

# Insider

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## Raising PBGC Premiums and Reforming DB Plan Funding Rules Remain on Legislative Agenda

By Precious Abraham and Ann Marie Breheny

For a while, it looked as if higher Pension Benefit Guaranty Corporation (PBGC) premiums for defined benefit (DB) pension plans would become part of a deal crafted by the Joint Select Committee on Deficit Reduction. The committee's failure to agree on a deficit reduction plan removes the most immediately available legislative vehicle for the premium hikes, but they are likely to reappear in other discussions and legislation.

The plan sponsor community had hoped to include proposals to stabilize required contributions to single-employer DB plans in the deficit reduction package. With that hope dashed, proponents will likely continue to fine-tune the proposal, which may become part of other legislation working its way through Congress.

Proposals to increase PBGC premiums and reduce near-term contribution requirements for DB plans will score as revenue raisers, making them potentially attractive additions to deficit-reducing legislation or any legislation requiring offsetting revenue.

### White House proposal for PBGC premiums

While there have been several deficit reduction and budget proposals to restructure PBGC premiums, only the White House submitted a formal proposal and legislative language to the deficit reduction committee. The White House proposal includes four key elements:

1. Increase the flat-rate premium to \$44 in 2014 (it is \$35 in 2011) and then increase it annually, with the premium reaching \$70 in 2021 and being indexed to wage inflation thereafter. This would raise \$4 billion between 2014 and 2021.
2. Authorize the PBGC board to set variable-rate premiums, with the increase targeted to generate an additional \$12 billion (not to exceed \$13 billion) in revenue between 2014 and 2021. (Variable-rate

premiums are currently \$9 per \$1,000 of plan underfunding.)

3. Allow the PBGC board to factor risk into the determination of variable-rate premium amounts. The board could consider the plan's assets and liabilities, the contributing sponsor's financial condition, the risk of losses from plan terminations and any other publicly available risk measure the board believes appropriate. Plan-specific information used to set premiums would be exempt from disclosure, except as necessary in an administrative or judicial proceeding, or in a disclosure to Congress. Plan sponsors are concerned that these disclosure proposals threaten the privacy of plan information.
4. In order to raise premiums at all, at least two-thirds of the PBGC board would have to certify that the increases would boost revenue by a minimum of \$16 billion above the baseline as of the enactment date of the legislation. This minimum revenue requirement also concerns plan sponsors.

There is considerable legislative momentum for higher PBGC premiums. In addition to seeking revenue raisers, lawmakers are concerned about the PBGC's reported deficit and perceived potential for a taxpayer bailout. The PBGC's 2011 report pegs the agency's deficit at \$26 billion — \$3 billion higher than last year. But the American Benefits Council (ABC) has noted that almost 80% of the reported deficit is directly attributable to today's historically low interest rates, which are the result of a national policy to stimulate the economy. Moreover, according to the ABC, most of the remaining 20% deficit results from the PBGC's using an interest rate that is materially lower than the rates employer-sponsored plans are required to use.

### Pension plan funding proposal

Pension plan sponsors and trade associations want funding reform to address the low interest rate environment and stabilize the funding rules. The proposal being developed by sponsors and their trade associations has two parts:

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## Insider

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1. *Interest rate stabilization.* The proposal would reduce volatility in required DB plan contributions by modifying the determination of interest rates used to measure plan liabilities. Under the proposal, such rates would continue to be based on a two-year average of high-quality corporate bond yields; however, rates during the period would be limited to 90% to 110% of the 25-year average of such corporate bond yields. Plan sponsors would gain long-term stability and predictability. The proposal does not apply to rates used to determine lump-sum pension payments to participants or PBGC premiums.
2. *More flexible amortization rules.* Plan sponsors could amortize the amount necessary to bring plan funding up to 80% over seven years and amortize any additional shortfalls over 15 years (current rules generally require fully funding the plan over seven years).

There are no revenue estimates or legislative language yet, although these are being pursued. The proposal would score as a revenue raiser by reducing required tax-deductible DB plan contributions in the near term, which could help it gain traction among lawmakers. Moreover, proponents highlight the proposal's potential to create and preserve jobs, as well as to soften the blow of possibly higher PBGC premiums.

Much remains to be done and the prognosis for any legislation is uncertain — some lawmakers might worry about undermining the Pension Protection Act of 2006 or supporting proposals that appear to promote near-term pension underfunding.

**Benefits Advisory and Compliance Update****DOL Finalizes Investment Advice Regulation**

On October 25, the Department of Labor (DOL) finalized its regulation on new methods of providing investment advice to participants in defined contribution (DC) plans. Under the guidance, investment advice may be provided through a fiduciary advisor compensated on a level-fee basis or by using a computer model certified as unbiased by an eligible investment expert. The new rules, which do not affect earlier DOL guidance on other types of investment advice arrangements approved under the Employee Retirement Income Security Act (ERISA), take effect December 27.

In a level-fee arrangement, compensation is not linked to a participant's investment selection. A computer model evaluates investment options using multiple factors, including historical performance, by attaching an appropriately adjusted weight to each factor. Computer models also must consider employer stock funds and asset allocation funds, such as life-cycle or target-date funds. The model may ignore in-plan annuity options (except to the extent a participant is already invested in such option) and any options the participant has ruled out.

The fiduciary advisor's selection of an eligible investment expert to certify the objectivity of the computer model constitutes a fiduciary act. Plan sponsors should consider how this affects their oversight of the fiduciary advisor. The computer model must be audited annually, and the plan sponsor's review of the audit adds another layer of due diligence to its fiduciary duties.

Plan sponsors should carefully review their investment advice arrangement. If a plan sponsor offers an investment advice arrangement to participants, failing to comply with ERISA puts the sponsor at risk of breaching its fiduciary duty.

These rules do not affect the definition of a fiduciary under ERISA, which, as noted in the September *Insider*, the DOL is scheduled to re-propose early next year.

# Pension Freezes Among the *Fortune* 1000 in 2011

By Brendan McFarland

From 2010 to 2011, the number of *Fortune* 1000 pension sponsors that froze at least one of their plans increased by 6%. The plan freeze rate has remained relatively constant since 2004, as sponsors continue to seek ways to reduce and manage expense and risk.

The long-standing shift from defined benefit (DB) plans to defined contribution (DC) plans has been driven by a variety of motives, including overcoming financial difficulties, aligning retirement packages, reducing expense and shifting/managing risk. These issues have become more pressing during the ongoing financial crisis. The shift to DC plans transfers retirement responsibility and risk from employers to employees, who must manage their own contributions, accumulations and withdrawals during retirement.

Towers Watson has been collecting data on DB plan sponsors in the *Fortune* 1000 since 2004, with a particular focus on firms that have frozen their domestic plans.<sup>1</sup>

When a company freezes a DB plan, it typically retains the plan but stops accruing benefits for all or some workers. Freezes can take various forms. A traditional pension with a formula based on pay and years of service can stop counting years of service and/or pay as of a specified date. In a cash balance or other account-based pension plan, companies typically stop making pay credits or contributions to the accounts, but balances continue to accrue with interest.

In contrast, when a sponsor closes a DB plan, current participants continue earning benefits but new employees cannot participate in the plan.

An employer that terminates a pension plan must settle all benefits by transferring assets and liabilities to a third party (generally an insurance company), paying all benefit obligations directly to participants/beneficiaries, or some combination of the two.

Many large companies sponsor more than one pension plan. Some have separate plans for their

unionized, hourly and salaried workforces. So a sponsor of a frozen plan might still maintain an active (i.e., open and unfrozen) DB plan, which is indeed the case for some firms in this analysis.

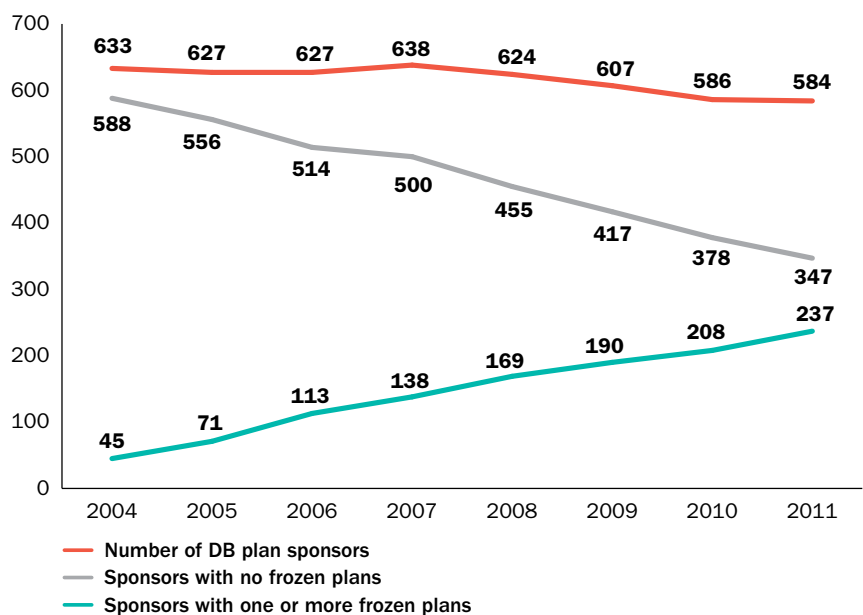
## DB plan sponsorship and freezes among the *Fortune* 1000

In this analysis, firms are classified as DB plan sponsors if they still manage DB plan assets for their domestic workforce. Among *Fortune* 1000 companies, DB plan sponsorship declined from 63% in 2004 to 58% in 2011. Turnover in the *Fortune* 1000 list explains most of the decline, with DB plan sponsors dropping off the list and being replaced by companies that sponsored only DC plans.

The percentage of companies in the *Fortune* 1000 sponsoring an actively accruing pension has dropped sharply, from 59% in 2004 to only 35% in 2011. Over the period, the number of *Fortune* 1000 companies that sponsor one or more frozen plans jumped from 45 to 237 (as shown in *Figure 1*). The percentage of DB plan sponsors with frozen plans rose from 7% to 41%.

“The percentage of companies sponsoring an actively accruing pension has dropped sharply, from 59% in 2004 to only 35% in 2011.”

**Figure 1. DB plan sponsorship among the *Fortune* 1000, 2004–2011**



Source: Towers Watson.

<sup>1</sup> See “Pension Freezes Continue Among *Fortune* 1000 Companies in 2010,” Towers Watson *Insider*, September 2010; “Pension Freezes Continue Among *Fortune* 1000 Companies in 2009,” *Insider*, August 2009; “Pension Freezes Continue Among the *Fortune* 1000, Albeit at a Slower Pace,” *Insider*, September 2008; “Pension Freezes: Has the Worst Passed?,” *Insider*, September 2007.

## Timing of freezes for companies in the 2011 *Fortune* 1000

Among companies in this year's *Fortune* 1000 list, pension freezes began accelerating in 2003 and picked up momentum in 2006 — 70% of the pension freezes occurred in 2006 or later. *Figure 2* shows the incidence of pension freezes from 1989 to 2018 (including scheduled future freezes) for the 2011 *Fortune* 1000 companies.

### Industry analysis

Over the years, pension freezes have spread across all industry sectors, although some industries experience higher freeze rates than others. Industries with higher DB plan sponsorship rates are less likely to freeze a plan than those with lower sponsorship rates. The utilities industry is a good example. It has one of the highest rates of DB plan sponsorship and very few plan freezes (see *Figure 3*, next page). Between 2010 and 2011, the largest increase in companies with one or more frozen DB plans was in the professional and business services and manufacturing sectors.

Between 2009 and 2011, the percentage of DB plan sponsors in the professional and business services industry that sponsor at least one frozen plan jumped from 42% to 68%. The professional and business services sector has one of the lowest DB plan sponsorship rates in the 2011 *Fortune* 1000.

## Closing plans to new hires

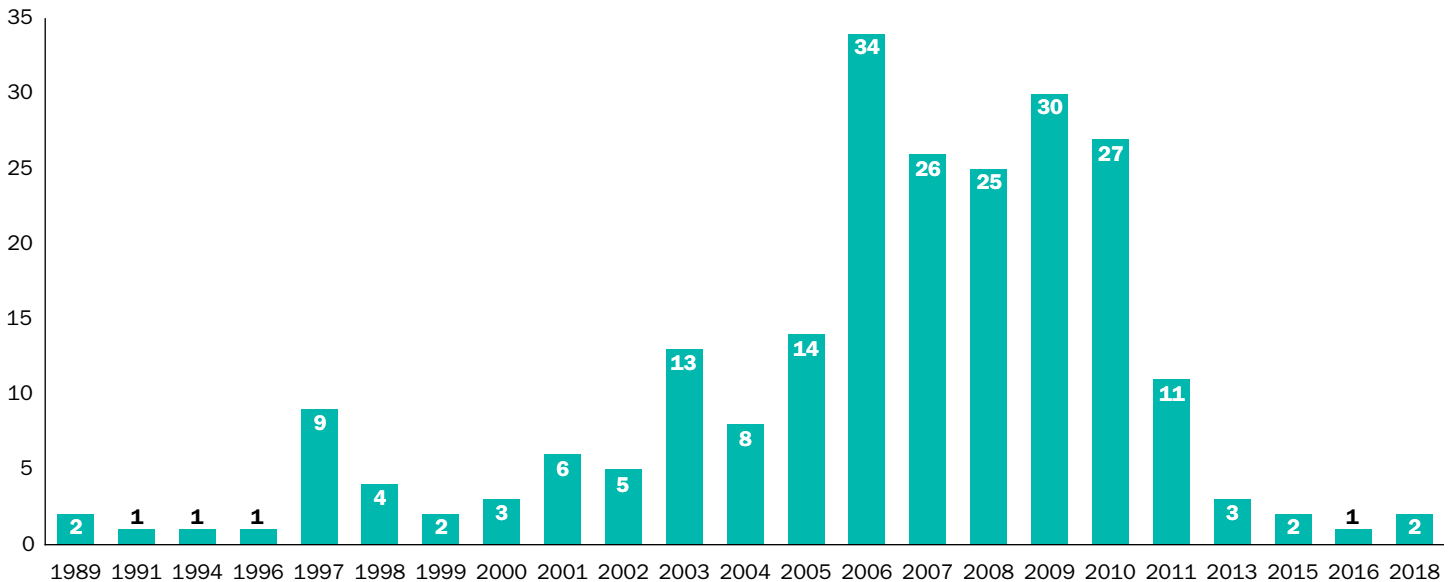
Over the last several years, Towers Watson has also been tracking *Fortune* 1000 firms that close their DB plan to new hires. If a company closed a DB plan but also froze another plan or closed the plan before eventually freezing it, the company is considered to have frozen a plan for this analysis. Between 2005 and 2011, the number of *Fortune* 1000 companies that closed at least one DB plan to new hires climbed from 25 to 92. Meanwhile, the number of *Fortune* 1000 companies that have neither frozen a DB plan nor closed one to new hires fell from 53% in 2005 to 25% in 2011. Of DB plan sponsors in the *Fortune* 1000, 56% have at least one plan that is either frozen or closed to new hires — up significantly from 15% in 2005.

## Terminated and unfrozen plans

A small number of companies in the *Fortune* 1000 have terminated their DB plans, which has contributed to the decline in plan sponsorship over the years. As noted earlier, after a plan sponsor terminates a pension plan, it settles all benefits by transferring assets and liabilities to a third party or paying all participants directly (or some combination thereof). So a termination implies a plan freeze has already occurred. Twelve companies in the 2011 *Fortune* 1000 have already terminated their DB plans or are in the process of doing so.

“The number of *Fortune* 1000 companies that have neither frozen a DB plan nor closed one to new hires fell from 53% in 2005 to 25% in 2011.”

**Figure 2. Incidence of pension freezes for companies in 2011 *Fortune* 1000, 1989–2018\***



\* Includes freezes announced and planned for 2013-2018. If a plan was frozen as of December 31, we consider the freeze to occur the following year (i.e., if a sponsor freezes a plan on December 31, 2010, participants have already accrued their 2010 benefits, so we consider 2011 the year of the freeze).  
Source: Towers Watson.

Figure 3. DB plan sponsorship in the 2011 *Fortune* 1000 by industry\*

Industry	Fortune 1000 firms	Number of DB plan sponsors	Firms with no pension freezes	Firms that froze one or more plans	% of firms that sponsor DB plans	% of firms with no pension freezes	% of firms that froze one or more DB plans
Aerospace and defense	6	6	6	0	100.0%	100.0%	0%
Utilities	61	57	48	9	93.4%	84.2%	15.8%
Food and beverage	31	28	20	8	90.3%	71.4%	28.6%
Automobiles and transportation equipment	24	20	13	7	83.3%	65.0%	35.0%
Manufacturing	156	128	79	49	82.1%	61.7%	38.3%
Natural resources	63	48	32	16	76.2%	66.7%	33.3%
Wholesale	43	28	14	14	65.1%	50.0%	50.0%
Energy	34	21	14	7	61.8%	66.7%	33.3%
Insurance	62	38	27	11	61.3%	71.1%	29.0%
Financial services	65	39	19	20	60.0%	48.8%	51.2%
Transportation	32	18	10	8	56.3%	55.6%	44.4%
Communications	53	29	11	18	54.7%	37.9%	62.1%
Pharmaceuticals	21	9	6	3	42.9%	66.7%	33.3%
High technology	85	33	13	20	38.8%	39.4%	60.6%
Professional and business services	65	25	8	17	38.5%	32.0%	68.0%
Property and construction	15	5	1	4	33.3%	20.0%	80.0%
Health care	48	15	12	3	31.3%	80.0%	20.0%
Retail	114	34	13	21	29.8%	38.2%	61.8%
Tourism and leisure	17	4	1	3	23.5%	25.0%	75.0%
Education	5	0	0	0	0%	n/a	n/a

\*Industry sectors are sorted by prevalence of DB plan sponsorship.  
Source: Towers Watson.

Bucking the trend, over the last year, two *Fortune* 1000 companies decided to unfreeze a pension and begin accruing benefits for workers again.

## Conclusion

Among the *Fortune* 1000, the number of sponsors with active DB plans continues to dwindle. Only 35% of *Fortune* 1000 companies maintain a DB plan and have no frozen plans, compared with 59% in 2004. In many companies today, DC plans are the sole retirement savings vehicle for new employees.

However, companies in industry sectors with higher DB plan sponsorship rates remain more likely than

other companies to maintain active DB plans. Some of these sponsors have adopted strategic benefit and investment policies to help manage the risks of sponsoring a DB plan. In this way, these companies continue to enjoy the benefits and advantages DB plans offer employers and employees (usually alongside a DC plan), compared with providing DC plans only. DB plans provide greater reliability and security for workers, and offer sponsors unique opportunities for long-term financial and workforce management efficiencies. Offered alongside a DC plan, a DB plan can serve as an integral component of a balanced retirement program.

“DB plans provide greater reliability and security for workers, and offer sponsors unique opportunities for long-term financial and workforce management efficiencies.”

# Employer Groups Submit Recommendations on Hybrid Plan Regulations, and IRS Delays Effective Dates of Regulations

By Alan Glickstein, Russ Hall, Bill Kalten and Mike Pollack

In September, defined benefit plan sponsor groups and Towers Watson submitted recommendations to the Department of the Treasury and the Internal Revenue Service (IRS) for the proposed hybrid plan regulations. The recommendations grew out of a series of meetings between the employer groups (including the Coalition to Preserve the Defined Benefit System, which Towers Watson coordinates) and the IRS and Treasury. In addition to attending the meetings and contributing to the recommendations, Towers Watson shared information from its hybrid plan study with the IRS and Treasury.<sup>1</sup>

Since then, the IRS has delayed the effective date of the hybrid plan regulations (those proposed and some of the final regulations) implementing the Pension Protection Act (PPA) provisions for hybrid plans. These regulations were scheduled to take effect for plan years beginning on or after January 1, 2012.

## Employer group/Towers Watson recommendations

### Whipsaw and hybrid plan benefits

1. Clearly state that the whipsaw calculation is no longer required in any circumstance.
2. Extend the deadline for retroactively eliminating the whipsaw calculation from hybrid plans that currently include it.
3. Permit hybrid plans to subsidize benefits, such as providing early retirement benefits.
4. Provide transition relief for benefit distributions that exceed those permitted under the final regulations (e.g., if the final regulations prohibit subsidies).

5. Clarify that the amount of a participant's accumulated percentage of final average pay might decline due to decreases in pay and increases in Social Security.

### Projecting variable interest credits into the future

6. Provide a viable general rule for projecting variable interest credits into the future.
7. Establish safe harbor alternatives for projecting variable interest credits into the future that are consistent with the general rule.
8. Do not use the third segment rate to project investment rates of return after plan termination.

### Market rate of return

9. Replace the exclusive list of market rates with an expanded safe harbor list.
10. Determine whether an interest crediting rate satisfies the market rate of return standard without regard to the PPA's minimum rates of return.
11. Ensure that the market rate rules permit rational retirement portfolios that reflect participants' changing needs and tolerance for risk over time.
12. Allow market rates to include returns on collective investment vehicles other than the plan, a regulated investment company or an insurance contract.
13. Increase the margins on Notice 96-8 rates.
14. Increase the cap on minimum annual rates of return to at least 5%.
15. Increase the cap on fixed annual rates of return to at least 6%.

### Transition

16. Delay the effective date of the regulations (note that the IRS and Treasury have adopted this recommendation, as discussed below).
17. Provide broad anti-cutback relief for the transition.
18. Confirm the reasonable interpretation standard before the regulatory effective date.

The complete report, "Hybrid Plan Regulations: Follow-Up on Critical Issues," is available here.

<sup>1</sup> See "Hybrid Pension Plans: A Comprehensive Look at Their History, Economics and Features," available at [www.towerswatson.com/assets/pdf/3143/Hybrid\\_Plans\\_Study.pdf](http://www.towerswatson.com/assets/pdf/3143/Hybrid_Plans_Study.pdf).

"The IRS has delayed the effective date of the 2010 proposed regulations for hybrid plans to plan years beginning on or after January 1, 2013."

## IRS delays effective date for hybrid plan regulations

The IRS has delayed the effective date of the 2010 proposed regulations for hybrid plans to plan years beginning on or after January 1, 2013 (or, if later, the date specified in the final regulations). The delayed provisions include the following:

1. Permissible minimum and fixed interest crediting rates
2. Permissible interest crediting rates based on actual asset returns
3. Requirements for whipsaw relief
4. Limited accrual rule and anti-cutback relief
5. Special rules for hybrid plan terminations

Some of the provisions in the 2010 final regulations for hybrid plans that were scheduled to take effect for plan years beginning on or after January 1, 2012, have also been postponed to 2013 at the earliest. These provisions relate to interest crediting.

The new deadline for adopting amendments to comply with the hybrid provisions added by the PPA (other than basic whipsaw relief) is the last day of the plan year immediately before the first plan year

to which the proposed hybrid regulations will apply once they are finalized. For example, if the regulations take effect January 1, 2013, the deadline for a calendar-year plan is December 31, 2012.

The relief from the Internal Revenue Code's anti-cutback prohibition for an amendment to reduce a hybrid plan's interest crediting rate remains available for amendments adopted in the last plan year before the first plan year in which the proposed regulations apply once they are finalized. For example, if the proposed regulations take effect January 1, 2013, the relief applies for amendments adopted through December 31, 2012. This relief assumes the reduction was made only to the extent necessary to keep interest credits from exceeding a market rate.

Sponsors of hybrid plans whose interest crediting rate exceeds the market rate standard can now wait for comprehensive IRS guidance before determining whether they need to change the rate and deciding on a new rate. Sponsors might also want to wait for answers on other issues — such as whether they can maintain early retirement subsidies and still qualify for whipsaw relief — before making other substantive changes to their hybrid plans.

“Sponsors of hybrid plans whose interest crediting rate exceeds the market rate standard can now wait for comprehensive IRS guidance before determining whether they need to change the rate.”

## Court Upholds Stock Deferral Plan Forfeiture Provision

By Bill Kalten and Steve Seelig

In *Renaudin v. Citigroup Global Markets Inc.*, the U.S. Court of Appeals for the 1st Circuit held that a forfeiture clause in a voluntary stock deferral plan (a capital accumulation plan) that was clearly described and agreed to by participating employees did not violate Colorado or Louisiana wage and labor laws.

The decision serves as a reminder of the importance of careful drafting to the enforceability of forfeiture provisions in deferral plans. Forfeiture provisions should be clearly described in all plan documents and explicitly communicated to affected employees, and employers should seek employee acknowledgement and consent to such provisions. While this decision applies to the forfeiture of voluntary deferrals made by employees who resign or are terminated for cause, it might also apply to deferral programs where forfeitures occur under different circumstances.

### *Renaudin v. Citigroup Global Markets Inc.*

Under the terms of the Citigroup capital accumulation plan, certain employees could elect to receive a portion of their pay in the form of company stock, substantially discounted and on a tax-deferred basis. The stock was subject to a multiyear vesting period. Employees who voluntarily resigned during the vesting period forfeited their purchased shares along with any compensation set aside to purchase shares. The deferral election form and other plan documentation clearly described the forfeiture provision.

The plaintiffs alleged that the forfeiture provision violated Colorado and Louisiana wage and labor laws. The court disagreed, holding that the Colorado Wage Claim Act does not require wages to be paid until they are “earned, vested and determinable,” and this standard had not been met when the plaintiffs resigned. The court further held that Louisiana's labor statute was not violated because it requires that employers pay discharged employees “the amount then due under the terms of employment,” but the restricted stock was not “then due” when the Louisiana plaintiffs resigned.

“... this decision ... might also apply to deferral programs where forfeitures occur under different circumstances.”

The court also rejected several common-law claims, including breach of contract, because the employees had signed the unambiguous terms of the restricted stock award agreement and the election form, which served as a formal modification to any employment contract. These decisions are in line with the 1st Circuit's previous decision in *Gilmore v. Citigroup Inc.* and other Federal District Court decisions addressing capital accumulation plans.

### Forfeitures in management stock purchase plans

In management stock purchase plans, executives agree to defer compensation and purchase shares in order to receive a forfeitable matching share grant of up to 50% of the purchased shares. Proxy advisors believe the deferral feature better aligns executive and shareholder interests.

Given that in *Renaudin* the court found the forfeiture of a participant's salary deferral acceptable, the forfeiture of employer matching share grants under a management stock purchase plan — a much less controversial outcome — should also be permissible.

### Clawbacks and malus clauses

Regulations recently proposed by the Federal Deposit Insurance Corporation, the Federal Reserve System and other federal agencies would require

mandatory deferral of compensation for certain employees in financial service companies. These companies could also make the deferrals subject to forfeiture based on the institution's future financial performance under malus clauses. In these arrangements, annual bonuses are held in escrow so the company can re-examine in later years the performance criteria attained; payments can be reduced if the goals attained were not sustainable.

Similarly, companies must soon establish clawback policies for financial restatements that are compliant with the Dodd-Frank Wall Street Reform and Consumer Protection Act. Companies might decide to provide for mandatory deferrals of incentive compensation — subject to forfeiture — to avoid the potential legal hurdles involved in seeking clawbacks of compensation already paid.

The *Renaudin* decision could resolve some of the potential conflicts between these federally mandated forfeiture requirements and other state wage, labor and contract laws. The question of when incentive pay subject to a malus clause or clawback provision becomes "wages" under applicable state law will be critical. To the extent the terms of employment — including the malus or clawback policy — are clearly spelled out, employers should be well positioned to maintain that incentive pay does not become wages until the malus or clawback conditions are satisfied.

## IRS Lifts Church Plan Moratorium But Imposes New Notice Requirements

By Lynn Cook, Stephen Douglas and Bill Kalten

In Revenue Procedure 2011-44, the Internal Revenue Service (IRS) modified the process for obtaining a private letter ruling that a retirement plan qualifies as a "church plan." The release lifts the years-long moratorium on such rulings. Under the new guidance, applicants for a private letter ruling must notify participants and other "interested persons" about how church plan status would affect their benefits. They must also inform them of their right to submit comments to the IRS.

It appears that, as in the past, the IRS will not issue favorable rulings to plan sponsors that convert a plan covered under the Employee Retirement Income Security Act (ERISA) to a church plan, such as when

a church-affiliated employer assumes a plan that was previously sponsored by a private employer.

Although a church plan is not required to have a favorable letter ruling from the IRS, a letter ruling would ordinarily confirm a plan's status for tax purposes.

### Church plan status

The Internal Revenue Code (IRC) defines a church plan as a plan established and maintained by a tax-exempt church or a convention or association of churches. Plans can also qualify as a church plan by being maintained by an organization controlled by or associated with a church, such as a church-run hospital or school.

Church plan participants are not protected under ERISA or the Pension Benefit Guaranty Corporation (PBGC) pension insurance program. So if a church

"The question of when incentive pay subject to a malus clause or clawback provision becomes 'wages' under applicable state law will be critical."

"It appears that the IRS will not issue favorable rulings to plan sponsors that convert a plan covered under ERISA to a church plan."

plan sponsor goes bankrupt or becomes insolvent with an underfunded plan, participants have no insurance protection.

Also, many of the qualification requirements under the IRC either do not apply to church plans or are more subjective than the requirements for most other tax-qualified pension plans. For example, a qualified church plan is not subject to the IRS anti-cutback rules or funding requirements, and the vesting and coverage rules are less rigorous than those under ERISA. Moreover, ERISA's reporting, disclosure and fiduciary conduct rules do not apply to church plans.

### Notification requirements

Under Rev. Proc. 2011-44, the notice that must be provided to interested persons must disclose that the plan sponsor is seeking a ruling regarding a plan's status as a church plan. Interested persons include plan participants, beneficiaries, alternate payees and any employee organization representing plan participants. If the plan covers more than one employer, notices must also be sent to all other contributing employers.

The notice must explain that if the plan is confirmed as a church plan, it will not be subject to many IRC requirements or receive the protections afforded by

ERISA or the PBGC. Plan sponsors must provide the notice within 30 days before the letter ruling request is submitted, and the notice must state that recipients have 60 days from the notice date to submit any relevant information to the IRS.

If a ruling request was already pending on September 26 — the date the revenue procedure was released — the sponsor was required to provide the notice by November 25. All sponsors seeking a ruling must send a copy of the notice to the IRS along with a statement regarding the date the notice was provided. The new notice requirement does not affect plan sponsors who received favorable church plan rulings before the moratorium went into effect.

Although plan sponsors must make a reasonable effort to comply with these notification rules, the failure of one or more interested persons to receive the required notice will not cause the applicant to fail the notice requirement. Merely posting the notice on a bulletin board, however, does not constitute a reasonable effort, unless (1) the notice is prominently displayed on a bulletin board at a principal place of employment, (2) employees regularly and actively use the bulletin board for a wide variety of purposes, and (3) the notice methods for all other interested persons are reasonable.

“The notice must explain that if the plan is confirmed as a church plan, it will not be subject to many IRC requirements or receive the protections afforded by ERISA or the PBGC.”

## Government Halts Implementation of the CLASS Act

By Kathleen Rosenow and Dorian Z. Smith

On October 14, the Department of Health and Human Services (HHS) announced the cancellation of the Community Living Assistance Services and Supports (CLASS) program, the long-term care insurance plan created under the health care reform law. The department said the program was not financially sustainable.<sup>1</sup>

The CLASS program would have made voluntary, federally administered long-term care insurance available to most working adults. The Patient Protection and Affordable Care Act (PPACA) called for benefits to be funded entirely through enrollee premiums (and subsequent earnings on such premiums), and for the program to be actuarially sound and financially solvent for at least 75 years. In addition, PPACA prohibited the use of taxpayer funds to pay for benefits. Employers would have

been allowed (but not required) to automatically enroll their employees in the program and collect premiums, and employees would have been able to opt out.

Slated to kick off October 1, 2012, the CLASS program would have included: (1) lifetime benefits, (2) no underwriting, (3) no pre-existing medical condition exclusion and (4) a \$50 a day cash benefit. After attempting to design an option to satisfy the statutory requirements, HHS Secretary Kathleen Sebelius told Congress that “despite our best analytical efforts, I do not see a viable path forward for CLASS implementation at this time.”

The cancellation leaves American workers without a public option for long-term care insurance, and the likelihood of such an option's becoming available anytime soon is uncertain. Workers who want long-term care insurance typically buy it through an employer-based plan (usually 100% employee paid) or in the individual market.

“The cancellation leaves American workers without a public option for long-term care insurance.”

<sup>1</sup> “Will the ‘CLASS’ Program Succeed? Is It Sustainable?” appeared in the December 2009 Watson Wyatt *Insider*, available at [www.watsonwyatt.com/render.asp?id=22906&catid=2](http://www.watsonwyatt.com/render.asp?id=22906&catid=2).

## Benefits Advisory and Compliance Update

### PDI Offering New Courses in 2012

Towers Watson's Professional Development Institute (PDI) has added two new courses to its benefits seminars, which are offered in major cities all over the country.

PDI is offering the following seminars in 2012:

- Fundamentals of Retirement Plans (two days)
- Fundamentals of Health and Group Benefits (two days)
- Beyond the Basics: Retirement Plans (two days)
- Beyond the Basics: Health and Group Benefits (two days)
- Focus On: Qualified Plan Distributions and Loans (new for 2012, one day)
- Focus On: Compliance Requirements for Health and Group Benefits (new for 2012, one day)

For more information about PDI, seminar dates and locations, and registration information, visit [towerswatson.com/research/5717](http://towerswatson.com/research/5717).

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