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FICPA Gulf Coast Chapter Meeting Outline
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Current Developments on Retirement & Welfare Plans Including Controlled Groups and DOMA

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1. <u>Post-DOMA Regime and Impact on Employee Benefit Plans</u>

The IRS and DOL have recently promulgated the "state of celebration rule," which recognizes persons who are lawfully married under state law (or law of any U.S. territory or possession or any foreign jurisdiction with legal authority to sanction marriages) at the time and location where the marriage ceremony was performed. The state of celebration rule is required for all non-governmental qualified retirement plans, but optional for non-governmental welfare plans. Governmental plans that are subject to state law shall continue to be subject to state law interpretation of spouse and marriage.

2. <u>*Sun Capital* Case and Impact on Potential ERISA Control Group Liabilities</u>

Pursuant to a recent First Circuit decision, investment funds may qualify as a "trades or businesses" and thus may be included in a "controlled group" with its portfolio companies for purposes of determining joint and several liability for certain pension liabilities.

3. <u>Change to Safe-Harbor Midyear Plan Change Rule</u>

The Treasury Department and IRS have recently issued final rules that permit mid-year suspension or reduction of employer contributions under safe harbor 401(k) plans.

4. <u>Change to Flexible Spending Plan Rule</u>

The Treasury Department announced it is relaxing a rule that requires account holders to "use-or-lose" the funds in their accounts by the end of the year. Employers will now be able to provide in the plans that participants can carry over up to $500 in unused funds to be used anytime during the next year or that participants may spend unused funds until March 15 of the next year (the March 15th grace period). However, employers have to choose which, if any, of these rules to use as they are not allowed to offer both.

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