SUTHERLAND

LEGAL ALERT

May 1, 2013

President's 2014 Budget Includes Employee Benefits Proposals

On April 10, 2013, the White House released its Fiscal Year 2014 Budget (the Budget), which includes a number of proposals related to employee benefit plans. Although it is unlikely that all of the proposals will ultimately become law, it is possible that one or more of them could be included in future legislation as a revenue raiser or otherwise, or as part of an overall tax reform package. This Legal Alert describes the employee benefits-related items in the Budget.

Plan Accumulation Limit. The Budget would limit an individual's total individual retirement account (IRA) and qualified retirement plan benefits to an amount sufficient to finance an annuity of not more than $205,000 per year in retirement, or about $3 million for someone retiring in 2013. The proposal covers both defined contribution and defined benefit accumulations. Once an individual's benefit exceeds the limit, no additional contributions or accruals are permitted. However, if the benefit subsequently becomes less than the limit (e.g., through poor investment performance in a defined contribution plan), the individual could make additional contributions and receive additional accruals until the limit is again reached.

Tax Deduction and Exclusion Limitation. The Budget proposes to limit certain individual itemized deductions and tax exclusions to 28% of the value of the deduction or exclusion, impacting taxpayers in the 33%, 35%, and 39.6% tax brackets. The items subject to the limitation include employer-provided health coverage, employee contributions for health coverage, HSA contributions, and employee contributions to 401(k) plans and IRAs.

IRA and Plan Distribution Changes. The Budget proposes several technical changes to the IRA and qualified retirement plan distribution rules:

- The Budget would require non-spouse beneficiaries of IRA owners and retirement plan participants to take distributions over no more than five years following death, as opposed to the current rule that allows distributions over the participant's or beneficiary's life expectancy in some instances. The proposal includes exceptions for beneficiaries who are not more than 10 years younger than the IRA owner or plan participant; disabled or chronically ill beneficiaries; and children who have not yet reached the age of majority (though the five-year rule would apply once the child reaches the age of majority).

- The Budget would eliminate the Internal Revenue Code (Code) section 401(a)(9) required minimum distribution rules for IRA or qualified retirement plan balances of $75,000 or less. For this purpose, all IRAs and qualified retirement plans would be aggregated, except for defined benefit plans that have already commenced distributions.

- Current law requires a non-spouse beneficiary of an IRA or retirement plan who wants to roll over the assets to an IRA to do so via a direct trust-to-trust transfer. The indirect 60-day rollover alternative is not available to a non-spouse beneficiary. The Budget proposes to allow non-spouse beneficiaries to make an indirect rollover.

ESOP Dividend Deduction. Under current law, employers with an employee stock ownership plan (an ESOP), including 401(k) plans holding employer stock that have been designated as having an ESOP

© 2013 Sutherland Asbill & Brennan LLP. All Rights Reserved.
This communication is for general informational purposes only and is not intended to constitute legal advice or a recommended course of action in any given situation. This communication is not intended to be, and should not be, relied upon by the recipient in making decisions of a legal nature with respect to the issues discussed herein. The recipient is encouraged to consult independent counsel before making any decisions or taking any action concerning the matters in this communication. This communication does not create an attorney-client relationship between Sutherland and the recipient.

feature, can take a deduction under Code section 404(k) for dividends paid on the employer stock, provided that the plan participants are allowed to elect to take the dividends as a current cash distribution. The Budget would eliminate the section 404(k) dividend deduction for large C corporations.

Form 5500 Reporting. The Budget would authorize the Department of Treasury and the Internal Revenue Service (IRS) to require additional tax-related information in electronically filed Form 5500 Annual Reports and certain other employee benefit plan reports. Under current law, Treasury and the IRS are not able to collect certain tax-related information through electronically filed reports.

PBGC Premiums. The Budget proposes to give the Pension Benefit Guaranty Corporation additional authority to modify and increase pension plan premiums.

Automatic IRAs. Employers with employees who are not eligible for a qualified retirement plan would generally be required to automatically enroll the employees in payroll deduction IRAs. The employees could opt out of the payroll reduction contributions. A Saver's Tax Credit would be available with respect to these contributions for eligible employees, and some small employers could be eligible for a tax credit to defray the administration costs of the arrangements. The principal features of the automatic IRAs would be:

- Mandatory for employers in business for at least two years that have more than 10 employees;
- If the employer sponsors a qualified retirement plan, SEP, or SIMPLE for its employees, it would not be required to provide an automatic IRA option for its employees, although it would generally be required to provide automatic IRAs to certain groups of employees excluded from the employer-sponsored plan, such as a division or job category;
- Default enrollment in a Roth IRA at 3% of the employee's compensation, with the ability to opt out, elect a higher or lower contribution rate, or choose a traditional IRA instead of a Roth IRA; and
- Low-cost, standard type of default investment and a small number of low-cost, standard investment alternatives prescribed by statute or regulation.

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.

Adam B. Cohen	202.383.0167	adam.cohen@sutherland.com
Carol T. McClarnon	202.383.0946	carol.mcclarnon@sutherland.com
Alice Murtos	404.853.8410	alice.murtos@sutherland.com
Joanna G. Myers	202.383.0237	joanna.myers@sutherland.com
Vanessa A. Scott	202.383.0215	vanessa.scott@sutherland.com
W. Mark Smith	202.383.0221	mark.smith@sutherland.com
William J. Walderman	202.383.0243	william.walderman@sutherland.com
Carol A. Weiser	202.383.0728	carol.weiser@sutherland.com

© 2013 Sutherland Asbill & Brennan LLP. All Rights Reserved.
This article is for informational purposes and is not intended to constitute legal advice.