A Preview of the 101st Congress (p. 1)  Number of Pension Plans Rises in 1987 (p. 4)  Pension Plan Qualification and the Bankruptcy Courts (p. 4)  Legislation & Litigation (p. 6)  In the States (p. 7)  House Names Leadership, Committee Chairmen (p. 8)  Bentsen Splits Health Subcommittee (p. 9)  For Your Benefit (p. 9)

A Preview of the 101st Congress

Employee benefits legislation in the 101st Congress is likely to begin where it left off in the 100th Congress: issues that were debated but not acted upon—such as dependent care, pension portability and preservation, asset reversions, the minimum wage, long-term care, parental leave, and access to health care for the uninsured—are likely to be revisited. In addition, a few new issues will be given unprecedented attention, including the implications of corporate mergers and acquisitions for tax policy and pension fund security.

President George Bush's legislative agenda, as stated during the presidential campaign, seems thus far to be moderate and, in many areas, in line with what the heavily Democratic Congress is likely to accept. It is uncertain what impact Vice President Dan Quayle's involvement as president of the Senate will have, given his vow to be highly visible in that role.

Faced with wide agreement on Capitol Hill that quick action should be taken to address the federal budget deficit, Bush's promise of "no new taxes" may be difficult to keep. Rep. Robert Michel (R-IL), the House Republican leader, said on Jan. 1 that a tax increase probably will be part of a bipartisan budget compromise. House Ways and Means Committee Chairman Dan Rostenkowski (D-IL) has said he supports increasing the amount of Social Security benefits subject to taxation and raising the gasoline tax 15 cents per gallon to raise revenues, and announced his committee will hold hearings Feb. 7-9 on ways to reduce the deficit. And both Reps. Pete Stark (D-CA) and Bill Gradison (R-OH) have said that partial taxation of health benefits may have to be considered as a means of financing health care for the uninsured.

Budget deficit reduction targets must be met, so it is unlikely that social programs with high price tags will be enacted unless the programs are "self financing" and, therefore, deficit-neutral. Congressional staff has for the last few years looked to raise revenues by altering the tax preferences afforded employee benefit programs, although legislators' actions on benefit issues have not been solely revenue-driven. Once again, we can expect Capitol Hill to view benefits as potential sources of tax revenues.

Corporate Takeovers

The historical $25 billion buyout of RJR Nabisco, Inc., late last year by Kohlberg Kravis Roberts & Co., which involved the largest amount of debt ever incurred by a buyer, topped off a year of corporate "takeover mania" which, according to IDD Information Services, totaled an estimated $453 billion. Numerous members of Congress have publicly voiced concern about the effect of takeovers on shareholders and on the economy—especially ofleveraged buyouts (LBOs), in which companies finance a takeover by borrowing huge amounts of money against their own assets—and various committees have scheduled hearings on the issue.

The Senate Finance Committee will hold hearings Jan. 24-26 on LBOs, while the House Ways and Means Committee will hold hearings on the tax policy aspects of mergers and acquisitions Jan. 31-Feb. 2. Hearings in early February by the Labor-Management Relations Subcommittee of the House Education and Labor Committee are to focus on the role of pension funds and LBOs. The Telecommunications and Finance Subcommittee of the House Energy and Commerce Committee also is planning to hold hearings on LBOs,
but at press time they had not been scheduled.

In addition, the chairman of the Securities and Exchange Commission has said his staff will thoroughly review LBOs and similar transactions. Other federal officials, including Federal Reserve Board Chairman Alan Greenspan, have expressed concern over potential abuse of the tax system in takeovers, since interest payments on corporate debt incurred in mergers and buyouts are fully deductible.

Early in the 100th Congress, following the Ivan Boesky-Wall Street scandal, lawmakers began a review of what they perceived as abuses in corporate takeovers, especially greenmail, poison pills, and tender offers. Former Sen. William Proxmire (D-WI) led the investigation and sponsored S. 1323, the Tender Offer Disclosure and Fairness Act of 1987, which was debated on the Senate floor but not brought to a vote.

Within the framework of pension funds and corporate mergers, also expect some attention to be given to the tax-free buildup of pension trust earnings as a way to raise revenue. Taxing short-term capital gains on pension investments is one option that has been floated as a source of substantial new revenues.

**Health Care**

Stark, Gradison, and Sen. Pete Domenici (R-NM) confirmed in separate recent speeches that some level of health benefit taxation is likely to be seriously considered by the new Congress. A coalition first established in 1985 and led by the Health Insurance Association of America is being revived to lobby against any tax on employer-provided health benefits.

The Congressional Budget Office (CBO) estimates that $47 billion in tax revenues could be gained over five years by taxing employer-financed health premiums exceeding $225 a month for families and $90 a month for individuals.

Health care cost management will be a driving issue in the health policy arena for the first time, said one congressional aide, a view consistent with that of Sen. Orrin Hatch (R-UT), who predicts enactment of medical malpractice tort reform. In addition, the Bipartisan Commission on Comprehensive Health Care, comprising House and Senate members and White House representatives, will continue to examine health policy and legislation.

**Access to Health Care**—During his campaign, Bush said he favors Medicaid buy-in, and this likely will be a key approach to dealing with the issue of the uninsured, particularly women and children. His campaign literature also indicated he supports incentives for small employers to provide coverage, including formation of employer groups.

An aide to Sen. Edward Kennedy (D-MA) reported that the senator will reintroduce his mandated health benefits bill, which passed the Senate Labor and Human Resources Committee during the last Congress; some observers believe, however, that the bill will not pass the new committee. Some congressional observers foresee a renewed effort to establish some form of national health insurance.

**Medicare**—Despite outcry from beneficiaries over the high cost of the Medicare Catastrophic Coverage Act of 1988, the 101st Congress is unlikely to enact further modifications immediately. The fastest-rising component of spending under Medicare has been payments to physicians, and some type of physician payment reform will be likely. The relative value scale proposed by researchers and the American Medical Association, which might realign physician incentives by paying more for primary care and less for complex care, has been discussed as a likely option, although a prepayment system may be proposed as a last resort, according to Hatch. In addition, Bush reportedly is receptive to a number of cuts in Medicare spending, which may face resistance on Capitol Hill.

**Long-Term Care**—Bush and the other presidential candidates devoted a good deal of rhetoric to the issue of financing and delivery of long-term care, so it is likely to be addressed early on. To date, Bush has offered no specific proposals for addressing the issue, however. Since most proposals involving public-based programs would be extremely expensive, it is likely that any action would use the tax code to encourage private financing. Rep. Claude Pepper (D-FL) is expected to continue to be a vocal advocate, even though his Medicare home care bill failed last year.

**Retiree Health**—As employer concern about bottom-line issues associated with retiree health benefits accelerates with the Financial Accounting Standards Board's imminent release of an exposure
draft expected to require employers to book a portion of their retiree health liabilities, demand will increase for Congress to begin taking a closer look at prefunding and benefit security issues. Few observers expect Congress to act, and then only if guarantees equivalent to benefit vesting are provided to retirees. Others believe that Congress will give consideration to tax-favored prefunding of retiree health benefits only if employers accept cutbacks in other employee benefit tax incentives, because of the revenue loss involved.

Section 89—Congress may seek ways to further ease the administrative burden of complying with the section 89 welfare benefit nondiscrimination rules, but repeal is not expected unless it is part of a universal health insurance coverage mandate.

Coverage Continuation—It is likely that lawmakers will address the problem faced by persons who must drop their former employer’s health coverage (continued under provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985) when they become covered under another employer plan, even though the new plan may contain a waiting period before preexisting medical conditions are covered.

Family Issues

Dependent Care—Particularly with the new president’s support of a child care tax credit, legislation providing child care support through the tax code is likely to pass the 101st Congress quickly. When it does, it will be the culmination of unfinished business that consumed a considerable amount of time and attention during the preceding Congress, when more than 100 child care bills were introduced. The debate will be different from last year’s, however, with the emphasis on tax code incentives rather than direct government funding.

Parental Leave—Congress is likely to consider bills that would require employers to provide leaves of absence without pay, with guaranteed job security, for employees who want time off from work for the birth, adoption, or serious illness of a child. Some observers believe a bill will be enacted.

Retirement Income

Pension and retirement income issues are likely to take a back seat to corporate takeover and health care issues.

Social Security—The buildup in the Social Security trust funds is likely to be at issue, particularly whether the funds should continue to be used to reduce the federal budget deficit. Intergenerational conflict issues also may arise as the ratio of active workers to retirees continues to fall.

Asset Reversions—Congress is likely to revisit the issue of asset reversions. Sen. Howard Metzenbaum (D-OH) is likely to continue his efforts to disallow reversions altogether or to further increase excise tax levels. Consideration will also be given to allowing “excess assets” to be reallocated to meet retiree medical obligations in return for ending asset reversions.

Pension Portability and Preservation—Reps. Rod Chandler (R-WA) and John McCain (R-AZ) are likely to once again introduce bills related to pension portability and preservation. Both are revising their proposals and are likely to place greater emphasis on preservation or completely restrict access to funds before age 59 1/2.

Technical Corrections—Pension-related technical corrections legislation spun off from the broader bill last June is likely to be addressed. Its ultimate fate, however, will depend

Thank You to Our Readers

Many thanks to those of you who participated in our second readership survey. Your comments and suggestions are extremely welcome.

We are happy to report that a majority of you rated Employee Benefit Notes and EBRI Issue Briefs as two of the best employee benefit periodicals. In particular, you said you look to us to provide information on employee benefit news and trends and report on government activity related to employee benefit issues.

In response to your comments, we will place a greater emphasis on providing more information about what other companies are doing in employee benefits. We also will bring you more information about state activities related to benefits in a new feature, “In the States,” which begins in this issue on p. 7.
on whether the two House committees of jurisdiction, Education and Labor and Ways and Means, can reach agreement. Pension technicals passed Education and Labor in July, but a discrepancy between the committee's and CBO's revenue estimates prevented the bill from reaching either floor.

Life Insurance

Rostenkowski and Stark are likely to continue to seek further restrictions on single-premium life insurance policies and similar products, aimed at making them less attractive as investment vehicles. Congress may also consider making employer-paid life insurance fully taxable, a move that would net $14 billion in tax revenues over five years, according to CBO.

Minimum Wage

A higher wage was debated in the 100th Congress but failed to pass. During his campaign for the presidency, Bush said he would support a wage increase if it was accompanied by a rise in the subminimum "training wage" for newly hired workers. Supporters will bring back the issue during the 101st Congress.

Number of Pension Plans Rises in 1987

The number of private defined benefit and defined contribution pension plans grew to 875,000 as of Sept. 30, 1987, an increase of 29,000 plans over the year-end 1986 level (table 1). Defined benefit plans numbered 233,000, up 4,000 since year-end 1986. A net 25,000 new defined contribution plans were established during this period, bringing the Sept. 30, 1987, level to 641,000 plans.

Defined benefit plans represented 26.7 percent of all plans, while defined contribution plans made up the remaining 73.3 percent. As a percentage of all plans, defined contribution plans have grown every year since 1980, reaching a new high with the latest count.

The ratio of defined benefit to defined contribution plans has received increased attention since the passage of the Employee Retirement Income Security Act of 1974 (ERISA). ERISA required minimum funding standards for all qualified defined benefit pension plans, as well as mandatory benefit insurance provided through the Pension Benefit Guaranty Corporation. Some observers felt that these requirements would raise the costs of defined benefit plans to a prohibitive level, thereby causing employers to substitute less-expensive defined contribution plans as the primary retirement benefit vehicle. Because plan participants bear greater investment risk in a defined contribution plan, it was feared that ERISA's requirements might indirectly place the retirement income security of plan participants at risk.

While defined contribution plans have shown a gradual proportional increase since the enactment of ERISA, the significance of this increase is complicated by a number of factors.

First, preliminary 1987 data indicate that there were 39.6 million participants in defined benefit plans (including active nonvested and vested workers, retired workers, and those who had separated from service), compared to 37.0 million in defined contribution plans. These data count the full number of participants in each plan and, therefore, persons who participate in more than one plan are counted twice. Although the number of defined contribution plan participants has shown a proportional increase relative to that of defined benefit plan participants, both groups have grown in absolute terms.

Second, the degree to which net new defined contribution plans have become primary retirement benefit vehicles is not clear. While nearly all defined benefit plans are primary, only about 75 percent of all defined contribution plans were primary plans in 1985, the most recent year for which data are available. The Labor Department is tabulating a time series that will detail the proportion of defined contribution plans that are secondary, versus primary, over time. These data will be available in late 1989.

Finally, the data include more than 100,000 corporate single-participant plans. Although these are predominantly defined contribution plans, their inclusion may either exaggerate or attenuate the ratio of defined contribution plans to the total. A new plan count series that will exclude single-participant plans will be available later this year, and will reveal the distribution of multiparticipant plans only.

Pension Plan Qualification and the Bankruptcy Courts

[Editor's note: This column, a regular
The actual outcome has depended not only on the particular court's view of the law but also on the type of plan involved, the degree of access to or control over plan assets by the debtor, whether the debtor is himself the employer sponsoring the plan, and whether the pension trust would qualify under state law as a "spendthrift trust" (i.e., a trust that provides protection against creditors, conceptually similar to ERISA's antialienation provisions).

For sponsoring employers and plan administrators, perhaps the most disturbing aspect of this fight is a concern similar to the old uncertainty about complying with family support orders running to plans (now resolved by ERISA's qualified domestic relations order [QDRO] provisions). The specific concern is the effect that complying with a decision to make plan assets available to the bankrupt party's creditors could have on the plan's tax qualification. Section 401(a)(13) of the Internal Revenue Code provides that a pension trust is not qualified "unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated." The Internal Revenue Service (IRS) has, in fact,

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**Table 1**

**Defined Benefit and Defined Contribution Plan Trends, 1974–1987**

<table>
<thead>
<tr>
<th>Year-End</th>
<th>Defined Benefit</th>
<th></th>
<th></th>
<th></th>
<th>Defined Contribution</th>
<th></th>
<th></th>
<th></th>
<th>All Plans</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number (thousands)</td>
<td>Percentage of total</td>
<td>Percentage change</td>
<td>Number (thousands)</td>
<td>Percentage of total</td>
<td>Percentage change</td>
<td>Number (thousands)</td>
<td>Percentage change</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1974</td>
<td>126</td>
<td>34.0%</td>
<td></td>
<td></td>
<td>245</td>
<td>66.0%</td>
<td></td>
<td></td>
<td>371</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1975</td>
<td>125</td>
<td>32.8%</td>
<td>-1.1%</td>
<td></td>
<td>256</td>
<td>67.2%</td>
<td>4.7%</td>
<td></td>
<td>381</td>
<td>2.7%</td>
<td></td>
</tr>
<tr>
<td>1976</td>
<td>127</td>
<td>31.6%</td>
<td></td>
<td>1.3%</td>
<td>274</td>
<td>68.4%</td>
<td>7.0%</td>
<td></td>
<td>401</td>
<td></td>
<td>5.1%</td>
</tr>
<tr>
<td>1977</td>
<td>132</td>
<td>29.2%</td>
<td></td>
<td>4.0%</td>
<td>320</td>
<td>70.8%</td>
<td>16.5%</td>
<td></td>
<td>451</td>
<td></td>
<td>12.6%</td>
</tr>
<tr>
<td>1978</td>
<td>139</td>
<td>28.1%</td>
<td></td>
<td>5.7%</td>
<td>357</td>
<td>71.9%</td>
<td>11.5%</td>
<td></td>
<td>496</td>
<td></td>
<td>9.8%</td>
</tr>
<tr>
<td>1979</td>
<td>158</td>
<td>29.3%</td>
<td></td>
<td>13.1%</td>
<td>381</td>
<td>70.7%</td>
<td>6.9%</td>
<td></td>
<td>539</td>
<td></td>
<td>8.7%</td>
</tr>
<tr>
<td>1980</td>
<td>179</td>
<td>30.4%</td>
<td></td>
<td>13.8%</td>
<td>410</td>
<td>69.6%</td>
<td>7.7%</td>
<td></td>
<td>590</td>
<td></td>
<td>9.5%</td>
</tr>
<tr>
<td>1981</td>
<td>203</td>
<td>30.6%</td>
<td></td>
<td>13.3%</td>
<td>460</td>
<td>69.4%</td>
<td>12.0%</td>
<td></td>
<td>663</td>
<td></td>
<td>12.4%</td>
</tr>
<tr>
<td>1982</td>
<td>220</td>
<td>30.2%</td>
<td></td>
<td>8.2%</td>
<td>509</td>
<td>69.8%</td>
<td>10.7%</td>
<td></td>
<td>729</td>
<td></td>
<td>9.9%</td>
</tr>
<tr>
<td>1983</td>
<td>222</td>
<td>30.1%</td>
<td></td>
<td>1.0%</td>
<td>515</td>
<td>69.9%</td>
<td>1.1%</td>
<td></td>
<td>737</td>
<td></td>
<td>1.1%</td>
</tr>
<tr>
<td>1984</td>
<td>216</td>
<td>28.8%</td>
<td></td>
<td>-2.8%</td>
<td>533</td>
<td>71.2%</td>
<td>3.5%</td>
<td></td>
<td>748</td>
<td></td>
<td>1.6%</td>
</tr>
<tr>
<td>1985</td>
<td>224</td>
<td>27.9%</td>
<td></td>
<td>4.0%</td>
<td>581</td>
<td>72.1%</td>
<td>9.1%</td>
<td></td>
<td>805</td>
<td></td>
<td>7.6%</td>
</tr>
<tr>
<td>1986</td>
<td>229</td>
<td>27.1%</td>
<td></td>
<td>2.2%</td>
<td>616</td>
<td>72.9%</td>
<td>6.1%</td>
<td></td>
<td>846</td>
<td></td>
<td>5.0%</td>
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<tr>
<td>1987</td>
<td>233</td>
<td>26.7%</td>
<td>n/a</td>
<td></td>
<td>641</td>
<td>73.3%</td>
<td>n/a</td>
<td></td>
<td>875</td>
<td>n/a</td>
<td></td>
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</table>

Source: Employee Benefit Research Institute tabulations of U.S. Department of Labor (DOL) and Internal Revenue Service (IRS) data. Years 1974–1976 and 1987 are based on IRS data; years 1977–1986 are based on DOL estimates.

*a(Number of plans as of Sept. 30, 1987.

n/a: Not applicable.

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*feature of Employee Benefit Notes, was prepared by EBRI's legal counsel, Arnold & Porter, under the supervision of K. Peter Schmidt.*
appeared in several bankruptcy litigations to argue that compliance with such a decision will result in plan disqualification.

Addressing this dilemma squarely, at least one bankruptcy court has recently held, over the objection of IRS, that it has jurisdiction to determine the ongoing qualification of the plan (In re Witte, 92 B.R. 218 [Bkptcy. Ct. W.D. Mich. 1988]). The facts were a little unusual in Witte in that the transfer in question was not pursuant to court order but, rather, pursuant to a settlement agreement among the debtor, the bankruptcy trustee, and a creditor. Nonetheless, the court concluded that the possible disqualification of the plan "arises in or is related to" the debtor's case within the meaning of the federal bankruptcy laws. (Those laws provide that the federal district courts have jurisdiction of all matters arising under the bankruptcy laws, and that all proceedings thereunder may be referred to the bankruptcy judges of such district.)

The court reasoned that either the plan did not qualify as a spendthrift trust, resulting under its view in the debtor's interest automatically becoming part of the bankrupt estate (with the settlement merely confirming what had already occurred as a matter of law), or it did so qualify, and the "integrity" of the trust had been invaded not by the filing of the petition but, rather, by the settlement itself. The court believed that the former situation would argue strongly for jurisdiction, since the alienation would have occurred as a direct result of filing the bankruptcy petition. As to the latter situation, the government argued that the transfer, which it apparently regarded as a violation of the plan qualification requirements, was a postpetition event over which the court would have no jurisdiction.

The court, however, indicated that it believed jurisdiction would exist in either event, since the settlement was of litigation over the debtor's discharge and exemptions, and merely anticipated a decision the court would have otherwise been forced to make. The court went on, however, to conclude that the plan did not qualify as a spendthrift trust and that the interest in the plan, therefore, came into the estate as a result of the filing of the petition. The court also rejected a government argument that the doctrine of sovereign immunity precluded a court declaration of qualification, and concluded on another point that there was no reason to refrain voluntarily from reaching this issue in order to allow IRS to make its own determination first. (One factor in declining to abstain was the court's view that IRS had already resolved the question adversely to the taxpayer.)

The court believed that an evidentiary hearing on this issue was required because of its view that the transfer might, from the plan's standpoint, constitute nothing more than a permissible loan from the plan to the debtor, which would not violate the antialienation provisions in the first place. The hearing would explore certain factual prerequisites to this theory. (The court's confused, or at least confusing, discussion on this point might itself be regarded as sufficient proof that bankruptcy courts should not be involving themselves in highly technical questions of plan qualification.)

An ability and willingness in the bankruptcy courts to address the qualification question might seem to ameliorate one of the primary concerns regarding this collision between ERISA and the bankruptcy laws. A more reasoned solution, however, and one that would clearly produce more uniform results, would be for Congress to speak, presumably by articulating the circumstances in which it expects the antialienation provisions to be overridden, in a fashion similar to the statutory amendments with respect to QDROs.

Legislation & Litigation

No Surprises in Reagan Budget

Ronald Reagan's budget submission for fiscal year 1990 contains no surprises and may have little impact on the current budget process. A forthcoming issue of Employee Benefit Notes will provide an analysis of proposals in both the Reagan budget and that submitted by President Bush that affect employee benefits.

Hearings Planned on Mergers, Acquisitions

A number of congressional committees and subcommittees will hold hearings in Washington, DC, related to mergers and acquisitions.

The House Ways and Means Committee will hold hearings on related tax policy aspects Jan. 31-Feb. 2. Hearings will begin at 10 a.m. in 1100 Longworth.

The Senate Finance Committee will hold hearings on leveraged buyouts.
(LBOs) Jan. 24–26, beginning at 10 a.m. in 215 Dirksen.

The implications of corporate takeovers and LBOs for pension funds will be the subject of hearings by the Labor-Management Relations Subcommittee of the House Education and Labor Committee in early February (date, time, and place to be announced).

**Plant-Closing Timetable in Effect**

The new law requiring employers to give workers 60 days’ advance notice of plant closings or large layoffs takes effect Feb. 4, but the Labor Department has ruled that the requirement applies to closings or layoffs on or after that date. The advance notice period, therefore, began 60 days prior. The requirement applies to employers with 100 or more workers.

**Regulations**

**IRS Provides Compliance Relief for Qualified Plan Sponsors**

The Internal Revenue Service (IRS) has issued four model amendments providing qualified plan sponsors with relief from recent tax law changes effective for 1989 plan years, including a $200,000 cap on includible compensation, new coverage and nondiscrimination requirements, and new rules for integrating private pension plans with Social Security.

The amendments, included in Notice 88-131, permit sponsors of qualified pension, profit sharing, stock bonus, and annuity plans to delay adoption of plan amendments to conform with the requirements of the Tax Reform Act of 1986 and the 1987 and 1986 budget reconciliation acts. Until further guidance is issued, plan sponsors may limit benefit accruals without causing a retroactive reduction in accrued benefits in violation of Internal Revenue Code section 411(d)(6).

**HCFA Guidance on Medicare Maintenance-of-Effort**

The U.S. Health Care Financing Administration (HCFA) has issued guidelines for use by employers in complying with the maintenance-of-effort (MOE) provisions of the Medicare Catastrophic Coverage Act.

The notice outlines how employers are to determine the value of their benefits and the degree to which they duplicate the newly expanded Medicare coverage. Employers who provide retiree health benefits that have a national average actuarial value to the employee of at least 50 percent of the value of the new Medicare benefits must return the duplicative portion to retirees in the form of a refund and/or additional benefits. Employers whose group health plans are primary to Medicare are exempt.

The notice also provides guidance on how employers should go about making refunds or providing additional benefits for Medicare Part A in 1989; the national average actuarial value for Part A this year is $65. See the Dec. 6, 1988, Federal Register, pp. 49233-49237.

**IRS Clarifies 401(k) Rules**

IRS has released additional guidance on section 401(k) cash or deferred arrangements. IRS Notice 88-127, issued on Dec. 9, 1988, clarifies the

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**In the States**

**Small Firms**—A new Oregon law provides temporary tax preferences to small employers that offer their employees health insurance coverage. As of Jan. 1, 1989, companies that have fewer than 25 workers and have not offered health coverage during the previous two years will receive tax credits of up to $25 per month per employee, or one-half of the total cost of providing benefits to all employees, whichever is less. The full tax credit may be taken for two years, after which it will gradually be phased out. To qualify, employers must offer at least an employee-only plan and finance at least 75 percent of the cost, up to $40 per worker.

**AIDS**—A Vermont law effective in July 1988 restricts insurance-related testing for exposure to the human immunodeficiency virus (HIV). The law, HB 460, prohibits insurers from testing without written, informed consent; requesting or using the results of prior HIV tests to make underwriting decisions; divulging personal information without permission; and using court orders to release such information without demonstrating a compelling need; and basing underwriting decisions on an applicant’s sexual orientation.
House Names Leadership, Committee Chairmen

House Democrats recently selected leaders and made recommendations for committee chairmanships. Jim Wright of Texas was reelected Speaker of the House, while Tom Foley of Washington was renamed majority leader. Bill Gray III of Pennsylvania was named chairman of the House Democratic Caucus and Tony Coelho of California was renamed Democratic whip.

House Republicans made the following selections: Robert Michel of Illinois, House Republican Leader; Jerry Lewis of California, chairman, House Republican Conference; and Dick Cheney of Wyoming, minority whip.

Selected House committee chairmanships are given below.

<table>
<thead>
<tr>
<th>Appropriations</th>
<th>Energy and Commerce</th>
<th>Ways and Means</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jamie Whitten, Mississippi</td>
<td>John Dingell, Michigan</td>
<td>Dan Rostenkowski, Illinois</td>
</tr>
<tr>
<td>Banking, Finance, and Urban Affairs</td>
<td>Government Operations</td>
<td>Ways and Means subcommittee chairmen:</td>
</tr>
<tr>
<td>Henry Gonzalez, Texas</td>
<td>John Conyers Jr., Michigan</td>
<td>Human Resources (formerly Public Assistance and Unemployment Insurance)—Harold Ford, Tennessee</td>
</tr>
<tr>
<td>Budget</td>
<td>Post Office and Civil Service</td>
<td>Oversight—J.J. Pickle, Texas</td>
</tr>
<tr>
<td>Leon Panetta, California</td>
<td>William Ford, Michigan</td>
<td>Health—Pete Stark, California</td>
</tr>
<tr>
<td>Education and Labor</td>
<td>Rules</td>
<td>Social Security—Andy Jacobs Jr., Indiana</td>
</tr>
<tr>
<td>Augustus Hawkins, California</td>
<td>Claude Pepper, Florida</td>
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<tr>
<td></td>
<td>Small Business</td>
<td></td>
</tr>
<tr>
<td></td>
<td>John LaFalce, New York</td>
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</tr>
</tbody>
</table>

final and proposed regulations issued in August 1988 in the areas of partnerships, hardship distributions, plan aggregation, matching contributions, and the definition of compensation.

(IRS issued two sets of regulations in August. The first, which adopted with revision regulations proposed in 1981, were issued in final form. The second were proposed regulations that address certain changes to 401(k) arrangements made by the Tax Reform Act of 1986.)

Partnerships—The notice delays the effective date of the proposed regulations relating to partnerships until plan years beginning after 1988. The notice provides that a partners-only plan will not be considered as a 401(k) arrangement if partners make a one-time, irrevocable election to participate or not participate by the later of the first day of the plan year or March 31, 1989—without regard to whether the election is made upon commencement of employment or upon first becoming eligible to participate.

Hardship Distributions—Under the notice, plans may continue to make hardship distributions based on the 1981 proposed regulations until April 1, 1989.

Matching Contributions—The notice clarifies that the term “matching contributions” includes discretionary employer contributions such as those dependent on employee profits.

Aggregation—The notice exempts employee stock ownership plans from the mandatory aggregation for highly compensated employees.

For more information on IRS Notice 88-127, contact the IRS Employee Plans Technical and Actuarial assistance telephone service, (202) 566-6783.

Employers Get Help with 1988 Dependent Care Reporting

Employers providing employee dependent care assistance can comply with new reporting requirements for 1988 by maintaining ade-
Bentsen Splits Health Subcommittee

Senate Finance Committee Chairman Lloyd Bentsen (D-TX) has divided the committee’s health subcommittee into two new subpanels to better accommodate the committee’s busy schedule in the health area.

Sen. Don Riegle (D-MI) was named chairman of the new Subcommittee on Health for Families and the Uninsured, which will examine ways to expand Medicaid to cover poor pregnant women and children and extend insurance to the unemployed and uninsured low-income workers.

Sen. John Rockefeller (D-WV) will head the new Medicare and Long-Term Care Subcommittee, which will look at physician payment reform and ways to make long-term care insurance affordable to the elderly.

The split in committee structure adds a new dimension to health care issues. Long-term care, for example, may have ramifications for both subcommittees since Medicaid finances nearly one-half of nursing home expenses.

In this case, and probably some others, there may be dual subcommittee jurisdiction.

Chairmanships of other Finance subcommittees will remain unchanged, including those relating to employee benefits. Sen. Daniel Moynihan (D-NY) will continue to serve as chairman of the Subcommittee on Social Security and Family Policy, while Sen. David Pryor (D-AR) will continue to head the Subcommittee on Private Retirement Plans and Oversight of the Internal Revenue Service.

Quaite payment records and providing employees with written statements of amounts paid by Jan. 31, 1989, IRS announced Jan. 5 in an advance copy of Notice 89-13. Information on reporting requirements for future years will be issued at a later date, IRS said. Requirements for 1988 were relaxed because the change was enacted so late in 1988.

Litigation

Court Limits Health Lawsuits

The California Supreme Court has ruled that state laws that permit damage suits for bad faith do not apply to disputes over benefits from group health plans governed by the Employee Retirement Income Security Act of 1974 (ERISA). ERISA allows a worker to sue for denied health benefits but does not permit additional damages for bad faith, delays, emotional distress, or punitive damages. The case involved a diabetic man who sued his employer’s health insurer, Commercial Life Insurance Co., for refusing to pay most of the cost of his eye surgery.

District Court Upholds PBGC

The U.S. District Court for the District of Columbia has upheld a determination by the Pension Benefit Guaranty Corporation (PBGC) that when a pension plan terminates, employees who contributed to the plan are entitled to a share of surplus assets when earnings on their contributions helped generate the excess.

The court issued an order on Dec. 1, 1988, in The Firestone Tire & Rubber Company v. Pension Benefit Guaranty Corporation, et al. (Civil Action No. 86-3306-OG). The lawsuit concerns Firestone’s attempt to deny employees who contributed to their pension plan a portion of the terminated plan’s excess assets. PBGC determined that federal law prohibits the company’s approach.

In 1984, Firestone terminated a plan covering more than 25,000 employees with more than $284 million in assets remaining after all liabilities had been paid. Under the basic allocation method in PBGC’s regulation, Firestone received about $275 million of the excess. The remaining $9 million attributable to employee contributions was placed in escrow pending the court’s decision.

For Your Benefit

Former Budget Committee Staff Director Is First EBRI Fellow

EBRI has selected Richard N. Brandon, Ph.D., former staff director.
of the U.S. Senate Budget Committee, as the first participant in its Fellows Program.

Brandon served on the committee as a professional staff member for a number of years before becoming its staff director. He has worked in the New York City and Philadelphia health and welfare departments and holds a Ph.D. from the University of Pennsylvania.

Brandon’s research will be on the interaction of Social Security and Medicare financing and on the federal budget process and regulatory control. He will be based at the University of Washington in Seattle, but will make periodic visits to Washington, DC.

EBRI inaugurated its Fellows Program last fall at the institute’s tenth anniversary celebration. The program will help EBRI carry out its mission of research and education by allowing persons from the government, private sector, academia, and news media to undertake projects on health, retirement, and other economic security issues. It is hoped that participants will gain a better understanding of the interaction between private-sector needs and public policy decisions on employee benefit issues.

HMO Premiums to Rise 16.9%

Health maintenance organizations (HMOs) will increase premiums an average of 16.9 percent this year, according to a sampling conducted by the Group Health Association of America (GHAA). Actual increases range from 6.0 percent to 47.2 percent, with 54 percent of the plans reporting increases of from 10.1 percent to 20.0 percent.

Most HMOs attribute premium increases to general cost inflation or to a rise in the cost of major patient care items, said GHAA. In comparison, premiums for indemnity plans underwritten by major insurance carriers will rise, on average, 17 percent to 23 percent, according to Hewitt Associates.

TIAA-CREF Eases Restrictions

Teachers Insurance & Annuity Association-College Retirement Equities Fund (TIAA-CREF), the nation’s largest private pension plan, has agreed to give its 1.2 million policyholders greater control over their money and permit them to elect trustees. The Securities and Exchange Commission is expected to approve the changes.

TIAA-CREF invests nearly $70 billion for teachers and other academic employees. CREF, the stock fund which has more than $30 billion in holdings, will permit investors to make transfers among a range of funds. Lump-sum distributions also will be permitted for the first time. TIAA, the fixed-income fund, will permit preretirement withdrawals spread over 10 years.

EBRI-ERF Book Explores Future of Business, Work, and Benefits

The United States faces challenges that may cause Americans to fundamentally rethink their individual and work-place responsibilities. Business, Work, and Benefits: Adjusting to Change, a new book published by the EBRI Education and Research Fund (EBRI-ERF), probes beyond a basic assessment of the economic and demographic changes facing the nation.

The book’s authors—experts from business, government, labor, and academia—offer tangible ways our society can respond to the realities of flagging international competitiveness, financial pressures on the nation’s retirement and health care systems due to a rapidly growing elderly population, the explosion of information technology, and the tensions between work and family responsibilities.

Authors include Kenneth Brown, retired president, Graphic Communications International Union; Pat Choate of TRW, author of The High Flex Society; Paul Cullinan and Paul Van de Water, Congressional Budget Office; Robert Friedland, EBRI; Jeffrey Hallett of TRAC, Inc., author of Worklife Visions; Social Security Commissioner Dorcas Hardy; Constance Horner, U.S. Office of Personnel Management; William Johnston and Arnold Packer, Hudson Institute; Thomas Merrick, Population Reference Bureau; John Palmer, Urban Institute; Ronald Pilzeno, American Society for Personnel Administration; James Ray, Connerton, Ray & Simon; Stanford Ross, Arnold & Porter; Royal Shipp, Congressional Research Service; and Thomas Wood, retired partner, Hewitt Associates.

Copies are available for $23.90 prepaid from EBRI, P.O. Box 4866, Hampden Station, Baltimore, MD 21211. (301) 338-6946. Request publication number 063-6.

PBGC Revises Benefit Guarantee

The Pension Benefit Guaranty Corporation (PBGC) announced that the maximum monthly benefit it will guarantee for participants in single-employer defined benefit pension plans will rise to $700 a month for retirement after 1980.
plans terminating this year is $2,028.41. The amount is adjusted annually according to a formula prescribed in the Employee Retirement Income Security Act of 1974 (ERISA) and based on changes in the Social Security contribution and benefit base. The amount for plans terminating in 1988 was $1,909.09.

The maximum applies to a single life annuity beginning at age 65, or later, for participants in terminated pension plans who have earned a monthly pension equal to or greater than the PBGC-guaranteed amount. The maximum is adjusted in cases where the benefit begins before age 65 or is payable in some form other than a life annuity.

Bush Appointees Named

President Bush has named the following persons to top-level posts in his administration: Elizabeth Dole, Secretary of Labor; Michael Boskin, chairman, Council of Economic Advisors; Louis Sullivan, M.D., Secretary of Health and Human Services; Nicholas Brady, Secretary of the Treasury; and Richard Darman, director, Office of Management and Budget.

New Medicare Hotline

Persons with questions about the Medicare program may call the U.S. Health Care Financing Administration's "New Medicare Information Line" toll-free, seven days a week, 8 a.m.–midnight, Eastern time. The number, (800) 888-1998, may be used for general questions about Medicare; inquiries about individual claims will not be handled.

GASB Seeks Rule Comment

The Governmental Accounting Standards Board (GASB) will hold hearings in March on its draft of new accounting standards for the pension costs of state and local government employers. The document, Preliminary Views on Major Issues Related to State and Local Governmental Employers' Accounting for Pensions, provides the views of GASB board members on measuring cost and reporting liabilities.

GASB will accept written comment through Feb. 17. Hearings will be held March 15 in Arlington, VA, and March 17 in St. Louis. Free copies of the draft may be obtained before Feb. 17 from the GASB Order Department, 401 Merritt 7, P.O. Box 5116, Norwalk, CT 06856-5116, or by calling (203) 847-0700.

Conaway Leaves Treasury

Harry Conaway, former associate tax legislative counsel for the Office of Tax Policy of the U.S. Treasury Department, has joined the Washington, DC, office of William M. Mercer Meidinger Hansen, Inc. He was a primary architect of the section 89 welfare benefit nondiscrimination rules that take effect this year.

Government Publications

Transition Series, U.S. General Accounting Office (GAO)

This series of 26 summary reports addresses major policy, management, or program issues facing agency heads in the new administration. Each report highlights actions that should be taken in critical areas affecting each department's operations. Titles include The Budget Deficit (GAO/OGC-89-1TR), Revenue Options (GAO/OGC-89-3TR), Health and Human Services Issues (GAO/OGC-89-10TR), Treasury Issues (GAO/OGC-89-17TR), Department of Labor Issues (GAO/OGC-89-21TR), and Internal Revenue Service Issues (GAO/OGC-89-26TR). Contact GAO, P.O. Box 6015, Gaithersburg, MD 20877. (202) 275-6241. First five copies of each report free.

Nongovernment Publications

Employer's Handbook: A Practical Guide to Section 89 Compliance, Thompson Publishing Group

This 300-page looseleaf guide is updated each month with replacement pages, analyses of new regulations, the latest section 89 news from Congress and the Internal Revenue Service, and information on employers' experience with the new law. It includes explanations of section 89's benefits valuation and nondiscrimination tests, practical guidance, and worksheets. Contact Thompson Publishing Group, 1725 K St., NW, Washington, DC 20006. (202) 872-1766. Cost $197 a year.

Surveys

Pension Plan Disclosure Under FASB Statement No. 87, Hewitt Associates

The average Fortune 500 industrial firm among the 364 included in this survey had pension assets to cover 160 percent of benefits earned by employees. The survey examined the companies' 1987 pension plan disclosure information reported under the Financial Accounting Standards Board's Statement No. 87. Contact Cathy Schmidt, Hewitt Associates, 100 Half Day Road, Lincolnshire, IL 60015. (312) 295-5000. Cost $25.
The Employee Benefit Research Institute (EBRI) is a nonprofit, nonpartisan public policy research organization based in Washington, DC. Established in 1978, EBRI provides educational and research materials to employers, employees, retired workers, public officials, members of the press, academics, and the general public. The Employee Benefit Research Institute Education and Research Fund (EBRI-ERF) is a nonprofit, nonpartisan education and research organization established by EBRI in 1979. EBRI-ERF produces and distributes a wide range of educational publications concerning health, welfare, and retirement policies. Through their books, policy forums, and monthly subscription service, EBRI and EBRI-ERF contribute to the formulation of effective and responsible health, welfare, and retirement policies. EBRI and EBRI-ERF have—and seek—a broad base of support among interested individuals and organizations, as well as among private-sector companies with interests in employee benefits education, research, and public policy.

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