

# Legal Alert

## 2006-2007 Employee Benefit, Executive Compensation and Insurance Tax Guidance

September 5, 2006

On August 15, 2006, the Treasury and Internal Revenue Service released their Priority Guidance Plan for regulations and other guidance they are undertaking to complete from July 2006 through 2007. Of the 264 priority projects listed, a significant number are relevant to employee benefits, executive compensation, and insurance arrangements. These projects are listed below by topic. The Plan as published does not appear to include projects arising under the Pension Protection Act of 2006.

### Qualified Retirement Plans Generally

- Guidance under section 411 regarding accrual and vesting of benefits provided pursuant to qualified retirement plans.
- Final regulations regarding the limitations on benefits and contributions under section 415. Proposed regulations were published on May 31, 2005.
- Final regulations on transmission of notices to participants through electronic means with respect to distributions from qualified retirement plans. Proposed regulations were published on July 14, 2005.

### Defined Benefit Plans

- Guidance on benefits not permitted in a defined benefit plan.

### Defined Contribution Plans

- Guidance regarding the treatment of incidental health insurance benefits provided under a profit-sharing or stock bonus plan.
- Guidance on notices to employees participating in a section 401(k) safe harbor plan.
- Final regulations on designated Roth contributions under section 401(k) plans and under section 402(A). Proposed regulations were published on January 26, 2006.

## ESOPs

- Final regulations under section 404(k) addressing redemptions of participant stock and avoidance or evasion of taxation. Proposed regulations were published on August 25, 2005.
- Final regulations under section 409(p) with respect to synthetic equity and additional issues relating to ESOPs. Temporary regulations were published on December 17, 2004.

## Executive Compensation

- Guidance under section 83 on post-grant restrictions.
- Guidance addressing the scope of section 162(m) with respect to amounts payable to covered employees.
- Guidance on the wage limitation used in connection with section 199.
- Guidance on the tax treatment of beneficiaries of nonexempt trusts described in section 402(b)(4).
- Final Regulations under section 409A.
- Guidance regarding the application of section 409A to split dollar life insurance.
- Guidance regarding reporting and income tax withholding under section 409A.

## 403(b)

- Final regulations under section 403(b) regarding tax-favored annuities purchased by section 501(c)(3) organizations or public schools. Proposed regulations were published on November 16, 2004.
- Final regulations on designated Roth contributions under section 403(b) plans. Proposed regulations were published on January 26, 2006.

## 457 Plans

- Guidance under section 457(f).

## **IRAs/Roth IRAs**

- Guidance regarding prototype Roth IRAs for amendments to accept rollovers from designated Roth accounts under a section 401(k) plan.
- Guidance under section 408 on the treatment of wrap fees.
- Final regulations on qualified nonbank trustees for deemed IRAs under section 408(q). Temporary regulations were published on July 22, 2004.

## **Annuities and Insurance**

- Guidance on the taxation of certain annuity contracts under section 72.
- Guidance on the qualification of certain arrangements as insurance.
- Guidance on the taxation of variable contracts as described in section 817(d).
- Final regulations under section 7702 regarding the attained age of the insured for purposes of testing the qualification of a contract as a life insurance contract. Proposed regulations were published on May 24, 2005.

## **Health and Other Welfare Plans**

- Revenue ruling on taxable health benefits for beneficiaries.
- Proposed regulations on cafeteria plans under section 125 updating regulations for statutory changes and providing additional guidance.
- Guidance on Health Savings Accounts.
- Guidance on deductions for contributions to a welfare benefit fund.
- Guidance under section 419A on reserves for post-retirement medical and life insurance benefits.

## **Fringe Benefits**

- Guidance on accountable plans and per diem payments.
- Guidance under section 132 on debit cards and qualified transportation fringes.

## **Tuition Savings Programs**

- Regulations under section 529 regarding qualified tuition programs.

## **Tax Administration**

- Modification of Rev. Proc. 2005-66 to reflect special rules regarding determination letter procedures for governmental and tax-exempt employers
- 2006 cumulative list of guidance for determination letter program.
- Modification of Rev. Proc. 2006-27 (EPCRS) to provide fixed fee schedule for opinion and advisory letter submissions for pre-approved plans filed after the January 31, 2006 deadline.
- Guidance on the elimination of Schedule P as an attachment to Form 5500.
- Guidance on how to provide electronically filed Form W-2s by deadline when employer ceases operation.
- Guidance on section 516 of the Tax Increase Prevention and Reconciliation Act of 2005 regarding the involvement of accommodation parties in tax shelter transactions.
- Final regulations under section 3121 regarding the definition of a salary reduction agreement. Temporary regulations were published on November 16, 2004.
- Final regulations under section 3402(f) relating to Form W-4. Temporary regulations were published on March 11, 2005.



*Please contact any of the following members of our Employee Benefits and Executive Compensation practice if you have any questions regarding this development:*

|                      |              |  |
|----------------------|--------------|--|
| George H. Bostick    | 202.383.0127 | <a href="mailto:george.bostick@sablaw.com">george.bostick@sablaw.com</a>       |
| Daniel M. Buchner    | 202.383.0869 | <a href="mailto:daniel.buchner@sablaw.com">daniel.buchner@sablaw.com</a>       |
| Adam B. Cohen        | 202.383.0167 | <a href="mailto:adam.cohen@sablaw.com">adam.cohen@sablaw.com</a>               |
| Ian A. Herbert       | 202.383.0644 | <a href="mailto:ian.herbert@sablaw.com">ian.herbert@sablaw.com</a>             |
| Alice Murtos         | 404.853.8410 | <a href="mailto:alice.murtos@sablaw.com">alice.murtos@sablaw.com</a>           |
| Robert J. Neis       | 404.853.8270 | <a href="mailto:robert.neis@sablaw.com">robert.neis@sablaw.com</a>             |
| W. Mark Smith        | 202.383.0221 | <a href="mailto:mark.smith@sablaw.com">mark.smith@sablaw.com</a>               |
| William J. Walderman | 202.383.0243 | <a href="mailto:william.walderman@sablaw.com">william.walderman@sablaw.com</a> |
| Carol A. Weiser      | 202.383.0728 | <a href="mailto:carol.weiser@sablaw.com">carol.weiser@sablaw.com</a>           |