



# SPECIAL Alert

## In This Issue

*In this seventh McGrawWentworth Special Alert for 2008, we will summarize two recent pieces of guidance issued by the government. The first piece of guidance applies to Medicare Part D notices. The government has released new model notice language for Medicare Part D.*

*The second piece of guidance is the Heroes Earnings Assistance and Relief Tax Act or HEART. The majority of the provisions in HEART address pension and retirement plans. The Act contains one provision that impacts Section 125 Medical Flexible Spending Accounts.*

*We welcome your comments and suggestions regarding this issue of our Special Alert. For more information on this article, please contact your Account Manager or visit the McGrawWentworth website at [www.mcgrawwentworth.com](http://www.mcgrawwentworth.com).*

## “Two New Initiatives Impacting Employers”

Recently the government released two new pieces of guidance that will affect employers and their benefit plans. The first deals with changes to the Medicare Part D notices. The other focuses on legislation impacting employees called to active duty in the armed services. Employers will need to address the various requirements in these regulations.



themselves can be found at [http://www.mcwent.com/Special\\_Alert/2007/Special\\_Alert\\_Issue\\_4.pdf](http://www.mcwent.com/Special_Alert/2007/Special_Alert_Issue_4.pdf).

Updated model language for a creditable coverage notice, a non-creditable coverage notice, and a personalized notice can be found at the CMS website. In addition, Spanish language versions of the various notices

are also located at this site. The language changes are not substantial, but were made to clarify the notices. Your organization should compare the new model language to your current notice and make any needed changes.

### HEART Act

In mid-June, President Bush signed into the law the Heroes Earnings Assistance and Relief Tax Act, or the HEART Act. The goal of this legislation is to provide benefit protection to members of the United States armed forces who are called to active duty. These protections extend beyond the job and health benefit protections already provided by USERRA. For more information on USERRA, please see our Benefit Advisor at [http://www.mcwent.com/Benefit\\_Advisor/2005/BA\\_Issue2.pdf](http://www.mcwent.com/Benefit_Advisor/2005/BA_Issue2.pdf).

### Medicare Part D Notices

In June 2008, the government released new model language for Medicare Part D disclosure notices. The government requires all health plans to notify Medicare beneficiaries whether the status of their prescription drug coverage is creditable or non-creditable. Employers must determine the creditable coverage status of their plan at least once per year. If an organization makes a change to their prescription drug coverage, then the coverage must be reviewed to determine if that change impacts its creditable status.

The new guidance does not change the notice distribution requirements or any of the methods for determining creditable coverage status. The new guidance simply updates the model notice language, which can be found at [http://www.cms.hhs.gov/CreditableCoverage/09\\_CAfterJune15.asp](http://www.cms.hhs.gov/CreditableCoverage/09_CAfterJune15.asp). (Additional details on the employer requirements

The majority of the HEART Act applies to pension benefits and includes the following provisions:

- If employers pay differential pay to employees called up to active duty, the employer must take that pay into account when calculating pension benefits.
- If an employee ordered to active duty requests a distribution from a defined contribution plan, that distribution will not be subject to the 10% early withdrawal penalty. (This applies to any individuals ordered to active duty for at least 6 months on or after December 31, 2007.)
- Any military death benefit received by the survivor of a deceased service member can be rolled over, tax-free, into the survivor's Roth IRA or into an educational account.
- There are simplified rules governing distributions when individuals are called to active military service.
- The Act closes some holes in USERRA. USERRA offers job protections to employees serving in the military, but it does not address what happens if that employee is killed while



on active duty. The HEART Act mandates that employers provide survivors of the service member with the same pension benefits that would have been provided had the employee returned and died while actively at work.

One provision of the HEART Act applies specifically to flexible spending accounts. Employers can amend their Section 125

plans to allow military reservists who spend at least 6 months on active duty to take any funds remaining in their spending accounts as a taxable distribution. In this way, they will not lose any monies that they were unable to use by the end of plan year.

The Act does not require employers to amend their plans, but that will make sense to many employers, especially those who have had employees called to active duty. When reservists are called to active duty, their lives and plans for the year are completely disrupted. For example, perhaps the employee planned on having LASIK vision surgery during the year, and set aside several thousand dollars to pay for it. But if the individual is called to active duty, this can disrupt the ability to schedule surgery. Under the rules of Section 125, if the individual is not able to use the funds during the plan year

(and the grace period, as applicable), then the funds are forfeited (the "use it or lose it" rule). However, if the employer amends the plan, then the balance of the spending accounts can be refunded at the end of the plan year. The funds are taxable, but at least they are not forfeited.

### Concluding Thoughts

Organizations need to address this latest guidance. The cosmetic changes made to the Medicare Part D disclosure notice language are few and fairly easy to integrate. It makes sense to review your creditable coverage notices now and compare them to the most recent model notice language. You will likely need to make minor changes, but nothing too substantial.

The HEART Act provisions require more attention. Your organization should contact your retirement plan consultant to address the changes that need to be made to your retirement plans. If you decide to amend your Section 125 plan to allow for the distribution of spending account funds to reservists called to active duty, please notify your spending account administrator. They are likely to have recommended language for this amendment.

If your organization has any questions regarding this guidance, please contact your McGraw Wentworth Account Manager. **MW**

Copyright McGraw Wentworth, Inc. Our publications are written and produced by McGraw Wentworth staff and are intended to inform our clients and friends on general information relating to employee benefit plans and related topics. They are based on general information at the time they are prepared. They should not be relied upon to provide either legal or tax advice. Before making a decision on whether or not to implement or participate in implementing any welfare, pension benefit, or other program, employers and others must consult with their benefits, tax and/or legal advisor for advice that is appropriate to their specific circumstances. This information cannot be used by any taxpayer to avoid tax penalties.

McGraw Wentworth, Inc.

3331 West Big Beaver Road, Suite 200  
Troy, MI 48084  
Telephone: 248-822-8000 Fax: 248-822-4131  
[www.mcgrawwentworth.com](http://www.mcgrawwentworth.com)

250 Monroe Ave. NW, Suite 400  
Grand Rapids, MI 49503  
Telephone: 616-717-5647 Fax: 248-822-1278  
[www.mcgrawwentworth.com](http://www.mcgrawwentworth.com)