

# Legislative and Regulatory Update

## Benefits Briefing

July 18, 2013

**Lynn Dudley**  
Senior Vice President,  
Retirement and  
International Policy  
*American Benefits Council*

**Kent Mason**  
**Michael Hadley**  
Partners  
*Davis & Harman LLP*



DAVIS &  
HARMAN<sub>LLP</sub>

---

# Outline

---

- Tax Reform and Deficit Reduction
  - **Recent proposals to raise revenue from retirement plans**
- Pension Reform
  - **Retirement plan simplification proposals (H.R. 2117; S. 1270)**
  - **USA Retirement Plans**
  - **Other issues**
- Key Regulatory Issues
  - **Pension issues**
  - **Lifetime income initiatives**
  - **Investment proposals**
  - **DC plan administration**
  - **Fiduciary reproposal**
  - **Update on U.S. v. Windsor**



# Tax Reform

---

- Outlook
  - **2013**
  - **2014**
- Politics of tax reform.
  - **What is the objective?**
  - **Political challenges.**



# Deficit Reduction/Raising Revenue

---

- Need for revenue with or without tax reform



# Possible Defined Contribution Plan/IRA Revenue Raising Proposals

- “20/20” proposal
  - **Reducing limit to lesser of \$20,000 of 20% of pay.**



# Possible Defined Contribution Plan/IRA Revenue Raising Proposals

- 28% proposal.
  - **Applicable to IRAs/pre-tax employee contributions to plans.**
- Initially double taxation
  - **Taxpayer in 39.6% bracket pays 11.6% on contributions.**
  - **Taxpayer pays tax again on contribution amount when distributed.**
- New version: basis provided.
  - **Complex calculations by individuals.**
- Roth contributions exempt.
- Effect on plan maintenance.



# Possible Defined Contribution Plan/IRA Revenue Raising Proposals

- Cap on deductions/exclusions.
- Applicable to IRA/plan contributions?
- If so, no exclusion in many cases.
  - **Double taxation?**
- Roth contributions exempt.
- Effect on plan maintenance.



# Possible Defined Contribution Plan/IRA/Defined Benefit Plan Revenue Raising Proposal

---

- Administration's proposal: Referred to as "\$3 million" cap, but that is not accurate.
- Cap based on amount necessary to generate a qualified joint and 100% survivor annuity commencing at age 62 (Code section 415(b) limit).
- Cap affected by age and interest rates (section 417(e) rates used).
- Cap applies to DB, DC, 403(b), governmental 457(b), and IRA benefits.





# Possible Defined Contribution Plan/IRA/Defined Benefit Plan Revenue Raising Proposal

---

- If individual over cap as of end of prior calendar year, no contributions or accruals in next year.
  - **Plan obligation to distribute excess to avoid double taxation of individual.**
- Reporting by all plans and IRAs.
  - **Need to report all DB benefits as equivalent qualified joint and 100% survivor annuities.**
  - **Calendar year reporting even if non-calendar year plan.**
  - **IRS would publish conversion tables for account balances.**
  - **Tracking by individuals.**
  - **Plan obligations?**



# Possible Defined Contribution Plan/IRA Revenue Raising Proposals

- Cap on combined DC plan and IRA balances.
  - **\$2 million? 3 million? 5 million?**
  - **No more contributions.**
  - **Distribution of excess?**



# Possible Defined Contribution Plan/IRA Revenue Raising Proposals

- Reduction of compensation limit.
- Stretch IRAs.



# Possible Defined Benefit Plan Revenue Raising Proposals

- PBGC premiums.
  - **\$25 billion increase proposed by Administration.**
- Funding stabilization.



# Pension Reform

---

- Pension plan simplification and enhancement
  - **Retirement Plan Simplification and Enhancement Act of 2013 (Neal bill, H.R. 2117)**
    - E.g., automatic enrollment enhancements, increased small business start-up credit, addressing nondiscrimination testing problem, clarification of PBGC powers regarding corporate transactions, and expanding IRS correction program.
  - **SAFE Retirement Act of 2013 (Hatch bill, S. 1270)**
    - E.g., electronic delivery, automatic enrollment enhancements, increased small business start-up credit, expanding IRS correction program, and fiduciary definition jurisdiction.



# Pension Reform

---

- USA Retirement Funds
  - **Funds: like “open” multiple employer plans.**
  - **All employers without auto enrollment and a minimum level of employer contributions must participate in a Fund. Mandate possibly being revisited.**
  - **All fiduciary duties shifted to Fund’s independent Board.**
  - **No lump sums permitted. Spousal consent applies.**



# Pension Reform

---

- Multiemployer plan reform.
- Plan consolidation



# Other Key Pension Issues

---

- Closed plan nondiscrimination testing issue.
  - **Regulatory activity**
- ERISA section 4062(e).
  - **PBGC enforcement policy.**
  - **With frozen and closed plans, a storm on the horizon.**
- PBGC's use of financial soundness
  - **4062(e)**
  - **Reportable events**
  - **Premium proposal**
  - **More to come**





# Other Key Pension Issues

---

- Hybrid plan regulations
  - **Timing**
  - **Market rate of return**
    - Closed class
    - Fixed rate
    - Minimum rate
    - Guidance on needed reductions
  - **Whipsaw.**
    - Conditions?
  - **Effective date:**
    - Transition period
    - Standard between statutory and regulatory effective dates.



# Other Key Pension Issues

---

- PEP guidance.
  - **Timing.**
  - **Prospective or retroactive?**
- De-risking.
  - **Legislative activity.**
  - **Regulatory activity.**



# Key Regulatory Issues

---

- Lifetime income initiatives
  - **Lifetime income disclosure on benefit statements.**
  - **Partial pension plan annuities.**
  - **QLACs**
  - **Removing required minimum distribution penalty on annuitization.**
- Investment related initiatives
  - **Money market fund reform – SEC proposal**
  - **Target date fund disclosure reform**



# Key Regulatory Issues

---

- Defined contribution plan administration
  - **408(b)(2) “summary” project**
  - **PBGC missing participant RFI**
  - **IRS project on plan rollovers**



# Key Regulatory Issues

---

- Fiduciary definition—new proposal.
  - **Timing.**
  - **Scope—expansion into distribution/rollover issue**
    - GAO report on rollovers.
- Guidance on *U.S. v. Windsor*
  - **Administration process for guidance**
  - **July 2 Council briefing – slides available**

