



# 2009 CORPORATE BENEFITS BRIEF

The Certainty of Change

In today's economic and corporate environment, business and HR managers at companies of all sizes are being asked to do more when it comes to employee benefits. You must find a way to provide benefits programs that create greater value for employees and employers alike — now, and into the future. The good news? With an NFP Benefits Partners firm by your side, you can do just that.

## NFP BENEFITS PARTNERS GIVES COMPANIES THE POWER TO BE GREATER.

Together with NFP Benefits Partners, we can help you be more — with greater insight, greater support and greater benefits solutions that meet the unique needs of your continually evolving workforce during these continually changing times.

*This corporate benefits brief is just one of the tools we provide, to help you develop a greater understanding of the trends and challenges that are shaping the industry today. Throughout this brief, you will find the leading-edge thinking and industry insight that keeps companies ahead of the curve.*

# EXECUTIVE SUMMARY

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A historic presidential election, global recession, tumbling stock markets, growing unemployment rates, a national credit crisis, an ongoing health care crisis ... 2008 was a year unlike any other we have seen in recent decades. What lies ahead in 2009 is anyone's guess, but this much is certain: more changes are coming.

Early in the 2008 presidential election, health care loomed as the most important domestic issue facing voters. But as the economic crisis began to unfold, the economy skyrocketed to the top of voters' priorities and has stayed there. That does not mean people believe the health care crisis is any less important than it was. In fact, several polls suggest that the majority of people think that in today's economic environment, it is more critical than ever that the health care crisis be addressed.

Throughout his campaign, President Obama pledged to make health care reform a priority. Members of Congress have also become increasingly vocal and active in lobbying for health care reform. There seems to finally be general consensus that reform is crucial, but vast disagreement on how reform should be handled. Analysts agree, however, that between the new administration and the current economic climate, major health care reforms will begin to take place. Be it directly or indirectly, most of those reform initiatives will have an effect on employers and their employees.

In addition to health care reform, changes are coming to the retirement planning front, including new reporting and disclosure requirements. But perhaps the biggest challenge will be instilling confidence in employees during these difficult financial times. Employees may think that a down market is the time to get out of their retirement plans. But if they stop saving and cash out their plans, they only lock in their losses. Employers are challenged with encouraging their employees to continue planning for long-term retirement goals and to not focus on the short-term situation.

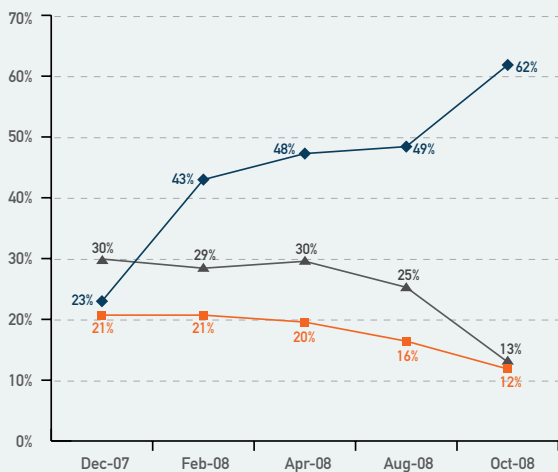
The NFP Benefits Partners' *2009 Corporate Benefits Brief* provides you with an explanation of the health care, retirement and economic challenges that many companies are facing, the changes that may occur in response to these challenges, and how you can help your employees understand and cope with these changes. By better understanding the obstacles ahead, your company, with the help of trusted advisors, can successfully navigate the "new world" that lies ahead.

# HEALTH:

## The Dawn of a New Era?

As we headed into 2008, the Kaiser Family Foundation tracked how health care ranked relative to other important issues. As of December 2007, 30 percent of Kaiser poll respondents named it as one of the top two issues overall (second only to Iraq at 35 percent). At that time, the economy ranked third overall, with just 21 percent of respondents naming it as one of the top two issues.<sup>1</sup>

As 2008 and the presidential election progressed, global recession put the economy at the forefront of voters' minds. By October 2008, when Kaiser conducted its final poll before the election, the economy had skyrocketed to the top of leading issues for registered voters — 62 percent of respondents named it as the single most important issue in their vote for president. Health care became roughly tied with Iraq as the second most important issue. Only 12 percent of voters cited it as the most important issue.<sup>2</sup>



### ISSUES IN THE 2008 ELECTION

Thinking about the campaign for the presidential election in 2008, what is the single most important issue in your vote for president? Is there another issue that's nearly as important? (open-ended; top 3 issues shown among registered voters)

**Note:** Adds up to more than 100% due to multiple responses.

**Source:** Kaiser Health Tracking Poll: Election 2008

- Economy
- Iraq
- Healthcare

Although these numbers may lead some people to conclude that health care reform will take a back seat to the economy as a priority for the new administration, Obama and other key leaders view health care as more important than ever. As Obama has stated: "Some may ask how, at this moment of economic challenge, we can afford to invest in reforming our health care system ... I ask how we can afford not to."<sup>3</sup>

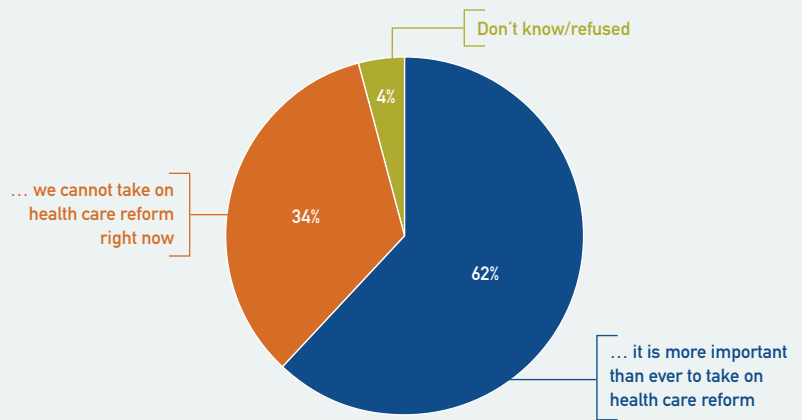
The public seems to agree. Kaiser's October 2008 poll asked registered voters about health care "given the economic challenges facing the country." Nearly two-thirds (62 percent) of respondents agreed that "it is more important than ever to take on health reform" in this economy.<sup>2</sup>

## HEALTH REFORM AND THE ECONOMIC DOWNTURN

Which comes closer to describing your own views?  
Given the economic challenges facing the country ...

**Note:** Among registered voters in October 2008.

**Source:** Kaiser Health Tracking Poll: Election 2008 (conducted Oct. 8-13, 2008).



There are a number of sobering statistics that point to why health care reform has become such an important issue.

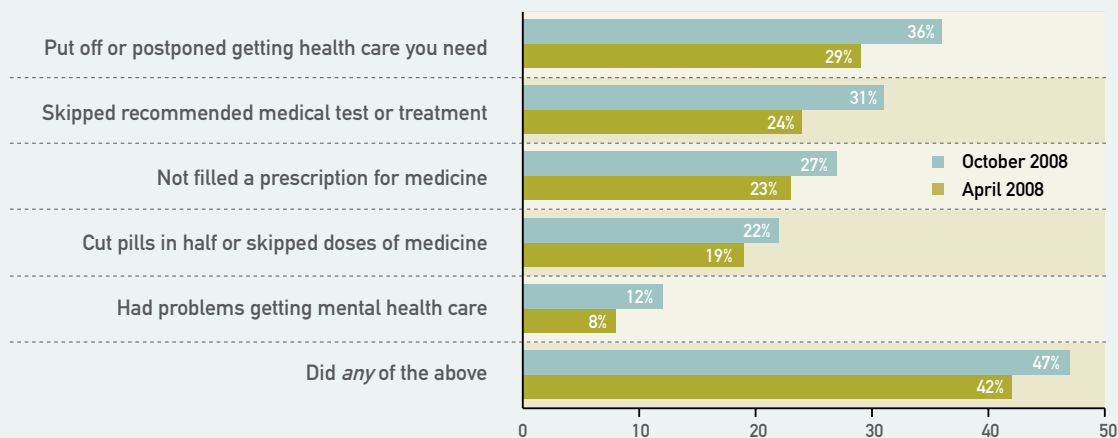
### Consider:

- > In 2008, health care spending reached \$2.4 trillion, representing 17 percent of the gross domestic product (GDP) (\$7,900 per person). That number is expected to increase to \$3.1 trillion by 2012, and \$4.3 trillion by 2016, a projected 20 percent of GDP.<sup>4</sup>
- > In 2007, the number of uninsured individuals was about 46 million, or 15.3 percent of Americans.<sup>5</sup> Although this number reflected the first decline in uninsureds in seven years (due largely to the expansion of government-funded programs for children), expectations are that this number will rise again due to increases in unemployment.
- > According to Kaiser, each 1 percent increase in the national unemployment rate results in an increase of 1.1 million uninsured individuals and of 1 million individuals enrolled in Medicaid or the State Children's Health Insurance Program.<sup>6</sup> The number of unemployed individuals has risen by 3.6 million since the beginning of the recession in December 2007, an increase of 2.3 percent to 7.2 percent.<sup>7</sup>

Although these figures are daunting, it is doubtful that most individuals care about such macro numbers. They care about how the health care crisis is affecting their own lives — and it clearly is. Almost half of all respondents to Kaiser's October 2008 poll indicated that in the past year they or a family member skipped some sort of necessary medical care, including recommended tests, treatments or prescriptions, because of cost.<sup>2</sup>

## PROBLEMS ACCESSING HEALTH CARE DUE TO COST

Percent saying they or a family member living in their household have done the following in the past year because of cost ...



**Note:** "Don't know/refused" responses not shown.

**Source:** Kaiser Health Tracking Poll: Election 2008 (conducted Oct. 8-13, 2008).

## THE ROAD TO REFORM

Obama pledged to address the health care crisis, and other members of Congress are lobbying for health care reform now more than ever. Most notably, Sen. Max Baucus of Montana and Sen. Ted Kennedy of Massachusetts have been vocal about making health care reform a priority. In November 2008, Baucus, chairman of the Senate Finance Committee, released *Call to Action: Health Reform 2009*, a 98-page white paper in which he stated, "In 2009, Congress must take up and act on meaningful health reform legislation ... The urgency of this task has become undeniable."<sup>8</sup>

Given the likelihood that some changes to health care will be made in the not-so-distant future, what are some of these potential changes, and how will they impact you and your employees? Most proposed changes can be divided into three broad categories:

- > Increasing access to health care (i.e., covering the uninsured)
- > Improving the health care delivery system to improve care and contain or reduce costs
- > Promoting a healthier population

While each of these categories has many components, we review those that have the most direct impact on employers or that employers can influence the most.

### ***Increasing Access to Health Care***

Although the expansion of public programs is one way that both Obama and Baucus have suggested to decrease the number of people without health coverage, they also agree that one of the best ways to increase access to health care is through the expansion and strengthening of the employer-based system.

Obama has proposed a requirement for employers to contribute a percentage of payroll to a national plan if they do not themselves provide "meaningful coverage or make a meaningful contribution to the cost of quality health coverage for their employees."<sup>9</sup> However, in recognition of the escalating costs of insurance premiums, Obama has also proposed a federal reinsurance program for employers who have an employee with a catastrophic illness. This reinsurance would help employers make their overall insurance premiums more affordable for all employees.

Other proposed initiatives focus on providing affordable insurance to small businesses, such as through a national health insurance exchange.

### ***Improving the Health Care Delivery System***

The inefficiencies of the U.S. health care system are a major contributing factor to the health care crisis. Although many of the proposed initiatives to improve the system are aimed at providers and the insurance and pharmaceutical industries, there are several initiatives related to transparency and technology that are designed to help individual patients.

Even prior to the current administration, a push toward increased transparency in the health care system was underway so that health care costs can be better evaluated and controlled, and quality can be improved.

In 2006, President George W. Bush signed an executive order directed to federal agencies that administer or sponsor health insurance programs. The goals of this order were to increase transparency in pricing, increase transparency in quality of care, encourage adoption of health information technology standards, and provide options that promote quality and efficiency in health care.<sup>10</sup>

The transparency initiative is an even more important one in today's economic climate as individuals become more concerned than ever about the cost of their health care. Improving transparency throughout the system can help individuals better understand and budget for health care costs. Obama proposed further initiatives for

improving cost transparency and the quality of care. These include requirements for hospitals and providers to collect and report information on health care costs and quality measures, and for insurance carriers to report the percent of premiums that go directly to patient care.

Obama also proposed further investment in electronic health information technology (HIT) systems. Proponents claim that moving to a standards-based electronic HIT system would improve care coordination and reduce medical errors and duplicate procedures. One Rand Corporation study reported that the adoption of electronic health records by most doctors and hospitals would lead to up to \$77 billion in annual savings through improved efficiencies such as reduced hospital stays, reduced duplicative or unnecessary testing, and more appropriate drug utilization.<sup>11</sup>

Several companies, including large insurance carriers and small niche technology companies, have already begun to promote the use of online medical records. Your current health insurance carrier may already provide you with this service. Although the technology offered by carriers falls short of the proposed broad-sweeping HIT system that may be in place in the future, encouraging employees to use this technology if it is available can provide them the benefit of having all of their own data in one central location that they can access online from almost anywhere.

Employees need to be assured, however, that as their employer, you do not have access to any of the information contained in their online medical records, even when provided by their employer-sponsored medical plan. Employees will be slow to embrace this technology no matter what the benefits may be if they feel that their privacy could be breached.

## ***Promoting a Healthier Population***

No matter what steps are taken to increase access to care and improve the health care delivery system, health care costs cannot be effectively controlled without improving health. As a nation, we are not in just a health care crisis but in a "health crisis." A study by the Milken Institute found that the economical impact of seven of the most common chronic diseases, including diabetes, hypertension and cancer, is \$1.3 trillion a year.<sup>12</sup> Of that, a staggering \$1.1 trillion is attributed to lost productivity, with another \$277 billion spent on treatment of these conditions. Rates of obesity, a primary risk factor for many costly chronic conditions, have continued to rise – 34 percent of U.S. adults age 20 or over are now considered obese.<sup>13</sup>

Employers are in a unique position to promote healthier lifestyles among their employees. Most employees spend the majority of their waking hours at the workplace, and employers essentially have a captive audience to which they can encourage healthy habits. By fostering an environment that encourages healthy behaviors, employers

## **HELPING YOUR EMPLOYEES DEAL WITH INCREASED STRESS**

Employers are demanding more from employees. Technology has created a "virtual leash," binding many employees to their jobs 24/7 with cell phones, laptops and other wireless devices. This was true even prior to the recession, but the economic crisis has worsened this problem as employers have been forced to lay off workers, leaving remaining employees with heavier workloads and stress related to their own job security. This additional stress can have a substantial impact not only on employee health, but also on productivity.

In the *Compensation & Benefits Review* article "The Top 10 Wellness Trends for 2008 and Beyond," increased demand for stress-related programs was listed as one of the leading trends in employee wellness programs.<sup>1</sup> This article cited the Watson Wyatt 2007/2008 "Staying@Work" report, which indicated that 48 percent of employers acknowledged that longer work hours and increased work demands affect performance to a "great" or "very great" extent.<sup>2</sup> As stated in the article, "Employers who don't address stress issues may be sitting on a time bomb that could explode in increased sick days, turnover, health care costs and lower productivity."

In addition to helping employees cope with workplace stress, wellness programs and Employee Assistance Programs can provide another important benefit in today's environment. Many programs have

*continues on page 8 »*

## CONT'D

evolved to address not only the physical and mental health of participants, but also their financial health.

Research has shown that financial stress can significantly impact physical and emotional health. In one study on the negative effects of financial stress on health, 82.5 percent of respondents indicated that financial stress was affecting their health.<sup>3</sup> With the current economic crisis, employees are feeling even more financial stress than ever before, and the impact on physical and emotional health will only get worse. An integrated program that incorporates both the financial and physical wellness of employees can lead to more successful outcomes for employees and their employers.

### SOURCES:

1. DeVries, George. "The Top 10 Wellness Trends for 2008 and Beyond," *Compensation & Benefits Review*, July/August 2008.
2. Watson Wyatt. "2007/2008 Staying@Work Report: Building an effective health & productivity framework," 2008. [www.watsonwyatt.com](http://www.watsonwyatt.com)
1. Schaitberger, B. & Dell, P. "Financial EAP Counseling Can Improve Fiscal, Physical Health," *Employee Benefit News*, March 1, 2007.

are able to not only help employees lead better lives and reduce their own health care costs, but also help the company's bottom line. Employers with healthier employee populations experience higher productivity, reduced medical premiums, and less absenteeism and presenteeism.

Both Obama and Baucus acknowledge that the promotion of prevention and improved public health are essential to addressing the health care crisis, and that worksite health promotion programs can be a powerful tool in these efforts. Some proposals suggest providing employers with tax credits or other subsidies to support proven wellness programs.<sup>8,9</sup> Although many employers may question how they can afford to offer or expand wellness programs during an economic downturn, the answer continues to be how can they afford not to?

## NAVIGATING AN EVER-CHANGING LANDSCAPE

While there may be consensus that major health care reform is needed, there is vast disagreement as to how it needs to be done. Will employer mandates to provide coverage for all employees be invoked? Will employers now be required to implement health promotion programs? Will consumer-driven plans such as health savings accounts continue to flourish? There are endless questions out there about the future of health care. In today's ever-changing environment, it is more important than ever to have a health care advisor who can stay abreast of the latest news, trends and regulations, and who can nimbly guide you through the many changes that will be coming in the next few years.

**"Some may ask how, at this moment of economic challenge, we can afford to invest in reforming our health care system ... I ask how we can afford not to."**

**– President Barack Obama**

# PLANNING FOR RETIREMENT

## in the “New World”

*Global economic recession, volatile financial markets, corporate fraud and malfeasance, consumer confidence crisis — it is enough to make even the most judicious retirement plan sponsor concerned. And they are not alone. Most employers are being inundated with questions from employees concerned about their shrinking retirement plan accounts.*

Current economic events are reshaping our world, with changes often happening overnight. The consequences of these events – particularly the downturn in the market – could lead to additional challenges for employers. Down markets provide an environment ripe with litigation opportunity. As participants watch their account balances precipitously drop, they may feel the need to blame their employers.

In fact, there already is pending 401(k) litigation, the outcome of which could bring further disclosures and challenges for plan fiduciaries. In one of the most notable of these pending court cases, *Hecker v. Deere & Company*, four Deere employees are accusing the farm equipment maker and its service provider of charging “excessive and unreasonable fees” and of not disclosing those fees.<sup>14</sup> Although the U.S. District Court initially dismissed the case, the Department of Labor has filed an amicus brief asking the United States Court of Appeals for the Seventh Circuit to overturn the decision.<sup>15</sup> Most experts believe that the final outcome of this case has the potential to bring about the most change for employer-sponsored retirement plans.

Pressure is also building on the regulatory front. Although the U.S. Department of Labor recently withdrew its proposed disclosure regulation – whereby service providers must provide written disclosure of their fees and services (the “reasonable contract or arrangement” part of Section 408(b)(2)) – some experts believe that the newly inaugurated administration may very well pursue the disclosure requirements proposal; whether in its current form, or some modified version remains to be seen.

## MANAGE, MITIGATE — SUCCEED

As you manage the day-to-day activity of your company’s retirement plan, it is important for you to have some level of understanding of current conditions as well as to stay abreast of potential changes. However, you have many other company responsibilities that demand your attention, so how do you even begin to understand all that you need to know about your company’s retirement plan? It is a daunting task to be sure. But there are steps you can take that can help you manage your responsibilities and mitigate your risk.

### ***Engage an Expert***

Running a retirement plan in today’s world has become too complex for most people to manage on their own. Just as you would hire an attorney for your legal concerns, or an accountant to perform your annual tax reporting, you should engage an expert retirement plan advisor to help you navigate your company’s retirement plan. An expert can guide you through myriad fiduciary obligations. Given the current market conditions, here are three important areas on which to focus:

#### **PLAN SUCCESS**

The obligations of the plan fiduciary really boil down to this: Are your employees successfully preparing for retirement? It is a difficult question to answer because it is difficult to measure success.

An expert retirement plan advisor can help you measure the success of your plan by identifying key plan metrics, such as participation and deferral rates, and then benchmarking those statistics against an industry standard. The results can help indicate whether participants are on track to meet their retirement goals.

## COMMUNICATING WITH YOUR EMPLOYEES ABOUT THEIR FINANCIAL FUTURE

What is the message that sponsors of a retirement plan should communicate to employees about their retirement plan accounts during these tumultuous time?

Your employees have undoubtedly been anxious and even fearful as they have watched their account balances decline. But the recent market downturn is a reminder of the importance of having a disciplined approach to investing. As your employees turn to you for guidance on their retirement plans, what should you say to them?

Here are some basic concepts you can share with your employees:

### BACK TO BASICS

Now marks the time to get back to the fundamentals of investing. To do so, it is important to adopt the proper mindset.

- **VIEW THE PLAN AS A SAVINGS PLAN RATHER THAN AN INVESTMENT PLAN.** You cannot meet your retirement goals if you don't actively set money aside. Save first, then decide how to invest it.
- **ADOPT A LONG-TERM PERSPECTIVE.** Do you find yourself checking your 401(k) account balance every day? Do you lose sleep at night when the stock market is down? If you plan to retire in 10 years or more, you are a long-term investor. Make your best effort to not get caught up in the short-term gyrations of the market. Remember that your account value matters most at the time you decide to sell.

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### VENDOR BENCHMARKING

As plan fiduciary, you are required to understand the fees you are paying for the plan and whether they are reasonable. It is difficult to determine "reasonableness" if you do not have a clear understanding of the services provided, and whether those fees and services are competitive with the marketplace.

Historically, it has been advisable to conduct a vendor benchmark every two to three years. However, with more pressure on fee disclosure, an annual benchmark conducted by a professional may be appropriate.

### EMPLOYEE COMMUNICATIONS: BACK TO BASICS

Make sure participants have the proper mindset for weathering the sometimes volatile markets. Everyone feels good when markets are going up, but when markets tumble, as they recently have, it is important to help your employees understand the risks – and the opportunities – of the markets.

An expert advisor can help your employees understand the value of the retirement plan, the basics of investing and how to handle the ups and downs of the market.

Some retirement plan advisors cannot (or will not) serve in a fiduciary capacity to your plan. If you prefer to work with a fiduciary, it is important to determine the advisor's fiduciary status prior to the arrangement, and to ask whether he can or will claim such status in writing.

### *Use ERISA Safeguards*

Take advantage of the safeguards and protections afforded to you by ERISA:

#### SECTION 404(C)

To reduce or eliminate potential fiduciary liability for participant investment decisions, follow the requirements of Section 404(c). Qualifying as a Section 404(c) plan means that you will not be liable for losses on individual transactions when:

- The participants actually exercised control with respect to the transaction.
- The losses were directly and necessarily a result of investment instructions given by the participants.

The regulations under 404(c) have been available for many years, but were reinforced the last time there were such turbulent markets – during the collapse of Enron and other financial frauds. In fact, in the Sept. 30, 2003, decision on the Enron case, the judge ruled: "If a plan does not qualify as a 404(c) [Plan], the fiduciaries retain the liability for all investment decisions made, including decisions by the participant ..."<sup>16</sup> Again, that's *all* investment decisions made, including decisions by the participant.

## QUALIFIED DEFAULT INVESTMENT ALTERNATIVE

In the absence of participant direction, e.g., if your plan has automatic enrollment or you fail to receive investment selection paperwork from an employee, you may invest the participant's account into a Qualified Default Investment Alternative (QDIA). QDIAs provide a legal defense for fiduciaries, commonly called a "safe harbor," and include:

- > Life-cycle or target date funds
- > Balanced funds
- > Professionally managed accounts

Against a backdrop of unprecedented volatility and challenging market conditions, your ability to manage the objectives of your company's retirement plan while calming participant fears has never been more important. Consequently, it is vital that plan sponsors work with a retirement plan professional to help navigate the multitude of fiduciary obligations and responsibilities, as well as provide education and support to plan participants.

**Everyone feels good when markets are going up, but when markets tumble, as they recently have, it is important to help your employees understand the risks – and the opportunities – of the markets.**

## CONT'D

- > **LIMIT YOUR LOAN ACTIVITY.** Only borrow from your 401(k) for critical expenses, such as medical bills.

Taking a loan from your 401(k) plan to buy a boat will not help you reach your retirement goals. Even though you will pay yourself back the loan, you forfeit potential growth of your money. A larger balance can compound faster than a smaller one.

- > **TAKE ADVANTAGE OF DOWN MARKETS.** Selling in a down market means one thing — you have just "locked in" your loss. Remember that an account that has decreased in value is only a paper loss, unless you choose to sell. Resist the urge to sell in down markets if you do not need the money.

Just as importantly, do not stop saving during a downturn. Save money regardless of what the markets are doing. Down markets are no reason to stop saving. In fact, it is quite the opposite. A market downturn provides the opportunity to buy shares at a "cheaper" price, and allows you to accumulate more shares than you would in an up market.

- > **FOCUS ON ACCUMULATING SHARES, NOT DOLLARS.** You have no control on what a share price will be when you decide to sell. But most investors have some measure of control over the number of shares they accumulate. You can decide whether to buy more (or less) shares during your accumulation years.

*continues on page 12 »*

## CONT'D

### ACTION PLAN

Once you adopt a disciplined mindset toward saving for your retirement, follow these simple steps to help achieve your retirement goals:

- Get into the plan! This is the most important step. Obviously, if you are not actively saving for retirement, you will not be prepared for it.
- Contribute as much as possible. It has been proven that how much you save is more important than how you invest it.
- Contribute enough to get the full match offered by your employer, if available.
- Diversify and rebalance. Once you're actively saving, it is important to make prudent decisions about how to invest your money. A diversified strategy may not make money in a bear market, but it may limit your losses.
- Do not touch your savings until retirement. Remember, your retirement account is for retirement. Do not tap into it before you actually need it.

More information on these suggestions, including useful illustrations and examples, can be found in "Managing Your Financial Future," a supplemental guide designed for your employees. Contact our offices to request this guide to share with your employees.

## BEST PRACTICES TO CONSIDER FOR EXECUTIVE BENEFITS

In April 2007, the U.S. Department of the Treasury and the Internal Revenue Service released final regulations regarding deferred compensation plans as defined under Internal Revenue Code Section 409A. Effective Jan. 1, 2009, plans are now required to be in strict documentary and operational compliance with Section 409A.

In light of these changes, consider taking the following steps regarding your executive plans:

### 1

#### IDENTIFY AND REVIEW PLANS IMPACTED BY SECTION 409A

The definition of deferred compensation has expanded. Think broadly when considering plans impacted by Section 409A. Plans that may be impacted include:

- Nonqualified deferred compensation plans (e.g., excess plans, 401(k) mirror plans)
- Nonqualified defined benefit deferred compensation plans (e.g., SERPs)
- Equity compensation awards (with deferral provisions)
- Severance agreements
- Post-retirement compensation reimbursement arrangements
- Executive benefit plans, such as split-dollar arrangements, that also include an element of deferred compensation, typically through a promise by the employer to forgive amounts owed by the employee

### 2

#### CONDUCT A SECTION 409A CAPABILITIES AUDIT OF PLAN ADMINISTRATORS

Given the flexibility and requirements of the new regulations, it is important to ensure that plan administrators have upgraded their systems with the necessary changes. Ask each plan administrator: which elements of the new regulations it plans to support (e.g., rabbi trusts, types of distribution and forms of payment), for the corresponding timeframe, and when the plan administrator plans to provide updated written plan documents. Another key concern expected to be addressed by administrators is dual reporting of grandfathered benefits and benefits subject to 409A.

**3****ACCOUNT FOR KEY EMPLOYEES (FOR PUBLIC COMPANIES)**

Publicly traded companies need to document “specified” employees, as defined by Section 409A, to comply with new rules that require a delay in payments to key employees for six months after separation from service.

**4****DO NOT OVERLOOK SECTION 457(F) PLANS (FOR NOT-FOR-PROFIT ORGANIZATIONS)**

Organizations with 457(f) plans may need to meet requirements under Section 409A as well as 457(f). An improperly drafted 457(f) plan that is not compliant with 409A may fail to provide plan participants ongoing tax deferrals and could subject them to significant tax penalties and interest. It is important that 457(f) plans be reviewed.

**5****ESTABLISH NEW DEFERRED COMPENSATION PLANS**

If your company has been waiting for final guidance under Section 409A before implementing a nonqualified deferred compensation plan, now is the best time to do so. Best practices have been codified and the IRS, through final regulations, has set very specific rules for compliance.

## Form 5500 Changes

Form 5500, the annual reporting form for qualified retirement plans with over 100 employees, includes “Schedule C,” which identifies the plan’s service providers and the compensation they receive. Historically, Schedule C required the reporting of “indirect” compensation received by plan service providers in connection with plan transactions. However, these fees have not typically been reported – largely because the fees were not known or understood – and the U.S. Department of Labor has never enforced this reporting rule.

For plan years beginning in 2009 (forms completed in 2010), both direct and indirect compensation will be required reporting on Schedule C. Highlights of what needs to be reported include:

- Report all service providers if they earn \$5,000 or more in direct or indirect compensation. Must include the nature of the services rendered and the total amount of compensation received by the provider.
- Direct compensation: a check, money or anything of value such as gifts, awards or trips.
- Indirect compensation (a little trickier): compensation not charged directly to the plan, the plan’s trust or a participant’s account, but received in connection with services rendered. Examples:
  - Finder’s fees, float, brokerage commissions, soft dollars and “other transaction-based fees” received in connection with transactions or services involving the plan.
  - Amounts charged to the plan’s investments and reflected in unit value, e.g., investment management fees, 12b-1 fees.
  - Not included: “investment fund” operating expenses, e.g., portfolio brokerage expenses.

**A professional can guide you through these new reporting requirements.**

# ARE YOU PREPARED?

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2009 is an environment ripe for change. The economic crisis cannot be fixed without addressing the health care crisis and challenges in saving for retirement. The symbiotic relationship that exists between health care, retirement and the broader economic environment necessitates that these issues be addressed in conjunction with one another and not as independent entities. As a result it will be even more important to be able to turn to an advisor that understands both the financial and health care challenges that you and your employees face.

Despite all the uncertainty, we know changes are coming. Although there is no crystal ball to tell us exactly what those changes will be, having an advisor who is prepared to navigate the health and retirement planning landscapes, offering assistance to employers and equipping them to help their employees, can help make it easier to adapt and succeed.

We remain committed to staying abreast of the latest tools, resources, trends and legislative developments so we can empower you and your employees to make the best decisions regarding your retirement and health care needs.

## SOURCES

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1. The Henry J. Kaiser Family Foundation. "Health Tracking Poll: Election 2008," Dec. 2007. [www.kff.org](http://www.kff.org)
2. The Henry J. Kaiser Family Foundation. "Health Tracking Poll: Election 2008," Oct. 2008. [www.kff.org](http://www.kff.org)
3. Broder, David S. "Health Reform's Moment," *The Washington Post*, Dec. 14, 2008. [www.washingtonpost.com](http://www.washingtonpost.com)
4. National Coalition on Health Care. "Health Insurance Costs: Facts on the Cost of Health Insurance and Health Care," 2008. [www.nchc.org](http://www.nchc.org)
5. U.S. Census Bureau, "Income, Poverty, and Health Insurance Coverage in the United States: 2007", Aug. 2008. [www.census.gov](http://www.census.gov)
6. Kaiser Commission on Medicaid and the Uninsured. Medicaid, SCHIP and Economic Downturn: Policy Challenges and Policy Responses, April 2008. [www.kff.org](http://www.kff.org).
7. U.S. Bureau of Labor Statistics. "The Employment Situation: Dec. 2008." [www.bls.gov](http://www.bls.gov)
8. Baucus, Max. *Call to Action: Health Reform 2009*, Nov. 12, 2008. [www.finance.senate.gov](http://www.finance.senate.gov)
9. Obama, Barack. 2008. [www.BarackObama.com](http://www.BarackObama.com)
10. The White House (press release). "Fact Sheet: Health Care Transparency: Empowering Consumers to Save on Quality Care," Aug. 2007.
11. The RAND Corporation. *Extrapolating Evidence of Health Information Technology Services and Costs*, 2005. [www.rand.org](http://www.rand.org)
12. The Milken Institute. *An Unhealthy America: The Economic Burden of Chronic Disease —Charting a New Course to Save Lives and Increase Productivity and Economic Growth*, Oct. 2007. [www.milkeninstitute.org](http://www.milkeninstitute.org)
13. Centers for Disease Control/National Center for Health Statistics. Nov. 2007. [www.cdc.gov/nccdphp/dnpa/obesity/trend/index.htm](http://www.cdc.gov/nccdphp/dnpa/obesity/trend/index.htm)
14. Hecker v Deere & Company, W.D. Wis., No. 06-C-719-S, 2007. U.S. Dist. LEXIS 45275.
15. Hecker v. Deere & Company, 7th Cir., No. 07-3604. Amicus brief filed March 20, 2008.
16. Tittle v. Enron Corp., 284 F.Supp.2d 511, 578 (S.D. Texas 2003).

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