

January 5, 2011

## 2011 Regulatory Agendas for Employee Benefits Published by Treasury and DOL

In December 2010, the principal regulators of U.S. employee benefits published their guidance plans for the coming months.

- On December 7, 2010, the U.S. Treasury Department and the Internal Revenue Service (IRS) released their [2010-2011 Priority Guidance Plan](#), often informally referred to as the IRS Business Plan and listing those issues that will be the subject of formal guidance from July 2010 through June 2011. The IRS Business Plan includes 19 pending items addressing retirement benefits and 23 pending items addressing executive compensation and health care and other benefits.
- On December 20, 2010, the U.S. Department of Labor (DOL) issued its Fall 2010 Semi-Annual Regulatory Agenda. This publication takes the form of a Federal Register notice, to comply with certain administrative requirements. The agenda itself is available on the DOL Website with many entries supported by a fact sheet (click here for [Spring 2010](#) and [Fall 2010](#) entries). DOL's agenda and related materials include 19 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.)

Projects added since the previously published agendas are shown in bold; there are 22 new initiatives.

Guidance Project	Type		Projected Date (DOL Only)
	Tax	DOL	
<b>General</b>			
Definition of "fiduciary" <ul style="list-style-type: none"> <li>Expand to include more persons, such as pension consultants, as fiduciaries</li> </ul>		X	2/3/2011 (Comment period closes)
Claims procedure <ul style="list-style-type: none"> <li>Notice, timing, appeals and other elements of the claims procedure regulation</li> </ul>		X	11/2011 (Proposed amendment)
<b>Prohibited transaction exemption procedures</b> <ul style="list-style-type: none"> <li><b>Amend current procedures to promote transparency and facilitate efficient consideration</b></li> </ul>		X	<b>11/2011</b> <b>(Final regulation)</b>
<b>Retirement Plans</b>			
Guidance on notice requirements applicable to single-employer plans that become subject to funding-based limitations, as added by the Pension Protection Act of 2006 (PPA)	X		
Final regulations of suspension or reduction of safe harbor contributions under § 401(k) and (m)	X		
Guidance on § 403(b) plan terminations	X		
Guidance on the prototype program for § 403(b) plans	X		
<b>Guidance on rules applicable to ESOPs under §§ 409 and 4975</b>	<b>X</b>		

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Guidance Project	Type		Projected Date (DOL Only)
	Tax	DOL	
Guidance on the definition of readily tradable securities for ESOPs	X		
Guidance on governmental plan status under § 414(d)	X		
Guidance on procedures for ruling requests under § 414(e) for church plans	X		
<b>Guidance on pick-up arrangements under § 414(h)(2)</b>	<b>X</b>		
Guidance on eligible combined plans under § 414(x), as added by PPA	X		
Final regulations on determination of minimum required contributions under § 430, as added by PPA	X		
Guidance updating revenue procedure on multiemployer plan amortization extension requests under § 431	X		
<b>Guidance under § 4980F regarding notice requirements for certain plan amendments to hybrid plans</b>	<b>X</b>		
Guidance related to compliance with certain reporting requirements under §§ 6057, 6058, and 6059 for retirement plans	X		
Guidance on international tax issues related to retirement plans	X		
Guidance on issues related to lifetime income from retirement plans	X		
<b>Update to Employee Plans Compliance Resolution System</b>	<b>X</b>		
<b>Guidance on application of normal retirement age rules to governmental plans</b>	<b>X</b>		
<b>Guidance on funding relief under the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010</b>	<b>X</b>		
Target date funds <ul style="list-style-type: none"> <li>▪ Increased disclosure to participants</li> </ul>		X	1/14/2011 (Comment period closes)
Annual funding notice <ul style="list-style-type: none"> <li>▪ Implement PPA § 501</li> </ul>		X	1/18/2011 (Comment period closes)
Enhanced fee disclosure for retirement plans <ul style="list-style-type: none"> <li>▪ Under ERISA service provider exemption</li> </ul>		X	4/2011 (Final regulation)
Lifetime income options in retirement plans <ul style="list-style-type: none"> <li>▪ Joint request for information with Treasury</li> </ul>		X	4/2011 (Review public record)
Statutory exemption for investment advice in participant-directed plans		X	5/2011 (Final regulation)
Pension benefit statements <ul style="list-style-type: none"> <li>▪ Implement PPA § 508</li> </ul>		X	6/2011 (Proposed regulation)
<b>Abandoned plan program</b> <ul style="list-style-type: none"> <li>▪ <b>Amend to expand scope of individuals entitled to be a “qualified termination administrator”</b></li> </ul>		<b>X</b>	<b>12/2011 (Proposed regulation)</b>

Guidance Project	Type		Projected Date (DOL Only)
	Tax	DOL	
<b>Executive Compensation</b>			
Proposed Regulations under § 83 to incorporate the holding in Rev. Rul. 2005-48	X		
<b>Guidance providing model language on § 83(b) elections</b>	<b>X</b>		
<b>Guidance under §§ 280G and 4999(a) on change in ownership</b>	<b>X</b>		
Final regulations on income inclusion under § 409A	X		
Guidance on the application of § 409A(b) (regarding deferred compensation funded through a rabbi trust in certain situations)	X		
Guidance under § 457A (regarding certain offshore deferred compensation)	X		
Guidance under § 457(f) on ineligible plans	X		
Guidance on the employee retention credit under § 1400R	X		
Proposed regulations implementing new § 3121(z) on foreign employers, as added by the Heroes Earnings Assistance and Relief Tax Act of 2008	X		
<b>Health Care and Other Benefits</b>			
<b>Guidance under § 45R as added by the Patient Protection and Affordable Care Act (PPACA)</b>	<b>X</b>		
Final regulations on cafeteria plans under § 125	X		
Guidance on the applicability of § 162(l) to COBRA premiums	X		
Proposed regulations under § 162(m) on the transition relief under Treas. Reg. § 1.162-27(f)(1)	X		
<b>Guidance on the application of § 162(m)(6) as added by PPACA</b>	<b>X</b>		
<b>Regulations under § 512 explaining how to compute unrelated business taxable income of voluntary employees' beneficiary associations described in § 501(c)(9)</b>	<b>X</b>		
Guidance on the employee retention credit under § 1400R	X		
<b>Guidance on employer-provided cell phones</b>	<b>X</b>		
Proposed regulations under §§ 3127, 3121(b)(3)(A) and 3306(c)(5) making certain FICA exemptions available for disregarded entities	X		
Proposed regulations under § 3504 designating certain parties who file employment tax returns under their EINs for their clients' workers persons required to perform acts of employers	X		
Guidance under § 4980B regarding calculation of the application premium for COBRA continuation coverage	X		
Regulations under § 4980G on interaction of § 4980G and § 125 with respect to comparable employer contributions to employees' HSAs	X		
<b>Guidance on reporting of aggregate cost of employer sponsored health coverage under § 6051(a)(14), as added by PPACA</b>	<b>X</b>		
Guidance updating Rev. Rul. 95-7 on tips	X		
Dependent coverage of children to age 26 under PPACA <ul style="list-style-type: none"> <li>▪ Implement ERISA § 715, enacted under PPACA</li> </ul>		X	4/2011 (Reviewing comments)

Guidance Project	Type		Projected Date (DOL Only)
	Tax	DOL	
<b>Coverage of preventative services without cost sharing</b> ▪ Implement ERISA § 715, enacted under PPACA		X	4/2011 (Reviewing comments)
<b>Automatic enrollment in health plans</b> ▪ Implement FLSA § 18a		X	5/2011 (Comment period closes)
<b>Ex parte cease and desist and summary seizure orders</b> ▪ Implement ERISA § 521, enacted under PPACA		X	7/2011 (Proposed regulation)
Enhanced fee disclosure for welfare plans ▪ Under ERISA service provider exemption		X	9/2011 (Proposed regulation)
Guidance under Mental Health Parity and Addiction Equity Act ▪ Final regulation		X	To be determined
<b>Grandfathered health plan guidance under PPACA</b> ▪ Final regulation		X	To be determined
<b>Preexisting conditions exclusions, lifetime and annuals limits, and recessions and patient protections under PPACA</b> ▪ Final regulation		X	To be determined
<b>Internal and external appeals processes under PPACA</b> ▪ Final regulation		X	To be determined

In her January 4 web chat about the regulatory agenda, Assistant Secretary Borzi noted one other pending DOL initiative: a request for information regarding electronic disclosure under ERISA, expected by the end of February 2011.



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