

July 16, 2013

DOL and Treasury Update 2012-2013 Regulatory Agendas for Employee Benefits

The principal regulators of U.S. employee benefits have recently published updates to their guidance plans for the coming months.

- On July 3, 2013, the U.S. Department of Labor (DOL) updated its [Semi-Annual Regulatory Agenda](#). This publication takes the form of a Federal Register notice to comply with certain administrative requirements. The DOL's agenda and related materials include nine pending projects related to employee benefits, which are listed in the chart below in order of the projected timetable for next steps. (In the ordinary course, dates projected in the agenda may prove to be ambitious.) Of particular interest, the reproposal of the amendment to the definition of fiduciary is projected to be published in October 2013.
- On May 2, 2013, the U.S. Treasury Department and the Internal Revenue Service (IRS) released their [Third Quarter Update to 2012-2013 Priority Guidance Plan](#), often informally referred to as the IRS Business Plan, which updates those issues that will be the subject of formal guidance from July 2012 through June 2013. The IRS Business Plan includes 34 pending items addressing retirement benefits and 24 pending items addressing executive compensation, health care and other benefits.

Projects added to the agendas since they were last published are shown in bold. There are two new DOL initiatives and three new tax initiatives. We also anticipate upcoming guidance regarding the recent U.S. Supreme Court decision holding that Section 3 of the federal Defense of Marriage Act is unconstitutional, but those guidance projects have not yet been announced.

| Guidance Project | Type | | Projected Date (DOL Only) | On Agenda Since: |
|--|------|-----|---------------------------|------------------|
| | Tax | DOL | | |
| Retirement Plans | | | | |
| Guidance on exceptions to additional tax under §72(t) on early distributions from retirement plans and IRAs | X | | | 9/2011 |
| Regulations on the application of the normal retirement age regulations under §401(a) to governmental plans | X | | | 12/2010 |
| Revenue procedure under §§401(a) and 403(a) updating interim amendment procedures in Rev. Proc. 2007-44 | X | | | 12/2012 |
| Final regulations under §401(a)(9) on deferred annuities | X | | | 12/2012 |
| Final regulations on suspension or reduction of safe harbor contributions under §401(k) and (m) | X | | | 11/2009 |
| Guidance under §402 on transfers from foreign retirement plans | X | | | 9/2011 |
| Final regulations under §402(a) regarding the treatment of incidental benefits provided under a qualified plan | X | | | 9/2011 |
| Guidance under §402(c) on distributions that are disbursed to multiple destinations | X | | | 9/2011 |
| Regulations under §402A on distributions from designated | X | | | 9/2011 |

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| Guidance Project | Type | | Projected Date (DOL Only) | On Agenda Since: |
|--|------|-----|------------------------------|---------------------|
| | Tax | DOL | | |
| Roth accounts that are disbursed to multiple destinations | | | | |
| Guidance on rules applicable to IRAs under §§408 and 408A | X | | | 9/2011 |
| Guidance on rules applicable to ESOPs under §§409 and 4975 | X | | | 12/2010 |
| Guidance updating regulations for service credit and vesting under §411 | X | | | 9/2011 |
| Final regulations relating to hybrid plans under §§411(a)(13) and 411(b)(5), as added by the Pension Protection Act of 2006 (PPA) | X | | | 9/2011 |
| Guidance relating to conforming amendments adopted in connection with final regulations under §§411(a)(13) and 411(b)(5), as added by PPA | X | | | 9/2011 |
| Guidance on issues relating to pension equity plans | X | | | 9/2011 |
| Regulations on the definition of governmental plan under §414(d) | X | | | 12/2012 |
| Regulations on the status of Indian tribal governmental plans as a governmental plan under §414(d) | X | | | 12/2012 |
| Guidance on pick-up arrangements under §414(h)(2) | X | | | 12/2010 |
| Regulations on eligible combined plans under §414(x), as added by PPA | X | | | 11/2009 |
| Final regulations under §417(e) to simplify the treatment of optional forms of benefit that are paid partly in the form of an annuity and partly in a more accelerated form | X | | | 12/2012 |
| Final regulations on determination of minimum required contributions under §430, as added by PPA | X | | | 9/2008 |
| Revenue procedure under §430 relating to approval for funding method changes to reflect changes to the minimum funding requirements made by PPA | X | | | 12/2012 |
| Regulations on additional issues relating to funding and related rules for single-employer plans under §§430 and 436 | X | | | 9/2011 |
| Notice on additional issues relating to funding and benefit limitation relief for single-employer plans under the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 | X | | | 12/2010 |
| Guidance on funding rules for multiemployer plans under §432, as added by PPA | X | | | 9/2011 |
| Guidance under §3405 regarding distributions made to payees with an address outside the United States | X | | | 12/2012 |
| Final regulations to designate the Form 8955-SSA as the form to satisfy the §6057 reporting requirements | X | | | 12/2012 |
| Guidance under §§6057, 6058, and 6059 for late filers of Form 5500 series | X | | | 12/2010 |
| Regulations under §§6057, 6058, and 6059 regarding electronic filing of Form 5500 | X | | | 9/2012 |
| Revenue procedure updating Rev. Proc. 2007-44 for determination letters for individually designed plans | X | | | 9/2011 |

| Guidance Project | Type | | Projected Date (DOL Only) | On Agenda Since: |
|---|------|-----|------------------------------------|----------------------|
| | Tax | DOL | | |
| Guidance on group trusts under Revenue Rulings 81-100 and 2011-1 | X | | | 12/2012 |
| Guidance facilitating rollovers into retirement plans | X | | | 9/2011 |
| Additional guidance on issues relating to lifetime income from retirement plans | X | | | 11/2009 |
| Guidance on certain issues related to multiple employer plans | X | | | 12/2012 |
| Pension benefit statements <ul style="list-style-type: none"> ▪ Implement PPA §508 | | X | 7/8/2013 (Comment period ends) | Prior to Spring 2008 |
| Guide or similar requirement for §408(b)(2) disclosures | | X | 10/2013 (Proposed regulation) | 1/2012 |
| Definition of “fiduciary” <ul style="list-style-type: none"> ▪ Expand to include more persons, such as pension consultants, as fiduciaries | | X | 10/2013 (Reproposed regulation) | 12/2010 |
| Annual funding notice <ul style="list-style-type: none"> ▪ Implement PPA §501 | | X | 10/2013 (Final regulation) | Prior to Spring 2008 |
| Target date funds <ul style="list-style-type: none"> ▪ Increased disclosure to participants | | X | 11/2013 (Final regulation) | 4/2010 |
| Abandoned plan program <ul style="list-style-type: none"> ▪ Amend to expand scope of individuals entitled to be a “qualified termination administrator” | | X | 1/2014 (Final regulation) | 12/2010 |
| Executive Compensation | | | | |
| Final regulations under §83 to incorporate the holding in Rev. Rul. 2005-48 | X | | | 11/2009 |
| Final regulations under §162(m) on the stock-based compensation aggregate limit rule under Treas. Reg. §1.162-27(e)(2), and the transition relief under Treas. Reg. §1.162-27(f)(1) | X | | | 9/2011 |
| Guidance under §§280G and 4999(a) on change in ownership | X | | | 12/2010 |
| Guidance on application of §402(b) to participants in foreign nonqualified deferred compensation plans | X | | | 9/2011 |
| Regulations under §404 on the application of the “in which or with which ends” rule and the exceptions to that rule in §1.404(a)-12(b) | X | | | 9/2011 |
| Final regulations on income inclusion under §409A | X | | | 11/2009 |
| Guidance on application of §409A to certain transactions involving compensatory stock options and a merger or acquisition | X | | | 12/2012 |
| Notice on the application of §409A(b), as amended by PPA (regarding deferred compensation funded through a rabbi trust in certain situations) | X | | | 11/2009 |

| Guidance Project | Type | | Projected Date (DOL Only) | On Agenda Since: |
|---|----------|-----|--------------------------------------|---------------------|
| | Tax | DOL | | |
| Revenue ruling under §419A on the definition of post-retirement medical benefits | X | | | 9/2011 |
| Revenue ruling under §424(c)(1)(B) on whether there is a disposition of Incentive Stock Option or Employee Stock Purchase Plan shares on receipt of boot by a target shareholder in a §368(a)(1) reorganization | X | | | 9/2011 |
| Regulations under §457(f) on ineligible plans | X | | | 9/2008 |
| Health Care and Other Benefits | | | | |
| Guidance under the §45R small employer health insurance credit as added by Patient Protection and Affordable Care Act (PPACA) | X | | | 12/2012 |
| Final regulations on cafeteria plans under §125 | X | | | 9/2008 |
| Guidance under §132(f) on the use of electronic forms of fare media to distribute qualified transportation fringe benefits | X | | | 9/2011 |
| Guidance under §162(m)(6), as added by PPACA | X | | | 12/2010 |
| Guidance under §223(c)(2)(C) on Health Savings Accounts (HSAs) regarding certain services required to be provided without cost sharing | X | | | 12/2012 |
| Regulations amending §1.419A-2T relating to collectively bargained welfare benefit funds | X | | | 12/2012 |
| Regulations under §512 explaining how to compute unrelated business taxable income of voluntary employees' beneficiary associations described in §501(c)(9) | X | | | 12/2010 |
| Guidance on the employee retention credit under §1400R | X | | | 11/2009 |
| Final regulations under §3504 on reporting employment taxes for home care service recipients | X | | | 5/2013 |
| Revenue procedure under §3504 updating and consolidating existing guidance related to the procedures for authorizing agents to perform employment tax acts on behalf of an employer | X | | | 5/2013 |
| Regulations under §4980G on interaction of §4980G and §125 with respect to comparable employer contributions to employees' HSAs | X | | | 9/2008 |
| Regulations on the reporting requirements under §6056, as added by PPACA | X | | | 9/2011 |
| Guidance under §6402 on employee consents obtained by employer to claim a refund of FICA taxes | X | | | 5/2013 |
| Guidance relating to coverage of preventive services under PPACA | | X | 7/2012 (Final regulation) | 12/2012 |
| Guidance relating to the Mental Health Parity and Addiction Equity Act of 2008 | | X | 10/2013 (Final regulation) | 7/2013 |
| Guidance relating to the 90-day waiting period limitation under PPACA | | X | 12/2013 (Final regulation) | 7/2013 |



If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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