



Legal Alert: Treasury Announces 2017-2018 Regulatory Agenda for Employee Benefits

October 31, 2017

The Internal Revenue Service (IRS) has recently published updates to its guidance plans for the coming months.

- On October 20, 2017, the US Department of the Treasury and the IRS released their [2017-2018 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 2017 through June 2018. The IRS Business Plan includes six new initiatives, 18 pending items addressing retirement benefits, and 17 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.
- The US Department of Labor (DOL) has not yet published an updated Semi-Annual Regulatory Agenda since the new Administration has taken office. The DOL employee benefit projects detailed in the chart below reflect the last agenda published during the prior Administration, listed 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, to the extent the new Administration continues to pursue them.)

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Projects added to the agendas since they were last published are shown in bold. There are six new IRS initiatives, and no new DOL initiatives.

Guidance Project	Type		Projected Date (DOL Only)	On Agenda Since:
	Tax	DOL		
Retirement Plans				
Guidance related to church plans	X			10/2017
Guidance on missing participants	X			10/2017
Guidance on the treatment of future interest credits and annuity conversion factor under a hybrid defined benefit plan and adjustments under a variable annuity plan for purposes of satisfying certain qualification requirements	X			8/2016
Guidance 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 under §§ 219, 408, 408A, and 4973 regarding IRAs	X			7/2015 and prior to Fall 2012
Additional guidance on issues relating to lifetime income from retirement plans and IRAs	X			7/2015
Final regulations regarding Qualified Nonelective Contributions (QNECs) and Qualified Matching Contributions (QMACs). Proposed regulations were published on January 18, 2017	X			8/2014
Guidance regarding the aggregation rules under § 414(m)	X			8/2014

Guidance Project	Type	Projected Date	On Agenda
Final regulations under § 417(e) that update the minimum present value requirements for defined benefit plans. Proposed regulations were published on November 25, 2016	X		8/2014
Regulations relating to the reporting requirements under § 6057. Proposed regulations were published on June 21, 2012	X		8/2014
Regulations under § 411(a)(11). Proposed regulations were published on October 9, 2008	X		8/2013
Final regulations under § 415 regarding § 7873 treaty fishing rights income. Proposed regulations were published on November 15, 2013	X		8/2013
Revenue procedure modifying EPCRS to provide guidance with regard to certain corrections	X		8/2013
Regulations on the definition of governmental plan under § 414(d). An ANPRM was published on November 8, 2011	X		12/2012
Revenue procedures relating to approval for funding method changes	X		12/2012
Guidance updating regulations for service credit and vesting under § 411	X		Prior to Fall 2012
Final regulations on the application of the normal retirement age regulations under § 401(a) to governmental plans. Proposed regulations were published on January 27, 2016	X		Prior to Fall 2012
Regulations updating the rules applicable to ESOPs	X		Prior to Fall 2012
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 2012
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 2012
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	Prior to Fall 2012
Target date funds ▪Specific disclosure requirements	X	Undetermined timetable	Prior to Fall 2012
Pension benefit statements ▪Implement PPA § 508	X	Undetermined timetable	Prior to Fall 2012
Executive Compensation			
Guidance on the application of § 409A to compensation deferred prior to 2009 and includible in income under § 457A no later than 2017	X		10/2017
Guidance under § 162(m) addressing certain situations involving a short taxable year	X		8/2016
Guidance on procedures under § 7436	X		8/2016
Guidance on the application of § 1402(a)(13) to limited liability companies	X		8/2014
Regulations under § 86 regarding rules for lump-sum elections	X		8/2013
Final regulations on income inclusion and various other issues under § 409A. Proposed regulations were published on December 8, 2008, and on June 22, 2016	X		Prior to Fall 2012
Final regulations under § 457(f) and related guidance on ineligible plans. Proposed regulations were published on June 22, 2016	X		Prior to Fall 2012
Health Care and Other Benefits			
Updated guidance on the classification system for the line of business determination under § 1.132-4 for purposes of qualified employee discounts and no-additional-cost services	X		10/2017
Guidance under § 3402 to remove alternative method of figuring withholding based on combined income, employee social security, and employee Medicare tax withholding tables	X		10/2017
Guidance under § 9831(d) on qualified small employer health reimbursement arrangements (QSEHRAs) as added by section 18001 of the 21st Century Cures Act	X		10/2017
Guidance on certain transactions involving welfare benefit funds	X		8/2016
Guidance on issues under § 4980H	X		8/2016
Regulations under § 4980I regarding the excise tax on high cost employer-provided coverage	X		8/2015

Guidance Project	Type	Projected Date	On Agenda
Regulations 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 ruling under § 419A on the definition of post-retirement medical benefits	X		Prior to Fall 2012
Final regulations under § 512 explaining how to compute unrelated business taxable income of voluntary employees' beneficiary associations described in § 501(c)(9). Proposed regulations were published on February 6, 2014	X		Prior to Fall 2012
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 Eversheds 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 Eversheds Sutherland attorney with whom you regularly work.