

# MONTHLY BENEFIT

## News and Developments

Employee Benefits

### Upcoming Key Dates

**12/15/11** (annual periods for fiscal years ending after) – If contributing to a multiemployer pension plan, publicly traded company must newly comply with FASB's standard on disclosures.

**12/27/11** (transactions on/after) – Application of DOL's final investment advice rule.

**12/27/11** – Compliance with DOL's final rule on prohibited transaction exemption applications.

**12/31/11** – Deadline to amend a nonqualified deferred compensation plan to make the time and form of payment identical to another NDCP to which it is linked for purposes of determining benefits or time and form of payment.

**12/31/11** – Deadline to amend calendar-year nongovernmental retirement plans for WRETA.

**12/31/11** – Deadline to amend calendar-year defined contribution or defined benefit plans for discretionary changes implemented during 2011.

**12/31/11** – Deadline to amend calendar-year single-employer defined benefit plans for funding-based limits and benefit accruals, and certain special rules for cash balance/hybrid plans (excluding interest crediting rules).

**12/31/11** – Expiration of: the reduced OASDI tax rate for workers; the dollar parity for employer-provided mass transit and parking benefits; the small-employer wage credit for differential wage payments paid to activated military reservists; the Work Opportunity and Indian employment tax credits; and the expanded adoption assistance program.

### Legislative Activity on the Benefits Front

Following congressional approval of a bill (H.R.2832) to extend the Generalized System of Preferences, the President signed it into law (P.L.112-40) and by so doing, temporarily and retroactively extended the Health Coverage Tax Credit (HCTC) and other benefits for certain workers displaced by trade agreements. The new law provides a subsidy (in the form of a refundable tax credit) amounting to 72.5% of the health insurance premiums (including COBRA premiums), retroactively to Feb. 13, 2011. It also restores the extended COBRA continuation coverage period for individuals eligible for trade adjustment assistance. The law returns the subsidy to 65% after 2013. In addition, the law defines an individual who has been rehired by an employer after 60 consecutive days of separation as a "newly hired employee" who must be reported to the national or state Directory of New Hires.

Congress continues to struggle with the appropriations bills for the 2012 fiscal year that began Oct. 1, making little headway even under pressure of an expiring temporary funding measure that is keeping federal agencies operating through Nov. 18. Lawmakers may consider a new continuing resolution to fund the government through the end of January.

In other legislative news:

- The House approved a bill (H.R.2576) that would include all Social Security benefits (i.e., not just the taxable portion) in adjusted gross income when determining an individual's eligibility for Medicaid and federal subsidies under the health reform law ("PPACA"). Senate action on this bill is uncertain at this time, although similar bills are pending and the specific provision has White House support.
- The Senate failed to advance a bill (S.1660) that, among other things, would have: halved payroll taxes for both workers and employers in 2012; eliminated payroll taxes for businesses that hire individuals who have been unemployed for more than six months; and extended unemployment insurance benefits. The bill would have been paid for by a new 5.6% surtax on households earning more than \$1 million per year.
- The "Supercommittee" working to produce a deficit reduction plan by Nov. 23 generally continues working behind closed doors.

#### *In developments related to PPACA:*

- The Administration has announced the cancellation of plans to implement the Community Living Assistance Services and Supports (CLASS) program, the voluntary long-term care plan under PPACA. The Department of Health and Human Services had concluded that the program was not financially viable.
- Briefs have been filed with the U.S. Supreme Court on challenges to the individual mandate and other PPACA provisions, paving the way for a decision in mid-November on whether it will review the appellate courts' rulings. If review is granted, arguments could be scheduled for early Spring.

## Governmental Retirement

The Census Bureau released its *2009 State and Local Employee Retirement Systems Survey*, an annual look at the financial activity and membership of public employee retirement systems, including revenues, expenditures, investment holdings, and number of systems. According to the survey, the nation's state and local public employee retirement systems had \$2.5 trillion in total cash and investment holdings in 2009, a \$726.1 billion or 22.7% decrease from \$3.2 trillion in 2008.

[www.census.gov](http://www.census.gov)

## A Pair of CBO Studies

The Congressional Budget Office issued:

- *Use of Tax Incentives for Retirement Saving in 2006* – This report found that 52% of all workers who filed tax returns participated in a tax-favored retirement plan. The highest participation rates (64% and above) were found among workers aged 45 to 59, whose income was \$40,000 or more and who were the higher earner in a two-earner household. The lowest rates (41% or less) were among workers under age 30, whose income was less than \$20,000 and who were unmarried.

- *Trends in the Distribution of Household Income Between 1979 and 2007* – This report found that for the top 1% of the population, average real after-tax household income grew by 275%, while those in the 21st through 80th percentiles experienced growth of just under 40%. Including employer-sponsored health insurance in income slightly lowered measured inequality and the measured increase in inequality between 1979 and 2007.

[www.cbo.gov](http://www.cbo.gov)

## GAO on Retirement Security

The Government Accountability Office (GAO) released *Income Security: Older Adults and the 2007-2009 Recession* (GAO-12-76), which concluded that the "shift from defined benefit to defined contribution pension plans will make future retirees: more dependent on their own choices about how much to save, how to invest those savings, at what age to retire, and how to draw upon those savings; and more vulnerable to financial market volatility."

[www.gao.gov](http://www.gao.gov)

## Regulatory Roundup

### From the Department of the Treasury:

- *Final and temporary rules* extending the exceptions from FICA and FUTA payroll taxes for religious members and their families.
- *Notice 2011-85*, announcing the postponement of effective dates for certain hybrid defined benefit plan interest crediting rules.
- *Notice 2011-86*, providing exemptions for determination letter user fees for retirement plans.
- *Revenue Procedure 2011-49*, updating the requirements for requesting opinion and advisory letters for master and prototype and volume submitter retirement plans that account for EGTRRA.
- *Rev. Proc. 2011-52*, providing the 2012 inflation-adjusted benefit figures and tax tables.
- *Information Release 2011-103*, announcing the 2012 pension plan limits (see [Client Action Bulletin 11-08](#)).
- Revised *Listing of Required Modifications* for cash-or-deferred arrangements and for defined contribution plans.
- *Information Release 2011-106* and a report from the Information Reporting Program Advisory Committee making recommendations on: healthcare reporting for 2013, EINs for retirement plans, and automatic extension of certain filing deadlines.
- Advance *proof copies* of the 2010 Form 8955-SSA and Instructions.

### From the Department of Labor:

- *Final rule on providing investment advice to participants in 401(k) and similar individual account plans.*
- *Final rule revising the Form LM-30 Labor Organization Officer and Employee Report and instructions.*
- *Final rule on applying for a prohibited transaction exemption.*
- *A press release announcing that information provided to participants to satisfy the agency's fee disclosure rule will also satisfy the Securities and Exchange Commission's Rule 482 on securities advertising, along with the SEC's staff no-action letter.*
- *Q's and A's to help multiemployer plans avoid prohibited transactions in common leasing arrangements.*

### From the Pension Benefit Guaranty Corporation:

- *Proposed rule* on determining benefits in terminating cash balance and other hybrid retirement plans.
- An *announcement* that the per-participant flat-rate premium for plan year 2012 remains at the 2011 rate of \$35 for single-employer plans and \$9 for multiemployer plans.
- A Web posting updated data on financial assistance payments to multiemployer pension plans.

### From the Department of Health and Human Services:

- *Frequently Asked Questions on COBRA for state and local government employers.*
- A *Fact Sheet* on the Medicare Part A and Part B cost-of-living adjustments (COLAs) for 2012 (see [CAB 11-09](#)).

### From the Social Security Administration:

- A *press release* announcing the COLAs for 2012 (see [CAB 11-08](#)).

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