



Legal Alert: Treasury Announces 2016-2017 Regulatory Agenda for Employee Benefits

August 25, 2016

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

- On August 15, 2016, the U.S. Department of the Treasury and the Internal Revenue Service (IRS) released their [2016-2017 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 2016 through June 2017. The IRS Business Plan includes 35 pending items addressing retirement benefits and 20 pending items addressing executive compensation, health care and other benefits. The items are listed in the chart below in the reverse order of when they first appeared on the agenda.
- On May 18, 2016, 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 13 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, the projected dates shown on the agenda may prove to be ambitious.)

Related People/Contributors

- W. Mark Smith
- Brittany Edwards-Franklin
- Brenna M. Clark
- Adam B. Cohen
- Michael A. Hepburn
- Cristopher D. Jones
- Paul R. Lang
- Carol T. McClarnon
- Alice Murtos
- Meredith L. O'Leary
- Vanessa A. Scott
- William J. Walderman
- Allison E. Wielobob

Projects added to the agendas since they were last published are shown in bold. There are 14 new IRS initiatives, and no new DOL initiatives. We also note that the section 280G guidance project is no longer on the IRS Business Plan.

| Guidance Project | Type | | Projected Date (DOL Only) | On Agenda Since: |
|---|------|-----|------------------------------|---------------------|
| | Tax | DOL | | |
| Retirement Plans | | | | |
| Additional guidance on the determination letter program, including changes to the pre-approved plan program | X | | | 8/2016 |
| Additional guidance regarding qualifying longevity annuity contracts | X | | | 8/2016 |
| Guidance on the timing of the use or allocation of forfeitures in defined contributions plans | X | | | 8/2016 |
| Guidance on the treatment of future interest credits under a hybrid defined benefit plan for purposes of satisfying various qualification requirements | X | | | 8/2016 |
| Guidance on § 403(b) remedial amendment period | X | | | 8/2016 |
| Regulations on qualified excess benefit arrangements under § 415(m) | X | | | 8/2016 |
| Update of § 416 regulations for statutory changes | X | | | 8/2016 |
| Revenue procedure modifying Revenue Procedure 2013-12 | X | | | 8/2016 |

| Guidance Project | Type | Projected Date | On Agenda |
|--|------|----------------|-------------------|
| relating to the Employee Plans Compliance Resolution System (EPCRS) to reflect changes in the determination letter program | | | |
| Regulations under § 401(a)(9) on the use of lump sum payments to replace lifetime income being received by retirees under defined benefit pension plans | X | | 7/2015 |
| Regulations regarding individual retirement accounts (IRAs) under §§ 219, 4973, 408, and 408A | X | | 7/2015 and 9/2011 |
| Additional guidance on issues relating to lifetime income from retirement plans and IRAs | X | | 7/2015 |
| Guidance regarding substantiation of hardship distributions | X | | 8/2014 |
| Guidance regarding Qualified Nonelective Contributions (QNECs) and Qualified Matching Contributions (QMACs) | X | | 8/2014 |
| Guidance regarding the aggregation rules under § 414(m) | X | | 8/2014 |
| Regulations under § 417(e) that update the minimum present value requirements for defined benefit plans | X | | 8/2014 |
| Regulations relating to the reporting requirements under § 6057 | X | | 8/2014 |
| Notice and regulations under § 430(h)(3)(B) updating the mortality tables used for pension funding purposes | X | | 8/2014 |
| Final regulations on closed defined benefit plans and related matters | X | | 8/2014 |
| Guidance under § 404 on deductions for employer contributions to qualified plans | X | | 8/2013 |
| Regulations under § 411(a)(11) | X | | 8/2013 |
| Final regulations under § 415 regarding § 7873 Treaty Fishing Rights income | X | | 8/2013 |
| Guidance concerning § 4975 | X | | 8/2013 |
| Revenue procedure amending Revenue Procedure 2013-12 relating to EPCRS to provide guidance with respect to certain corrections | X | | 8/2013 |
| 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 |
| 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 |
| Revenue procedure under § 430 relating to approval for funding method changes to reflect changes to the minimum funding | X | | 12/2012 |

| Guidance Project | Type | Projected Date | On Agenda |
|--|------|--------------------------------------|--------------------|
| requirements made by the Pension Protection Act (PPA) | | | |
| Guidance under § 3405 regarding distributions made to payees with an address outside of the United States | X | | 12/2012 |
| Regulations on exceptions to additional tax under § 72(t) on early distributions from retirement plans and IRAs | X | | 9/2011 |
| Guidance updating regulations for service credit and vesting under § 411 | X | | 9/2011 |
| Guidance on issues relating to pension equity plans | X | | 9/2011 |
| Regulations on additional issues relating to funding and related rules for single-employer plans under §§ 430 and 436 | X | | 9/2011 |
| Final regulations on the application of the normal retirement age regulations under § 401(a) to governmental plans | X | | Prior to Fall 2011 |
| Regulations updating the rules applicable to employee stock ownership plans (ESOPs) | X | | Prior to Fall 2011 |
| Regulations on eligible combined plans under § 414(x), as added by PPA | X | | Prior to Fall 2011 |
| Amendment to claims procedure regulation <ul style="list-style-type: none"> Amendment to strengthen, improve and update current rules governing internal claims and appeals processes | | X 6/2016 (Analyze comments) | Prior to Fall 2011 |
| Modernize Form 5500 <ul style="list-style-type: none"> Joint project with IRS and Pension Benefit Guaranty Corporation (PBGC) to streamline Form 5500, making its data mineable | | X 6/2016 (Proposed regulation) | 5/2014 |
| Expand Voluntary Fiduciary Correction Program (VFCP) <ul style="list-style-type: none"> Expand scope of some transactions eligible for correction and streamline procedures for others | | X 7/2016 (Interim final rule) | 5/2014 |
| Abandoned plan program <ul style="list-style-type: none"> Amend to expand the scope of individuals entitled to be a "qualified termination administrator" | | X 8/2016 (Interim final rule) | Prior to Fall 2011 |
| Savings arrangements established by states for non-governmental employees <ul style="list-style-type: none"> Guidance regarding methods states may use to offer retirement savings arrangements to private-sector employees | | X 9/2016 (Final regulation) | 11/2015 |
| Top hat plan electronic filings <ul style="list-style-type: none"> Amend current rules to permit electronic filing of certain reporting and disclosure requirements | | X 10/2016 (Final regulation) | 5/2014 |

| Guidance Project | Type | Projected Date | On Agenda |
|--|----------|------------------------------------|--------------------|
| Standards for brokerage windows ▪ Review the use of brokerage windows in participant-directed individual account retirement plans | X | Undetermined timetable | 11/2013 |
| Lifetime income in defined contribution plans ▪ Safe harbor for annuity selection | X | Undetermined (Proposed regulation) | 11/2013 |
| § 408(b)(2) disclosure ▪ Guide to disclosure | X | Undetermined timetable | 1/2012 |
| Target date funds ▪ Specific disclosure requirements | X | Undetermined timetable | Prior to Fall 2011 |
| Pension benefit statements ▪ Implement PPA § 508 | X | Undetermined timetable | Prior to Fall 2011 |
| Executive Compensation | | | |
| Guidance under § 162(m) addressing certain situations involving a short taxable year | X | | 8/2016 |
| Final regulations on various issues under § 409A | X | | 8/2016 |
| Revenue procedure on requirements for maintaining certification and operating as a Certified Professional Employer Organization (CPEO) | X | | 8/2016 |
| Guidance on procedures under § 7436 relating to proceedings for determination of employment status | X | | 8/2016 |
| Final regulations and related guidance under §§ 3511 and 7705 on CPEO as added by § 206 of the Stephen Beck, Jr. Achieving a Better Life Experience (ABLE) Act of 2014 | X | | 7/2015 |
| Guidance to update prior § 409A self-correction program guidance | X | | 8/2014 |
| Guidance on the application of § 1402(a)(13) to limited liability companies | X | | 8/2014 |
| Guidance under § 6053 regarding tips | X | | 8/2014 |
| Final regulations regarding election procedures under § 83(b) | X | | 8/2014 |
| Regulations under § 86 regarding rules for lump-sum elections | X | | 8/2013 |
| Final regulations on income inclusion under § 409A | X | | Prior to Fall 2011 |
| Final regulations under § 457(f) on ineligible plans | X | | Prior to Fall 2011 |
| Health Care and Other Benefits | | | |
| Guidance on certain transactions involving welfare benefit funds | X | | 8/2016 |
| Guidance on issues under § 4980H | X | | 8/2016 |

| Guidance Project | Type | Projected Date | On Agenda | |
|--|------|----------------|------------------------|---------|
| Regulations under § 4980I regarding the excise tax on high-cost employer-provided coverage | X | | 8/2015 | |
| Guidance under §§ 119 and 132 regarding employer-provided meals | X | | 8/2014 | |
| Regulations amending § 1.419A-2T relating to collectively bargained welfare benefit funds | X | | 12/2012 | |
| Revenue procedure under § 6402 on employee consents obtained by employer to claim a refund of FICA taxes | X | | 12/2012 | |
| Revenue ruling under § 419A on the definition of post-retirement medical benefits | X | | 9/2011 | |
| Final regulations under § 512 explaining how to compute the unrelated business taxable income of voluntary employees' beneficiary associations described in § 501(c)(9) | X | | Prior to Fall 2011 | |
| Notice of Proposed Rulemaking for Health Care Continuation Coverage <ul style="list-style-type: none"> ▪ Eliminates model notice in the appendix of § 2590.606-1, among other changes, and allows the Department of Labor to place updated model notices on its website | | X | Undetermined timetable | 5/2015 |
| Improved fee disclosure for welfare plans <ul style="list-style-type: none"> ▪ Rules to ensure that plan fiduciaries of welfare plans can access information necessary to determine whether an arrangement for services is reasonable | | X | Undetermined timetable | 11/2013 |

For more resources and commentary regarding the expanded DOL Fiduciary Rule, visit Sutherland's www.dolfiduciaryrule.com.

If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed under 'Related People/Contributors' or the Sutherland attorney with whom you regularly work.