

January 3, 2013

2012-2013 Regulatory Agendas for Employee Benefits Published by DOL and Treasury

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

- On December 24, 2012, the U.S. Department of Labor (DOL) updated its [2012 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 eight 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.)
- On November 19, 2012, the U.S. Treasury Department and the Internal Revenue Service (IRS) released their [2012-2013 Priority Guidance Plan](#), often informally referred to as the IRS Business Plan, which lists those issues that will be the subject of formal guidance from July 2012 through June 2013. The IRS Business Plan includes 36 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 (although in some cases these projects had been announced previously). There are two new DOL initiatives and 17 new tax initiatives.

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 Roth accounts that are disbursed to multiple destinations	X			9/2011
Revenue procedure on §403(b) plans	X			9/2008

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Guidance Project	Type		Projected Date (DOL Only)	On Agenda Since:
	Tax	DOL		
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 on group trusts under Revenue Rulings 81-100 and 2011-1	X			12/2012

Guidance Project	Type		Projected Date (DOL Only)	On Agenda Since:
	Tax	DOL		
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
Revenue procedure updating Employee Plans Compliance Resolution System	X			12/2010
Pension benefit statements <ul style="list-style-type: none"> Implement PPA §508 		X	12/2012 (Advanced notice of proposed regulation)	Prior to Fall 2007
Abandoned plan program <ul style="list-style-type: none"> Amend to expand scope of individuals entitled to be a “qualified termination administrator” 		X	2/11/2013 (Comment period ends)	12/2010
Guide or similar requirement for §408(b)(2) disclosures		X	5/2013 (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	7/2013 (Reproposed regulation)	12/2010
Annual funding notice <ul style="list-style-type: none"> Implement PPA §501 		X	10/2013 (Final regulation)	Prior to Fall 2007
Target date funds <ul style="list-style-type: none"> Increased disclosure to participants 		X	11/2013 (Final regulation)	4/2010
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 §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
Regulations under §§3101(b), 3102(f), and 1401(b) on additional Medicare tax on employees and self-employed individuals, as added by PPACA	X			9/2011
Final regulations under §§4375-4377, as added by PPACA, regarding fees on insured and self-insured health plans to fund the Patient-Centered Outcomes Research Trust Fund	X			12/2012
Regulations under §4980G on interaction of §4980G and §125 with respect to comparable employer contributions to employees' HSAs	X			9/2008
Regulations on shared responsibility for employers regarding health coverage under §4980H, as added by §1513 of PPACA	X			12/2012
Regulations on the reporting requirements under §6056, as added by PPACA	X			9/2011
Guidance relating to coverage of preventive services under PPACA		X	12/2012 (Proposed regulation)	12/2012
Incentives for nondiscriminatory wellness programs in group health plans		X	1/25/2013 (Comment period ends)	12/2012



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

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