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Topic: Post-Severance Compensation - How It Affects Plan Qualification and Plan Administration

Regulations issued under IRC §415 on April 5, 2007 (Treasury Regulation §1.415(c)-2(e)), changed the landscape with respect to compensation paid after an employee terminates employment. Prior to that time, the issue of whether an employee could accrue benefits with respect to post-severance compensation, particularly in the context of elective deferral arrangements (e.g., 401(k) plans), had been debated, with IRS officials generally taking a narrower view than many practitioners in the retirement plan community.

With the issuance of regulations, the debate ended, but the task of complying with the regulations became the new challenge. Several aspects of the regulations have raised a number of questions. What post-severance compensation must be taken into account and for what purposes under the plan? What post-severance compensation can never be taken into account? How is it determined what post-severance compensation is recognized by the plan and what is not? How does the accruing of benefits with respect to post-severance compensation, or the making of elective deferrals from such compensation, affect nondiscrimination testing requirements? If a plan excludes post-severance compensation from the definition of compensation for accrual purposes, or specifically precludes the making of any elective deferrals from post-severance compensation, does such a provision trigger special nondiscrimination testing requirements? What recordkeeping requirements are generated from the post-severance compensation rules? These questions are all addressed in this issue of ERISA Views.

Although the regulations have been in effect for 2, in some cases 3, plan years for most plans, we

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continue to hear from plan administrators, consultants and sponsors that the regulations are confusing. We hope to clear up that confusion with this quarter’s issue of ERISA Views!

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