

Legislative and Regulatory Benefits Update

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Retirement Plan Issues

White House Pension Proposals

Employer Retirement Savings Accounts (ERSAs)

- Combines various forms of DC plans (including 401(k) and 403(b)) into one type of retirement plan
- Simplified version of 401(k) rules
- Existing 401(k) plans would be renamed as ERSAs; 403(b) plans that do not convert to ERSAs would not be able to accept new contributions

Lifetime Savings Accounts (LSAs)

- After-tax contributions of up to \$2,000 a year
- Roth-style accounts
- No income or age limits for these accounts
- Available for any type of savings

White House Pension Proposals

Retirement Savings Accounts (RSAs)

- After-tax contributions of up to \$5,000 a year
- Roth IRAs would be renamed as RSAs
- No income or age limits for these accounts
- Ability to convert from traditional IRA into RSA (no income limit restricting ability to convert)
- No additional contributions could be made to traditional IRAs (except for rollover amounts from employer-sponsored plans)

Proposed 415 Regulations

- Generally will be effective January 1, 2007.
- Special \$10,000/\$40,000 (lifetime) rule for church 403(b) plans is specifically included.
- Lifetime \$40,000 limit is used up only to the extent of the excess over the regular 415(c) limits.
- May address how 415 rules apply to “grandfathered” 403(b)(9) defined benefit plans.

Proposed 415 Regulations

- Termination pay can only count as 415 compensation if paid within 2½ months following severance from employment and is one of the following:
 - Payments that, absent severance, would have been paid to the employee anyway and are “regular compensation”
 - Bona fide accrued sick, vacation or other leave, but only if the employee could have taken leave if employment had continued
- Severance pay is not permitted to be considered as 415 compensation.

Proposed 403(b) Regulations

- Final regulations allegedly will be issued by June 30, 2007.
- New effective date will be January 1, 2008.
- Church Alliance submitted comments on several issues, including:
 - Use of 415(c) contribution limits for grandfathered DB plans (may be addressed in 415 regulations)
 - Creation of separate 403(c) account for excess contributions
 - Calculation of special 403(b) catch-up contributions
 - Transfers from qualified plan to 403(b)(9) plan (see attachment)

Church Plan Rulings

Temporary moratorium on the issuance of all church plan rulings continues:

- IRS (in conjunction with DOL and PBGC) is re-assessing position on church plan rulings.
- Concern about giving church plan rulings retroactive effect.
- Also re-assessing past rulings which have permitted mergers of ERISA-covered plans into church plans, with little in the way of continuing ERISA protection.

Investment Advice

DOL Field Assistance Bulletin (“FAB”) 2007-01:

Note: This guidance is applicable only to ERISA plans

- PPA does not affect prior guidance relating to investment advice – fiduciaries must prudently select and periodically monitor the advisory program.
- Same fiduciary duties apply to the selection and monitoring of an investment adviser, regardless of whether PPA statutory exemption applies.
- Fiduciary will not fail to meet ERISA requirements solely by reason of offering a program of investment advice services to participants or beneficiaries that is not an eligible investment advice arrangement under PPA.

Investment Advice

FAB 2007-01 (cont'd)

- Fiduciary that prudently selects and monitors an investment advice provider will not be liable for the advice furnished by such provider, whether or not that advice is provided pursuant to the PPA statutory exemption.
- Plan assets can be used to pay reasonable expenses in providing investment advice, provided the service provider rendering investment advice is selected and monitored prudently .
- PPA requirement that fees not vary depending on the basis of any investment options selected do not extend to affiliates of the fiduciary adviser, unless affiliate provides investment advice to the plan.

QDROs

DOL Interim Rule

- Order will not fail to be QDRO solely because:
 - It revises another QDRO or is issued after another QDRO;
 - It is issued after participant dies; or
 - It is issued after the annuity starting date

409A Plans

- Proposed legislation to limit nonqualified deferred compensation to lesser of:
 - \$1,000,000 or
 - Employee's annual compensation (based on 5-year average)
 - Average annual compensation limit could affect contributions made to nonqualified plans by or on behalf of clergy

EPCRS

Revenue Procedure 2006-27

- Updates and expands the rules for correcting plan failures under EPCRS.
- IRS examining ways to improve and expand EPCRS; requests comments on correction methods for following:
 - failures to allow eligible employees to make age-50 catch-up contributions
 - failures to allow employees to make designated Roth contributions
 - treatment of excess annual additions.

Note PPA directs the IRS to continue to update and improve EPCRS.

Welfare Plan Issues

President's Health Care Proposal

- Employer-provided health insurance would be considered taxable income.
- New standard deduction for health insurance:
 - \$15,000 for family
 - \$7,500 for individual
- Deduction would apply to both income and payroll taxes.

President's Health Care Proposal (cont'd)

Expand HSAs

- Cover medical expenses incurred beginning first day of year (whether or not HSA established)
- Allow spouses (if both eligible) to contribute up to maximum to a single HSA
- Allow larger employer contributions for chronically ill by excluding from comparability rules
- Allow contributions from employees covered under FSA or HRA but reduce HSA contribution limits by amounts contributed to FSA/HRA

HIPAA

- National Provider Identifier (“NPI”) Rules:
 - Health plans must use NPI in standard electronic transactions beginning 5/23/2007. (Note: small health plans with less than \$5 million in revenue must comply by 5/23/2008.)
 - NPI is a unique 10-digit “intelligence free” number assigned to health care providers.
 - NPI replaces other identifying numbers.

FSA's and HRAs

Notice 2006-69 –

- Provides substantiation methods for use of credit cards and debit cards under health FSAs and HRAs.
- Can also use a payment card program to reimburse expenses from dependent care FSA.

Notice 2007-2

- Transition relief through 12/31/2007 for use of debit/credit card at grocery stores, discount stores and wholesale clubs.

HRAs

Revenue Ruling 2006-36

- Amounts paid to an employee's HRA were not excludable from gross income where terms of the HRA allowed reimbursements for medical costs incurred by a designated beneficiary who was not an employee, an employee's spouse, or an employee's dependent.

Mental Health Parity

- Legislation requires that any cost-sharing requirements or limits on the duration of coverage for mental health benefits be no more restrictive than those applied by the plan for other benefits.
- Does not mandate that plans cover any specific mental health benefits.
- Preempts state laws from imposing any parity requirements which “differ from” those in the legislation, a provision intended to help ensure uniformity between the federal requirements and those established by the states.
- Applies to employers with 50 or more employees.
- Broad bipartisan support (40 co-sponsors in Senate).

Mental Health Parity

State law changes –

- New York –
 - Must provide coverage for all “biologically-based mental illnesses”;
 - Must cover at least 30 inpatient days and 20 outpatient days for mental health;
 - Must provide coverage for children with serious cases of certain disorders (e.g., ADD)
- Ohio –
 - Must provide same coverage for all “biologically-based mental illnesses” as for physical illnesses

Genetic Nondiscrimination

H.R. 493 – Genetic Information Nondiscrimination Act

- Would prohibit discrimination in health insurance and employment practices on basis of genetic information.
- Would prohibit employer-sponsored group health plans and health insurers from restricting enrollment or adjusting premiums based on genetic information.
- Would prohibit entities from requiring or requesting genetic testing.
- House and Senate bills have bipartisan support.

Miscellaneous

E-SIGN

- Electronic Signatures in Global and National Commerce Act – generally provides that electronic records and signatures are given the same legal effect as paper records and signatures.
- Final regulations on E-SIGN issued October 20, 2006
- Regulations permit use of electronic medium to:
 - provide written notices to participants
 - allow participants to make elections and consents .
- Apply to 401(a) plans, 403(b) plans, cafeteria plans, IRAs, HSAs, and Archer Medical Savings Accounts.
- Do not apply to notices, elections, or consent over which the DOL or PBGC has interpretive or enforcement authority.

TIPRA

Tax Increase Prevention and Reconciliation Act of 2005 (enacted May 2006)

- Changes to section 911 of the Code –
 - Foreign earned income exclusion cap indexed for inflation after 2005 (foreign earned income exclusion = \$82,400 for 2006).
 - New “stacking” rule – income not excluded is subject to the same rate of tax as would have been applicable if not 911 exclusion.