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RECENT LEGISLATIVE ACTIVITY

Senate Finance Committee Staff Release Proposals for Economic Security Tax Rules

On May 23, the Democratic and Republican staffs of the Senate Finance Committee released **a document setting forth options regarding the tax rules** that affect individual economic security for consideration by the Committee members in the context of tax reform. The list of ideas discussed relate to health, retirement, life insurance, fringe benefits and executive compensation, and are not intended to be the complete list of proposals that might be considered.

Many of the items included in the staff options paper relate to proposals that have been made by deficit reduction commissions, policy think tanks or have been introduced as legislation by members of Congress. The paper notes that the inclusion of a proposal in the options paper does not necessarily indicate its endorsement by either Committee Chairman Max Baucus (D-MT) or Ranking Member Orrin Hatch (R-UT) nor to reflect the views of any members of the Committee.

Three goals are also identified that could serve as guidelines for the Committee: reducing complexity, getting greater value for tax dollars spent and reducing disparity in income.

Retirement Policy

The document references several recent proposals from the Obama Administration's budget that would limit tax preferences for retirement plan savings:

- The 28% proposal that limits the tax benefit from employee contributions to plans and IRAs to 28%, so that taxpayers in higher tax brackets receive a limited tax benefit from contributing on a pre-tax basis to a plan or IRA;
- The so-called $3 million cap on an individual's defined contribution, defined benefit and IRA benefits (the equivalent of roughly a $200,000 annuity at today's interest rates);
- Reform of the so-called "stretch IRA" rules that currently allow an extended pay-out period for non-spouse beneficiaries (also recently proposed in a bill by a group of Senate Democrats in connection with upcoming student loan legislation); and
- Repeal of the current rule permitting a deduction under certain circumstances for dividends on employer stock held by an ESOP.

Other recommendations were drawn from numerous sources, such as bipartisan commissions, tax policy experts, hearings and Members of Congress. These include:

- Reducing or repealing all retirement tax incentives and "replacing" them with automatic enrollment or expanded Social Security benefits;
- Reducing the limits on contributions to defined contribution plans and/or IRAs. Under one proposal, for example, the limit would be the lesser of $15,000 or 15% of income, similar to the so-called "20/20 proposal" by the National Commission on Fiscal

Responsibility and Reform (often referred to as the Simpson-Bowles Commission), which proposed an annual cap of the lesser of 20,000 or 20% of income;

- Making contributions to plans and IRAs taxable and non-deductible, but providing a refundable tax credit that would be contributed to the plan or IRA; and

- Repealing the catch-up contributions permitted to individuals who have attained age 50.

The document also includes proposals intended to increase retirement savings, such as an expansion of the savers credit and small business start-up credit and creation of a simplified multiple employer plan for small businesses. To address complexity, the paper suggests consolidating types of retirement plans, expands use of electronic disclosure and eliminates the age 70 1/2 minimum distribution rules for individuals with total retirement benefits of less than, for example, $100,000 (similar to a proposal in the Administration's budget). There are ideas for reducing leakage from plans, including limiting access to a portion of amounts saved in defined contribution plans and IRAs and facilitating repayment of loans after employment with an employer. Finally, the document includes other proposals to address coverage and adequacy through the establishment of automatic payroll IRAs and similar ideas, improving automatic enrollment rules for employer plans and facilitating life-time income.

Executive Compensation

The paper outlines several ideas that would affect executive compensation, including repeal of the deduction limit under Section 162(m) of the Internal Revenue Code, modifying the definition of covered employee, extending the limitation to all equity compensation and capping the deduction for total executive compensation at a multiple of (for example 25 times) the lowest compensation paid to any other employee or a set dollar amount (for example $500,000), whichever is lower. It also includes various measures that would change the taxation of deferred compensation and a proposal to cap the amount of deferred compensation permitted in a single year to $1,000,000. Finally, ideas are included that would revise the rules regarding stock options, both the amount and timing of the deduction, and that would reform the rules for deducting payments made in the context of a change in control.

Health Policy

The Senate Finance Committee staff options paper contains numerous proposals in six broad categories related to health coverage, health services and excise taxes on products that "may affect health status". Most notably, it includes proposals to cap and phase-out the tax exclusion available to employees for employer-sponsored health coverage, disallowing new contributions to health savings accounts (HSAs) and limiting the employee tax exclusion for health coverage while providing a comparable tax deduction for those who purchase health coverage in the individual insurance market.

Other suggestions made would modify several tax provisions that were included in the Affordable Care Act (ACA). For example, the options paper cites proposals to allow certain over-the-counter prescription drugs to be purchased without a prescription through flexible spending accounts (FSAs) and HSAs. Another possible ACA tax change would accelerate the high cost plan ("Cadillac plan") excise tax, while an alternate approach would be to reduce the high-cost plan excise tax at the same time as a reduction is made in the employee tax exclusion for employer-sponsored health coverage.

Other notable possible changes to ACA tax provisions included in the staff paper would replace the tax on health insurance coverage with one applied to both insured and self-insured health claims, modify employer reporting requirements, the definitions of full-time employees and large employers, eliminate the employer and individual responsibility provisions, and repeal the ACA tax on medical devices.

The paper also includes several possible health tax expansions, including proposals to modify limits on HSAs, repeal the $2,500 contribution limit on FSAs and allow an income tax credit or deduction for long-term care insurance. Finally, the document identifies several possible areas for excise tax expansions on products that "may affect health" including tobacco, alcohol, "sugary" beverages, and recreational use of marijuana.

Fringe Benefits

The paper also contains several options focused on limiting tax benefits for fringe benefits such as repealing or reducing the tax exclusion for parking expenses and imposing a tax on employers for the net cost of certain benefits provided to employees and customers unless taxable to the individual. The document also includes the idea of equalizing the exclusion for employer-paid parking and transportation benefits. At the same time, it mentions several ideas for expanding tax preferences for student loan repayment assistance, tuition assistance and award plans for safety service volunteers.

Joint Tax Committee Summarizes Tax Reform Proposals and Ways & Means Working Group Submissions, Including Addressing Retirement Incentives

In an extensive 568-page document, Congress' Joint Committee on Taxation (JCT) summarized current law, key tax reform proposals and formal submissions to the House of Representatives Ways and Means Committee working groups on tax reform. The tax incentives that serve as the foundation for the voluntary employer-sponsored retirement plan system are noted prominently in the committee's report.

The Ways and Means Committee – which has jurisdiction over all tax issues and where all tax legislation must originate – designated 11 tax reform working groups to evaluate ideas for comprehensive tax reform. The "Pensions/Retirement" working group, chaired by Representative Pat Tiberi (R-OH) with Rep. Ron Kind (D-WI) as vice chair, held a number of information-gathering meetings on various topics related to the retirement system.

The JCT report begins by providing an overview of the present law federal tax system and then provides details of present tax law by working group topic area. The section on retirement plans (Page 323 of the document (331 of the PDF)) describes both defined benefit and defined contribution plans, while also touching on IRAs (traditional and Roth), stock plans, and multiemployer plans, including specific plan design and funding features.

The middle portion of the JCT report examines selected tax reform proposals, including the plans offered by the National Commission on Fiscal Responsibility and Reform (chaired by former Senator Alan Simpson (R-WY) and former White House Chief of Staff under President Clinton Erskine Bowles) and the Bipartisan Policy Center (chaired by former Senator Pete Domenici (R-NM) and Dr. Alice Rivlin), as well as proposals offered by a panoply of think tanks and various lawmakers. Many of these proposals make changes to employer-sponsored

retirement plans to some degree, although the numerous proposals do not approach any kind of consensus on the topic.

The JCT document does not make policy recommendations. The report will be used by Ways and Means members and staff to develop legislative options for consideration. The prospects for comprehensive tax reform taking place within the current Congress is highly uncertain, but it is possible that a negotiated deal to raise the federal debt ceiling later this year will provide the impetus for forward movement on tax reform legislation.

Legislation Defining 'Full Time' Employee Introduced in Senate

In an effort to reduce burdens on employers subject to the "shared responsibility" provisions of the Patient Protection and Affordable Care Act (PPACA), Senator Susan Collins (R-ME) has introduced the **Forty Hours Is Full Time Act (S. 701)** to explicitly define "full time" as 40 hours rather than 30 hours as dictated under PPACA.

The PPACA "shared responsibility" employer mandate, which takes effect in 2014, requires employers with 50 or more full-time (or equivalent) employees to offer health coverage that satisfies affordability and minimum value requirements to their full-time employees or pay a penalty if even one full-time employee receives a premium tax credit for health coverage obtained through a health insurance exchange. A "full-time employee" is defined by the statute and regulatory guidance (Internal Revenue Service (IRS) Notice 2012-58) as one who, on average, works at least 30 hours per week.

S. 701 would simply:

- replace the number 30 with the number 40 for purposes of identifying full-time employees, and
- modify the calculation of full-time *equivalent* workers with respect to PPACA by requiring employers to divide the aggregate number of hours of service of employees who are not full-time employees by 174 rather than 120.

An amendment offered by Collins to the Fiscal Year 2014 Senate Budget Resolution was approved by voice vote on March 23, 2013, that sought to "restore a sensible definition of full-time employee" for purposes of health coverage under PPACA.

Neal Introduces Retirement Plan Simplification Legislation

Representative Richard Neal (D-MA), a senior member of the U.S. House of Representatives Ways and Means Committee, on May 22 introduced **the Retirement Plan Simplification and Enhancement Act**, a measure designed to ease some of the burdens associated with employer sponsorship of defined contribution and defined benefit retirement plans. Neal previously introduced a similar bill as H.R. 4050 in the previous congressional session.

The measure is designed with the goals of (1) expanding coverage and increasing retirement savings; (2) encouraging small businesses to enter and remain in the employer retirement plan system; (3) preservation of income; and (4) simplification and clarification of qualified retirement plan rules. An **official summary** has been prepared by Neal's office.

This legislation includes numerous provisions to streamline defined contribution plan administration, most notably:

- modifying the automatic enrollment safe harbor to remove the existing 10 percent cap on employee deferrals;
- establishing a new automatic enrollment safe harbor for minimum default and matching contributions;
- amending top-heavy rules to allow employers to test participants that have not met the minimum statutory age and service requirements separately for determining the top-heavy contribution standards;
- requiring employers to allow certain long-term, part-time employees to make elective deferrals to qualified plans;
- Increasing the qualified plan start-up credit for small businesses to $5,000;
- directing the U.S. Treasury and Labor departments to issue administrative guidance for multiple employer plans;
- excepting retirement savings under $100,000 from required minimum distribution rules;
- specifying required target date fund disclosure;
- clarifying that forfeitures can fund safe harbor contributions;
- revising "lifetime income option" rules within defined contribution plans;
- enhancing the Saver's Credit, including expanding eligibility and making it refundable;
- expanding the IRS's Voluntary Correction Program; and
- simplifying and consolidating various required disclosures to participants and the federal government.

Unlike previous versions of the legislation, the measure does not permit all required ERISA disclosures to be made available in an electronic manner.

In addition to these defined contribution plan provisions, the measure also includes two provisions related to defined benefit plans:

- A provision related to partial terminations of defined benefit plans under Section 4062(e) of ERISA would clarify the definition of a "substantial cessation of operations" and prohibit Pension Benefit Guaranty Corporation (PBGC) regulations contravening this clarification. PBGC has indicated that it will soon finalize proposed regulations addressing 4062(e) matters.
- A revision of the nondiscrimination rules would allow employer plan sponsors to protect participants in frozen defined benefit plans. Under H.R. 4050, if a grandfathered group of

employees is a nondiscriminatory group when it is first formed, it would be treated as a nondiscriminatory group permanently (unless the group is modified by plan amendment). This would prevent these frozen plans from inadvertently violating the Treasury rules prohibiting discrimination in favor of highly compensated employees.

The measure has been referred to the Committee on Ways and Means (of which Neal is the ranking Democrat on the Select Revenue Measures Subcommittee) and the Committee on Education and the Workforce. While it is unlikely that the House will take up this legislation as a whole, bipartisan support for the bill could persuade the House leadership to consider individual items within the package.

Newly Introduced Student Loan Bill Would Restrict 'Stretch IRAs'

The Student Loan Affordability Act (S. 953), introduced in the Senate on May 14 to restore reduced interest rates on student loans, includes a revenue-raising provision that would restrict the ability of IRA and defined contribution plan beneficiaries to spread out distributions over the beneficiary's life expectancy.

Such arrangements, commonly known as "stretch IRAs," are currently permitted under prevailing required minimum distribution (RMD) rules. Under S. 953, beneficiaries of IRAs, qualified plans (such as 401(k)s), 403(b) plans and 457(b) plans would be required to draw down all assets in the IRA within five years. Exceptions would apply to beneficiaries who are (1) the surviving spouse of the IRA owner, (2) a child who has not attained the age of majority, (3) disabled, (4) chronically ill, or (5) not more than 10 years younger than the IRA owner. In the case of a child who has not attained the age of majority, the five-year rule would apply as of the date the child attains the age of majority.

The provision also contains a small amendment only applicable to qualified plans with respect to the determination of an employee's status as a 5-percent owner for purposes of the RMD rules. The provision, which is generally effective with respect to IRA owners who die after December 31, 2013 (with an exception for existing annuity contracts and a special rule for beneficiaries of IRA owners who die before 2014), raises $4.6 billion over 10 years.

S. 953 has substantial Democratic support, including co-sponsorship by Senate Majority Leader Harry Reid (D-NV). A similar provision was cited in the Analytical Perspectives portion of President Obama's Fiscal Year 2014 budget proposal.

RECENT REGULATORY ACTIVITY

Final PPACA Wellness Regulations Issued

The U.S. departments of Treasury, Labor (DOL) and Health and Human Services (HHS) issued final regulations on May 29 implementing provisions of the Patient Protection and Affordable Care Act (PPACA) related to nondiscriminatory wellness programs, including the increase in permissible maximum rewards under health –contingent wellness programs to 30 percent and 50 percent for programs designed to prevent or reduce tobacco use. The final regulations replace certain existing 2006 HIPAA wellness plan regulations and are applicable to both grandfathered and non-grandfathered group health plans and group health insurance coverage for plan years beginning on or after January 1, 2014.

The final regulations set forth criteria for a program of health promotion or disease prevention offered or provided by a group health plan or group insurance issuer that must be satisfied in order for the plan or issuer to qualify for an exception to the prohibition on discrimination based on health status under HIPAA. As explained in the preamble, "…these rules set forth criteria for an affirmative defense that can be used by plans and issuers in response to a claim that the plan or issuer discriminated under the HIPAA nondiscrimination rules."

Consistent with the 2006 HIPAA regulations, the final regulations continue to divide wellness plans into two categories: "participatory wellness programs" and "health-contingent wellness programs.

Participatory wellness programs are defined under the final regulations as programs that either do not provide a reward or do not base a reward on satisfying a standard related to a health factor. These include programs that reimburse for the cost of membership in a fitness center; provide a reward to employees for attending a monthly, no-cost health education seminar; or reward employees who complete a health risk assessment, without requiring them to take further action. Participatory wellness programs are not required to meet the requirements applicable to health-contingent wellness programs in the final regulations.

Health-contingent wellness programs require an individual to satisfy a standard related to a health factor to obtain a reward that generally requires individuals to meet a specific standard related to their health to obtain a reward. Examples of health-contingent wellness programs include programs that provide a reward to those who do not use, or decrease their use of, tobacco, or programs that reward those who achieve a specified health-related goal, such as a specified cholesterol level, weight, or body mass index, as well as those who fail to meet such goals but take certain other healthy actions. In the final regulations, the category of health-contingent wellness programs is subdivided into: (1) activity-only wellness programs, and (2) outcome-based wellness programs. Both of these subcategories are permissible only if they comply with the final regulations.

As specified in the final regulations, outcome-based wellness plans must offer a "reasonable alternative standard" (or waiver to the otherwise applicable standard) to a broader group of individuals than is required for an activity-only program. Specifically, for activity-only wellness programs, a reasonable alternative standard for obtaining the reward must be provided for any individual for whom, for that period, it is either unreasonably difficult due to a medical condition to meet the otherwise applicable standard, or for whom it is medically inadvisable to attempt to satisfy the otherwise applicable standard. For outcome-based wellness programs, which generally provide rewards based on whether an individual has attained a certain measurable health outcome (such as a particular body mass index (BMI), cholesterol level, or non-smoking status, determined through a biometric screening or health risk assessment), a reasonable alternative standard must be provided to all individuals who do not meet the initial standard, to ensure that the program is reasonably designed to improve health and is not a subterfuge for underwriting or reducing benefits based on health status.

Along with the final regulations, the departments also released the results of a RAND Corporation research study commissioned by DOL and HHS to review workplace wellness programs, upon which the final regulations were partially based. The document contains numerous statistics on wellness plan designs and utilization. In a cover note to the report, the HHS Office of the Assistant Secretary for Planning and Evaluation suggests that the study

"contributes to an improved understanding of current worksite wellness program participation, impact and the role of incentives, and has also identified priority areas for future research."

DOL/EBSA Issues Advance Proposed Regulations Addressing Retirement Plan Benefit Statements

In an Advance Notice of Proposed Rulemaking (ANPRM), the U.S. Department of Labor Employee Benefits Security Administration (EBSA) revealed new details of "lifetime income" disclosure rules being considered for defined contribution retirement plans, in connection with the DOL's regulatory project addressing the individual "pension benefit statements" required under the Pension Protection Act (PPA) of 2006.

Under Section 105 of ERISA, as amended by the PPA, defined benefit plans must provide the statement every three years (with an annual notice alternative) while defined contribution plans that permit participant direction must provide the statement quarterly. However, individual account plans that do not allow participant direction must only provide the statement annually.

The ANPRM explores whether and how the individual benefit statement must present a participant's accrued benefits in a defined contribution plan as a lifetime income stream of payments as well as in the form of an individual account balance. The ANPRM notes that DOL and EBSA "intends to consider all reasonable alternatives to direct regulation, including whether there is a way short of a regulatory mandate that will ensure that participants and beneficiaries get constructive and helpful lifetime income illustrations." The "Background" section of the ANPRM discusses the general policy concerns prompting the rulemaking action, while the "Overview of Intended Regulations" provides potential language for proposed regulations. The attached "Appendix A" contains an example that demonstrates how to calculate a lifetime income illustration. Along with the ANPRM, DOL and EBSA have made available on its website a fact sheet and an interactive calculator that calculates lifetime income streams in accordance with the suggested regulatory framework.

Specifically, the DOL is considering the following requirements in benefit statements:

1. A lifetime income illustration converting the participant's current balance as if the participant (or beneficiary) had reached normal retirement age under the plan, even if he or she is much younger;
2. Another lifetime income illustration using a projected balance to normal retirement age, based on assumed future contribution amounts and investment returns;
3. Both income streams would be (1) presented as estimated monthly payments based on expected mortality, and (2) if the participant is married, include a projection based on the joint lives of the participant (or beneficiary) and spouse (based on a 50% survivor annuity); and
4. An "understandable explanation of the assumptions" behind the illustrations and a statement that projections and lifetime income stream illustrations are estimates and not guarantees.

The ANPRM provides considerable information on the guidance that the DOL is considering in connection with the "projected balance" lifetime income illustration (Item No. 2 above). First, the proposal indicates the projected balance and related monthly payment would be discounted by an inflation factor in order to be shown in today's dollars. Second, the DOL is considering a "reasonableness" standard as a general rule (projections "based on reasonable assumptions

taking into account generally accepted investment theories") combined with a regulatory safe harbor which "would prescribe a specific set of assumptions for contributions, returns and inflation."

Assumptions in the safe harbor would include (1) that contributions would continue to normal retirement age at the current annual dollar amount increased at a rate of 3 percent per year, (2) investment returns of 7 percent per year (nominal) and (3) a discount rate of 3 percent per year for establishing the value of the projected account balance in today's dollars. Background information is provided to indicate how the DOL came up with these assumptions and the DOL specifically requests comments on the proposed assumptions.

The DOL also indicated that commenters to a 2010 request for information (RFI) on lifetime income issues identified two methods for converting an account balance to an income stream in retirement: a "systematic withdrawal" approach and "annuitization." The DOL only appears to be considering "annuitization," indicating in the ANPRM that only the annuitization method reflects "lifetime" income.

When converting the balance to an annuity, again the DOL is considering a "reasonableness" standard combined with a safe harbor. Safe harbor assumptions being considered by the DOL include (1) use of 10-year Treasury securities rate of interest, and (2) mortality assumptions using the Internal Revenue Code Section 417(e)(3)(B) mortality table in effect for the month that contains the last day of the benefit statement period. Again, background information is provided to indicate how the DOL arrived at these assumptions and comments are requested (including comments on the possibility of using PBGC termination liability rates). If the plan offers an annuity distribution option, the DOL indicated that plans would be able to use the interest rate and mortality assumptions for that annuity distribution option, instead of the safe harbor assumptions.

Additional topics on which the DOL provided ideas and/requested comments include (1) whether the lifetime income illustrations should include an "insurance load" to reflect the market price of lifetime income, (2) treatment of in-plan annuities, (3) whether illustrations should be provided annually or quarterly, and (4) whether the DOL should publish and periodically update a table of conversion factors based on safe harbor assumptions. The deadline for comments to EBSA was recently extended from July 8 to August 7.

IRS Proposes Regulations for Determining "Minimum Value" of Employer-Sponsored Coverage

The Internal Revenue Service (IRS) released proposed regulations relating to the determination of minimum value of eligible employer-sponsored plans, and also addressing rules regarding the health insurance premium tax credit that will be available through the Exchanges beginning in 2014. Under the ACA, an employer-sponsored plan fails to offer minimum value if the plan's share of the total allowed costs of benefits provided under the plan is less than 60 percent of such costs. The ACA also provides that employees may be eligible for premium tax credits even if offered employment-based coverage (which could result in an employer's liability for an assessable payment) if that coverage is "unaffordable." Unaffordability is generally defined as costing an employee more than 9.5 percent of household income. The IRS previously issued IRS Notice 2012-31, a request for comment on methods for determining minimum value for employer plans.

Minimum Value Determinations Generally and Safe Harbor Plan Designs. The proposed regulations, following on Notice 2012-31, provides that taxpayers may determine minimum value by using the Department of Health and Human Services' "MV Calculator," which can be found online. The proposed regulations also provide that additional safe harbor plan designs will be provided in additional guidance as a means for demonstrating minimum value. The preamble to the proposed regulations states that, "[i]t is anticipated that the guidance will provide that the safe harbors are examples of plan designs that clearly would satisfy the 60 percent threshold if measured using the MV Calculator," and that "[t]he safe harbors are intended to provide an easy way for sponsors of typical employer-sponsored group health plans to determine whether a plan meets the MV threshold without having to use the MV Calculator." Per the preamble, it appears that the regulators are contemplating the following plan design safe harbors:

- A plan with a $3,500 integrated medical and drug deductible, 80 percent plan cost-sharing, and a $6,000 maximum out-of-pocket limit for employee cost-sharing; and
- A plan with a $4,500 integrated medical and drug deductible, 70 percent plan cost-sharing, a $6,400 maximum out-of-pocket limit, and a $500 employer contribution to an HSA; and (3) a plan with a $3,500 medical deductible, $0 drug deductible, 60 percent plan medical expense cost-sharing, 75 percent plan drug cost-sharing, a $6,400 maximum out-of-pocket limit, and drug co-pays of $10/$20/$50 for the first, second and third prescription drug tiers, with 75 percent coinsurance for specialty drugs.

Wellness Programs and Minimum Value. The proposed regulations provides guidance that addresses how wellness programs factor into an employer's determination of whether its plan provides minimum value, and if it is affordable. Under the proposed rule, when determining a plan's share of costs for minimum value purposes, any reduced cost-sharing that is available under a nondiscriminatory wellness program is generally disregarded, with one exception. For wellness programs designed to prevent tobacco use, a plan's minimum value may be calculated assuming every eligible individual satisfies the terms of the program relating to prevention or reduction of tobacco use.

Wellness Programs and Affordability. Similarly, the proposed regulations provide that for purposes of determining affordability of employer coverage, employers must assume that each employee fails to satisfy the requirements of a wellness program, except that an employer may assume that employees satisfy the requirements of a qualifying tobacco cessation program. For employers concerned that their plans will be considered unaffordable due to the failure to take into account a premium discount or surcharge under a wellness plan, there is some limited transition relief. For plan years beginning before January 1, 2015, an employer will not be subject to an assessable payment under 4980H(b) with respect to an employee who received a premium tax credit because the offer of coverage was not affordable or did not satisfy minimum value, if it would have been affordable or satisfied minimum value based on the total employee premium and cost-sharing for that plan that would have applied if the employee had satisfied the requirements of wellness plans generally in effect as of the date of the regulation. Note that the amount and terms of the wellness program incentive must have been in place as of the date the proposed regulation is published in the Federal Register (anticipated May 3, 2013). Additionally, this only applies to categories of employees who were eligible for the incentive as of such date.

HRAs and HSAs and Minimum Value/Affordability. The proposed regulation separately addresses how employer contributions to HRAs and HSAs are treated in determining minimum value and affordability. Specifically, all amounts contributed by an employer to an HSA are taken into account in determining the plan's share of costs for purposes of minimum value and

are treated as amounts available for first dollar coverage. However, amounts newly made available under an HRA integrated with an employer-sponsored plan count for purposes of minimum value if they can only be used for cost-sharing, and not to pay insurance premiums. Amounts newly made available under an HRA integrated with an employer plan are taken into account in determining affordability if the employee may use the amounts only for premiums or may choose to use the amounts for either premiums or cost-sharing.

COBRA and Retiree Coverage. The proposed rule states that former employees who may enroll in continuation coverage required under federal or state law, and individuals who may enroll in retiree coverage under an employer-sponsored plan, are eligible for minimum essential coverage under this coverage only for months that the individual is actually enrolled in the coverage. In other words, these individuals may be eligible for premium tax credits if they are not enrolled in the coverage, notwithstanding their eligibility.

DOL Releases Temporary Guidance on PPACA Exchange Notices

In **Technical Release 2013-02**, issued on May 8, the U.S. Department of Labor (DOL) provided "temporary guidance" regarding the Patient Protection and Affordable Care Act (PPACA) required notice to employees of their options under state and federally-facilitated health insurance exchanges.

PPACA amends current law to require that applicable employers must provide each employee with a written notice providing the employee with information about the exchange and how to request assistance, describing the availability of a premium tax credit (if applicable) and outlining the implications for the employee if they choose to purchase a qualified health plan through an exchange. The notice requirement was originally scheduled to take effect on March 1, 2013, but subsequent guidance has indicated that the timing for distribution of notices will be the late summer or fall of 2013 in coordination with the open enrollment period for exchanges.

Along with technical release, the following model notices have also been issued by DOL:

- Model notice for employers who offer a health plan to some or all employees
- Model notice for employers who do not offer a health plan
- COBRA model election notice (Microsoft Word format)
- COBRA model election notice redline version (Microsoft Word format)

IRS Releases 2014 Indexed Amounts for HSAs, HDHPs

The U.S. Treasury Department and Internal Revenue Service (IRS) released Revenue Procedure 2013-25, which lists the 2014 indexed amounts, adjusted for inflation, for health savings accounts and high-deductible health plans (HDHPs). (In some cases, this resulted in no change from the prior year.) The following table lists the current 2013 amounts and the new 2014 amounts:

	Calendar Year 2013		Calendar Year 2014	
	Self-only	Family	Self-only	Family
Annual Contribution Limit	$3,250	$6,450	$3,300	$6,550
HDHP Minimum Deductible	$1,250	$2,500	$1,250 (no change)	$2,500 (no change)
HDHP Out-of-Pocket Limit (includes deductibles, co-payments and other amounts but not premiums)	$6,250	$12,500	$6,350	$12,700

The Revenue Procedure is effective for calendar year 2014.

RECENT JUDICIAL ACTIVITY – DOMA Case Reported Next Month.