Introduction

Development of the Law

The Employee Retirement Income Security Act (ERISA) (Pub. L. No. 93-406) was signed into law in 1974, following years of deliberation and intensive debate. ERISA and the related Internal Revenue Code (IRC) sections have been amended frequently since that time, as outlined below.

In addition, the Patient Protection and Affordable Care Act (ACA), enacted in 2010, made significant changes to the Public Health Service Act (PHSA). The individual and group health market reforms made in PHSA apply to group health plans and to health insurance issuers in the group market as if the provisions were included in ERISA and the IRC.

2019

In an unusual show of bipartisanship, the House overwhelmingly passed a retirement bill by a vote of 417 to 3 on May 23. The bill contained many of the key provisions in the Retirement Enhancement and Savings Act (RESA, H.R. 1007), which was passed unanimously by the Senate Finance Committee in 2016. RESA was not brought up for a vote in the Senate. The House bill also stalled in the Senate.

The House bill, informally known as the SECURE Act (H.R. 1994), would have:

- increased the age at which participants must begin taking distributions, from 70½ to 72, and would have permitted owners of traditional IRAs who are over age 70½ to continue to make contributions;
- allowed two or more companies that are not in the same industry to offer defined contribution plans or IRAs to their employees through a third-party plan administrator;
- provided relief from the "one bad apple" rule for multiemployer and pooled plans so that those plans would not have been treated as failing to meet defined contribution plan or IRA requirements if one employer in the plan did not meet its obligations;
- allowed long-term, part-time workers to participate in 401(k) plans;
- permitted related retirement plans to file a single Form 5500 and increased a tax credit for small-employer pension plan startup costs; and
- made changes to the rules for plan administration, church plans, and terminated 403(b) accounts.

A law intended to address the opioid crisis amended the tax Code to expand the religious conscience exemption under the ACA. The exemption applies to the requirement to purchase and maintain minimum essential health care coverage. The law is the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act or the SUPPORT for Patients and Communities Act (Pub. L. No. 115-271).

2017–2018

To much fanfare, the largest tax act since 1986 was enacted December 22, 2017. The act (informally known as the "Tax Cuts and Jobs Act," Pub. L. No. 115-97) made major changes to the taxation of individuals, corporations, and pass-through entities and created a territorial tax system for multinational businesses. Many of these changes became effective January 1, 2018, for calendar-year taxpayers, although grandfather rules apply to certain written binding contracts that already were in effect.

Earlier drafts of the act contained sweeping changes to employee benefits and executive compensation—for instance, a proposal to repeal IRC §409A and replace it with a new IRC §409B—and provisions that would have affected defined benefit and defined contribution plans. Those proposals and others were dropped before the bill was finalized. Still, many changes survived and became law.

Major changes to employee benefits and executive compensation made by the 2017 Tax Act include:

- **Amendments to IRC §162(m).** IRC §162(m) prohibits a publicly traded company from deducting more than $1 million per year for compensation paid to certain executives. The act eliminated exceptions for performance-based compensation paid on a commission basis. The act also revises the definition of "covered employee."
- **"Qualified equity grants" for closely held companies.** By adding IRC §83(i), the act allows certain employees to defer taxation for up to five years on qualified employer stock received by exercising an option or through restricted stock units (RSUs). The employer must grant stock options or RSUs to at least 80% of all U.S. employees in the calendar year, and the employees must have the same rights and privileges to receive the stock.
- **An excise tax on executive compensation paid by tax-exempt organizations.** The act adds IRC §4960, which imposes an excise tax on a tax-exempt organization that pays more than $1 million to any of its five highest-paid employees for a tax year, or to any person who was one of those employees in any tax year beginning after 2016. The tax can apply to excess parachute payments. The act exempts from the definition of "compensation," for purposes of the tax, remuneration paid to licensed medical professionals in exchange for medical services performed.
- **Individual mandate to purchase health care coverage.** The act reduced the penalty for failure to have health insurance coverage to $0.
- **Common employee-related deductions and exclusions.** The act suspends or limits deductions or exclusions for: moving expenses, entertainment, amusement or recreation activities, and qualified transportation fringe benefits. The deduction for employer-provided meals generally is retained until December 31, 2025.
- **Rollover period for loan offsets.** The act extends the rollover period for plan loan offsets in the event of a plan termination or for participants who fail to meet the loan repayment terms because of their severance from employment.

- **Disaster relief for storms and flooding.**
- **Roth IRA conversions.** The act prohibits a taxpayer from unwinding a Roth IRA conversion. Because the act suspends all miscellaneous itemized deductions from January 1, 2018, through December 31, 2025, miscellaneous itemized deductions for IRA losses are no longer permitted.
- **CPI-U index replaced.** The act replaces the CPI-U index for annual increases in limits on various plans and IRAs with the "chained" CPI-U index, which is expected to increase more slowly.

In addition to the 2017 Tax Act, budget, appropriations, and other acts made changes to the health care and benefits provisions of the tax Code:

- Pub. L. No. 115-63: provides tax relief related to Hurricanes Harvey, Irma, and Maria. This act did not amend the tax Code.
- Pub. L. No. 115-120: amends the ACA to delay for two years the implementation of the excise tax on high cost employer-sponsored health coverage (commonly known as the "Cadillac tax"). The tax will go into effect December 31, 2021. Also, this act suspended for 2019 the annual fee imposed on certain health insurance providers based on market share.
- Pub. L. No. 115-123: allows various tax credits, deductions, and modifications to the tax Code for individuals and businesses affected by wildfires in California and other disasters. It also extended numerous provisions of the tax Code that would have expired.
- Pub. L. No. 115-141: makes numerous technical and conforming corrections and amendments to previously enacted tax provisions and deletions of "deadwood" provisions.

Many technical or conforming amendments, and deletions of deadwood provisions, were made to the tax Code.

2017

The 21st Century Cures Act, 2016, Pub. L. No. 114-255, was enacted December 13, 2016. The Act contains a means to encourage small employers to offer health coverage to employees. The Act created the "qualified small employer HRA" that may be established by an employer that does not offer a group health plan and has fewer than 50 full-time employees. If a qualified small employer HRA meets certain requirements, it will be exempt from obligations that apply to group health plans, including coverage and cost-sharing requirements. Employers that sponsor group health plans that do not meet certain requirements can be subject to an excise tax. The Act sets forth factors for determining whether an employee covered under an HRA is eligible for premium subsidies under the ACA.

During 2017, congressional Republicans tried to pass legislation to "repeal and replace" the ACA without Democratic support. House Republicans narrowly passed a bill entitled the American Health Care Act. However, instead of voting on the House

bill, the Senate Republican leadership attempted to pass a succession of three bills, each intended to address health care. Each bill was defeated.

2016

The Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, made several important changes to the rules governing individual retirement accounts (IRAs), other retirement plans, and health care, including:

- Delay of the "Cadillac tax." Congress delayed implementation of the 40% excise tax on high-cost health plans, often called the Cadillac tax. The tax was scheduled to take effect in 2018, but implementation was deferred to 2020 (and further delayed to 2022 by Pub. L. No. 115-120, see above). Also, the 2016 law made the excise tax payments deductible as a business expense.
- Temporary delay of health insurance provider fee. For 2017, there is a temporary moratorium on the annual fee required from insurance providers that insure the health risks of U.S. citizens and residents and individuals located in the United States.
- Tax-free IRA distributions to charity made permanent. Taxpayers who are at least age 70½ may donate up to $100,000 of required distributions from traditional or Roth IRAs to charities tax free. The exclusion originally applied to these distributions only in taxable years 2006 and 2007, but subsequently was extended to apply to distributions in taxable years 2008 through 2014. The Act makes the exclusion permanent, effective for distributions made in taxable years beginning after December 31, 2014.
- The exclusion enables taxpayers to mitigate the tax consequences of the required minimum distribution rules, which require IRA owners to take minimum distributions from their IRAs by April 1 of the year that follows the year in which they reach age 70½. This change allows those IRA owners to exclude from their taxable income distributions that they transfer directly from an IRA to a qualified charity. Qualified charities, for this purpose, include churches, conventions or associations of churches, certain governmental units, and certain health care groups.
- Rollover contributions permitted from other retirement plans to SIMPLE retirement accounts. Certain rollovers to an employee's SIMPLE retirement account are permitted from traditional IRAs, qualified annuities, §403(b) annuities, and other sources.
- A longer period applies for rollovers of amounts from airline bankruptcies. The law extended the period for rollovers to traditional IRAs of amounts received as a result of certain airline carrier bankruptcies.
- Early withdrawals are penalty free for public safety officers. The 10% early withdrawal penalty for early distributions from a qualified retirement plan does not apply to a broader group of public safety employees.

The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (Pub. L. No. 114-41) extended the date—to December 31, 2025—by which qualified transfers of excess pension assets from overfunded plans may be made to

a medical expense account for the payment of retiree health care expenses. This Act also provided that qualified transfers will not be treated as impermissible employer reversions or prohibited transactions under ERISA if made prior to January 1, 2026.

To avoid a government shutdown, Congress passed the Bipartisan Budget Act of 2015 (Pub. L. No. 114-74). To raise revenue, this Act accelerated the Pension Benefit Guaranty Corporation (PBGC) flat-rate and variable-rate premium due date for the 2025 plan year by 1 month. Thus, the premium due date changed from the 15th day of the 10th full calendar month of the premium payment year to the 15th day of the 9th calendar month beginning on or after the 1st day of the premium payment year. The single-employer flat-rate premium was increased. The flat-rate premium was increased to $69 for plan years commencing in 2017, $74 for plan years commencing in 2018, and $80 for plan years commencing in 2019 and later, as indexed for inflation. Variable-rate premiums are indexed for inflation and will be increased by an additional $3 for plan years commencing in 2017, an additional $4 for plan years commencing in 2018, and an additional $4 for plan years commencing in 2019.

2015

Congressional negotiations over the federal budget in late 2014 resulted in a landmark change to ERISA and the tax Code. The Multiemployer Pension Reform Act of 2014 (MPRA) allows financially troubled multiemployer plans to cut retiree benefits to prevent a plan from becoming insolvent. Benefit suspension is permitted only for the most severely underfunded multiemployer plans, called "multiemployer plans in critical and declining status." This status is available only to multiemployer plans, not single employer plans. This change may have a major impact on the PBGC, as well as multiemployer plans.

MPRA is included in the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. No. 113-235, Division O).

MPRA allows a plan in critical and declining status to suspend benefits to participants without running afoul of the anti-cutback rules or being held liable for missed benefit payments. Although the legislation uses the term "benefit suspension," monthly benefits may not be reduced to less than 110% of PBGC guarantees. Benefits and benefit increases that have been in effect for at least five years generally cannot be eliminated entirely. The suspension of benefits may be permanent or temporary and may apply regardless of whether benefits are in pay status.

In addition, MPRA made extensive changes to other multiemployer plan rules, including:

- Repeal of the December 31, 2014, sunset provision of the Pension Protection Act of 2006. As a result, multiemployer plan rules relating to (1) automatic extensions of amortization periods; (2) deemed approval of a multiemployer plan's adoption, use, or cessation of use of the shortfall funding method; and (3) endangered and critical status are permanent.
- Expanded PBGC authority to partition plans that are in critical and declining status and increased PBGC premiums. Partitioning is intended to allow a financially healthy employer to maintain a plan by carving out the plan liabilities attributable to employers that have filed for bankruptcy.

- Repeal of the reorganization rules for multiemployer plans and related modifications to the insolvency rules, including a requirement that, for a multiemployer plan in critical status, the plan sponsor must compare assets and liabilities to determine if the plan will become insolvent in the future.
- Revised requirements for rehabilitation plans that must be adopted for multiemployer plans in critical status.
- Authorization of any employee representative, or any employer obliged to contribute to a plan, to bring a civil action to enjoin any act or practice that violates certain disclosure requirements or to obtain appropriate equitable relief to redress a violation or enforce the requirements.
- Authorization of the PBGC to promote and facilitate the merger of multiemployer plans.
- Authorization of the PBGC to enable plans involved in a plan merger to avoid or postpone insolvency by providing financial assistance to a merged plan under certain circumstances.

Division P of Pub. L. No. 113-235 also made other amendments to ERISA and the tax Code, including to the treatment of the substantial cessation of operations and the normal retirement age for certain defined benefit plans.

Congress also passed the Tax Increase Prevention Act of 2014 (Pub. L. No. 113-295), which extended many tax provisions that had expired at the end of 2013. In addition to numerous technical corrections, this act extended for the 2014 tax year the monthly maximum exclusion amount for transit passes and van pool benefits so that these benefits match the exclusion for qualified parking benefits.

2014

2014 was a year of milestones. ERISA turned 40, and another practice-changing event for tax and employee benefits practitioners—the enactment of IRC §409A—had its 10th anniversary.

ERISA was intended to help protect employee retirement savings and ensure a stream of retirement income for workers. It is a voluntary system. In return for complying with ERISA requirements, retirement plans receive favorable tax treatment.

Many practitioners don’t remember a time before ERISA. The law was enacted in 1974 to protect employees from abuses in the administration and investment practices of private retirement plans and welfare benefit plans. Over the years, Congress has made major changes to ERISA, modest tweaks, and everything in between. With a broad preemption provision, ERISA replaced a thicket of state laws that had governed employee benefit plans and trusts. A massive amount of regulations and guidance from three agencies, as well as decisions from the federal courts, followed.

ERISA contains an employment-based system of retirement planning. However, with the move from defined benefit to defined contribution plans, the primary responsibility of saving for retirement, and choosing how to invest retirement savings, largely has shifted to individuals. Also, workers have become more mobile in their careers and no longer tend to look to a single employer’s retirement plan as their means of retirement saving. They prefer the option of rolling over an account from

one employer's 401(k) plan to a subsequent employer's plan or an IRA. One risk is that without a lifetime guarantee of pension income, individuals will run out of retirement savings. There are many proposals to address this risk, such as a safe harbor for annuities offered by 401(k) plans to encourage a move away from lump-sum payouts. Still, despite more flexibility in the retirement system, the question remains—how to provide Americans with secure retirement plan coverage?

Pension smoothing provisions were enacted that extended for five years the funding stabilization provisions of the Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. No. 112-141). The Highway and Transportation Funding Act of 2014 (the Highway Act) (Pub. L. No. 113-159), a 10-month transportation funding patch, was intended to stabilize the discount rates used to calculate employers' pension funding obligations.

The Highway Act modified the segment rate stabilization table in IRC §430(h) to apply the applicable range of percentages used for calendar year 2012 during years 2012 through 2017, and to apply the percentages for 2013, 2014, 2015, and after 2015 during years 2018, 2019, 2020, and after 2020, respectively, instead. The funding target determination periods were amended so that the five-year period for applying the first segment rate begins on the valuation date for the plan year instead of the first day of the plan year. The Highway Act modified the IRC §436(d) exception to the rule that a single-employer plan may not make prohibited payments while the plan sponsor is in bankruptcy by determining the adjusted funding target attainment percentage without taking into account any adjustment of segment rates.

Other legislation in 2014 included the Cooperative and Small Employer Charity Pension Flexibility Act (CSEC Act) (Pub. L. No. 113-97). The CSEC Act provided permanent relief from the full-funding requirements of the Pension Protection Act of 2006 (2006 PPA) (Pub. L. No. 109-280) for eligible multiple-employer cooperative plans and multiple-employer charity plans. CSEC plans may elect to follow funding requirements based on the pre-2006 PPA funding rules. These funding options affect roughly 30 multiple-employer pension plans, according to the Congressional Budget Office. Title I of the CSEC Act amends ERISA, and Title II incorporates a similar set of rules into the Internal Revenue Code.

2013

Following temporary extensions, The American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, §101, repealed the sunset provision of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Pub. L. No. 107-16, §901. The law made EGTRRA provisions permanent.

2012

In order to ease pension funding obligations that increased due to low interest rates, Congress gave employers the option in 2012 of using segment rates within 10% of a 25-year historical average of segment rates to calculate their pension funding contributions, an interest-rate corridor that would increase incrementally to 30% in 2016, in the Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. No. 112-141). Some underfunded plans must disclose their use of these rates in their

plans' annual funding notices. Use of the 25-year average rate within the specified interest-rate corridor is mandatory beginning in 2013.

Employers may use the segment rates for most pension-related funding calculations, with exceptions for calculating lump-sum distributions, limits on deductible contributions to single-employer plans, PBGC variable-rate premiums, financial reporting under ERISA §4010, and qualified transfers of excess pension assets to retiree medical accounts.

Also, MAP-21 extended existing rules under IRC §420 that permit transfers of excess pension assets to retiree medical accounts and expanded the rules to include the use of excess pension assets to purchase retiree life insurance.

Under the FAA Modernization and Reform Act of 2012 (Pub. L. No. 112-95), if a qualified airline employee receives any airline payment amount from a commercial passenger airline carrier and transfers any portion to a traditional IRA within 180 days of receipt (or, if later, by August 12, 2012), the transferred amount is treated as a rollover contribution under §402(c), and the employee may exclude that amount from gross income. The act provides an extension for an employee who excludes such an amount from gross income in a prior taxable year to file a refund claim for that exclusion within the limitation period under IRC §6511(a) or, if later, by April 15, 2013. The total amount of airline payment amounts that may be transferred to one or more traditional IRAs is subject to a cap.

2011

Congress enacted several amendments to the Affordable Care Act (ACA) (Pub. L. No. 111-148). For example, IRC §36B, which was added to the tax Code by ACA, allows a refundable credit to help individuals and families pay for health insurance premiums. IRC §36B was amended by the Medicare and Medicaid Extenders Act of 2010 (Pub. L. No. 111-309), the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011 (Pub. L. No. 112-9), and the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. No. 112-10). In addition to amending IRC §36B, Pub. L. No. 112-10 repealed the provisions of PPACA that required employers to offer free choice vouchers to certain low-income employees to use to purchase health insurance through a state health care exchange.

In an effort to stimulate the economy by increasing the take-home pay of employees, Congress reduced payroll taxes. The Social Security payroll tax was 12.4% of taxable earnings, with 6.2% paid by the employer and 6.2% paid by the employee. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Pub. L. No. 111-312) temporarily reduced the employee's share of the Social Security payroll tax to 4.2% for 2011.

2010

The Patient Protection and Affordable Care Act (ACA) (Pub. L. No. 111-148), which was intended to increase the number of, and provide protections to, Americans with health insurance, changed many of the rules that govern the U.S. health care system. The law's reach extends to the states, employers, health care insurers, and most individual taxpayers.

PPACA made significant changes to the Public Health Service Act (PHSA) that added requirements for group health plans, including insured and self-insured plans, although some employer plans are grandfathered. All of the individual and group market reforms in part A of title XXVII of PHSA, as amended by PPACA, apply to group health plans and to health insurance issuers in the group market as if the provisions were included in ERISA and the IRC. Because these provisions are included by reference in ERISA, participants have a private right of action to enforce them.

The law's effective dates were spread over several years and some have been extended by subsequent legislation. Some provisions became effective for plan years beginning after September 23, 2010 (for example, the ban on annual and lifetime limits). The individual mandate for coverage, which requires that individuals maintain health insurance coverage that is minimum essential coverage or pay a penalty and the requirement that larger employers must provide coverage to their employees or pay a tax, became effective in 2014. However, the 2017 Tax Act (Pub. L. No. 115-97) reduced the penalty amount for individuals to $0, effective December 31, 2018. The excise tax on high-cost employer coverage known as the "Cadillac tax" was postponed by other legislation to tax years beginning after December 31, 2021 (see above).

ACA was amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152) and by two other laws (Pub. L. No. 111-159 and Pub. L. No. 111-173) in 2010.

Amendments were made to the funding provisions of ERISA and the IRC by the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (Pub. L. No. 111-192).

2009

In an effort to avoid a more serious recession than was occurring at the time, Congress passed the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5). In addition to provisions intended to stimulate the economy, Division B, title VII of the act amended the Emergency Economic Stabilization Act of 2008 by adding new standards for executive compensation and corporate governance that apply to entities that received taxpayer money under the Treasury Department's Troubled Asset Relief Program, such as restrictions on bonuses and golden parachute payments. ARRA also included a temporary subsidy for the cost of health care continuation coverage for eligible individuals and parity for transit benefits, in addition to other changes.

Two laws—the TAA Health Coverage Improvement Act of 2009 (Pub. L. No. 111-5), also part of ARRA, and the Children's Health Insurance Program Reauthorization Act of 2009 (Pub. L. No. 111-3)—amended ERISA §701.

The Worker, Retiree, and Employer Recovery Act of 2008 (Pub. L. No. 110-458) made extensive technical corrections to ERISA and the IRC related to changes made by the Pension Protection Act of 2006.

2008

Congress made changes to the rules governing taxation of executive compensation. The Emergency Economic Stabilization Act of 2008 (Pub. L. No. 110-343), which

was intended to restore liquidity and stability to the U.S. financial system, added significant restrictions on the executive compensation that may be offered by the financial institutions participating in the "troubled assets" program created by the Act. The restrictions are designed to limit and discourage participating institutions from paying excessive compensation to senior executive officers. Also, the Act added IRC §457A, which applies principles similar to IRC §409A to nonqualified deferred compensation plans sponsored by certain foreign corporations and partnerships. IRC §457A applies the "substantial risk of forfeiture" standard to the taxation of nonqualified deferred compensation from those foreign entities and incorporates by reference many of the provisions of IRC §409A. In addition, the Act expands the mental health parity requirements for private insurance plans that offer mental health benefits and applies similar requirements to services for substance use disorders.

Other amending legislation includes the Genetic Information Nondiscrimination Act of 2008 (Pub. L. No. 110-233) (prohibits health insurers and employers from discriminating based on genetic information), the Heroes Earnings Assistance and Relief Tax Act of 2008 (Pub. L. No. 110-245) (includes tax breaks and penalty-free withdrawals from pension plans and IRAs for military personnel), and Michelle's Law (Pub. L. No. 110-381) (requires continued coverage of dependent students during a medically necessary leave of absence from school).

Other amendments were made by the Housing and Economic Recovery Act of 2008 (Pub. L. No. 110-289) and the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. L. No. 110-351).

2007

Congress modified some of the changes to the tax Code and ERISA that it made in the Pension Protection Act of 2006 (see "2006" below for discussion of the Pension Protection Act of 2006) in the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. No. 110-28), title VI.

In Pub. L. No. 110-28, Congress made changes to the rules that apply when a multiemployer plan revokes its election to not be treated as a multiemployer plan or when a defined benefit plan transfers excess assets to a retiree medical account in order to fund retiree health benefits. Also, Congress extended the alternative deficit reduction contribution rules, which gave commercial passenger airlines, and catering services to commercial passenger airlines, the option of paying a reduced additional required contribution by amortizing unfunded plan liability over 17 plan years.

2006

Faced with terminations of large defined benefit pension plans, funding shortfalls in many other pension plans, and some well-publicized corporate scandals that cost employees their retirement savings, Congress responded to these threats to the pension system by passing a comprehensive benefits law, the Pension Protection Act of 2006 (PPA) (Pub. L. No. 109-280). PPA replaced the prior funding rules for single-employer defined benefit plans in ERISA and the tax Code, effective after 2007, with new minimum required contribution rules, notice requirements, and

restrictions that apply to "at-risk" plans, and made changes to the funding rules for multiemployer plans.

In addition, PPA made permanent pension and IRA provisions enacted in the Economic Growth and Tax Relief Reconciliation Act of 2001 (Pub. L. No. 107-16), which were set to expire after 2010.

While the primary emphasis of PPA was on defined benefit plan funding, PPA contained significant provisions related to defined contribution plans, the Pension Benefit Guaranty Corporation, fiduciaries, contributions, health benefits, distributions and rollovers, cash balance plans, IRAs, and other matters. Also, PPA permitted plans to continue to use corporate bond rates, rather than 30-year Treasury rates, for plan funding for the 2006 and 2007 plan years.

Two other laws enacted in 2006 changed some of the rules for IRAs. Beginning after December 31, 2009, the Tax Increase Prevention and Reconciliation Act of 2005 (Pub. L. No. 109-22), which was enacted May 17, 2006, eliminated the modified adjusted gross income limit on conversions of traditional IRAs to Roth IRAs and permits married taxpayers filing a separate return to convert amounts in a traditional IRA into a Roth IRA.

Congress addressed health savings accounts (HSAs) in the Tax Relief and Health Care Act of 2006 (Pub. L. No. 109-432). Taxpayers may transfer funds tax free from a flexible spending arrangement or health reimbursement arrangement to an HSA; deduct HSA contributions, subject to certain limitations; and make a one-time, tax-free distribution from an IRA to an HSA. Congress modified the rules that determine when an employer is subject to the excise tax for failing to make comparable HSA contributions for non-highly compensated employees.

Also enacted in 2006, the Heroes Earned Retirement Opportunities Act (Pub. L. No. 109-227) allows typically nontaxable combat pay to count as taxable income for purposes of calculating allowable IRA contributions under IRC §219.

2005

Much of the federal legislation concerning benefit plans focused on participants affected by Hurricanes Katrina, Rita, and Wilma. The Gulf Opportunity Zone Act of 2005 (GOZA) (Pub. L. No. 109-135) codified and expanded relief provided in an earlier act, the Katrina Emergency Tax Relief Act of 2005 (Pub. L. No. 109-73). GOZA includes an exception to the §72(t) early distribution tax for distributions related to the hurricanes, allows participants to recontribute certain distributions from retirement plans, and eases the plan loan rules.

GOZA affects taxation of nonqualified deferred compensation under IRC §409A. GOZA provides that the additional tax and interest under IRC §409A is not treated as regular tax for alternative minimum tax purposes and that the funding rules in IRC §409A(b) relating to offshore trusts and financial triggers are effective January 1, 2005.

The Deficit Reduction Act of 2005 (Pub. L. No. 109-171) amended title IV of ERISA, which deals with plan termination insurance. The act increases the per participant premium that must be paid by single and multiemployer plans and adds a

new premium charge for certain terminated single-employer plans and a special rule for plans terminated in bankruptcy reorganization.

2004

Marking a busy year for benefits legislation, three statutes were enacted. The American Jobs Creation Act of 2004 (AJCA) (Pub. L. No. 108-357), the Working Families Tax Relief Act of 2004 (Pub. L. No. 108-311), and the Pension Funding Equity Act of 2004 (Pub. L. No. 108-218) made extensive changes to the law of employee benefits, particularly to executive compensation. AJCA added IRC §409A, which creates another layer of rules on top of the pre-existing law governing nonqualified deferred compensation plans. IRC §409A contains a structure of rules that restricts when a participant may make an initial deferral election or receive distributions; prohibits accelerated distributions; limits a participant's ability to make a "subsequent election" that would delay or change the form of a distribution; immediately taxes "off-shore" rabbi trusts and plans that provide for funding or increased security due to a change in the employer's financial health; and imposes new reporting and withholding requirements.

The Pension Funding Equity Act amended ERISA and the IRC to lower certain employer contributions to underfunded plans, generally for the 2004 and 2005 plan years, by permitting plans to use higher interest rate assumptions based on long-term corporate bonds. In addition, the Act provided airlines and steel manufacturers with relief for up to two plan years from contributions for underfunded plans and permitted certain multiemployer plan sponsors to defer a charge for net experience loss.

Other changes to the law of employee benefits included an exclusion from wages and employment taxes for certain executive compensation; an excise tax on stock-based compensation from certain expatriated corporations; and a modification of the retiree health care minimum cost requirement when employers transfer excess pension assets to pay group health plan liabilities.

2003

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. No. 108-173) created health savings accounts (HSAs) that provide tax-favored treatment for current medical expenses, as well as a tax-favored vehicle for saving for future medical expenses. HSAs are tax-exempt trusts or custodial accounts created exclusively to pay for the qualified medical expenses of the account holder and his or her family. HSAs are subject to rules similar to those applicable to individual retirement arrangements.

The Military Family Tax Relief Act of 2003 (Pub. L. No. 108-121) expanded the tax relief available to members of the armed services and their families under IRC §7508. The Act granted extensions of time to persons deployed outside the United States away from the individual's permanent duty station while participating in military "contingency operations," as designated by the Secretary of Defense. The Act extended the time period for actions such as making a tax-qualified con-

tribution to an IRA. The act also provided that dependent care assistance benefits provided to a member of the uniformed services by reason of the member's status or service as a member of the uniformed services are excludible from gross income as a qualified military benefit.

2002

The Job Creation and Worker Assistance Act of 2002 (JCWAA) (Pub. L. No. 107-147) contained several changes that affected employee benefit plans, including temporary funding relief for defined benefit plans, an extension for medical savings accounts, and corrections to the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) (Pub. L. No. 107-6).

The Sarbanes-Oxley Act of 2002 (Pub. L. No. 107-204) contained some key provisions related to employee benefit plans, including requiring plan administrators to provide participants with advance notice of any "blackout" periods during which participants may not self-direct the investments in their accounts within a defined contribution plan or receive plan loans or distributions. The act also imposed new penalties for violations of ERISA's reporting and disclosure rules.

The Trade Act of 2002 (Pub. L. No. 107-210) expanded the benefits available to workers displaced by import competition or shifts of production to other countries. The Trade Act also provided a first-time benefit to certain workers who are receiving trade adjustment assistance, in the form of a tax credit for 65% of the premiums paid by these workers for certain types of medical coverage (including COBRA coverage) for themselves and their families. The Trade Act included additional help for eligible workers through grants to state programs that may be used to assist in obtaining medical coverage (including COBRA coverage). In addition, to give workers who did not elect COBRA another chance to make an election after becoming eligible for the new tax credit (or for state assistance in obtaining coverage), the Trade Act created a new, second COBRA election period for workers who are receiving trade adjustment assistance.

2001

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) (Pub. L. No. 107-16) included much of the pension reform package that Congress had been working on for the previous several years.

Sunset Provision: To comply with the Congressional Budget Act of 1974, §901 of EGTRRA provided that all provisions of, and amendments made by, EGTRRA generally would not have applied for taxable, plan, or limitation years beginning after December 31, 2010, unless renewed by Congress. The Pension Protection Act of 2006 (Pub. L. No. 109-280), §811, repealed the EGTRRA sunset provision (§901) as it applied to pensions and IRAs. Subsequently, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Pub. L. No. 111-312), §101(a), extended the EGTRRA sunset to December 31, 2012. The American Taxpayer Relief Act of 2012 (Pub. L. No. 112-240), §101(a), struck the sunset provision of EGTRRA.

Public Law No. 107-22 renamed “education individual retirement accounts” as “Coverdell education savings accounts.”

2000

The Consolidated Appropriations Act of 2001 (Pub. L. No. 106-554) included the Community Renewal Tax Relief Act of 2000, which made many technical corrections to the IRC in the areas of qualified plans and IRAs. Specifically, the Community Renewal Tax Relief Act retroactively treated nontaxable salary reduction amounts used for qualified transportation fringe benefits as compensation for purposes of qualified retirement plans; permitted lump-sum distributions from a terminated 401(k) plan to include distributions from annuity contracts; and clarified that IRA contributions for a non-working (or lesser-earning) spouse cannot exceed the couple’s combined earned income.

The Consolidated Appropriations Act also enacted the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000, which amended ERISA §4022A to increase by more than 100% the maximum Pension Benefit Guaranty Corporation guarantees for multiemployer pension plans that terminate without sufficient assets to pay benefits.

1999

The Tax Relief Extension Act of 1999 (Pub. L. No. 106-170) amended IRC §420(c)(3) to reflect minimum cost requirements for the transfer of excess pension assets to retiree health accounts and the calculation of minimum cost requirements. For qualified transfers occurring after December 17, 1999, the applicable employer cost is determined according to employer cost and not the benefits provided. The Act also made conforming amendments to ERISA and the IRC and extended certain expiring tax and employee benefits provisions.

1998

Four statutes were enacted that contained significant employee benefit provisions. The Transportation Equity Act for the 21st Century (Pub. L. No. 105-178) clarified that metro transit vouchers provided pursuant to a qualified transportation fringe benefit program could be provided on a salary-reduction basis. The Act also increased the monthly value of transit passes and parking that could be provided tax free by an employer to an employee.

The Child Support Performance and Incentive Act of 1998 (Pub. L. No. 105-200) required that all health care plans recognize a national medical support notice. The Act amended ERISA to provide that such notices are to be considered qualified medical child support orders with which plan administrators must comply.

The Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. No. 105-206) made numerous technical changes in the areas of regular IRAs, Roth IRAs, and SIMPLE IRAs. The Act also made certain §401(k) plan distributions ineligible for rollover treatment.

Finally, the Tax and Trade Relief Extension Act of 1998 (Pub. L. No. 105-277) increased the deduction for health insurance for self-employed individuals and made certain technical changes to the rules of IRC §221 regarding the deductibility of interest on qualified educational loans. Part of that legislation, the Women's Health and Cancer Rights Act, added §713 to ERISA, granting certain rights under group health plans for reconstructive surgery following a mastectomy.

1997

The Taxpayer Relief Act of 1997 (Pub. L. No. 105-34) and the Balanced Budget Act of 1997 (Pub. L. No. 105-33) became law. The Taxpayer Relief Act, among other things, created the Roth IRA, from which distributions are nontaxable; allowed taxpayers to save for a child's higher education through Educational IRAs; and repealed the excise tax on excess retirement distributions and accumulations. The Balanced Budget Act introduced the Medicare+Choice MSA (later renamed the Medicare Advantage MSA). Other benefits legislation enacted in 1997 included Pub. L. No. 105-72, making certain amendments to ERISA §3(38)(B), and the SAVER Act (Pub. L. No. 105-92), requiring the Labor Department to host a national conference on retirement policy.

1996

The Small Business Job Protection Act of 1996 (SBJPA) (Pub. L. No. 104-188) created a new type of simplified employee retirement plan, known as the SIMPLE plan, for the employees of certain small employers. SIMPLE plans can be maintained in either IRA or §401(k) form. The SBJPA also enacted a wide variety of pension simplification measures.

The Health Insurance Portability and Accountability Act (HIPAA) (Pub. L. No. 104-191) authorized the establishment of medical savings accounts (MSAs) as a means of allowing employees to save for medical expenses on a tax-favored basis. HIPAA also permitted certain long-term care insurance and services to be treated as provided under an accident or health plan for tax purposes. Finally, HIPAA added rules for the application and enforcement of certain group health plan portability, access, and renewability requirements.

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1997 (Pub. L. No. 104-204) added mental health parity provisions and provisions regarding the minimum hospital stay for newborns and mothers to the health care portability, access, and renewability requirements of the IRC and ERISA. Other minor changes in the employee benefits area were made by Pub. L. No. 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the welfare reform bill).

1995

The Self-Employed Health Insurance Act of 1995 (Pub. L. No. 104-7) made the deduction for the health insurance costs of self-employed individuals permanent and

increased the allowable deduction. In addition, the State Taxation of Pension Income Act of 1995 (Pub. L. No. 104-95) amended Title 4 of the United States Code to limit the ability of states to tax the retirement income of certain nonresidents.

1994

The Retirement Protection Act of 1994 (RPA) (Pub. L. No. 103-465) significantly tightened the funding rules for underfunded defined benefit pensions. The RPA also extended the sunset date through the year 2000 for IRC §420 (later extended through 2013 by Pub. L. No. 108-218), which allows the transfer of certain excess pension assets from defined benefit plans to individual medical accounts within such plans. In addition, the Pension Annuitants' Protection Act (Pub. L. No. 103-401) clarified that individuals and the Labor Department could bring suit for a failure to provide the annuitized benefits called for under ERISA to former participants and beneficiaries of terminated defined benefit plans. Also, the Social Security Administrative Reform Act of 1994 (Pub. L. No. 103-296) established the Social Security Administration as an independent federal agency and made appropriate conforming changes to the IRC.

1993

The Omnibus Budget Reconciliation Act of 1993 (OBRA '93) (Pub. L. No. 103-66) lowered the amount of compensation that could be taken into account in calculating benefit accruals or allocations under qualified plans. OBRA '93 extended retroactively the income tax exclusion for employer-provided educational assistance and the health insurance deduction for self-employed individuals. The law changed the fringe benefit treatment of moving expenses and required group health plans to honor child medical support orders.

1992

The Unemployment Compensation Amendments of 1992 (UCA) (Pub. L. No. 102-318) allowed any portion of most distributions from a qualified pension plan or annuity or a tax-sheltered annuity to be rolled over tax free into an IRA or another qualified plan or annuity. The law required qualified plans to permit participants to elect to have any distribution eligible for rollover treatment transferred directly to an eligible transferee plan designated by the participant.

The Comprehensive National Energy Policy Act of 1992 (Pub. L. No. 102-486) included a provision on the funding of health benefits for retired coal miners. The law required companies that were party to labor agreements with the United Mine Workers of America as far back as 1950 to cover retiree health costs. In addition, excess union pension funds and interest on monies in the abandoned mine land reclamation fund were required by the act to be transferred to the union's health benefit fund. Also, the law allowed excess assets in qualified black lung benefit trusts to be used to pay accident and health premiums for retired miners. Another provision of the law expanded the exclusion from taxable income for employer-provided transit subsidies while limiting the exclusion for employer-provided parking.

1991

The Rural Telephone Cooperative Associations ERISA Amendments Act of 1991 (Pub. L. No. 102-89) removed from ERISA's definition of "multiple employer welfare arrangements" the welfare plans of rural telephone cooperative associations.

Emergency supplemental appropriations legislation (Pub. L. No. 102-229) created ERISA §4001(a)(14)(C). The provision was aimed specifically at preventing Carl Icahn, chairman and chief executive officer of Trans World Airlines Inc., from escaping responsibility for TWA's pension plan underfunding.

While the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. No. 102-242) did not amend ERISA or its corresponding tax Code sections, it did contain provisions affecting employee benefit plans. The act allowed pass-through coverage by the Federal Deposit Insurance Corporation (FDIC) for benefit plan assets placed in well-capitalized financial institutions. However, pass-through coverage for bank investment contracts was eliminated. The act also specified that the FDIC and other successors to failed financial institutions have the same obligation under ERISA §602 to offer COBRA continuation group health coverage to former employees as the failed institution would have had if not for its failure.

The Tax Extension Act of 1991 (Pub. L. No. 102-227) extended for six months certain expiring tax provisions, including the provisions covering employer-provided educational assistance, group legal services plans, and health insurance costs of self-employed individuals. However, the six months lapsed without the provisions being extended again or made permanent; the provisions expired at the end of June 1992. (The exclusion for educational assistance was extended several times, then made permanent and broadened to include graduate education in Pub. L. No. 107-16.)

1990

The Omnibus Budget Reconciliation Act of 1990 (OBRA '90) (Pub. L. No. 101-508) extended the sunset date for the IRC's tax breaks for tuition assistance and group legal service plans, increased the excise tax on reversions of excess assets to employers from plan terminations, raised plan termination insurance premiums, permitted the transfer of some excess assets to retiree health accounts, and made a number of technical changes. Also, Pub. L. No. 101-540 amended Title I of ERISA to expand the definition of "employer securities" to include interests in certain publicly traded partnerships.

1989

Public Law No. 101-140 increased the public debt limit and repealed IRC §89. The Omnibus Budget Reconciliation Act of 1989 (OBRA '89) (Pub. L. No. 101-239) modified COBRA health care continuation coverage rules and made numerous technical corrections to prior laws. The law also amended civil penalties for fiduciary violations and repealed or limited a number of provisions on employee stock ownership plans.

1988

The Technical and Miscellaneous Revenue Act of 1988 (TAMRA) (Pub. L. No. 100-647) included a number of provisions affecting employee benefits. TAMRA amended the tax sanctions for violation of the COBRA requirements; increased the excise tax on reversions of excess plan assets; made certain clarifying amendments to pension rules; and amended IRC §457 (relating to unfunded deferred compensation arrangements for employees of governmental units and tax-exempt organizations).

1987

The Omnibus Budget Reconciliation Act of 1987 (OBRA ’87) (Pub. L. No. 100-203) tightened the funding requirements for defined benefit pension plans and increased the premium that single-employer defined benefit plans must pay to guarantee a certain level of benefits.

1986

The Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) (Pub. L. No. 99-272) included provisions requiring the continuation of employer-sponsored group health insurance for certain individuals and their dependents. In addition, Title XI of the law amended the single-employer pension plan provisions of ERISA. Title XI is cited as the Single-Employer Pension Plan Amendments Act of 1986.

The Tax Reform Act of 1986 (Pub. L. No. 99-514) made extensive changes affecting employee pension and welfare benefit plans, including amendments to the rules on nondiscrimination, coverage, participation, Social Security integration, vesting, and distributions.

The Omnibus Budget Reconciliation Act of 1986 (OBRA ’86) (Pub. L. No. 99-509) required continued benefit accruals or allocations for employees who continue to work beyond normal retirement age and stipulated that employers must offer health insurance coverage to retirees and dependents who otherwise would lose coverage because the employer filed for Chapter 11 bankruptcy.

1984

The Deficit Reduction Act (Pub. L. No. 98-369) added and amended tax code provisions in such areas as fringe benefits, cafeteria plans, and employee welfare plans. The Retirement Equity Act (REA) (Pub. L. No. 98-397) amended both tax code and ERISA provisions on vesting, participation, and joint and survivor annuities.

1982

A bill was introduced in the House to reduce the contribution and benefit limits for qualified corporate plans; modify the rules for integration with Social Security; tighten the rules for loans from plans to key employees; and limit the estate tax exclusion for retirement annuities paid to beneficiaries, among other changes. Those proposals were modified and rolled into a revenue raising package introduced in an attempt to reduce budget deficits. The revenue package became the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. No. 97-248).

1981

A series of savings incentive bills was introduced in Congress. Proposals were made to raise the limits on deductible contributions to IRAs and Keogh plans; encourage the adoption of employee stock ownership plans; and change the tax treatment of stock options. The retirement plan proposals and other savings incentive provisions eventually were consolidated, and became part of the Economic Recovery Tax Act (Pub. L. No. 97-34).

1980

The first major changes in benefits law were enacted in the Multiemployer Pension Plan Amendments Act of 1980 (Pub. L. No. 96-364). Although ERISA itself remained virtually untouched for six years, a number of changes affecting pension and benefit plans were enacted through various tax laws that amended the qualified plan provisions of the IRC.

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