responded to its March 2004 request for comments, in particular those impediments relating to electronic signatures, attachments and attestations furnished by third parties. These issues were among the issues raised in a comment letter filed by the Council. The DOL indicated that filing requirements and compliance instructions will be provided in advance of any due date for filing the Form 5500 under the final regulations. Plan sponsors will continue to be required to maintain a fully signed paper copy of the filing with its permanent plan records.

IRS Issues Two-and-a-Half Month Grace Period Guidance for Dependent Care FSAs

The Internal Revenue Service (IRS) has issued Notice 2005-61 to clarify the Form W-2 reporting requirements applicable to dependent care flexible spending arrangements (FSAs) when an employer has provided the two-and-a-half month spending extension. Notice 2005-42 provided employers with the option of allowing employees to have an additional two-and-a-half months at the end of the calendar year to spend health and/or dependent care FSA dollars before they become subject to the use-it-or-lose-it rule. Concerns were raised with IRS and Department of Treasury staff about the year to

which the dependent care FSA expenses paid during the spending extension relate, which is important for purposes of W-2 reporting and the $5,000 annual limit on excludable dependent care expenses. Notice 2005-61 clarifies that expenses paid during the spending extension are reportable as provided in the calendar year for which the salary reduction contributions were elected.

IRS Implements Staggered Determination Letter Process
On August 26, the Internal Revenue Service (IRS) issued Revenue Procedure 2005-66 providing for the issuance of determination letters under a staggered remedial amendment period (RAP) system for individually designed as well as pre-approved qualified plans. A determination letter provides assurance that the terms of the retirement plan satisfies the qualification requirements of the Internal Revenue Code, and the determination letter program allows sponsors of qualified retirement plans to request and receive letters of determination regarding the qualified status of their plans.

Revenue Procedure 2005-66 establishes a regular, five-year cycle for plan amendments and determination letters for individually designed plans and two six-year cycles (one for defined contribution plans and another for defined benefit plans) for opinion letters for pre-approved plans which includes master and prototype (M&P) and volume submitter plans. To ensure that their plans continue to comply with qualification requirements, plan sponsors will need to submit determination letter applications (or applications for opinion letters) regularly once every five or six years. In the past, determination letters have been sought after major legislative changes required substantial changes and the remedial amendment period (the period during which amendments can be made and the determination letter requested) has been set on an ad hoc basis by the IRS.

The new procedure will first be used for applications for determination letters that take into account the requirements of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and would extend an individually designed plan's EGTRRA remedial amendment period to the following dates based on the plan sponsor's taxpayer identification number (TIN).

TIN Ends in	Last day of EGTRRA Remedial Amendment Period	Next 5-Year Remedial Amendment Period Ends on
1 or 6	January 31, 2007	January 31, 2012
2 or 7	January 31, 2008	January 31, 2013
3 or 8	January 31, 2009	January 31, 2014
4 or 9	January 31, 2010	January 31, 2015
5 or 0	January 31, 2 011	January 31, 2016

Under the revenue procedure, the IRS will begin to accept applications for individually designed plans that take into account the EGTRRA requirements on February 1, 2006.

Treasury, IRS Finalize Regulations on Valuation of Distributed Life Insurance Contracts
On August 29, the U.S. Department of Treasury and the Internal Revenue Service (IRS) published final regulations clarifying the tax treatment of life insurance contracts either distributed from a qualified retirement plan or sold at less than fair market value to a plan

participant or beneficiary. Under the final regulations, the distributee is taxed on the full fair market value of the insurance contract or the amount of the "bargain" element if the contract is sold for less than full fair market value.

The final regulations, which generally retain the rules set forth in regulations proposed in 2004, indicates that the entire cash value of the contract may not reflect the fair market value of the contract. The regulations clarify that where a qualified plan distributes a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, the fair market value of all features of the contract, (including (1) the value of all rights under the contract, (2) any supplemental agreements whether or not guaranteed, and (3) the value of a springing cash value feature) are generally included in the distributee's income.

The final regulations also clarify that any bargain element in the sale of a contract is treated as a distribution under Internal Revenue Code (Code) Section 402(a), and could cause qualification issues under other sections of the Code (the regulations specifically mention limitations on in-service distributions and the limitations of Code Section 415). A bargain element is created when a qualified plan transfers the contract for consideration that is less than the fair market value of the contract. The bargain element of a sale made prior to August 29, 2005, is not treated as a distribution for purposes of the qualification requirements but is still income under Code Section 61.

RECENT LEGISLATIVE ACTIVITY

Senate Finance, HELP Committees Reach Compromise on Pension Funding Reform Bill

On September 28, the leadership of Senate Finance and Health, Education, Labor and Pensions (HELP) committees announced a compromise bill that will make significant changes to the rules governing defined benefit and defined contribution plans. The Pension Security and Transparency Act of 2005 will soon be considered by the full Senate. The legislative text, as well as an official summary, is available on the Council Web site.

The bill is sponsored by Senators Charles Grassley (R-IA) and Max Baucus (D-MT), chairman and ranking member of the Finance Committee, and Mike Enzi (R-WY) and Edward Kennedy (D-MA), chairman and ranking member of the HELP Committee. It represents a compromise between the National Employee Savings and Trust Equity Guarantee (NESTEG) Act, approved by the Senate Finance Committee on July 26 and the Defined Benefit Security Act (summary), approved by the HELP Committee on September 8.

The revised bill retains elements of both bills, including several features from NESTEG that raise concerns for Council members. These include:

- A relatively short transition period beginning in 2007 of 3 years (5 years for very small plans) to reach the new target liability and an interest rate for calculating liabilities based on a 3-segmented yield curve using a 12 month unweighted average of investment grade corporate bonds beginning in 2007. The currently used 4-year weighted average of long-term corporate bonds would be used in 2006. Plus,

- ? An at-risk target liability for plans less than 93 percent funded on a non-risk liability basis;
- ? New "rehabilitation" requirements on multiemployer plans as were included in the Defined Benefit Security Act; and
- ? The prospective only provisions on hybrid plan clarification that were included in both NESTEG and the Pension Security Act.

The bill also includes important changes applicable to defined contribution plans. These include:

- ? Required diversification requirements applicable to employer stock after 3-years of service;
- ? Specific new requirements for quarterly statements;
- ? Black-out period notices and investment education in general and with respect to company stock as well as sizeable penalties for failure to comply with the new requirements;
- ? Application of the vesting schedule currently applicable to matching contributions (100 percent after 3 years or 20 percent after 2 years increasing by 20 percent each year) to all employer contributions;
- ? new survivor benefit requirements; and
- ? A study on extending spousal consent requirements to defined contribution plans.

The bill does include several helpful provisions. There would be a much higher deductible limit, 180 percent of target liability, available for contributions to defined benefit plans, as well as repeal of the combined plan limit which has restricted the ability of plan sponsors to maximize contributions to their defined contribution plans. The bill generally allows the use of credit balances resulting from pre-funded amounts. The bill includes the ability to obtain qualified retirement planning services pre-tax, the ability to provide investment advice through a "qualified investment adviser," the ability to transfer lost participants' benefits to the PBGC, expanded rollover rules and expanded notice and consent requirements.

The full Senate was expected to consider the bill early in October, but potential amendments delayed that action. A few amendments are expected on the floor including expansion of the relief provided to the troubled airlines to fund their unfunded liabilities (currently a 14-year amortization period and the ability to use alternative assumptions to calculate liabilities) and provisions adding automatic enrollment and automatic increases.

Senator Tom Harkin (R-IA), who had previously indicated his intent to offer an amendment mandating retroactively that plans not be permitted to "wear-away" benefits when there is a plan conversion to a hybrid plan from a traditional defined benefit plan, is unlikely to offer an amendment. To the extent there is debate over the bill it is likely that some members will raise concerns that the hybrid plan provisions in the bill fall short of resolving the issues surrounding cash balance and other hybrid plans and, in fact, raise further concerns. There is also a possibility that concerns raised by the Council and its members regarding the funding rules could be reflected in an amendment.

Council Releases *Promises to Keep* Report on PBGC Deficit
On September 23, the American Benefits Council unveiled *Promises to Keep: The True Nature of the Risks to the Defined Benefit Pension System*, a report examining the reported deficit of the Pension Benefit Guaranty Corporation (PBGC) – estimated at $23.3 billion in the federal agency's most recent annual report. According to *Promises to Keep*, "Using slightly more reasonable assumptions, this deficit could be reduced to $14.3 billion, and, under one scenario, could be as low as $4.6 billion."

The report was commissioned by the Council and prepared by Mary Schmitt and John O'Hare of Optimal Benefit Strategies, LLC; Schmitt and O'Hare possess more than 40 years of combined experience on Capitol Hill and the executive branch and have extensive knowledge of federal tax policy.

Specifically, the report discusses the PBGC's use of abnormally low interest rate assumptions and how it translates into both a larger deficit number and reduced benefits for participants of those plans that are taken over by the agency. The report also examines PBGC's investment strategy, finding it "overly conservative and heavily skewed toward fixed-income securities."

Coincidentally, on September 23, the Congressional Budget Office released A Guide to Understanding the Pension Benefit Guaranty Corporation, which aims to provide a basic understanding of federal pension insurance, the operations of the PBGC, and the financial condition of and the outlook for the agency over the next 10 years.