

Washington Update: The Outlook for Defined Contribution Plan Policy

P&I MidAmerica Defined Contribution Conference
April 28, 2008

Jamey Delaplane



DAVIS &
HARMAN^{LLP}



Overview

- Pension Protection Act Follow-Up
- Retirement Plan Fee Developments
- Election Outlook
- Presidential Candidate Proposals
- Future Retirement Policy Initiatives
- Tax Policy Outlook and Repercussions
- Conclusions



PPA Follow-Up: Regulatory

- Treasury/IRS
 - **Auto Enrollment**
 - **Notices Re Rollover Distributions**
 - **Defined Benefit Plan Issues**
- Department of Labor
 - **QDIA Follow-Up**
 - **Investment Advice**
 - **Annuity Selection Criteria**



PPA Follow-Up: Legislative

- PPA Technical Corrections (H.R. 3361/S. 1974)
 - **Status Report**
 - **Provisions of Note**
 - **Outlook**
- PPA Modification Legislation from Rep. Rob Andrews (D-NJ)
 - **Provisions of Note**
 - **Outlook**
- Military Family Tax Legislation
 - **Retirement Plan Provisions**



Retirement Plan Fees: Regulatory

- Department of Labor Regulations
 - **Regulations on Plan Reporting to Government (Form 5500) – Final**
 - Likelihood of Follow-Up Guidance
 - **Regulations on Provider Disclosure to Fiduciaries (ERISA Section 408(b)(2)) – Proposed**
 - Basic Approach
 - Key Issues in Comment Process
 - Timetable for Completion
 - **Regulations on Fee Disclosure to Participants - Upcoming**
- SEC Summary Prospectus Proposal



Retirement Plan Fees: Legislative

- Congressional Perspective on Regulatory Actions
- Multiple Democratic Bills Introduced
 - **Key Areas of Focus**
- Recent Revisions Made to Miller Bill (H.R. 3185)
 - **Index Fund Mandate Moved to ERISA Section 404(c)**
 - **Unbundling by Service Providers Into Fewer Categories**
 - **Treatment of Revenue Sharing/Potential Conflicts**
 - **Participant Disclosure (Annual Notice and Quarterly Statements) Somewhat Simpler**
 - **Promotion of Electronic Delivery**
 - **Penalty Regime**
 - **Delayed Effective Date**



Retirement Plan Fees: Legislative

- House Education & Labor Committee Approval of Revised Miller Bill
 - **Key Points in Committee Debate**
- Next Steps in House
 - **Ways & Means Committee Consideration**
 - **Outlook for House Floor Vote**
- Current Senate Posture
- Enactment Outlook



Current Balance of Power

Senate

House

White House

51 D

234 D

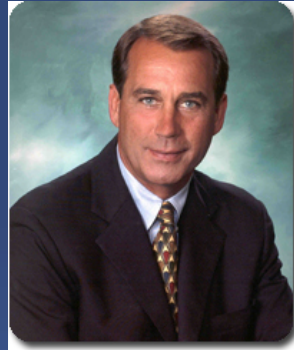
49 R

198 R

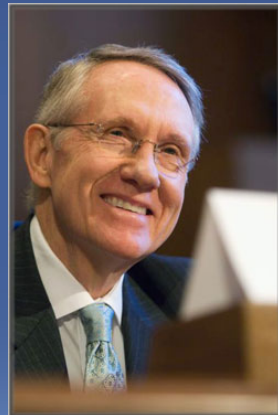


Outlook for 2008 Elections

- House



- Senate



Candidate Retirement Policy Agendas

- Obama
 - **Payroll Deduction IRAs**
 - **Refundable Savers Credit Directed to Accounts**
 - **Defined Benefit Plan Investment Transparency**
 - **Enhanced Bankruptcy Protection for Benefits**
- Clinton
 - **Creation of American Retirement Accounts**
 - **Government Matching Contributions**
- McCain
- Candidate Social Security Positions



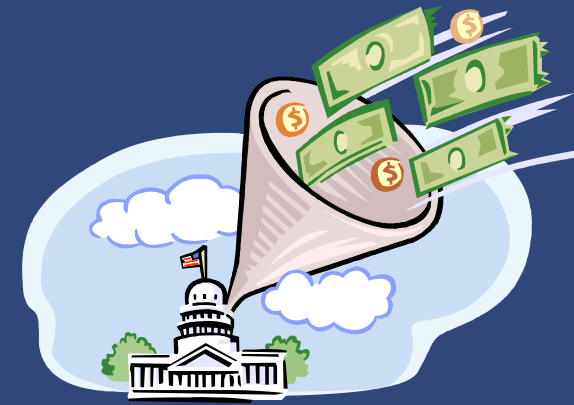
Addressing Coverage Gap



- Context
 - **Frustration Regarding Lack of Plan/IRA Coverage**
 - **Size of Tax Expenditure on Retirement Savings**
- Growing Menu of Coverage Proposals
 - **Payroll Deduction IRA Mandate**
 - **SIMPLE IRA Promotion**
 - **Mandated Contributions for Those Without Plans**
- Common Reliance on Government Structures and Passive, Low-Cost Investments
- Repercussions for Employer Plans



Progressive Tax Incentives



- Context
 - **General Concern About Income Inequality**
 - **Concern About Who Aided by Retirement Tax Incentives**
- Policy Proposals
 - **Expanded Saver's Credit**
 - **Government Matching Contribution**
 - **Conversion of Pre-Tax Exclusion/Deduction to Credit**
 - **Dollar Cap on Amount of Tax Incentive**
- Repercussions for Employer Plans



Participant Protections



- Context
 - **Attempt to Address Perceived Inattention to Issue Under Republicans**
 - **Concern That System Favors Sponsors and Providers**
- Policy Proposals
 - **Fee Disclosure/Regulation**
 - **Regulation of Investment and Service Offerings**
 - **Auto Diversification**
 - **Bankruptcy Changes**
 - **Expanded ERISA Remedies**
- Repercussions for Employer Plans



The Next President's First Decision

Health

Entitlements

Tax Reform



Tax Outlook

- Every New President Does A Major Tax Bill
- Hand Forced by Expiration of Bush Tax Cuts/AMT
- Bill Will Be Crafted By A Democratic Congress
 - **Budget Bill Will Only Need 50 Senate Votes**
- Tax Bill Will Include Major Reshuffling of Tax Burden and Major Tax Increases
 - **Regardless of Who is President**



Next Tax Bill – Everything in Play

<u>Tax Expenditure</u>	<u>2007 Revenue Loss</u>
Employer-Sponsored Retirement/IRA	\$139 Billion
Capital Gains and Dividends Rates	\$127 Billion
Employer-Provided Health	\$106 Billion
Child Credit and EITC	\$103 Billion
Home Mortgage & Home Exclusion	\$102 Billion
Cafeteria Plans	\$30 Billion
Life Insurance and Annuities	\$29 Billion

Source: Joint Committee on Taxation, JCS-3-07 (September 24, 2007)



Potential Tax Bill Repercussions

- Limited Prospects for New Incentives
- Need for “Revenue Raisers”
- Possible Limitations on Retirement Incentives
- Possible Reallocation of Retirement Incentives
- Other Potential Revenue-Raisers
 - **NQDC Restrictions**
 - **Cafeteria Plans**
 - **Tighter Minimum Required Distribution Rules**



Recap: Playing Defense/Change Coming

- Short Term: Political Gridlock
- Post-November 2008
 - **Major Tax Reform Bill Very Likely**
 - **Health Care Reform Possible**
- Coverage Will Be Key Retirement Issue
- New Retirement Incentives Unlikely
- Possible Threats to Existing Retirement Tax Incentives
- Proposed Government “Solutions” (Mandates) Are Likely to Multiply



Wrap Up

- Questions and Answers
- Contact Information

Jamey Delaplane
Davis & Harman LLP
(202) 662-2294
jmdelaplane@davis-harman.com

