

February 21, 2012

## 2011-2012 Regulatory Agendas for Employee Benefits Published by Treasury and DOL

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

- On January 20, 2012, the U.S. Department of Labor (DOL) updated its [2011 Semi-Annual Regulatory Agenda](#). This publication takes the form of a Federal Register notice, to comply with certain administrative requirements. DOL's agenda and related materials include nine 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 January 25, 2012, the U.S. Treasury Department and the Internal Revenue Service (IRS) updated their [2011-2012 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 2011 through June 2012. The IRS Business Plan includes 29 pending items addressing retirement benefits and 26 pending items addressing executive compensation and health care and other benefits.

Projects added since the previously published agendas are shown in bold. There are two new DOL initiatives and no new Treasury initiatives.

Guidance Project	Type		Projected Date (DOL Only)	Initial Date on Agenda
	Tax	DOL		
<b>General</b>				
Definition of "fiduciary"			5/2012 (Reproposed regulation)	12/2010
<ul style="list-style-type: none"> <li>Expand to include more persons, such as pension consultants, as fiduciaries</li> </ul>		X		
Claims procedure			6/2012 (Proposed regulation)	4/2010
<ul style="list-style-type: none"> <li>Notice, timing, appeals and other elements of the claims procedure regulation</li> </ul>		X		
<b>Guide or similar requirement for §408(b)(2) disclosures</b>		X	<b>6/2012 (Proposed regulation)</b>	<b>1/2012</b>
<b>Retirement Plans</b>				
Guidance on exceptions to additional tax under §72(t) on early distributions from retirement plans and IRAs	X			9/2011
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

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Guidance Project	Type		Projected Date (DOL Only)	Initial Date on Agenda
	Tax	DOL		
Regulations under §402A on distributions from designated Roth accounts that are disbursed to multiple destinations	X			9/2011
Guidance on §403(b) plans	X			9/2008
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
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
Guidance under §417 for defined benefit plans	X			9/2011
Guidance under §§417 and 401(a)(11) for defined contribution plans	X			9/2011
Final regulations on determination of minimum required contributions under §430, as added by PPA	X			9/2008
Regulations on additional issues relating to funding and related rules for single-employer plans under §§430 and 436	X			9/2011
Guidance on funding rules for multiemployer plans under §432, as added by PPA	X			9/2011
Guidance related to compliance with certain reporting requirements under §§6057, 6058, and 6059 for retirement plans	X			12/2010
Guidance under §§6057, 6058, and 6059 providing a voluntary compliance program for late filers of Form 5500-EZ	X			9/2011
Revenue procedure updating Rev. Proc. 2007-44 for determination letters for individually designed plans	X			9/2011
Guidance on rollovers to defined benefit plans	X			9/2011
Update to Employee Plans Compliance Resolution System	X			12/2010
Guidance on application of normal retirement age rules to governmental plans	X			12/2010
Guidance on funding relief under the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010	X			12/2010
Guidance on notice requirements applicable to single-employer plans that become subject to funding-based limitations, as added by PPA	X			11/2009

Guidance Project	Type		Projected Date (DOL Only)	Initial Date on Agenda
	Tax	DOL		
Guidance on issues related to lifetime income from retirement plans	X			11/2009
Target date funds <ul style="list-style-type: none"> <li>Increased disclosure to participants</li> </ul>		X	4/2012 (Final regulation)	4/2010
Pension benefit statements <ul style="list-style-type: none"> <li>Implement PPA §508</li> </ul>		X	6/2012 (Proposed regulation)	Prior to Fall 2007
Abandoned plan program <ul style="list-style-type: none"> <li>Amend to expand scope of individuals entitled to be a “qualified termination administrator”</li> </ul>		X	5/2012 (Proposed regulation)	12/2010
Annual funding notice <ul style="list-style-type: none"> <li>Implement PPA §501</li> </ul>		X	5/2012 (Final regulation)	Prior to Fall 2007
<b>Executive Compensation</b>				
Regulations under §83 to incorporate the holding in Rev. Rul. 2005-48	X			11/2009
Regulations providing model language on §83(b) elections	X			12/2010
Guidance under §162(m) on the application of the deduction limitation to certain payments of dividends or dividend equivalents	X			9/2011
Revenue ruling 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
Guidance 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
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 under §419A on the definition of post-retirement medical benefit	X			9/2011
Guidance 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
Guidance under §457(f) on ineligible plans	X			9/2008
<b>Health Care and Other Benefits</b>				
Final regulations on cafeteria plans under §125	X			9/2008
Guidance on the \$2,500 annual limit on salary reduction contributions to cafeteria plan health flexible spending arrangements (health FSAs) under §125(i), as added by the Patient Protection and Affordable Care Act (PPACA)	X			9/2011

Guidance Project	Type		Projected Date (DOL Only)	Initial Date on Agenda
	Tax	DOL		
Guidance under §132(f) on the use of smart cards, debit cards and credit cards in providing qualified transportation fringe benefits	X			9/2011
Guidance on the application of §162(m)(6) as added by PPACA	X			12/2010
Notice under §223 on the effect of Indian Health Service coverage on eligibility to contribute to a Health Savings Account	X			9/2011
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
Revenue ruling under §3121(q) updating Rev. Rul. 95-7 on tips	X			9/2011
Proposed regulations under §3504 designating certain parties who file employment tax returns under their EINs for their clients' workers as persons required to perform acts of employers	X			11/2009
Regulations under §4980G on interaction of §4980G and §125 with respect to comparable employer contributions to employees' HSAs	X			9/2008
Guidance on the reporting requirements under §6056, as added by PPACA	X			9/2011
Guidance on the tax treatment of health insurance premium rebates under Public Health Service Act §2718(b), as added by PPACA	X			9/2011
Guidance under §51(d) on whether a State Workforce Agency may accept a Form 8850 (Pre-Screening Notice and Certification Request for the Work Opportunity Credit) with faxed signatures of the job applicant and the employer	X			9/2011
Revenue ruling under §62(c) on wage recharacterization	X			9/2011
Ex parte cease and desist and summary seizure orders <ul style="list-style-type: none"> <li>▪ Implement ERISA §521, enacted under PPACA</li> </ul>		X	3/5/2012 (Comment period ends)	12/2010
<b>Filings required of MEWAs and certain other entities that offer or provide coverage for medical care to employees of two or more employers</b>		X	<b>3/5/2012 (Comment period ends)</b>	1/2012



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